

3 **AN ORDINANCE SUPPLEMENTING PRIOR**  
4 **ORDINANCES AUTHORIZING THE ISSUANCE OF**  
5 **CITY OF FORT WAYNE, INDIANA ECONOMIC**  
6 **DEVELOPMENT SOLID WASTE FACILITY REVENUE**  
7 **BONDS (DO GOOD FOODS FORT WAYNE LLC**  
8 **PROJECT), AND THE LENDING OF THE PROCEEDS**  
9 **THEREOF TO DO GOOD FOODS FORT WAYNE LLC,**  
10 **AND AUTHORIZING AND APPROVING OTHER**  
11 **ACTIONS WITH RESPECT THERETO**

12 WHEREAS, the Common Council previously adopted its Special Ordinances (the  
13 “Prior Ordinances”) finding, determining, ratifying and confirming, *inter alia*, that the  
14 issuance and sale of the City of Fort Wayne, Indiana Economic Development Solid Waste  
15 Facility Revenue Bonds (Do Good Foods Fort Wayne LLC Project), in one or more  
16 taxable and tax-exempt series, in an aggregate amount not to exceed One Hundred Ninety  
17 Million Dollars (\$190,000,000) (the “Bonds”), and the loaning of the proceeds of the  
18 Bonds to Do Good Foods Fort Wayne LLC, or an affiliate thereof, for the financing of all  
19 or a portion of the acquisition, construction and equipping of a new solid waste facility  
20 involving the intake of food waste that would otherwise be disposed of at solid waste  
21 landfills from approximately 450 supermarkets and the conversion thereof to chicken feed,  
22 to be located at 8645 Aviation Drive, Fort Wayne, Indiana 46809, which constitutes solid  
23 waste disposal facilities under Section 142(a)(6) of the Internal Revenue Code of 1986, as  
24 amended (the acquisition, construction and equipping of such solid waste disposal  
25 facilities, the “Project”), will be of benefit to the health and general welfare of the City of  
26 Fort Wayne, Indiana (the “City”), will serve the public purposes referred to above in  
27 accordance with the I.C. 36-7-11.9 and I.C. 36-7-12 (the “Act”), and fully complies with  
28 the Act; and

29 WHEREAS, on December 15, 2022, the City issued its “City of Fort Wayne,  
30 Indiana Economic Development Solid Waste Facility Revenue Bonds (Do Good Foods  
Fort Wayne LLC Project), Series 2022A-1 (Federally Tax-Exempt)” in the aggregate  
principal amount of \$135,000,000 and its “City of Fort Wayne, Indiana Economic  
Development Solid Waste Facility Revenue Bonds (Do Good Foods Fort Wayne LLC

1 Project), Series 2022A-2 (Federally Taxable)” in the aggregate principal amount of  
2 \$18,220,000 (collectively, the “Prior Bonds”); and

3  
4 WHEREAS, pursuant to the Prior Ordinances, additional taxable bonds are to be  
5 issued to complete the Project in the aggregate principal amount of approximately  
6 \$25,000,000 (the “Completion Bonds”); and

7 WHEREAS, the Completion Bonds are to be issued pursuant a Master Trust  
8 Indenture, a Subordinate Trust Indenture, a Subordinate Loan Agreement, and a  
9 subordinate form of Bond (collectively, the “Financing Agreements”), as such Financing  
10 Agreements are presented to this meeting; and

11 WHEREAS, on February 23, 2023, the Fort Wayne Economic Development  
12 Commission (the “Commission”) adopted a resolution approving the Financing  
13 Agreements.

14  
15  
16 **NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL**  
17 **OF THE CITY OF FORT WAYNE, INDIANA;**

18 **Section 1.** **Approval of Financing Agreements.** The forms of the proposed  
19 Financing Agreements presented to this Common Council and in the form approved by  
20 Commission, are hereby approved. As stated in the Prior Ordinances, the Bonds and the  
21 interest thereon do not and shall never constitute an indebtedness of, or a charge against  
22 the general credit or taxing power of, the City, but shall be special and limited obligations  
23 of the City, payable solely from revenues and other amounts derived from the Financing  
24 Agreements.

25 **Section 2.** **General.** The Mayor and the Clerk, and each of them, are hereby  
26 authorized and directed, in the name and on behalf of the City, to execute or endorse any  
27 and all agreements, documents and instruments, perform any and all acts, approve any and  
28 all matters, and do any and all other things deemed by them, or either of them, to be  
29 necessary or desirable in order to carry out and comply with the intent, conditions and  
30

1 purposes of this Supplemental Ordinance (including the preambles thereto and the  
2 documents mentioned therein), the Project, the issuance and sale of the Completion Bonds,  
3 and the securing of the Completion Bonds under any documents related to the Completion  
4 Bonds, and any such execution, endorsement, performance or doing of other things  
5 heretofore effected be, and hereby is, ratified and approved.

6 **Section 3. Binding Effect.** The provisions of this Ordinance and the  
7 Financing Agreements shall constitute a binding contract between the City and the holders  
8 of the Completion Bonds, and after the issuance of the Completion Bonds, this  
9 Supplemental Ordinance shall not be repealed or amended in any respect which would  
10 adversely affect the rights of the holders of the Completion Bonds as long as the  
11 Completion Bonds or interest thereon remains unpaid.

12 **Section 4. No Changes to Prior Ordinances.** All findings and terms of the  
13 Prior Ordinances remain in full force and effect.

14 **Section 5. Effective Date.** This Ordinance shall be in full force and effect  
15 from and upon compliance with the procedures required by law.  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

Introduced by: \_\_\_\_\_  
\_\_\_\_\_, Councilman

Passed in open Council this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Glyn Hines, Common Council President

Attest:

\_\_\_\_\_  
Lana Keesling, City Clerk

Presented by me to the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Lana Keesling, City Clerk

Approved by me, the Mayor, this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Tom Henry, Mayor

Attest:

\_\_\_\_\_  
Lana Keesling, City Clerk

Approved as to Form and Legality

\_\_\_\_\_  
Malak Heiny, City Attorney

**RESOLUTION NO. 2-23-2023**

**A RESOLUTION AMENDING A PRIOR RESOLUTION  
APPROVING AND AUTHORIZING CERTAIN  
ACTIONS AND PROCEEDINGS WITH RESPECT TO CERTAIN  
PROPOSED ECONOMIC DEVELOPMENT REVENUE BONDS**

WHEREAS, the City of Fort Wayne Economic Development Commission (the “Commission”) previously adopted its Resolutions (the “Prior Resolutions”), finding, determining, ratifying and confirming, *inter alia*, that the issuance and sale of the “City of Fort Wayne, Indiana Economic Development Solid Waste Facility Revenue Bonds (Do Good Foods Fort Wayne LLC Project), Series 2022,” in one or more taxable and tax-exempt series, in an aggregate amount not to exceed One Hundred Ninety Million Dollars (\$190,000,000) (the “Bonds”), and the loaning of the proceeds of the Bonds to Do Good Foods Fort Wayne LLC, or an affiliate thereof, for the financing of all or a portion of the acquisition, construction and equipping of a new solid waste facility involving the intake of food waste that would otherwise be disposed of at solid waste landfills from approximately 450 supermarkets and the conversion thereof to chicken feed, to be located at 8645 Aviation Drive, Fort Wayne, Indiana 46809, which constitutes solid waste disposal facilities under Section 142(a)(6) of the Internal Revenue Code of 1986, as amended (the acquisition, construction and equipping of such solid waste disposal facilities, the “Project”), will be of benefit to the health and general welfare of the City of Fort Wayne, Indiana (the “City”), will serve the public purposes referred to above in accordance with the I.C. 36-7-11.9 and I.C. 36-7-12 (the “Act”), and fully complies with the Act; and

WHEREAS, on December 15, 2022, the City issued its “City of Fort Wayne, Indiana Economic Development Solid Waste Facility Revenue Bonds (Do Good Foods Fort Wayne LLC Project), Series 2022A-1 (Federally Tax-Exempt)” in the aggregate principal amount of \$135,000,000 and its “City of Fort Wayne, Indiana Economic Development Solid Waste Facility Revenue Bonds (Do Good Foods Fort Wayne LLC Project), Series 2022A-2 (Federally Taxable)” in the aggregate principal amount of \$18,220,000 (collectively, the “Prior Bonds”); and

WHEREAS, pursuant to the Prior Ordinances, additional taxable bonds are to be issued to complete the Project in the aggregate principal amount of approximately \$25,000,000 (the “Completion Bonds”); and

WHEREAS, the Completion Bonds are to be issued pursuant a Master Trust Indenture, a Subordinate Trust Indenture, a Subordinate Loan Agreement, and a subordinate form of Bond (collectively, the “Financing Agreements”), as such Financing Agreements are presented to this meeting.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FORT WAYNE ECONOMIC DEVELOPMENT COMMISSION AS FOLLOWS:

SECTION 1. The forms of the proposed Financing Agreements presented to this Commission are hereby approved. As stated in the Prior Resolutions, the Bonds and the interest thereon do not and shall never constitute an indebtedness of, or a charge against the general

credit or taxing power of, the City, but shall be special and limited obligations of the City, payable solely from revenues and other amounts derived from the Financing Agreements.

SECTION 2. The Secretary of this Commission shall transmit this Resolution, together with the forms of the documents approved by this Resolution, to the Common Council of the City.

SECTION 3. All prior findings and terms of the Prior Resolutions remain in full force and effect.

SECTION 4. This Resolution shall be in full force and effect upon adoption.

Adopted this 23<sup>rd</sup> day of February, 2023.

CITY OF FORT WAYNE ECONOMIC  
DEVELOPMENT COMMISSION

  
\_\_\_\_\_

  
\_\_\_\_\_

  
\_\_\_\_\_

MASTER TRUST INDENTURE

between

DO GOOD FOODS FACILITY MANAGEMENT, LLC.  
as Obligated Group Agent

and

UMB BANK, N.A.,  
as Master Trustee

Dated as of December 1, 2022

---

---

## TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS .....	2
ARTICLE II THE MASTER NOTES .....	24
Section 2.01. Series, Designation and Amount of Master Notes.....	24
Section 2.02. Payment of Master Notes; Investments .....	24
Section 2.03. Execution.....	26
Section 2.04. Authentication .....	26
Section 2.05. Form of Master Notes and Temporary Master Notes .....	26
Section 2.06. Mutilated, Lost, Stolen or Destroyed Master Notes. ....	27
Section 2.07. Registration; Negotiability; Cancellation upon Surrender; Exchange of Master Notes.....	27
Section 2.08. Security for Master Notes.....	28
Section 2.09. Issuance of Master Notes in Forms Other than Notes .....	28
Section 2.10. Appointment of Obligated Group Agent .....	29
ARTICLE III PREPAYMENT OF MASTER NOTES .....	29
Section 3.01. Prepayment Dates and Prices.....	29
Section 3.02. Partial Prepayment or Redemption of Master Notes. ....	31
Section 3.03. Effect of Call for Prepayment or Redemption.....	31
ARTICLE IV FUNDS AND ACCOUNTS.....	31
Section 4.01. Establishment of Funds and Accounts.....	31
Section 4.02. Revenue Fund.....	32
Section 4.03. Operating Fund.....	34
Section 4.04. Debt Service Fund .....	34
Section 4.05. Capital Reserve Fund.....	37
Section 4.06. Facility Surplus Fund.....	38
Section 4.07. Lease Fund.....	<b>Error! Bookmark not defined.</b>
Section 4.08. Lease Fund Reserve. ....	<b>Error! Bookmark not defined.</b>
Section 4.09. Renewal Fund. ....	39
Section 4.10. Property Tax Fund. ....	<b>Error! Bookmark not defined.</b>
Section 4.11. Transfer of Excess Funds. ....	<b>Error! Bookmark not defined.</b>
ARTICLE V REPRESENTATIONS OF MEMBERS.....	40
Section 5.01. Due Authorization of Master Indenture and Master Notes.....	40
Section 5.02. No Defaults; Noncontravention.....	41
Section 5.03. No Litigation.....	41
Section 5.04. Establishing and Preserving the Lien on Collateral.....	41
ARTICLE VI COVENANTS OF THE OBLIGATED GROUP .....	41
Section 6.01. Covenants as to Corporate Existence, Maintenance of Properties, and Similar Matters; Right of Contest.....	41
Section 6.02. Liens on Property.....	44
Section 6.03. Permitted Indebtedness.....	46
Section 6.04. Calculation of Debt Service and Debt Service Coverage. ....	48
Section 6.05. Rates and Charges. ....	49
Section 6.06. Sale, Lease or Other Disposition of Projects and Mortgaged Property. ....	49



Section 6.07.	Merger, Consolidation, Sale or Conveyance .....	50
Section 6.08.	Successor Company Substituted.....	51
Section 6.10.	Financial Statements, Records and Reports.....	51
Section 6.11.	Insurance.....	53
Section 6.12.	Damage, Destruction and Condemnation.....	53
Section 6.13.	Entrance into the Obligated Group.....	56
Section 6.14.	Cessation of Status as a Member of the Obligated Group.....	57
Section 6.15.	Right to Perform Members' Covenants; Advances.....	58
Section 6.16.	Right to Consent, Etc.....	58
Section 6.17.	Designation of Additional Paying Agents.....	58
Section 6.18.	Further Assurances.....	58
Section 6.19.	Indemnity.....	59
Section 6.20.	Additions to Excluded Property.....	<b>Error! Bookmark not defined.</b>
Section 6.21.	Compliance with Related Financing Documents and Related Leases.....	60
Section 6.22.	Subordination of Certain Payments.....	<b>Error! Bookmark not defined.</b>
Section 6.23.	Arbitrage and Other Tax Covenants.....	60
Section 6.24.	Secondary Market Disclosure.....	61
ARTICLE VII EVENTS OF DEFAULT .....		61
Section 7.01.	Event of Default.....	61
Section 7.02.	Payment of Master Notes on Default.....	63
Section 7.03.	Suit for Moneys Due; Other Remedies.....	63
Section 7.04.	Proceedings in Bankruptcy.....	64
Section 7.05.	Suit by Master Trustee.....	64
Section 7.06.	Application of Moneys Collected.....	64
Section 7.07.	Action by Holders.....	66
Section 7.08.	Direction of Proceedings by Holders.....	67
Section 7.09.	Notice of Default .....	67
ARTICLE VIII THE MASTER TRUSTEE .....		67
Section 8.01.	Acceptance of the Trusts .....	67
Section 8.02.	Fees, Charges and Expenses of Master Trustee and any Additional Paying Agent .....	71
Section 8.03.	Notice to Master Note Holders if Default Occurs .....	71
Section 8.04.	Intervention by Master Trustee.....	71
Section 8.05.	Successor Master Trustee .....	71
Section 8.06.	Corporate Master Trustee Required; Eligibility .....	71
Section 8.07.	Resignation by the Master Trustee .....	72
Section 8.08.	Removal of the Master Trustee .....	72
Section 8.09.	Appointment of Successor Master Trustee by the Master Note Holders; Temporary Master Trustee .....	72
Section 8.10.	Concerning Any Successor Master Trustee.....	73
Section 8.11.	Master Trustee Protected in Relying Upon Resolutions, Etc .....	73
Section 8.12.	Successor Master Trustee as Trustee of Funds, Paying Agent and Master Note Registrar.....	73
Section 8.13.	Maintenance of Records .....	73
Section 8.14.	Appointment of Co-Master Trustee.....	73
ARTICLE IX SUPPLEMENTAL MASTER INDENTURES AND AMENDMENTS .....		74
Section 9.01.	Supplemental Master Indentures Not Requiring Consent of Master Note Holders.....	74

Section 9.02.	Supplemental Master Indentures Requiring Consent of Master Note Holders. ....	75
Section 9.03.	Opinion .....	76
Section 9.04.	Amendments to Related Lease .....	77
ARTICLE X SATISFACTION OF THIS MASTER INDENTURE .....		77
Section 10.01.	Defeasance .....	77
Section 10.02.	Provision for Payment of a Particular Series of Master Notes or Portion Thereof .....	78
Section 10.03.	Satisfaction of a Series of Secured Obligations.....	79
ARTICLE XI MANNER OF EVIDENCING OWNERSHIP OF MASTER NOTES .....		79
Section 11.01.	Proof of Ownership .....	79
ARTICLE XII MISCELLANEOUS.....		80
Section 12.01.	Limitation of Rights.....	80
Section 12.02.	Unclaimed Moneys.....	80
Section 12.03.	Severability .....	80
Section 12.04.	Notices .....	80
Section 12.05.	Master Trustee as Paying Agent and Registrar.....	81
Section 12.06.	Counterparts .....	81
Section 12.07.	Applicable Law.....	81
Section 12.08.	Immunity of Officers, Employees and Members .....	81
Section 12.09.	Holidays.....	81
Section 12.10.	Joint and Several Obligations; Cross Guaranty.. ..	82
Section 12.11.	Waivers With Respect to Other Member Secured Obligations .....	82
EXHIBIT A: LIST OF OBLIGATED GROUP MEMBERS .....		A-1
EXHIBIT B: LIST OF EXCEPTIONS .....		B-1

This is a Master Trust Indenture, dated as of December 1, 2022, between Do Good Foods Facility Management, LLC, a Delaware limited liability company (the “**Obligated Group Agent**”), for itself and as the Obligated Group Agent on behalf of Do Good Foods Fort Wayne LLC, a Delaware limited liability company and each other member of the Obligated Group (defined below) that becomes a party hereto and UMB BANK, N.A., a national banking association duly established, existing and authorized to accept and execute trusts of the character herein set out under and by virtue of the laws of the United States of America, herein referred to as the “**Master Trustee**”.

#### **WITNESSETH:**

WHEREAS, all capitalized terms used herein and not otherwise defined have the meanings ascribed to them in Article I of this Master Indenture; and

WHEREAS, the Obligated Group Agent is authorized and deems it necessary and desirable to enter into this Master Indenture for the purpose of providing for the issuance of Master Notes from time to time by the Obligated Group Agent or other Persons electing to become Obligated Group Members to finance or refinance the acquisition, construction and equipping of food production facilities or other facilities operated and maintained by the Obligated Group Members, or for other lawful and proper purposes; and

WHEREAS, to secure the Master Notes the Obligated Group Members have delivered the Master Mortgages, the Security Agreements and this Master Indenture; and

WHEREAS, all acts and things necessary to constitute this Master Indenture a valid indenture and agreement according to its terms have been done and performed, the Obligated Group Agent has duly authorized the execution and delivery of this Master Indenture and proposes to make, execute, issue and deliver Master Notes hereunder; and

WHEREAS, the Master Trustee agrees to accept and administer the trusts created hereby;

#### **NOW, THEREFORE, THIS MASTER INDENTURE WITNESSETH:**

In order to declare the terms and conditions upon which Master Notes of each series are authenticated, issued and delivered, and in consideration of the foregoing premises and of the purchase and acceptance of Master Notes of each series by the holders thereof and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Members covenant and agree with the Master Trustee, for the benefit of the respective holders from time to time of Master Notes of each series as follows:

#### **GRANTING CLAUSES**

That each Member of the Obligated Group, in consideration of the premises and of the purchase of the Master Notes and of other good and lawful consideration, the receipt of which is hereby acknowledged, and to secure the payment of the principal of, premium, if any, and interest on the Master Notes and/or payment obligations related to Interest Rate Agreements secured by the Master Notes, and the performance and observance of all of the covenants and conditions herein or therein contained, has executed and delivered this Master Indenture and has conveyed, mortgaged, granted, assigned, transferred, pledged, set over and confirmed and granted a security interest in and by these presents does hereby convey, mortgage, grant, assign, transfer, pledge, set over and confirm and grant a security interest in, unto the Master Trustee, its successor or successors and its or their assigns forever, with power of sale, all and singular the property, real and personal, hereinafter described (said property being herein sometimes referred to as the “trust estate”) to wit:

## **DIVISION I**

All of its respective right, title and interest in and to (a) the Funds and Accounts established under this Master Indenture, including all moneys and investments therein and investment income derived from the investment thereof and (b) the Gross Revenues.

## **DIVISION II**

Any and all other property of every kind and nature from time to time hereafter, by delivery or by writing of any kind, conveyed, pledged, assigned or transferred as and for additional security hereunder by any Member of the Obligated Group or by anyone on its behalf to the Master Trustee, including without limitation, funds of any Member held by the Master Trustee as security for the Master Notes;

TO HAVE AND TO HOLD, all and singular, the properties, rights and privileges hereby conveyed, assigned and pledged by any Member or intended so to be, unto the Master Trustee and its successors and assigns forever, but in trust nevertheless, with power of sale for the equal and pro rata benefit and security of all Master Notes issued hereunder, without preference, priority or distinction as to participation in the lien, benefit and protection hereof of one Master Note over or from the others, by reason of priority in the issue or negotiation or maturity thereof, or for any other reason whatsoever, except (i) that each and every Senior Class A-1 Master Note shall have priority and preference as to payment over each and every Senior Class A-2 Master Note, (ii) each and every Senior Master Note shall have priority and preference over each and every Subordinate Master Note, and (iii) as otherwise specifically provided in this Master Indenture;

PROVIDED, HOWEVER, that the portion of the Trust Estate so pledged hereunder that consists of accounts and proceeds thereof may be (i) transferred despite and free of this pledge if such transfer is in accordance with the provisions of this Master Indenture and any Lien created hereunder on any such amounts shall terminate and be released immediately upon any such transfer or (ii) subjected to a Permitted Encumbrance, as herein defined; and

PROVIDED, NEVERTHELESS, and these presents are upon the express condition, that if the Members or their successors or assigns shall well and truly pay or cause to be paid the principal of such Master Notes with interest, according to the provisions set forth in the Master Notes or shall provide for the payment or redemption of such Master Notes by depositing or causing to be deposited with the Master Trustee the entire amount of funds or securities requisite for payment or redemption thereof when and as authorized by this Master Indenture, and shall also pay or cause to be paid all other sums payable hereunder by the Members, then these presents and the estate and rights hereby granted shall cease, terminate and become void, and thereupon the Master Trustee, on payment of its lawful charges and disbursements then unpaid, on demand of the Members and upon the payment of the cost and expenses thereof, shall duly execute, acknowledge and deliver to the Members such instruments of satisfaction or release as may be necessary or proper to discharge this Master Indenture of record, and if necessary shall grant, reassign and deliver to the Members, their successors or assigns, all and singular the property, rights, privileges and interests by them hereby granted, conveyed and assigned, and all substitutes therefor, or any part thereof, not previously disposed of or released as herein provided; otherwise this Master Indenture shall be and remain in full force.

## **ARTICLE I**

### **DEFINITIONS**

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

“Accounts” shall mean the named and unnamed accounts established within any Fund.

“Act of Bankruptcy” shall mean, with respect to any Person, the filing of a petition in bankruptcy (or the other commencement of a bankruptcy or similar proceeding) by or against such Person, under the Federal Bankruptcy Code or any other applicable bankruptcy, insolvency, reorganization or similar law, now or thereafter in effect; provided, however, that no involuntary petition in bankruptcy, or appointment of a trustee, custodian or receiver, without the consent of such Person, shall constitute an Act of Bankruptcy until ninety (90) days shall have elapsed from the date of filing thereof, during which time such Person has been unable to obtain the dismissal of the petition or appointment.

“Additional Indebtedness” shall mean Indebtedness incurred by any Member subsequent to the Effective Date.

“Additional Master Notes” shall mean Master Notes other than those initially issued pursuant to this Master Indenture.

“Affiliate” shall mean, with respect to any Person, another Person which controls, is controlled by or is under common control with such Person.

“Allocable Secured Obligations” shall mean that portion of a Series of Secured Obligations (which may be all such Secured Obligations or less than all) that has been allocated in the Related Financing Documents or in a Supplemental Indenture to a particular Project.

“Architectural Consultant” shall mean an Independent architect, engineer, firm of architects or engineers, other third party consultant or firm of third party consultants which is appointed by the Obligated Group Agent for the purpose of passing on questions relating to the design and construction of any particular facility, has all licenses and certifications necessary for the performance of such services and has, in the reasonable opinion of the Obligated Group Agent, a favorable reputation for skill and experience in performing similar services in respect of facilities of a comparable size and nature and, to the extent such consultant is not E3 Consulting, is acceptable to the Majority Applicable Holders.

“Audited Financial Statements” shall mean the financial statements of a Person that have been prepared in accordance with GAAP and examined by independent certified public accountants in accordance with generally accepted auditing standards. Such financial statements at a minimum shall include a balance sheet, statement of operations, and statement of changes in net assets, and the report of the examination shall contain an opinion relative to such financial statements. With respect to the Obligated Group, “Audited Financial Statements” shall mean the combined financial statements of the Obligated Group Members, each of which shall be (i) Audited Financial Statements or (ii) unaudited financial statements included within the consolidated Audited Financial Statements of the Parent; provided that such combined financial statements of the Obligated Group must be accompanied by the statement of the independent certified public accountants to the effect that the included unaudited financial statements of a Member were subject to auditing procedures applied in the examination of the consolidated financial statements and are presented fairly in all material respects in relation to such consolidated financial statements taken as a whole. The Audited Financial Statements of the Obligated Group shall be presented in the form of supplementary information to the Audited Financial Statements of the Parent.

“Authorized Representative” shall mean, with respect to any particular action to be taken by or on behalf of a Member, any officer of such Member or of the entity in control of such Member who is authorized to take such action pursuant to a certified resolution duly adopted by its board or other Governing Person, a copy of which shall be filed with the Master Trustee, and, with respect to the Master Trustee, shall mean any authorized trust officer.

“Balloon Indebtedness” shall mean Indebtedness, 25% or more of the original principal of which matures during any consecutive twelve-month period, if such maturing principal amount is not required to be amortized below such percentage by mandatory redemption or prepayment prior to such twelve-month period. Balloon Indebtedness does not include Indebtedness that otherwise would be classified hereunder as Put Indebtedness.

“Bankruptcy Code” shall mean Title 11 of the United States Code, 11 U.S.C. §§101 et seq., as amended from time to time.

“Bond Counsel” shall mean an attorney or firm of attorneys selected by the Obligated Group Agent and acceptable to the Master Trustee, recognized, by inclusion in the listing of attorneys in the Bond Buyer’s Municipal Market Place (or a successor publication) as most recently issued, as nationally expert in the field of municipal finance.

“Bond Trustee” shall mean the trustee for the holders of any Series of Secured Obligations.

“Book Value,” when used with respect to Property of a Member, shall mean the value of such Property, net of accumulated depreciation and amortization, as reflected in the most recent Audited Financial Statements of such Member, and, when used with respect to Property of all Members, means the aggregate of the values of such Property, net of accumulated depreciation and amortization, as reflected in the most recent combined Audited Financial Statements of the Obligated Group, provided that such aggregate shall be calculated in such a manner that no portion of the value of any Property of any Member is included more than once.

“Budgeted Operating Expense Amount” shall mean the aggregate budgeted Operating Expenses for one or more Projects, Members or the Offtake Purchaser, as the context requires, for any particular Fiscal Year as certified to by an Authorized Representative of the Obligated Group Agent.

“Business Day” shall mean any day other than a Saturday, Sunday or a day on which banking institutions in New York, New York and/or the cities in which the principal corporate trust or principal operations offices of the Master Trustee and the Bond Trustee to whom a payment is to be made, as applicable, are located are authorized or obligated by law or executive order to be closed or the New York Stock Exchange is closed.

“Capital Costs” shall mean costs related to improvements to capital assets of the Members.

“Capital Reserve Fund” means the Fund with such name established with the Master Trustee pursuant to this Master Indenture, in accordance with the requirements of this Master Indenture.

“Capital Reserve Fund Requirement” shall mean, with respect to any Project, such amount, if any, as required pursuant to a Supplemental Master Indenture entered into in connection with the financing of such Project.

“Capitalized Interest” means amounts irrevocably deposited in escrow to pay interest on Indebtedness or Secured Obligations and interest earned on such deposits to the extent such interest is required to be applied to pay interest on Indebtedness or Secured Obligations.

“Capitalized Lease” means any lease of real or personal property that, in accordance with GAAP, is required to be capitalized as a finance lease on the balance sheet of the lessee; provided, however, leases (either existing at the time hereof or entered into in the future) that would have satisfied the accounting

requirements for treatment as an operating lease prior to the adoption of ASC 842 shall be treated as operating leases.

“Capitalized Rentals” means, as of the date of determination, the amount at which the aggregate Net Rentals due and to become due under a Capitalized Lease would be reflected as a liability on a balance sheet of the lessee

“Code” shall mean the Internal Revenue Code of 1986, as amended from time to time.

“Collateral Agent” means UMB Bank, N.A., in its capacity as collateral agent under the Collateral Agency Agreement, together with its successors or assigns in such capacity.

“Collateral Agency Agreement” means a collateral agency, intercreditor and accounts agreement, in form and substance satisfactory to the Majority Applicable Holders, to be executed and delivered by the Collateral Agent, the depositary bank identified therein, the Offtake Purchaser and the Secured Parties from time to time a party thereto, as the same may be amended, supplemented or modified from time to time according to its terms.

“Completion Indebtedness” shall mean any Indebtedness for borrowed money: (a) incurred for the purpose of financing the completion of the acquisition, construction, remodeling, renovation, or equipping of Facilities with respect to which Indebtedness for borrowed money has been incurred in accordance with the provisions hereof, and (b) with a principal amount not in excess of the amount required to provide a completed and equipped Project of substantially the same type and scope contemplated at the time such prior Indebtedness was originally incurred, to provide for Capitalized Interest during the period of construction, to provide any reserve fund relating to such Completion Indebtedness and to pay the costs and expenses of issuing such Completion Indebtedness.

“Consultant” or “Independent Consultant” shall mean an Independent consulting firm which is appointed by the Obligated Group Agent at its expense for the purpose of passing on questions relating to the financial affairs, management or operations of one or more Members or the entire Obligated Group, is nationally recognized for its expertise and has, in the reasonable opinion of the Obligated Group Agent, a favorable reputation for skill and experience in performing similar services in respect of entities engaged in reasonably comparable endeavors and, in particular, in the market analysis of consumer product recycling facilities. If any Consultant’s report or opinion is required to be given with respect to matters partly within and partly outside the expertise of any Consultant, such Consultant may rely upon the report or opinion of another Consultant possessing the necessary expertise.

“Consultant’s Report” means a written report of an Independent Consultant.

“Counsel” shall mean a licensed attorney at law or law firm (which may include counsel to a Member).

“Credit Facility” shall mean an unconditional irrevocable letter of credit or an indemnity or surety insurance policy, a bond insurance policy or bond (a) which is issued for the benefit of the holder of any Indebtedness in order to provide a source of funds for the payment of all or any portion of a Member’s payment obligations under or with respect to such Indebtedness or which is issued to fund a Debt Service Reserve Fund and (b) the issuer of which is a Qualified Financial Institution.

“Current Value” shall mean (a) with respect to Property, Plant and Equipment: (i) the aggregate fair market value of such Property, Plant and Equipment as reflected in the most recent written report of an appraiser selected by the Obligated Group Agent and, in the case of real property, who is a member of the

American Institute of Real Estate Appraisers (MAI), delivered to the Master Trustee (which report shall be dated not more than three years prior to the date as of which Current Value is to be calculated) increased or decreased by a percentage equal to the aggregate percentage increase or decrease in the Construction Index from the date of such report to the date as of which Current Value is to be calculated, plus (ii) the Book Value of any Property, Plant and Equipment acquired since the last such report increased or decreased by a percentage equal to the aggregate percentage increase or decrease in the Construction Index from the date of such acquisition to the date as of which Current Value is to be calculated, minus (iii) the greater of the Book Value or the fair market value (as reflected in such most recent appraiser's report) of any Property, Plant and Equipment disposed of since the last such report increased or decreased by a percentage equal to the aggregate percentage increase or decrease in the Construction Index from the date of such report to the date as of which Current Value is to be calculated, and (b) with respect to any other Property, the fair market value of such Property, which fair market value shall be evidenced by an appraiser selected by the Obligated Group Agent.

“Debt Service” shall mean the principal and redemption price of and interest due on or under a Note.

“Debt Service Coverage Ratio” shall mean, for the period of time for which it is calculated for all Master Notes, the ratio determined by dividing (a) a numerator equal to the Net Cash Flow for such period by (b) a denominator equal to the sum of the Debt Service Requirements with respect to all Master Notes for such period, plus any amounts then required to be deposited in the Debt Service Reserve Funds to meet the Debt Service Reserve Requirements for the Senior Master Notes.

“Debt Service Fund” means the special Fund established with the Master Trustee pursuant to this Master Indenture in accordance with the requirements of this Master Indenture.

“Debt Service Requirement” means, with respect to the period of time for which calculated, the aggregate of the payments required to be made during such period in respect of principal (whether at maturity, as a result of mandatory sinking fund redemption, mandatory prepayment, or otherwise) and interest on outstanding Indebtedness of each Person or a group of Persons with respect to which calculated; provided, however, that optional redemptions shall not be deemed to be “required” as that term is utilized in this definition, and provided, further, that: (a) the amount of such payments for a future period shall be calculated in accordance with the assumptions contained in Sections 6.03 and 6.04, (b) interest shall be excluded from the determination of the Debt Service Requirement to the extent that Capitalized Interest is available to pay such interest, and (c) principal of and interest on Indebtedness shall be excluded from the determination of Debt Service Requirement to the extent that amounts are on deposit in an irrevocable escrow and such amounts (including, where appropriate, the earnings or other increment to accrue thereon) are required to be applied to pay such principal and interest, and such amounts are in fact sufficient to pay such principal and interest. Notwithstanding the foregoing, in no event shall the Debt Service Requirements be calculated as including amounts paid or due on any Outstanding or contemplated Subordinate Master Notes or any other Indebtedness, outstanding or contemplated, which is subordinate to the Senior Master Notes.

“Debt Service Reserve Fund” means the Debt Service Reserve Fund established with the Master Trustee pursuant to this Master Indenture in accordance with the requirements of this Master Indenture.

“Debt Service Reserve Requirement” shall mean, with respect to any Series of Master Notes, such amount, if any, as required pursuant to a Supplemental Master Indenture entered into in connection with the issuance thereof; provided, however, in the case of any Master Notes relating to Tax Exempt Secured Obligations, in no event shall the aggregate Debt Service Requirement for all Tax-Exempt Secured Obligations be greater than the least of (i) the maximum annual principal and interest requirements of such



Tax Exempt Secured Obligations, (ii) 10% of the Sale Proceeds and (iii) 125% of the average annual principal and interest requirements of such Secured Obligations, in each case which amount shall be certified in writing by the Obligated Group Agent or applicable Bond Trustee(s).

“Default” means an event which, with notice or the passage of time or both, would become an Event of Default.

“Depository Bank” means the bank identified in the Collateral Agency Agreement, together with its successors or assigns.

“Distribution Conditions” means:

(a) all payments pursuant to Section 4.02 of this Agreement have been made for the monthly period immediately preceding the date on which distributions are to be made and all other conditions have been satisfied under this Agreement;

(b) no Default or Event of Default has occurred and has not been cured to the satisfaction of the Master Trustee under this Agreement;

(c) such distribution would not, with the passing of time or with the giving of notice or both, cause an Event of Default under this Agreement;

(d) the Debt Service Coverage Ratio was at least equal to 1.50:1.00 for the semi-annual period immediately preceding the date on which distributions are to be made; and

(e) both prior to and after giving effect to the proposed distribution, each of the Debt Service Reserve Fund, the Operating Reserve Fund, the Capital Reserve Fund, and the Lease Fund Reserve Fund are fully funded in amounts equal to no less than (A) the Debt Service Reserve Requirement with respect to the Debt Service Reserve Fund, (B) the Operating Reserve Fund Requirement with respect to the Operating Reserve Fund, (C) the Capital Reserve Fund Requirement with respect to the Capitalized Reserve Fund, and (D) the Lease Fund Reserve Fund Requirement with respect to the Lease Fund Reserve Fund.

“Effective Date” shall mean December 1, 2022.

“Electronic Means” shall mean the following communications methods: a portable document format (“pdf”) or other replicating image attached to an unsecured e-mail, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Master Trustee, or another method or system specified by the Master Trustee as available for use in connection with its services hereunder.

“EMMA” shall mean the Electronic Municipal Market Access system, as administered by the Municipal Securities Rulemaking Board

“Environmental Laws” means any and all federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including, but not limited to, those related to Hazardous Materials, hazardous substances or wastes, air emissions and discharges to waste or public systems.

“Event of Default” shall mean any event of default under this Master Indenture, as defined in Section 7 of this Master Indenture.

“Excluded Property” shall mean any assets of “employee pension benefit plans” as defined in the Employee Retirement Income Security Act of 1974, as amended.

“Extraordinary Items” means the after tax financial impact of significant events, transactions, or activities that are both unusual in nature and infrequent in occurrence, determined in accordance with GAAP. Such extraordinary events, transactions or activities include, but are not limited to, the following: (i) Force Majeure Events, (ii) affiliation or asset acquisitions activities, including direct expenses incurred related to pre-affiliation or acquisition activities, such as, without limitation, legal fees, consultant fees and due diligence costs, as well as post affiliation or acquisition adjustments and (iii) insurance settlements.

“Facility Surplus Fund” means the Fund with such name established with the Master Trustee pursuant to this Master Indenture, in accordance with the requirements of this Master Indenture.

“Final Release Conditions” shall have the meaning set forth in Section 4.03 hereof.

“Fund Letter of Credit” means the irrevocable, transferable letter of credit, if any, consented to by the Required Bondholders, deposited in an applicable Fund in lieu of or in partial substitution for cash or securities on deposit therein, which shall be payable or available to be drawn upon on any date that moneys therein are required to be transferred; provided that the issuer providing such letter of credit shall be a banking association, bank or trust company or branch thereof whose letter of credit results in municipal obligations secured by such letter of credit to be rated in any of the three highest rating categories of Moody’s and S&P at the time such Fund Letter of Credit is issued and while the Bonds are Outstanding.

“Fiscal Quarter” shall mean a period of three consecutive months ending on March 31, June 30, September 30, and December 31 or on such other dates as may be specified in an Officer’s Certificate delivered to the Master Trustee.

“Fiscal Year” shall mean a period of twelve consecutive months ending on December 31 or on such other date as may be specified in an Officer’s Certificate delivered to the Master Trustee.

“Fitch” means Fitch Inc., and its successors and assigns.

“Force Majeure Event” shall mean any significant event that is both unusual in nature and infrequent in occurrence including any of the following: acts of God; industrial disturbances; acts of public enemies; acts or orders of any kind of the government of the United States of America, or of any state or locality thereof or any of their departments, agencies, or officials, or any civil or military authority, in any case, that materially restricts the ability of a Member to operate its facilities as intended; terrorist acts; insurrections; riots; epidemics; pandemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; droughts; restraining of government and people; civil disturbances; explosions; nuclear accidents; wars; breakage or accidents to machinery, transmission pipes or canals; partial or entire failure of utilities or any other cause not reasonably within the control of the Members..

“Fund” shall mean any of the named Funds required to be established by the Master Trustee pursuant to this Master Indenture, or any other Fund permitted to be established by the Master Trustee.

“General Account” shall mean the Account with such name within the Revenue Fund, established with the Master Trustee pursuant to this Master Indenture, in accordance with the requirements of this Master Indenture.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States of America as consistently applied.

“Governing Body” means, with respect to a Member, the board of managers, or similar group in which the right to exercise the powers of corporate directors or trustees is vested.

“Governing Person” shall mean the governing board of an entity or such other Person having control over the actions or determinations of an entity or other Person, which Person shall be identified to the Master Trustee in writing (and, if requested by the Master Trustee, confirmed by an Opinion of Counsel).

“Government Obligations” shall mean:

(i) direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America;

(ii) evidences of ownership of a proportionate interest in specified direct obligations of, or specified obligations the timely payment of the principal of and the interest on which are unconditionally and fully guaranteed by, the United States of America, which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian;

(iii) obligations issued by the Resolution Funding Corporation pursuant to the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (the “FIRRE Act”), (A) the principal of which obligations is payable when due from payments of the maturing principal of non-interest bearing direct obligations of the United States of America which are issued by the Secretary of the Treasury and deposited in the Funding Corporation Principal Fund established pursuant to the FIRRE Act, and (B) the interest on which obligations, to the extent not paid from other specified sources, is payable when due by the Secretary of the Treasury pursuant to the FIRRE Act; and

(iv) obligations which are (A) issued by any state or political subdivision thereof or any agency or instrumentality of such a state or political subdivision, (B) fully secured as to principal and interest by obligations described in clause (i), (ii) or (iii) above and (C) rated at the time of purchase in one of the two highest ratings categories by Moody’s, Fitch and Standard & Poor’s (or, upon discontinuation of either rating service, by such other nationally recognized rating service or services as may be acceptable to the Obligated Group Agent).

“Gross Revenues” shall mean all operating and non-operating revenues, receipts and income of each Member and all rights to receive the same, whether in the form of accounts receivable, contract rights, chattel paper, instruments, general intangibles or other rights and all proceeds thereof, including insurance proceeds and condemnation awards, whether now existing or hereafter coming into existence and whether now owned or hereafter acquired and all amounts contributed to the capital of a Member by its owners.

“Holder” shall mean, as the context requires, any holder of or other obligee on a Master Note, and shall include successors or assigns. In the case of a Master Note issued to a trustee or other fiduciary acting on behalf of the holders of any bonds, notes, certificates or other similar obligations that are secured by such Master Note, the term Holder shall mean the trustee or other fiduciary as provided in the Related Financing Documents.

“Indebtedness” shall mean and include any obligation for the payment of money to a Person other than a Member, which obligation is incurred, assumed or guaranteed by a Member and is in the form of (i)

a note, (ii) a loan, (iii) a capitalized lease, installment sale agreement or other comparable arrangement to provide for the acquisition, renovation or construction of capital assets, or (iv) any other debt for borrowed money that is properly treated as indebtedness under GAAP; provided, however, that Indebtedness shall not include (i) the joint and several liability of any Member on Indebtedness of another Member, or (ii) obligations (including any termination payments) under Interest Rate Agreements unless such obligations are presently due and owing.

“Independent” shall mean a Person who is not (i) a Governing Person, (ii) a member of the governing board of any Member or Governing Person, (iii) an officer or employee of any Member, or (iv) a Person having a partner, director, officer, member, or substantial stockholder who is a member of the board of any Member or who is a Governing Person or an officer or employee of a Member or Governing Person; provided, however, that the fact that such Person is retained regularly by or transacts business with a Member shall not make such Person an employee within the meaning of this definition.

“Independent Director” means a natural person who, for the five year period prior to his or her appointment as Independent Director, has not been, and during the continuation of his or her service as Independent Director is not: (i) an employee, director, manager, member, stockholder, partner or officer of the Parent, Offtake Purchaser, any Member or any of their Affiliates (other than his or her service as an Independent Director of any such Person or its Affiliates); (ii) a customer or supplier of the Offtake Purchaser, the Parent, any Member or any of their Affiliates; (iii) an Affiliate of any Person described in clause (i) or (ii) of this definition; or (iv) any member of the immediate family of a person described in (i), (ii) or (iii).

“Independent Manager” means an individual who is not at the time of his/her appointment as Independent Manager, has not been at any time during the preceding five (5) years, and does not become subsequently: (i) a direct or indirect legal or beneficial holder of any stock, partnership or other equity interest in the Parent, Offtake Purchaser, any Member or any of their Affiliates; (ii) a creditor, supplier, employee, officer, director, family member, manager (other than during the individual’s tenure as Independent Manager) or contractor of the Parent, the Offtake Purchaser, any Member or any of their Affiliates; or (iii) an individual who controls, directly, indirectly or otherwise the Parent, the Offtake Purchaser, any Member or any of their Affiliates or any creditor, supplier, officer, director, member, manager or contractor of such Person or its Affiliates.

“Independent Public Accountant” shall mean an Independent accounting firm which is appointed by the Obligated Group Agent for the purpose of examining and reporting on or passing on questions relating to the financial statements of one or more Members or the entire Obligated Group, has all certifications necessary for the performance of such services and has a favorable reputation for skill and experience in performing similar services in respect of entities engaged in reasonably comparable endeavors.

“Interest Rate Agreement” means an interest rate exchange, hedge or similar agreement, expressly identified in an Officer’s Certificate of the Member entering the Interest Rate Agreement or a duly authorized resolution of the Governing Body of the Member entering the Interest Rate Agreement delivered to the Master Trustee as being entered into in order to hedge or manage the interest payable on all or a portion of any Secured Obligation, which agreement may include, without limitation, an interest rate swap, a forward or futures contract or an option (e.g., a call, put, cap, floor or collar) and which agreement does not constitute an obligation to repay money borrowed, credit extended or the equivalent.

“Investment Securities” shall mean and include any of the following to the extent the same are legal investments under the laws of any applicable jurisdiction:

(i) cash deposits (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with Government Obligations);

(ii) Government Obligations;

(iii) obligations of the following federal agencies so long as such obligations are backed by the full faith and credit of the United States of America: (a) U.S. Export-Import Bank (Eximbank), (b) Rural Economic Community Development Administration, (c) Federal Financing Bank, (d) General Services Administration, (e) U.S. Maritime Administration, (f) U.S. Department of Housing and Urban Development (PHAs) (g) Small Business Administration, (h) Government National Mortgage Association (GNMA), (i) Federal Housing Administration, and (j) Farm Credit System Financial Assistance Corporation;

(iv) direct obligations of any of the following federal agencies which obligations are not fully guaranteed by the full faith and credit of the United States of America: (a) senior debt obligations rated in the highest long-term rating category by at least two nationally recognized rating agencies issued by the Federal National Mortgage Association (FNMA) or Federal Home Loan Mortgage Corporation (FHLMC), (b) senior debt obligations of the Federal Home Loan Bank System, and (c) senior debt obligations of other United States government sponsored agencies bearing the same or higher ratings as Government Obligations;

(v) U.S. dollar denominated deposit accounts, federal funds and bankers' acceptances with domestic commercial banks which either (a) have a rating on their short-term certificates of deposit on the date of purchase in the highest short-term rating category of at least two nationally recognized rating agencies, (b) are insured at all times by the Federal Deposit Insurance Corporation or (c) are collateralized with Government Obligations at 102% of the value thereof, valued daily. All such certificates must mature no more than 360 days after the date of purchase (Ratings on holding companies are not considered as the rating of the bank);

(vi) commercial paper which is rated at the time of purchase in the highest short-term rating category of at least two nationally recognized rating agencies and which matures not more than 270 days after the date of purchase;

(vii) investments in (a) money market funds registered under the Investment Company Act of 1940, as amended, whose shares are registered under the Securities Act of 1933, as amended, and rated in the highest short-term rating category of at least two nationally recognized rating agencies, including, without limitation, funds for which the Master Trustee, its Affiliates and subsidiaries provide investment advisory or other management services, and (b) public sector investment pools operated pursuant to SEC Rule 2a-7 in which the issuer's deposit shall not exceed 5% of the aggregate pool balance at any time and such pool is rated in one of the two highest short-term rating categories of at least two nationally recognized rating agencies;

(viii) pre-funded municipal obligations defined as follows: any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local government unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice and (a) which are rated, based on an irrevocable escrow account or fund (the "escrow"), in the highest long-term rating category of at least two nationally recognized rating agencies (without regard to gradations), or (b)(1) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or Government Obligations, which escrow may be applied only to the payment of such principal of and interest and redemption

premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (2) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this clause (viii) on the maturity date or dates specified in the irrevocable instructions referred to above, as appropriate;

(ix) general obligations of states with a short-term rating in one of the two highest rating categories and a long-term rating in one of the two highest rating categories of at least two nationally recognized rating agencies. In the event such obligations are variable rate obligations, the interest rate on such obligations must be reset not less frequently than annually;

(x) investment agreements with a Qualified Investment Provider;

(xi) other forms of investments (including repurchase agreements) approved in writing by a Qualified Financial Institution providing a Credit Facility or not unacceptable to the Rating Agencies then rating any Secured Obligations;

(xii) repurchase agreements relating to securities described in clauses (i), (ii), (iii), (iv), (vi), (viii) and (ix) above, with a Qualified Investment Provider which agreement shall provide that (A) such securities have a value of at least 103% (valued on each interest payment date for the Secured Obligations) of the specified repurchase price and are deposited with the Master Trustee or with a third party custodian approved by, and in accordance with documentation satisfactory to, the Master Trustee, (B) the provider will repurchase such securities without penalty upon request of the Master Trustee in order to use the proceeds for any purpose for which the Fund from which the investment was made may be used, (C) if such rating falls below "A3" or "A-," respectively by either Moody's and Standard & Poor's, the provider must notify the Trustee and repurchase such securities without penalty within five (5) Business Days of such downgrade and (D) the Master Trustee is expressly authorized to liquidate such securities in the event of the insolvency of the provider or the commencement by or against the provider of a case under the federal Bankruptcy Code or the appointment or taking possession by a trustee or custodian of the assets of the provider; and

(xiii) a guaranteed investment contract with a defined termination date, secured by Government Obligations or other security not unacceptable to the Rating Agencies then rating the Secured Obligations in an amount at least equal to the amount invested under the contract and pledged to the Master Trustee.

"Lease" shall mean a ground or facility lease by a Member of a Project.

"Lien" shall mean any mortgage, pledge, or lease of, security interest in or lien, charge, restriction, or encumbrance upon, any Property of the Person involved in favor of, or that secures any obligation to, any Person other than any Member, and any Capitalized Lease under which any Member is lessee and the lessor is not another Member, but excluding, however, and lease and leaseback or similar arrangement with a Related Issuer to the extent required in connection with the issuance of Secured Obligations.

"Limited Special Purpose Entity" shall mean a corporation, limited partnership or limited liability company, which at all times from and after the date of execution of this Master Indenture:

(a) is organized solely for the purpose of (i) acquiring, developing, owning, holding, selling, leasing, transferring, managing and operating one of the Projects, entering

into this Master Indenture and consummating the transactions contemplated by this Master Indenture and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing; or (ii) acting as a general partner of a limited partnership that is a Member or as a member or manager of a limited liability company that is a Member;

(b) is not engaged and will not engage in any business unrelated to (i) the acquisition, development, ownership, management or operation of one of the Projects or (ii) acting as a general partner of a limited partnership that is a Member or as a member or manager of a limited liability company that is a Member;

(c) does not have and will not have any assets other than those related to the Projects or its partnership interest in the limited partnership or the membership interest in the limited liability company that is a Member, as applicable;

(d) shall not take for itself any of the following actions without the prior unanimous written consent of its members and the Independent Manager: (i) file or consent to the filing of any bankruptcy, insolvency or reorganization case or proceeding; institute any proceedings under any applicable insolvency law; file an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally, (ii) seek, consent to or acquiesce to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for itself or any other entity, (iii) make an assignment of its assets for the benefit of its creditors or an assignment of the assets of another entity for the benefit of such entity's creditors, (iv) take any action in furtherance of the foregoing, (v) modify or amend any requirements relating to qualification as a single purpose entity, or (vi) modify or amend any requirements relating to its Independent Manager;

(e) shall maintain one Independent Manager, which shall serve as a springing Independent Manager, selected from a company satisfying the criteria for an Independent Manager listed in the definition of Independent Manager;

(f) shall have organizational documents that (i) provide that the Independent Manager may consider only the interests of each Member, including its creditors, and will have no fiduciary duties to each Member's equityholders (except to the extent of their respective interests in each Member), (ii) prohibit the replacement of any Independent Manager without cause and without giving at least two (2) Business Days' prior written notice to the Trustee and Issuer (except in the case of the death, legal incapacity, or voluntary non collusive resignation of an Independent Manager, in which case no prior notice to the Trustee and Issuer will be required in connection with the replacement of such Independent Manager with a new Independent Manager that is provided by any of the companies listed in the definition of Independent Manager) and (iii) provided that, upon the occurrence of any event that causes the Parent to cease to be the sole member of each Member while the Master Notes are outstanding, the Independent Manager shall automatically be admitted as the sole member of each Member and such admittance will preserve and continue the existence of each Member without dissolution;

(g) shall maintain an operating agreement which provides that, for so long as the Master Notes are Outstanding, each Member will not take or consent to any of the following actions except to the extent expressly permitted in the Master Trust Indenture:

(1) the dissolution, liquidation, consolidation, merger or sale of all or substantially all of its assets;

(2) the engagement by each Member in any business other than the acquisition, development, management, leasing, ownership, maintenance and operation of the Project and incidental activities;

(3) the filing, or consent to the filing, of a bankruptcy or insolvency petition, any general assignment for the benefit of creditors or the institution of any other insolvency proceeding, or the seeking or consenting to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official in respect each Member without the affirmative vote of its Independent Manager; and

(4) any amendment or modification of any provision of its organizational documents relating to qualification as a single purpose entity or the maintenance of an Independent Manager.

(h) if such entity is a limited liability company with only one member, has and will have (i) as its only member a non-managing member, (ii) at least one (1) Independent Manager and has not caused or allowed and will not cause or allow the board of managers of such entity to take any action requiring the unanimous affirmative vote of one hundred percent (100%) of the Managers unless the Independent Manager shall have participated in such vote and (iii) at least one springing member that will become the non-managing member of such entity upon the dissolution of the existing non-managing member;

(i) if such entity is (i) a limited liability company, has a limited liability company agreement, (ii) a limited partnership, has a limited partnership agreement, or (iii) a corporation, has a certificate of incorporation or articles that, in each case, provide that such entity will not: (A) to the fullest extent permitted by law, dissolve, merge, liquidate or consolidate; (B) sell all or substantially all of its assets or the assets of the Member (as applicable); (C) engage in any other business activity, or amend its organizational documents with respect to the matters set forth in this definition without the consent of the Master Trustee (which consent may be based upon written direction of the Majority Applicable Holders); or (D) without the affirmative vote of the Independent Director or the Independent Manager, as applicable, and of all other directors or the general partner or managing or co-managing member or manager of such entity, file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest;

(j) is and will remain solvent and pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due, and is maintaining and will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(k) has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;

(l) has maintained and will maintain its accounts, books and records separate from any other Person and will file its own tax returns unless it is a disregarded entity for



federal income tax purposes, except to the extent that it is required to file consolidated tax returns by law;

(m) has maintained and will maintain its own records, books, resolutions and agreements;

(n) other than as contemplated by this Master Indenture has not commingled and will not commingle its funds or assets with those of any other Person;

(o) has held and will hold its assets in its own name;

(p) has conducted and will conduct its business in its name;

(q) has maintained and will maintain its financial statements, accounting records and other entity documents separate from any other Person and has not permitted and will not permit its assets to be listed as assets on the financial statement of any other entity except as required by GAAP; provided, however, that any such consolidated financial statement shall contain a note indicating that its separate assets and liabilities are neither available to pay the debts of the consolidated entity nor constitute obligations of the consolidated entity;

(r) has paid and will pay its own liabilities and expenses, including the salaries of its own employees, if any, out of its own funds and assets except as provided in this Master Indenture, and to the extent it has employees, has maintained and will maintain a sufficient number of employees in light of its contemplated business operations;

(s) has observed and will observe all partnership, corporate or limited liability company formalities, as applicable; has and will have no Indebtedness other than (i) the Indebtedness permitted hereby, (ii) liabilities incurred in the ordinary course of business relating to the ownership and operation of the Project and the routine administration of the Member including equipment leasing and financing and other short term unsecured indebtedness, in amounts not to exceed four percent (4%) of the principal balance of the Master Notes which liabilities are not more than sixty (60) days past the date incurred, are not evidenced by a note and are paid when due, and which amounts are normal and reasonable under the circumstances, and (iii) such other liabilities that are permitted pursuant to this Master Indenture;

(t) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except as between Members of the Obligated Group as permitted pursuant to this Master Indenture;

(u) has not and will not acquire obligations or securities of its partners, members or shareholders or any other Affiliate;

(v) has allocated and will allocate fairly and reasonably any overhead expenses that are shared with any Affiliate, including, but not limited to, paying for shared office space and services performed by any employee of an Affiliate;

(w) to the extent it has such items, maintains and uses and will maintain and use separate stationery, invoices and checks bearing its name. The stationery, invoices,

and checks utilized by the Limited Special Purpose Entity or utilized to collect its funds or pay its expenses shall bear its own name and shall not bear the name of any other entity unless such entity is clearly designated as being the Limited Special Purpose Entity's agent;

(x) has not pledged and will not pledge its assets for the benefit of any other Person except as permitted by this Master Indenture;

(y) has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other Person, and will not take any actions through an Affiliate;

(z) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(aa) has not made and will not make loans to any Person or hold evidence of indebtedness issued by any other Person or entity (other than cash and investment grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity);

(bb) has not identified and will not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it, and has not identified itself and shall not identify itself as a division of any other Person;

(cc) has not been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are intrinsically fair, commercially reasonable and are no less favorable to it than would be obtained in a comparable arm's length transaction with an unrelated third party;

(dd) has not and will not have any obligation to, and will not, indemnify its partners, officers, directors or members, as the case may be, unless such an obligation is fully subordinated to the Secured Obligations and will not constitute a claim against it in the event that cash flow in excess of the amount required to pay the Secured Obligations is insufficient to pay such obligation;

(ee) if such entity is a corporation, it shall consider the interests of its creditors in connection with all corporate actions;

(ff) does not and will not have any of its obligations guaranteed by any Affiliate other than permitted among the Members as contemplated by this Master Indenture; and

(gg) has complied and will comply with all of the terms and provisions contained in its Organizational Documents.

“Majority Applicable Holders” shall mean in the case of consent or direction to be given under this Master Indenture, the Holders of the majority in aggregate principal amount of Outstanding Senior Master Notes or, if no Senior Master Note remains Outstanding, the Holders of the majority in aggregate principal amount Outstanding of Subordinate Master Notes.

“Master Note” shall mean any note issued under this Master Indenture by the Members to evidence the joint and several obligations of the Members to make all payments required under any Indebtedness incurred pursuant to the terms of this Master Indenture or in respect of any Secured Obligation of any Member.

“Master Note Registrar” shall mean the Master Trustee.

“Master Mortgage” means, collectively, those certain Mortgage and Security Agreements from each Member to the Master Trustee and any other mortgage in favor of the Master Trustee securing the obligations of the Obligated Group under the Master Notes and this Master Indenture, in each case as amended and supplemented from time to time.

“Master Trustee Indemnified Persons” means the Master Trustee and each and all of the Master Trustee’s respective past, present and future directors, board members, officers, employees, Authorized Signatories, attorneys, agents and advisers (including, without limitation, counsel and financial advisers) and each of their respective heirs, successors and assigns.

“Material Adverse Effect” shall mean (a) a material adverse change in the financial condition of any Member, Project; or (b) any event or occurrence of whatever nature which would materially and adversely change (i) any Member’s ability to perform its obligations under this Master Indenture or any Related Financing Documents; or (ii) the Holder’s or the Master Trustee’s security interests in the security pledged under this Master Indenture or the Security Documents.

“Member” or “Member of the Obligated Group” means any Person who is listed on Exhibit A hereto from time to time.

“Moody’s” means Moody’s Investors Service, Inc., and its successors and assigns.” Mortgage” shall mean a mortgage or deed of trust and an included or separate assignment of rents together with such other security documents as shall be executed to effect a security interest of the Master Trustee in a Project.

“Net Cash Flow” means, with respect to any period, Net Income for such period plus all amounts deducted in arriving at such Net Income amount in respect of (i) federal, state and local income taxes, (ii) interest expense, (iii) amortization expense and (iv) depreciation expense; provided, however, that the following items shall be excluded from the Net Cash Flow: (A) Extraordinary Items of income or loss, (B) gains or losses from the extinguishment of Indebtedness, (C) unrealized gains and losses on investments, (D) any gain or loss from the disposition of assets not in the ordinary course of business, (E) any loss from impairment of the value of assets, (F) financing costs that are treated as a current expense, rather than amortized, (G) costs of equity based compensation not paid in cash, and (H) any other item that is (i) non recurring or (ii) a non-cash item.

“Net Income” means, with respect to any period, the sum of the excess of revenues over expenses of the Offtake Purchaser and the Obligated Group for such period as determined by GAAP in the United States. For purposes of this definition, (i) expenses for a Project to be constructed shall not include (A) Debt Service on Indebtedness incurred with respect thereto until six months after the each of the Selma and Fort Wayne Projects is placed in service (which shall not, in the aggregate, exceed a period in excess of three years from the incurrence date of such Indebtedness) and (B) expenses financed with the proceeds of Secured Obligations incurred to finance working capital expenditures of the Project, and (ii) prior to the fourth Fiscal Quarter in 2023, expenses shall not include expenses of the Offtake Purchaser.

“Net Proceeds,” when used with respect to any damage, destruction, condemnation or loss of title, means the gross proceeds from any insurance relating to damage or destruction of any Project or

condemnation award with respect to any condemned Project or realization of title insurance with respect to any deficiency or loss of title to any Project, remaining after the payment of all expenses (including attorneys' fees and any expenses of the Master Trustee) incurred in the collection of such gross proceeds, whether paid to the Member or to the landlord under the Related Lease, but in the case of amounts paid to such landlord, shall include only those amounts to be made available for replacement or repair of such Project or for the repayment of Secured Obligations.

“Net Rentals” means all fixed rents (including as such all payments that the lessee is obligated to make to the lessor on termination of the lease or surrender of the Property other than upon termination of the lease for a default thereunder) payable under a lease or sublease of real or personal Property excluding any amounts required to be paid by the lessee (whether or not designated as rents or additional rents) on account of maintenance, repairs, insurance, taxes, and similar charges. Net Rentals for any future period under any so-called “percentage lease” shall be computed on the basis of the amount reasonably estimated to be payable thereunder for such period, but in any event not less than the amount paid or payable thereunder during the immediately preceding period of the same duration as such future period; provided that the amount estimated to be payable under any such percentage lease shall in all cases recognize any change in the applicable percentage called for by the terms of such lease.

“Net Worth” means the value of all assets of a Person less the value of all its outstanding liabilities.

“Non-Recourse Indebtedness” means any Indebtedness that is recourse solely to the equipment financed with the proceeds thereof.

“Obligated Group” shall mean all Members.

“Obligated Group Agent” shall mean Do Good Foods Facilities Management LLC, a Delaware limited liability company, and its successors and assigns, including, without limitation, any other Member of the Obligated Group that shall have been designated to assume the responsibilities of the Obligated Group Agent pursuant to this Master Indenture.

“Obligated Group Agent Equity Pledge and Security Agreement” shall mean the Equity Pledge and Security Agreement to be executed and delivered by the Obligated Group Agent for the benefit of the Master Trustee, pursuant to which it pledges its equity interest, among other things, in the other Members.

“Obligated Group Security Agreement” shall mean the Security Agreement, dated as of the date hereof, by the members of the Obligated Group for the benefit of the Master Trustee

“Officer’s Certificate” shall mean a certificate or report signed by an Authorized Representative of the appropriate Member of the Obligated Group. When an Officer’s Certificate is required under this Master Indenture to set forth matters relating to more than one Member of the Obligated Group, such Officer’s Certificate shall be signed by an Authorized Representative of the Obligated Group Agent.

“Offtake Purchaser” means, initially, Do Good Foods LLC and its successors and assigns.

“Offtake Purchaser Security Agreement” means the Security Agreement to be executed by the Offtake Purchaser in favor of the Master Trustee, including the related Collateral Assignment of Agreements, as amended, modified, supplemented or restated from time to time.

“Offtake Purchaser Security Documents” means the Collateral Agency Agreement, the Offtake Purchaser Guaranty and the Offtake Purchaser Security Agreement.

“Offtake Purchaser Guaranty” means the Guaranty to be executed by the Offtake Purchaser in favor of the Master Trustee, as amended, modified, supplemented or restated from time to time.

“Operating Company” shall mean any subsidiary of the Obligated Group Agent that owns and operates a Project.

“Operating Expenses” shall mean, for each Member and/or the Offtake Purchaser, as applicable, all reasonable and necessary operating and maintenance expenses of such Member and/or the Offtake Purchaser incurred through its normal business operations.

“Operating Fund” shall mean the Fund with such name established with the Master Trustee pursuant to this Master Indenture, in accordance with the requirements of this Master Indenture

“Operating Reserve Fund” shall mean the Fund with such name established with the Master Trustee pursuant to this Master Indenture, in accordance with the requirements of this Master Indenture.

“Operating Reserve Fund Requirement” means, with respect to a Project, such amount as may be required pursuant to the terms of the related Supplemental Master Indenture.

“Operating Revenues” shall mean Gross Revenues derived from the operation of a Project.

“Opinion of Bond Counsel” shall mean a written opinion of Bond Counsel.

“Opinion of Counsel” shall mean an opinion or opinions in writing, signed by legal counsel who, unless otherwise specified, may be counsel to a party to the Related Financing Documents or to a Member of the Obligated Group. As to any factual matters involved in an Opinion of Counsel, such counsel may rely, to the extent that they deem such reliance proper, upon a certificate or certificates setting forth such matters which have been signed by an official, officer, general partner or authorized representative of a particular Person.

“Organizational Documents” shall mean for any Member the organizational documents governing its creation, existence and actions, as in effect on the date in question.

“Outstanding” shall mean all Master Notes issued, authenticated and delivered under this Master Indenture other than (i) Master Notes as to which all required payments of principal, premium and interest have been fully paid or have been duly provided for pursuant to this Master Indenture, and (ii) Master Notes surrendered to and required to be cancelled by the Master Trustee or otherwise replaced, as provided in this Master Indenture.

“Parent” shall mean KDC Agribusiness LLC, and its permitted successors or assigns.

“Parent Guaranty” means the Guaranty to be executed by the Parent for the benefit of the Master Trustee.

“Parent Equity Pledge and Security Agreement” means, collectively, (i) the Equity Pledge and Security Agreement of the Parent’s equity interest in the Obligated Group Agent and (ii) the Equity Pledge and Security Agreement of the Parent’s equity interest in the Offtake Purchaser, each to executed by the Parent in favor of the Master Trustee, as amended, modified, supplemented or restated from time to time.

“Parent Security Documents” means the Parent Guaranty and the Parent Equity Pledge and Security Agreement.

“Paying Agent” means the bank or banks, if any, designated pursuant to a Related Bond Indenture to receive and disburse the principal of and interest on any Secured Obligations or designated pursuant to the Master Indenture to receive and disburse the principal of and interest on any obligations.

“Payment Account” shall mean the account so designated within the Debt Service Fund established with the Master Trustee pursuant to this Master Indenture in accordance with the requirements of this Master Indenture.

“Permitted Encumbrances” shall mean those encumbrances enumerated in Section of \_\_\_ this Master Indenture.

“Person” shall mean an individual, a corporation, a partnership, an association, a limited liability company, a joint stock company, a joint venture, a trust, an unincorporated organization, a governmental unit or an agency, political subdivision or instrumentality thereof or any other group or organization of individuals.

“Project” shall mean a facility financed by one or more Secured Obligations.

“Projected Debt Service Coverage Ratio” shall mean, for the period of time for which it is calculated for all Master Notes, the ratio determined by dividing (a) a numerator equal to the Projected Net Cash Flow for the Offtake Purchaser and the Obligated Group for such period by (b) a denominator equal to the sum of the Debt Service Requirements for all Master Notes for such period plus any amounts reasonably expected to be required to be deposited in the Debt Service Reserve Funds for all Secured Obligations (including Secured Obligations expected to be issued).

“Projected Net Cash Flow” shall mean “Net Cash Flow” for one or more Members, a Project or the Obligated Group, as the context requires, where Net Income is projected for a future period using reasonable, consistently applied and stated assumptions including reasonable assumptions as to the revenues to be generated by the new or renovated facility which is anticipated to be financed by the proposed Indebtedness.

“Projected Rate” means, at the option of the Obligated Group Agent and approved by the Majority Applicable Holders (a) the interest rate that equals the most recently available Revenue Bond Index as published in The Bond Buyer (or such comparable index approved by the Obligated Group Agent if the Revenue Bond Index is no longer published), or (b) the projected yield at par of an obligation as set forth in the report of a Consultant (which Consultant and report, including without limitation the scope, form, substance and other aspects thereof, are acceptable to the Majority Applicable Holders). Such report shall state that in determining the Projected Rate such Consultant reviewed the yield evaluations at par of not less than three obligations selected by such Consultant, the interest on which is entitled to the exemption from federal income taxation afforded by Section 103(a) of the Code or any successor thereto (or, if it is not expected that it will be reasonably possible to issue such tax-exempt obligations, or if the interest on the Indebtedness for which the Projected Rate is being calculated is not entitled to such exemption, then obligations the interest on which is subject to federal income taxation), which obligations such Consultant states in its report are reasonable comparators for utilizing in developing such Projected Rate and which obligations: (i) were outstanding on a date selected by the Consultant, which date so selected occurred during the 90-day period preceding the date of the calculation utilizing the Projected Rate in question, (ii) to the extent practicable, are obligations of Persons engaged in operations similar to those of the Obligated Group and having a credit rating similar to that of the Obligated Group, (iii) are not entitled to the benefits of any credit enhancement, including without limitation any letter or line of credit or insurance policy, and (iv) to the extent practicable, have a remaining term and amortization schedule substantially the same as the obligation with respect to which such Projected Rate is being developed.

“Property” shall mean any and all rights, titles, and interests in and to any and all property, whether real or personal, tangible (including cash) or intangible, wherever situated and whether now owned or hereafter acquired, other than Excluded Property.

“Property, Plant and Equipment” means all Property of each Member that is classified as property, plant and equipment under GAAP, and as to the Obligated Group, means such Property of the Members on combined basis in accordance with GAAP.

“Purchaser Guarantee” means the Guaranty, dated the date hereof, by the Offtake Purchaser for the benefit of the Master Trustee, as the same may be amended, modified or supplemented from time to time.

“Put Indebtedness” means Indebtedness that is (a) payable or required to be purchased or redeemed by or on behalf of the underlying obligor, at the option of the owner thereof, prior to its stated maturity date or (b) payable or required to be purchased or redeemed from the owner by or on behalf of the underlying obligor (other than at the option of the owner) prior to its stated maturity date, other than pursuant to any mandatory sinking fund or other similar fund or other than by reason of acceleration upon the occurrence of an event of default.

“Qualified Escrow” shall mean a segregated escrow fund or other similar fund or account which (a) is irrevocably established as security for Indebtedness previously incurred and then outstanding (herein referred to as “Prior Indebtedness”) or for Indebtedness, if any, then to be incurred to refund outstanding Prior Indebtedness (herein referred to as “Refunding Indebtedness”), (b) is held by the holder of the Prior Indebtedness or Refunding Indebtedness secured thereby or by a trustee or agent acting on behalf of such holder and is subject to a perfected security interest in favor of such holder, trustee or agent, (c) is held in cash or invested in obligations described in subparagraph (i), (ii), (iii) or (iv) of the definition of Investment Securities, and (d) is required by the documents establishing such fund or account to be applied toward a Member’s payment obligations in respect of the Prior Indebtedness, provided that, if the fund or account is funded in whole or in part with the proceeds of Refunding Indebtedness, the documents establishing the same may require specified payments of principal or interest (or both) in respect of the Refunding Indebtedness to be made from the fund or account prior to the date on which the Prior Indebtedness is repaid in full.

“Qualified Financial Institution” shall mean a bank, trust company, national banking association, insurance company, other financial services company or government or quasi-governmental agency whose unsecured long term debt obligations or whose claims paying abilities (in the case of an insurance company) are rated to the equivalent of “A- or higher by one or more of Moody’s, Fitch and Standard & Poor’s, as applicable, including the Rating Agency then rating the Secured Obligations (or, upon discontinuation of either rating service, by such other nationally recognized rating service or services as may be acceptable to the Obligated Group Agent).

“Qualified Investment Provider” shall mean a financial institution or insurance company which has (or the parent company or guarantor of which has) at the date of execution of the applicable investment agreement an outstanding issue of unsecured, uninsured and unguaranteed debt obligations or a claims paying ability rated in either of the two highest long-term rating categories by Moody’s, Fitch or Standard & Poor’s (without regard to gradations).

“Rating Agency” shall mean the rating agency or agencies rating any Master Note issued under this Master Indenture, initially Standard & Poor’s.

“Rebate Amount” has the meaning ascribed in Section 1.148-3(b) of the Regulations and generally means the excess as of any date of the future value of all receipts on Nonpurpose Investments over the

future value of all payments on Nonpurpose Investments all as determined in accordance with Section 1.148-3 of the Regulations.

“Redemption Account” means the account so designated within the Debt Service Fund established with the Master Trustee pursuant to this Master Indenture, in accordance with the requirements of this Master Indenture.

“Regulations” means the applicable Income Tax Regulations under Sections 148, 103 and 141 through 150 of the Code and, to the extent appropriate, any predecessor statute, whether at the time proposed, temporary, final or otherwise.

“Related Bonds” shall mean any revenue bonds or similar obligations issued by a Related Issuer, the proceeds of which are loaned or otherwise made available to any Member in consideration, whether in whole or in part, of the execution, authentication, and delivery of a Master Note.

“Related Financing Documents” shall mean all documents pursuant to which the proceeds of Secured Obligations are made available to a Member, the payment obligations evidenced by the Secured Obligations are created and any security for the Secured Obligation (if permitted under this Master Indenture) is granted in favor of the Holder thereof, and (ii) all documents creating any additional payment or other obligations on the part of a Member which are executed in favor of or assigned to the Holder in consideration of the proceeds of the Secured Obligation (or of any debt evidenced or secured thereby) being loaned or otherwise made available to the Member or, if a Credit Facility has been issued in support of the Member’s obligations under the Master Note, executed in favor of the issuer thereof or assigned thereto in consideration of such issuance; and

“Related Issuer” means the issuer of a series of Secured Obligations that is any state, commonwealth or territory of the United States, or any municipal corporation or other political subdivision formed under the laws thereof, or any constituted authority, agency, or instrumentality of any of the foregoing empowered to issue obligations on behalf thereof.

“Related Lease” shall mean the Lease, if any, related to a particular Project, as the context requires.

“Renewal Fund” means the Fund established with such name with the Master Trustee pursuant to this Master Indenture, in accordance with the requirements of this Master Indenture.

“Required Monthly Deposits” shall mean in any month, the sum of the following with respect to each Outstanding Master Note: (i) a portion of the interest due on the next scheduled interest payment date with respect to the Series of Secured Obligations or other Indebtedness secured thereby, such that if, in each subsequent month prior to the next date scheduled interest is to be paid with respect to such Master Note, an equal amount were deposited, the amount on deposit on such next scheduled interest payment date would be equal to (or as close to equal to, but not less than, as possible) the interest due with respect thereto on such date; (ii) a portion of the principal due on the next scheduled principal payment or prepayment date with respect to the Series of Secured Obligations or other Indebtedness secured thereby, such that, if, in each subsequent month prior to the next date scheduled principal is to be paid or prepaid with respect to such Master Note, an equal amount were deposited, the amount on deposit on the next scheduled principal payment date would be equal to (or as close to equal to, but not less than, as possible) of the principal (including scheduled prepayments) and, notwithstanding this Master Indenture, excluding any termination payments due under a Interest Rate Agreement due on such next scheduled principal payment date; (iii) any prepayments of the Master Notes required to be made in connection with any unscheduled mandatory redemption of such Series of Secured Obligations or any optional redemption for which irrevocable notice has been sent; and (iv) any termination payments due under a Interest Rate Agreement. In calculating the



Required Monthly Deposits, the Master Trustee shall take into account, and credit as deposited towards the Required Monthly Deposit with respect to the applicable Series of Secured Obligations, amounts required to be credited to the Debt Service Fund held by the related Bond Trustee because of permitted reductions in the amount held in the Debt Service Reserve Fund for such Series of Secured Obligations and may adjust for earnings and other extra amounts held in the Revenue Fund and the Debt Service Fund.

“Revenue Fund” shall mean the Fund with such name authorized to be established pursuant to this Master Indenture in accordance with the requirements of this Master Indenture.

“Secured Obligations” shall mean the Indebtedness and Interest Rate Agreements issued, incurred or entered into by a Member pursuant to the Related Financing Documents, and with respect to which a Master Note is issued hereunder, including Related Bonds.

“Security Documents” means the Master Mortgage, this Master Indenture, the Obligated Group Security Agreement, the Obligated Group Agent Equity Pledge and Security Agreement, the Collateral Agency Agreement, the Offtake Purchaser Security Documents and the Parent Security Documents.

“Senior Class A-1 Secured Obligation” shall mean any Secured Obligation secured by a Senior Class A-1 Master Note.

“Senior Class A-2 Secured Obligation” shall mean any Secured Obligation secured by a Senior Class A-2 Master Note.

“Senior Class A-1 Master Note” shall mean a Master Note that is designated as “Senior Class A-1” and is, therefore, secured by the superior liens and has the preferences as to payment and rights specified in this Master Indenture with respect to Senior Class A-1 Master Notes as compared to those of Class A-2 Senior Master Notes and Subordinate Master Notes.

“Senior Class A-2 Master Note” shall mean a Master Note that is designated as “Senior Class A-2” and, therefore, is subordinate as to payment to the Senior Class A-1 Master Notes but superior in payment and to the rights of the Subordinate Master Notes.

“Senior Master Notes” shall mean, collectively, the Senior Class A-1 Master Notes and the Senior Class A-2 Master Notes.

“Series” shall mean the series of Secured Obligations relating to a particular Master Note.

“Special Redemption Account” shall mean the special segregated Account within the Debt Service Fund, established with the Master Trustee pursuant to this Master Indenture in accordance with the requirements of this Master Indenture.

“Standard & Poor’s” shall mean Standard & Poor’s Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc., and its successors and assigns.

“Subordinate Master Note” shall mean a Master Note that is designated as “Subordinate” and is, therefore, secured by the subordinate liens and has the inferior and subordinate rights specified in this Master Indenture with respect to Subordinate Master Notes as compared to those of Senior Master Notes.

“Supplemental Indenture” shall mean an indenture supplemental to, and authorized and executed pursuant to the terms of this Master Indenture.

“Tax Exempt Secured Obligations” shall mean any Series of Secured Obligations, the interest on which is excluded from federal income tax pursuant to Section 103 of the Code and the Regulations promulgated thereunder.

“Testing Date” shall mean the first Business Day on or after each December 31st, March 31st, June 30th and September 30th or as otherwise may be required pursuant to the terms of this Master Indenture or any Supplemental Master Indenture.

“Trust Estate” shall have the meaning set forth in this Master Indenture.

“United States Government Obligations” means non-callable direct obligations of, or obligations the timely payment of the principal of and interest on which is fully guaranteed by, the United States of America including without limitation obligations issued or held in book-entry form.

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context otherwise indicates or requires, words importing the singular number shall include the plural and vice versa. All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP in effect on the date such determination or computation is made for any purpose of this Master Indenture or, if a change in GAAP occurs subsequent to the effective date of this Agreement, and the effect of which is to render any provision of this Agreement inconsistent with the intent of the parties hereto, the Obligated Group Agent and the Master Trustee (acting at the direction of the Majority Noteholders) shall negotiate in good faith as to the application of such changes to the requirements of this Agreement. Headings of articles and sections herein and the table of contents hereof are solely for the convenience of reference, do not constitute a part hereof, and shall not affect the meaning, construction or effect hereof.

## ARTICLE II

### THE MASTER NOTES

Section 2.01. *Series, Designation and Amount of Master Notes* No Master Notes may be issued under the provisions of this Master Indenture except in accordance with this Article. Master Notes may be issued to evidence Indebtedness, evidence any repayment obligation under Interest Rate Agreement or evidence a reimbursement obligation arising as a result of the issuance of a surety bond or other instrument guaranteeing or in effect guaranteeing any payments under an Interest Rate Agreement, as provided in Section 2.09, or in consideration of the issuance or incurrence of Secured Obligations by a Member. The total principal amount of Master Notes, the number of Master Notes and the series of Master Notes that may be created under this Master Indenture are not limited except as shall be set forth with respect to any series of Master Notes in the Supplemental Master Indenture providing for the issuance thereof. Each series of Master Notes shall be designated so as to differentiate the Master Notes of such series from the Master Notes of any other series. Unless provided to the contrary in a Supplemental Master Indenture, Master Notes shall be issued as fully registered Master Notes with the Master Notes of each series to be lettered and numbered R-1 and upward.

Section 2.02. *Payment of Master Notes; Investments* The principal of, premium, if any, and interest on, and/or payment obligations related to Interest Rate Agreements secured by, the Master Notes shall be payable in any currency of the United States of America that, at the respective dates of payment thereof, is legal tender for the payment of public and private debts, and such principal, premium, if any, and interest shall be payable at the designated corporate trust office of the Master Trustee or at the office of any alternate Paying Agent or agents named in any such Master Notes or in a Related Financing Documents. Unless contrary provision is made herein or in the Supplemental Master Indenture pursuant to which such

Master Note is issued, or the election referred to in the next sentence is made, payment of the interest on the Master Notes shall be made to the person appearing on the registration books of the Master Trustee, as Master Note Registrar, as the registered owner thereof and shall be paid by check or draft mailed to the registered owner at his address as it appears on such registration books or at such other address as is furnished to the Master Trustee in writing by such holder; provided, however, that any Supplemental Master Indenture creating any Additional Master Note may provide that interest on such Additional Master Note may be paid, upon the request of the holder of such Additional Master Note, by wire transfer. The foregoing notwithstanding, if a Member so elects, payments on such Master Note shall be made directly by such Member, by check or draft hand delivered to the holder thereof or its designee or shall be made by such Member by wire transfer to such holder, in either case delivered on or prior to the date on which such payment is due. Such Member shall give notice of any such payment or any failure to make such payment to the Master Trustee concurrently with the making or failure to make thereof, specifying the amount paid or unpaid and identifying the Master Note or Master Notes with respect to which such payment or nonpayment was made by series, designation, number and registered holder. Except with respect to Master Notes directly paid, the Members agree to deposit with the Master Trustee prior to each due date of the principal of, premium, if any, or interest on any of the Master Notes a sum sufficient to pay such principal, premium, if any, or interest so becoming due. Any such moneys shall upon written request and direction of the Obligated Group Agent be invested in Investment Securities. The foregoing notwithstanding, amounts deposited with the Master Trustee to provide for the payment of Master Notes pledged to the payment of Secured Obligations shall be invested in accordance with the provisions of the Related Financing Documents. The Master Trustee shall not be liable or responsible for any loss resulting from any such investments, and the Master Trustee may conclusively rely upon the written investment directions as to both the suitability and legality of the directed investments, and such written direction shall be deemed to be a certification to the Master Trustee that such directed investments constitute Investment Securities. In the absence of such written investment direction, the Master Trustee shall hold money deposited in any fund or account hereunder in cash, with no liability for interest. Investments in Investment Securities that are United States Government Obligations may be made through repurchase agreements with banks or other financial institutions, including but not limited to the Master Trustee or any related Bond Trustee, provided that each such repurchase agreement is, confirmed by an Opinion of Counsel, in a commercially reasonable form, is for a commercially reasonable period, results in the transfer of legal title to identified United States Government Obligations that are segregated in a custodial or trust account for the benefit of the Master Trustee, and further provided that United States Government Obligations acquired pursuant to such repurchase agreements shall be valued at the lower of the then-current market value thereof or the repurchase price thereof set forth in the applicable repurchase agreement. Notwithstanding anything contained herein to the contrary, the Master Trustee shall have no obligation to enter into any investment contract, forward delivery investment agreement, repurchase agreement contract or any similar agreements with respect to the investment of any funds held under this Master Indenture unless (i) such agreement is in form and content reasonably acceptable to the Master Trustee, (ii) any liability of the Master Trustee under such agreement is limited to costs, losses and expenses incurred solely by the Obligated Group occasioned by the gross negligence or willful misconduct of the Master Trustee, (iii) the Master Trustee is not liable under any circumstances for any amount to the provider under such agreement, and (iv) the Obligated Group pay to the Master Trustee such fees and expenses as established by the Master Trustee from time to time. Supplemental Master Indentures may create such security, including debt service reserve funds and other funds, as are necessary to provide for payment or to hold moneys deposited for payment or as security for a related series of Additional Master Notes.

The Master Trustee may elect, but shall not be obligated, to credit the funds and accounts held by it with moneys representing income or principal payments due on, or sales proceeds due in respect of, investments in such funds and accounts, or to credit to investments intended to be purchased with such moneys, in each case before actually receiving the requisite moneys from the payment source, or to

otherwise advance funds for account transactions. The Obligated Group acknowledges that the legal obligation to pay the purchase price of any investment arises immediately at the time of the purchase. Notwithstanding anything else in this Master Indenture, (i) any such crediting of funds or assets shall be provisional in nature, and the Master Trustee shall be authorized to reverse any such transactions or advances of funds in the event that it does not receive good funds with respect thereto, and (ii) nothing in this Master Indenture shall constitute a waiver of any of the Master Trustee's rights as a securities intermediary under Uniform Commercial Code § 9-206.

Section 2.03. *Execution.* Master Notes shall be executed on behalf of a Member by the manual or, if permitted by law, facsimile signature of the chair of its Governing Body, chief executive officer or chief financial officer, and shall have impressed or printed by facsimile thereon the corporate seal of such Member, if required by law or the initial Master Note holder. In case any officer whose signature or facsimile of whose signature shall appear on the Master Notes shall cease to be such officer before the delivery of such Master Notes, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery.

Section 2.04. *Authentication* No Master Note shall be valid or obligatory for any purpose or entitled to any security or benefit under this Master Indenture unless and until a certificate of authentication of such Master Note substantially in the form set forth below shall have been duly executed by the Master Trustee, and such executed certificate of the Master Trustee shall be attached to or appear upon the Master Note and shall be conclusive evidence that such Master Note has been authenticated and delivered under this Master Indenture. The Master Trustee's certificate of authentication on any Master Note shall be deemed to have been executed by it if signed by an authorized officer or signer of the Master Trustee, but it shall not be necessary that the same officer or signer sign the certificate of authentication on all of the Master Notes issued hereunder.

The Master Trustee's authentication certificate shall be in substantially the following form:

MASTER TRUSTEE'S AUTHENTICATION CERTIFICATE

This Master Note is one of the Master Notes described in the within-mentioned Master Indenture.

\_\_\_\_\_

as Master Trustee

By \_\_\_\_\_

Authorized Officer

Section 2.05. *Form of Master Notes and Temporary Master Notes* All Master Notes issued under this Master Indenture shall be substantially in the form set forth in the Supplemental Master Indenture pursuant to which such Master Notes are issued, in each case with such appropriate variations, omissions and insertions as are permitted or required by this Master Indenture or deemed necessary by the Master Trustee to reflect the terms and conditions thereof as established hereby and by any Supplemental Master Indenture. Unless Master Notes of a series have been registered under the Securities Act of 1933, as amended, each Master Note of such series shall be endorsed with a legend that shall read substantially as follows: "This Master Note has not been registered under the Securities Act of 1933, as amended."

Master Notes of any series may be initially issued in temporary form exchangeable for definitive Master Notes of the same series when ready for delivery. The temporary Master Notes shall be of such denomination or denominations as may be determined by the Member executing the same, and may contain

such reference to any of the provisions of this Master Indenture as may be appropriate. Every temporary Master Note shall be executed by a Member and be authenticated by the Master Trustee upon the same conditions and in substantially the same manner as the definitive Master Notes. If any Member issues temporary Master Notes it will execute and furnish definitive Master Notes without delay and thereupon the temporary Master Notes may be surrendered for cancellation in exchange therefor at the designated corporate trust office of the Master Trustee, and the Master Trustee shall authenticate and deliver in exchange for such temporary Master Notes an equal aggregate principal amount of definitive Master Notes of the same series and maturity of authorized denominations. Until so exchanged, the temporary Master Notes shall be entitled to the same benefits under this Master Indenture as definitive Master Notes authenticated and delivered hereunder.

Section 2.06. *Mutilated, Lost, Stolen or Destroyed Master Notes.* In the event any temporary or definitive Master Note is mutilated, lost, stolen or destroyed, the Member issuing such Master Note may execute and the Master Trustee may authenticate a new Master Note of like form, date, maturity and denomination as that mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated Master Note, such mutilated Master Note shall first be surrendered to the Master Trustee, and in the case of any lost, stolen or destroyed Master Note, there shall be first furnished to such Member and the Master Trustee evidence of such loss, theft or destruction satisfactory to such Member and the Master Trustee, together with indemnity satisfactory to them. In the event any such Master Note shall have matured, instead of issuing a duplicate Master Note the Obligated Group may pay the same without surrender thereof. The Obligated Group and the Master Trustee may charge the holder or owner of such Master Note with fees and expenses in this connection.

Section 2.07. *Registration; Negotiability; Cancellation upon Surrender; Exchange of Master Notes.* Upon surrender for transfer of any Master Note at the designated corporate trust office of the Master Trustee, the Member issuing such Master Note shall execute and the Master Trustee shall authenticate and deliver in the name of the transferee or transferees a new fully registered Master Note or Master Notes of the same series, designation and maturity without coupons for a like aggregate principal amount.

The execution by a Member of any Master Note of any denomination shall constitute full and due authorization of such denomination and the Master Trustee shall thereby be authorized to authenticate and deliver such Master Note.

The Master Trustee shall not be required to transfer or exchange any Master Note during the period of 15 days next preceding any interest payment date of such Master Note or to transfer or exchange any Master Note after the notice calling such Master Note or portion thereof for redemption has been given as herein provided, or during the period of 15 days next preceding the mailing of such notice of redemption with respect to any Master Note of the same series and maturity.

As to any Master Note, the person in whose name the same shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal of any such Master Note shall be made only to or upon the order of the registered owner thereof or his legal representative, but such registration may be changed as herein provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Master Note to the extent of the sum or sums so paid.

Any Master Note surrendered for the purpose of payment or retirement or for replacement pursuant to Section 2.06 shall be cancelled upon surrender thereof to the Master Trustee or any Paying Agent. Unless contrary provision is made in the Supplemental Master Indenture pursuant to which such Master Note is issued, if any Member shall acquire any of the Master Notes, such Member shall deliver such Master Notes to the Master Trustee for cancellation and the Master Trustee shall cancel the same. Any such Master Notes

cancelled by any Paying Agent other than the Master Trustee shall be promptly transmitted by such Paying Agent to the Master Trustee. Certification of Master Notes cancelled by the Master Trustee and Master Notes cancelled by a Paying Agent other than the Master Trustee that are transmitted to the Master Trustee shall, upon request, be made to the Obligated Group Agent. Cancelled Master Notes may be destroyed by the Master Trustee unless instructions to the contrary are received from the Obligated Group Agent.

The Obligated Group and the Master Trustee may charge each Master Note holder requesting an exchange, registration, change in registration or transfer of a Master Note any tax, fee or other governmental charge required to be paid with respect to such exchange, registration or transfer.

Section 2.08. *Security for Master Notes.* Any one or more series of Master Notes issued hereunder may, so long as any Liens created in connection therewith constitute Permitted Encumbrances, be secured by security (including without limitation letters or lines of credit, insurance or Liens on Property, including the Projects, or security interests in depreciation reserve, debt service or interest reserve or debt service or similar funds). Such security need not extend to any other Indebtedness (including any other Master Notes or series of Master Notes). Consequently, the Supplemental Master Indenture pursuant to which any one or more series of Master Notes is issued may provide for such supplements or amendments to the provisions hereof, including without limitation Articles II and V, as are necessary to provide for such security and to permit realization upon such security solely for the benefit of the Master Notes entitled thereto.

Section 2.09. *Issuance of Master Notes in Forms Other than Notes* To the extent that any Indebtedness that is permitted or required to be issued pursuant to this Master Indenture is not in the form of a promissory note, a Master Note in the form of a promissory note may, but is not required to, be issued hereunder and pledged as security for the payment of such Indebtedness in lieu of directly issuing such Indebtedness as a Master Note hereunder. Nevertheless, the parties hereto agree that Master Notes may be issued hereunder to evidence any type of Indebtedness, including without limitation any Indebtedness in a form other than a promissory note, or to evidence or secure any repayment obligation under a Interest Rate Agreement or to evidence or secure a reimbursement obligation arising as a result of the issuance of a surety bond or other instrument guaranteeing or in effect guaranteeing any payments under a Interest Rate Agreement. Consequently, the Supplemental Master Indenture pursuant to which any Master Note is issued may provide for such supplements or amendments to the provisions hereof, including without limitation Articles II and V, as are necessary to permit the issuance of such Master Note hereunder and as are not inconsistent with the intent hereof that, except as otherwise expressly provided herein, all Master Notes issued hereunder be equally and ratably secured by any lien created hereunder. Any Interest Rate Agreement that is authenticated as a Master Note under this Master Indenture or any Master Note issued to evidence a Member's obligations under a Interest Rate Agreement shall be equally and ratably secured by any lien created under this Master Indenture with all other Master Notes except as otherwise provided in this Master Indenture; provided, however, that any such Master Note shall be deemed outstanding under this Master Indenture solely for the purpose of enforcing any right or remedy that is available to a holder of a Master Note upon an event of default or receiving payment under this Master Indenture and shall not be entitled to exercise any other rights under this Master Indenture.

Section 2.10. *Appointment of Obligated Group Agent* Each Member, by becoming a Member of the Obligated Group, irrevocably appoints the Obligated Group Agent as its agent and true and lawful attorney in fact and grants to the Obligated Group Agent (a) full and exclusive power to execute Supplemental Master Indentures authorizing the issuance of Master Notes or series of Master Notes, to execute and deliver Master Notes on behalf of such Member, to execute and deliver Related Financing Documents and to execute and deliver any other documents or instruments relating to or securing any borrowings, indebtedness, obligations or the like, including without limitation notes, bonds, debentures, Capitalized Leases, Interest Rate Agreements, mortgages, deeds of trust, security agreements, and financing statements, (b) full power to prepare, or authorize the preparation of, any and all documents, certificates or disclosure materials reasonably and ordinarily prepared in connection with the issuance of Master Notes hereunder, or Secured Obligations associated therewith, or Interest Rate Agreements and to execute and deliver such items on behalf of such Member to the appropriate parties in connection therewith and (c) full authority to exercise all other powers granted hereunder to the Obligated Group Agent.

### ARTICLE III

#### PREPAYMENT OF MASTER NOTES

Section 3.01. *Prepayment Dates and Prices.* Master Notes shall be subject to optional and mandatory prepayment or redemption in whole or in part and may be prepaid prior to maturity as provided in this Master Indenture or the Supplemental Master Indenture pertaining to the series of Master Notes to be prepaid, but not otherwise.

(a) *Prepayment upon Casualty and Condemnation.* The Master Notes are subject to special mandatory prepayment, in whole or in part, prior to maturity in the event of damage to or destruction of the facilities of any Member or any part thereof or condemnation (or sale consummated under threat of condemnation) of the facilities of any Member or any part thereof in excess of 10% of the Book Value of the Property, Plant and Equipment of the Obligated Group, but only to the extent Net Proceeds from a Damaged Project (as defined in Section 6.10(e)), are transferred to the Revenue Fund for such purpose and the Related Indebtedness is redeemed in accordance with the Related Financing Documents as provided in Section 6.10(3) of this Master Indenture. In such events, the Master Notes shall be subject to prepayment by the Members at any time, in whole or in part, and if in part then by series and maturities designated by the Obligated Group Agent (and, if less than all of a maturity is being redeemed, by lot in such manner as determined by the Master Trustee), at the principal amount thereof plus accrued interest to the prepayment date and without premium; provided that if the proceeds resulting from such damage to or destruction or condemnation or sale consummated under threat of condemnation of any discrete free standing facilities financed.

(b) *Optional Prepayment.* To the extent not otherwise provided herein or in a Supplemental Master Indenture, the Obligated Group shall have the right to prepay all or such portion of the Master Notes of any particular series as shall be necessary to effect the payment, prepayment, redemption, refunding or advance refunding of a Series of Secured Obligations or Secured Obligations or any portion thereof in the manner provided in the Related Financing Documents. If called for prepayment or redemption in such events, the Master Notes of such series shall be subject to prepayment in such amount, and at such times, in the manner and with the premium necessary to effect the refunding, advance refunding or redemption of all or the portion of the series of Secured Obligations to be refunded, advance refunded or redeemed.

Unless contrary provision is made in the Supplemental Master Indenture pursuant to which a series of Master Notes is issued or in a Related Financing Document, Master Notes may be called

for optional prepayment or redemption by the Master Trustee pursuant to this Section 3.01 upon receipt by the Master Trustee at least 30 days prior to the redemption date of a certificate of the Obligated Group Agent requesting such prepayment or redemption and a resolution of a Member designating funds for such prepayment or redemption. Such certificate shall specify the particular series and the principal amount of such series of Master Notes so to be called for prepayment or redemption (and if less than all of a series is to be prepaid, the maturities or portions thereof), the applicable prepayment or redemption price or prices and the provision or provisions of this Master Indenture or any Supplemental Master Indenture pursuant to which such Master Notes are to be called for prepayment or redemption.

(c) Sinking Fund Payments. Master Notes of any series with respect to which a sinking fund has been established for the Secured Obligations shall be redeemed by the Master Trustee at such times and in the amounts as the Secured Obligations of such series are redeemed or prepaid pursuant to the provisions of such sinking fund in accordance with the Related Financing Documents and, in accordance herewith and with any Supplemental Master Indenture pursuant to which such Master Notes were issued, in each case without any notice from or direction of any Member.

(d) Mandatory Redemption Payment. The Master Notes are subject to special mandatory prepayment, in whole or in part, prior to maturity upon the mandatory redemption of the Secured Obligations in accordance with the Related Financing Documents and in accordance herewith and with any Supplemental Master Indenture pursuant to which such Master Notes were issued, in each case without any notice from or direction of any Member.

(e) Purchase in Lieu of Prepayment. In lieu of prepaying or redeeming Master Notes pursuant to this Section 3.01 the Master Trustee may, at the request of the Obligated Group Agent, use funds otherwise available hereunder for the redemption of such Master Notes to purchase such Master Notes in the open market at a price not exceeding the redemption price then applicable hereunder. Any such Master Notes so purchased by the Obligated Group Agent shall be immediately cancelled.

(f) Additional Prepayments Applicable to Additional Master Notes. In addition to the redemptions herein provided that are applicable to all Master Notes, each series of Additional Master Notes shall be redeemable in the manner, at the time or times, at the premiums, if any, and upon the terms specified in the Supplemental Master Indenture pursuant to which such Master Notes were issued or in a Related Financing Document.

(g) Minimum Prepayment Amounts. Except for prepayment or redemption made pursuant to the immediately preceding paragraph and except to the extent that contrary provision is made herein or in the Supplemental Master Indenture pursuant to which a series of Master Notes is issued, no redemption of less than all of the Master Notes of a particular series at the time outstanding shall be made pursuant hereto unless the aggregate principal amount of such Master Notes to be redeemed is equal to or more than \$100,000.

(h) Notice of Prepayment or Redemption. Except as permitted by Section 3.01 above or unless contrary provision is made with respect to a particular series of Master Notes in the Supplemental Master Indenture pursuant to which such Master Notes are issued, notice of the call for any such prepayment or redemption identifying the Master Notes to be prepaid shall be given by mailing a copy of such notice by registered or certified mail to each Related Issuer and to the registered owner of Master Notes to be prepaid to the address shown on the registration books maintained by the Master Trustee not less than 30 days prior to the prepayment or redemption date,



which notice, in the case of an optional prepayment, may provide that the Member giving such notice may elect to cancel such prepayment or redemption at any time prior to such prepayment or redemption, in which case it will give notice thereof in the same fashion as soon as reasonably practicable following such election; provided, however, that failure to give such notice by mailing or a defect in the notice or the mailing to any particular Master Note holder will not affect the validity of the prepayment or redemption of any other Master Note.

Section 3.02. *Partial Prepayment or Redemption of Master Notes.* Upon surrender of any Master Note for prepayment or redemption in part only, the Member issuing such Master Note shall execute and the Master Trustee shall authenticate and deliver to the holder thereof, at the expense of the Obligated Group, a new registered Master Note or Master Notes of the same series and maturity of authorized denominations in aggregate principal amount equal to the unpaid portion of the Master Note surrendered. Such Member and the Master Trustee may agree with any holder of any Master Note that such holder may, in lieu of surrendering the same for a new registered Master Note, endorse on such Master Note a notice of such partial prepayment or redemption to be made on the following form that shall be typed or printed on the reverse side of such Master Note:

PAYMENTS ON ACCOUNT OF PRINCIPAL

Payment Date	Principal Amount Prepaid or Redeemed	Balance of Principal Amount Unpaid	Signature
--------------	---	---------------------------------------	-----------

Such partial prepayment or redemption shall be valid upon payment of the amount thereof to the registered owner of any such registered Master Note and the Obligated Group and the Master Trustee shall be fully released and discharged from all liability to the extent of such payment irrespective of whether such endorsement shall or shall not have been made upon the reverse of such Master Note by the owner thereof and irrespective of any error or omission in such endorsement.

Section 3.03. *Effect of Call for Prepayment or Redemption.* Unless the Member has elected to cancel such prepayment or redemption, on the date designated for prepayment or redemption by notice given as herein provided, the Master Notes so called for prepayment or redemption shall become and be due and payable at the prepayment or redemption price stated in such notice. If on such date, moneys for payment of the prepayment or redemption price and accrued interest are held by the Master Trustee or any other Paying Agent as provided herein, interest on such Master Notes (or portions thereof) so called for prepayment or redemption shall cease to accrue, such Master Notes shall cease to be entitled to any benefit or security hereunder except the right to receive payment from the moneys held by the Master Trustee or the Paying Agents and the amount of such Master Notes so called for prepayment or redemption shall be deemed paid and no longer outstanding. The Master Trustee shall prepay or redeem, in the manner provided in this Article, such an aggregate principal amount of such Master Notes of the series to be prepaid at the principal amount thereof plus accrued interest to the prepayment or redemption date and premium, if any, as will exhaust as nearly as practicable the funds deposited with the Master Trustee for prepayment or redemption. At the written direction of the Obligated Group Agent, such funds may be invested in Government Obligations until needed for prepayment or redemption payout.

**ARTICLE IV**

**FUNDS AND ACCOUNTS**

Section 4.01. *Establishment of Funds and Accounts.*

(a) The Master Trustee shall maintain a Revenue Fund and the other Funds and Accounts described in Section (c) below.

(b) The Members shall transfer, or cause to be transferred, all Gross Revenues on hand when such Member joins the Obligated Group to the Master Trustee for deposit to the appropriate account in the Revenue Fund, and shall transfer, or cause the Collateral Agent to transfer pursuant to the terms of an executed and delivered Collateral Agency Agreement, all Gross Revenues received thereafter, immediately upon receipt (but in any event within five (5) days of receipt) thereof, to the Master Trustee for deposit to the Revenue Fund.

(c) In addition to the Revenue Fund, the Master Trustee shall establish in this Master Indenture the following Funds: the Operating Fund, the Operating Reserve Fund, the Debt Service Fund, the Capital Reserve Fund, the Property Tax Reserve Fund, the Debt Service Reserve Fund, the Facility Surplus Fund and the Renewal Fund. The Revenue Fund shall include a General Account. The Debt Service Fund shall consist of a Payment Account and a Special Redemption Account. The Debt Service Reserve Fund shall consist of a Senior Class A-1 Account and a Senior Class A-2 Account. The Master Trustee shall establish separate accounts or subaccounts within each named Fund or Account for each Member if requested to do so in writing by the Obligated Group Agent.

Section 4.02. *Revenue Fund.*

(a) The Obligated Group shall deposit, or cause the Collateral Agent to deposit pursuant to the terms of an executed and delivered Collateral Agency Agreement, into the Revenue Fund all Gross Revenues required to be deposited as set forth in this Section 4.02. All such Gross Revenues shall be deposited in the General Account of the Revenue Fund. On or before the fifteenth (15<sup>th</sup>) day of each month or, if such fifteenth (15<sup>th</sup>) day is not a Business Day, the next Business Day, the Master Trustee shall withdraw and pay or transfer from the amounts on deposit in the Revenue Fund (except as otherwise noted, without regard to which Member provided which revenues), the following amounts in the order of priority:

(a) pay to the Master Trustee and each Bond Trustee amounts equal to all fees or expenses which are then due and payable to such Person;

(b) transfer to the related Bond Trustee the amount necessary to pay the Rebate Amount when due, with respect to Master Notes securing Tax-Exempt Secured Obligations;

(c) transfer to the appropriate account in the Operating Fund, an amount equal to the Operating Expenses for each Member for the current month as requested in writing by the Obligated Group Agent based on the Budgeted Operating Expense Amount as set forth in the annual budget (to the extent not otherwise required to be transferred to another Fund hereunder); provided, however, that the Obligated Group Agent (1) shall not in any month request a deposit to the Operating Fund in an amount to pay Operating Expenses of the Members that is reasonably expected to cause the projected annual Operating Expenses for the Members of the Obligated Group to exceed the Budgeted Operating Expense Amount as set forth in the annual budget (as delivered pursuant to this Master Indenture) for the then current Fiscal Year by more than 10%; and (2) shall not request one or more withdrawals from the Operating Fund that are, in the aggregate, more than budgeted monthly Operating Expenses, as approved in such budget for such month by more than

20%, unless the Obligated Group Agent certifies in writing that such costs constitute Operating Expenses;

(d) transfer to the Property Tax Reserve Fund an amount equal to 1/12th of the property taxes payable on the Projects for the then current Fiscal Year as certified to the Master Trustee by the Obligated Group Agent on or before January 10 of each calendar year;

(e) transfer to the Debt Service Fund, an amount sufficient to make all Required Monthly Deposits and to remedy any prior deficiencies relating to previously Required Monthly Deposits not being made in full, each with respect to the Senior Class A-1 Master Notes. Amounts deposited pursuant to this Master Indenture as described in this clause shall be credited first against any previously due and unpaid Required Monthly Deposit with respect to the Senior Class A-1 Master Notes, in order of past due date;

(f) transfer to the Senior Class A-1 Account within the Debt Service Reserve Fund an amount sufficient to make the balance in each such Account equal the Debt Service Reserve Requirement for the Senior Class A-1 Master Notes;

(g) transfer to the Debt Service Fund, an amount sufficient to make all Required Monthly Deposits and to remedy any prior deficiencies relating to previously Required Monthly Deposits not being made in full with respect to the Senior Class A-2 Master Notes. Amounts deposited as described in this clause shall be credited first against any previously due and unpaid Required Monthly Deposit with respect to the Senior Class A-2 Master Note in order of past due date;

(h) transfer to the Senior Class A-2 Account within the Debt Service Reserve Fund an amount sufficient to make the balance in each such Account equal the Debt Service Reserve Requirement for the Senior Class A-2 Master Notes;

(i) transfer to the Operating Reserve Fund an amount an amount equal to 1/12th of the sum of the Operating Reserve Fund Requirement less an amount equal to 60 Days Cash on Hand of the Obligated Group, as such amount is certified to the Master Trustee in writing by the Obligated Group Agent.

(j) transfer to the Capital Reserve Fund an amount equal to 1/12th of the Capital Reserve Fund Requirement for the then current Fiscal Year;

(k) transfer to the Debt Service Fund, an amount sufficient to make all Required Monthly Deposits and to remedy any prior deficiencies relating to previously Required Monthly Deposits not made in full, with respect to Subordinate Master Notes. Amounts deposited pursuant to Master Indenture as described in this clause shall be credited first against any previously due and unpaid Required Monthly Deposit with respect to the Subordinate Master Notes in order of past due date; and

(l) transfer to the Facility Surplus Fund, the balance, if any, of such moneys after making the payments or deposits required under clauses (a) through (k) above.

(b) Upon acceleration of the principal of all Master Notes issued pursuant to this Master Indenture, the Master Trustee shall immediately transfer all amounts in the Revenue Fund to the Debt Service Fund and apply such funds as required pursuant to Section 7.06.

(c) The Obligated Group Agent shall keep an accounting of the amounts of revenues deposited by each Member in the Revenue Fund and what amounts are deposited to Members' Accounts and subaccounts and otherwise benefit each Member and what amounts are spent from each Account and subaccount for which Members. The Obligated Group Agent shall provide the Master Trustee with any information reasonably requested by the Master Trustee to comply with the requirements in this Article IV.

(d) Upon the occurrence of an Event of Default under this Master Indenture, the Master Trustee may, and shall, upon direction of the Majority Applicable Holders make some or all of the transfers described in (e) or (g) above prior to making the transfer described in (c) above.

#### Section 4.03. *Operating Fund.*

The Master Trustee shall deposit into each Member's Account in the Operating Fund the amounts required by this Master Indenture and shall remit any balance therein at the written direction of the Obligated Group Agent, who shall use such amounts to pay Operating Expenses then due and payable for any Member. The Obligated Group Agent shall direct the Master Trustee to create an account in the Operating Fund for each Member, as needed.

#### Section 4.04. *Debt Service Fund.*

(a) The Trustee shall deposit into the Payment Account of the Debt Service Fund all amounts required to be deposited therein from the Revenue Fund and any other amounts paid to or recovered by the Master Trustee for deposit in the Debt Service Fund that are not specifically required to be credited to another Account in the Debt Service Fund.

(b) All amounts (other than amounts transferred to the Special Redemption Account from the Renewal Fund or credited to the Special Redemption Account in accordance with this Master Indenture) deposited into the Payment Account of the Debt Service Fund shall be applied by the Master Trustee (without regard to source of revenues) to the payment of principal or redemption or prepayment price of and interest on all Master Notes in accordance with their respective terms in the following order of priority (and in accordance with the priorities set forth in this Master Indenture): first, subject to the provisions of this Master Indenture, to payment of all Debt Service due and payable with respect to Senior Class A-1 Master Notes without priority or preference, and second, to payment of all Debt Service due and payable with respect to Senior Class A-2 Master Notes without preference or priority (except as otherwise provided in this Master Indenture), and third, subject to the provisions of this Master Indenture, to payment of all Debt Service due and payable with respect to Subordinate Master Notes without priority or preference (except as otherwise provided in this Master Indenture). Pending such application, all moneys and investments in the Debt Service Fund shall be held for the equal and ratable benefit of all Master Notes issued and Outstanding under this Master Indenture; provided that each and every Senior Class A-1 Master Note issued and Outstanding under this Master Indenture shall have priority and preference as to payment over each and every Senior Class A-2 Master Note and that each and every Senior Master Note issued and Outstanding under the this Master Indenture shall have priority and preference as to payment over each Subordinate Master Note.

(c) Any amount transferred to the Debt Service Fund from the Renewal Fund for redemption of Master Notes, or held by a Bond Trustee in the redemption account established under the applicable Related Financing Documents as excess Proceeds following completion of construction or renovation or otherwise in excess of the amounts required to complete the Project to be financed by the applicable Secured Obligations, shall be credited (but amounts held by a Bond

Trustee need not be actually transferred) to the subaccount of the Special Redemption Account for the Member that owns the Project in question, to be used solely for the purpose of redeeming the Master Notes related to such Secured Obligations, in an amount equal in principal amount to the amount of Secured Obligations to be redeemed, on the earliest date such Master Notes are permitted under this Master Indenture to be redeemed without premium.

(d) Except as otherwise specifically provided in this Master Indenture or in any Supplemental Indenture, amounts held in the Debt Service Fund may be applied to the optional prepayment of Master Notes that are then optionally prepayable at the election of the Members as directed by the Obligated Group Agent to the Master Trustee in writing. To the extent not otherwise specifically provided in this Master Indenture or in any Supplemental Indenture, any optional prepayment of a Series of Master Notes shall be pro rata within such Series (or as close to pro rata as practicable) among all Master Notes Outstanding unless (i) the Obligated Group Agent certifies to the Master Trustee that such distribution is not in accordance with federal tax law or other applicable restrictions or (ii) the Obligated Group Agent certifies that the Debt Service Coverage Ratio following such prepayment will be at least equal to the then current Debt Service Coverage Ratio (based on the Debt Service Coverage Ratio most recently calculated and delivered to the Master Trustee pursuant to this Master Indenture).

(e) To the extent of amounts available in the Payment Account, the Obligated Group may elect to use such amounts to purchase Secured Obligations as permitted by the applicable Bond Indenture.

(f) Except as otherwise provided in this Master Indenture with respect to excess or unclaimed amounts, the amounts in the Debt Service Fund shall be used solely for the payment of Debt Service, and during the continuance of an Event of Default, payment of the fees and expenses of the Master Trustee and each Bond Trustee, in accordance with the provisions of Section 7.06(a) of this Master Indenture.

#### Section 4.05. *Debt Service Reserve Funds.*

(a) Senior Class A-1 Debt Service Reserve Account. There shall be deposited into the Senior Class A-1 Debt Service Reserve Account of the Debt Service Reserve Fund amounts sufficient to cause the total amount on deposit in the Senior Class A-1 Debt Service Reserve Account to be an amount not less than the Senior Class A-1 Debt Service Reserve Requirement.

(b) Moneys on deposit in the Senior Class A-1 Debt Service Reserve Account shall be applied as follows (unless otherwise provided herein):

(a) On the date of each required payment in respect of any Senior Class A-1 Master Note, moneys in the Senior Class A-1 Debt Service Reserve Account shall be applied to cure any deficiency in the applicable subaccount within the Debt Service Fund needed to pay Debt Service on all Outstanding Senior Class A-1 Master Notes. The Obligated Group Agent agrees that any transfer from the Senior Class A-1 Debt Service Reserve Fund to the Debt Service Fund pursuant to this paragraph shall not be construed as curing any nonpayment.

(b) At the time of valuation pursuant to Section 4.11, any amount in the Senior Class A-1 Debt Service Reserve Account in excess of the Senior Class A-1 Debt Service Reserve Requirement shall be transferred to the Debt Service Fund.

(c) In each month during the twelve-month period preceding the final maturity date of the Master Notes, so long as no Event of Default has occurred and is continuing, moneys held in the Senior Class A-1 Debt Service Reserve Account shall be credited against the payment of principal of and interest on the Senior Class A-1 Master Notes and shall be transferred to the Debt Service Fund for the payment of such principal and interest, provided that after such transfer the amount remaining in the Senior Class A-1 Debt Service Reserve Account satisfies the Senior Class A-1 Debt Service Reserve Fund Requirement.

(c) Senior Class A-2 Debt Service Reserve Account. There shall be deposited into the Senior Class A-2 Debt Service Reserve Account of the Debt Service Reserve Fund amounts sufficient to cause the total amount on deposit in the Senior Class A-2 Debt Service Reserve Account to be an amount not less than the Senior Class A-2 Debt Service Reserve Requirement.

(d) Moneys on deposit in the Senior Class A-2 Debt Service Reserve Account shall be applied as follows (unless otherwise provided herein):

(a) On the date of each required payment in respect of any Senior Class A-2 Master Note, moneys in the Senior Class A-2 Debt Service Reserve Account shall be applied to cure any deficiency in the applicable subaccount within the Debt Service Fund needed to pay Debt Service on all Outstanding Senior Class A-2 Master Notes. The Obligated Group Agent agrees that any transfer from the Senior Class A-2 Debt Service Reserve Fund to the Debt Service Fund pursuant to this paragraph shall not be construed as curing any nonpayment.

(b) At the time of valuation pursuant to Section 4.11 any amount in the Senior Class A-2 Debt Service Reserve Account in excess of the Senior Class A-1 Debt Service Reserve Requirement shall be transferred to the Debt Service Fund.

(c) In each month during the twelve-month period preceding the final maturity date of the Master Notes, so long as no Event of Default has occurred and is continuing, moneys held in the Senior Class A-2 Debt Service Reserve Account shall be credited against the payment of principal of and interest on the Senior Class A-2 Master Notes and shall be transferred to the Debt Service Fund for the payment of such principal and interest, provided that after such transfer the amount remaining in the Senior Class A-2 Debt Service Reserve Account satisfies the Senior Class A-2 Debt Service Reserve Fund Requirement.

(e) Subordinate Debt Service Reserve Account. There shall be deposited into the Subordinate Debt Service Reserve Account of the Debt Service Reserve Fund amounts sufficient to cause the total amount on deposit in the Subordinate Debt Service Reserve Account to be an amount not less than the Subordinate Debt Service Reserve Requirement.

(f) Moneys on deposit in the Subordinate Debt Service Reserve Account shall be applied as follows (unless otherwise provided herein):

(a) To replenish the Senior Debt Service Reserve Fund to the extent it is drawn upon.

(b) On the date of each required payment in respect of any Subordinate Master Note, moneys in the Subordinate Debt Service Reserve Account shall be applied to cure any deficiency in the applicable subaccount within the Debt Service Fund needed to pay Debt Service on all Outstanding Subordinate Master Notes. The Obligated Group Agent

agrees that any transfer from the Subordinate Debt Service Reserve Fund to the Debt Service Fund pursuant to this paragraph shall not be construed as preventing, waiving or curing any nonpayment until the amount of such deficiency has been restored.

(c) At the time of valuation pursuant to Section 4.11, any amount in the Subordinate Debt Service Reserve Account in excess of the Subordinate Debt Service Reserve Requirement shall be transferred to the Debt Service Fund.

(d) In each month during the twelve-month period preceding the final maturity date of the Master Notes, so long as no Event of Default has occurred and is continuing, moneys held in the Subordinate Debt Service Reserve Account shall be credited against the payment of principal of and interest on the Subordinate Master Notes and shall be transferred to the Debt Service Fund for the payment of such principal and interest, provided that after such transfer the amount remaining in the Subordinate Debt Service Reserve Account satisfies the Subordinate Debt Service Reserve Fund Requirement.

(g) Notwithstanding anything in this Master Indenture to the contrary, moneys on deposit in the Debt Service Reserve Fund shall be available to pay fees and expenses of the Master Trustee or any related Bond Trustee, including fees and expenses of counsel to each of the Master Trustee or any related Bond Trustee.

Section 4.06. *Operating Reserve Fund.* The Master Trustee shall transfer to the Operating Reserve Fund from Gross Revenues the amounts required pursuant to this Master Indenture. Any moneys deposited into the Operating Reserve Fund pursuant to this Master Indenture shall be disbursed and expended by the Master Trustee solely for the payment of (i) Debt Service in accordance with the priorities set forth in this Master Indenture if insufficient moneys therefor are available in the Debt Service Fund, and (ii) provided that no Event of Default exists under this Master Indenture, Operating Expenses of Members, at the written request of the Obligated Group Agent, if amounts in the Operating Fund are insufficient to pay such Operating Expenses. In the event that the balance of the moneys in the Debt Service Fund is insufficient to pay Debt Service on the Senior Master Notes when due and payable, and prior to any transfers for such purposes from the Debt Service Reserve Fund Accounts for the Senior Master Notes, moneys in the Operating Reserve Fund shall be transferred by the Master Trustee to the appropriate account within the Debt Service Fund for credit to the Payment Account in an amount sufficient to make up such deficiency. Moneys in the Operating Reserve Fund may also be used to pay the Debt Service on the Senior Master Notes becoming due at maturity or upon redemption in full thereof. The Obligated Group Agent and the Members may withdraw amounts to pay Operating Expenses as provided in this Master Indenture only to the extent the Obligated Group Agent certifies to the Master Trustee that such expenditures qualify as Operating Expenses of the Members.

(b) Upon the acceleration of the principal of all Master Notes Outstanding pursuant to this Master Indenture, the Master Trustee shall transfer all amounts in the Operating Reserve Fund to the Payment Account of the Debt Service Fund.

(c) Notwithstanding anything in this Master Indenture to the contrary, moneys on deposit in the Operating Reserve Fund shall be available to pay fees and expenses of the Master Trustee or any Related Bond Trustee, including fees and expenses of counsel to each of the Master Trustee or any Related Bond Trustee.

Section 4.08. *Capital Reserve Fund.*

(a) The Master Trustee shall transfer to the Capital Reserve Fund from Gross Revenues the amounts required pursuant to this Master Indenture. Any moneys deposited into the Capital Reserve Fund pursuant to this Master Indenture shall be disbursed and expended by the Master Trustee solely for the payment of (i) Debt Service in accordance with the priorities set forth in this Master Indenture if insufficient moneys therefor are available in the Debt Service Fund, and (ii) (A) Capital Costs designated by the Obligated Group Agent to be paid from the Capital Reserve Fund; and (B) provided that no Event of Default exists under this Master Indenture, other Operating Expenses, at the written request of the Obligated Group Agent, if amounts in the Operating Fund are insufficient or not permitted to be used (i.e. for capitalizable repairs) to pay such Operating Expenses. In the event that the balance of the moneys in the Debt Service Fund is insufficient to pay Debt Service on the Senior Master Notes when due and payable, and prior to any transfers for such purposes from the Debt Service Reserve Fund Accounts for the Senior Master Notes, moneys in the Capital Reserve Fund shall be transferred by the Master Trustee to the appropriate account within the Debt Service Fund for credit to the Payment Account in an amount sufficient to make up such deficiency to the extent not already funded by a transfer from the Operating Reserve Fund. Moneys in the Capital Reserve Fund may also be used to pay the last Debt Service on the Senior Master Notes becoming due. The Obligated Group Agent and the Members may withdraw amounts to pay Operating Expenses as provided in this Master Indenture only to the extent the Obligated Group Agent certifies to the Master Trustee that such expenditures qualify as Operating Expenses.

(b) Upon the acceleration of the principal of all Master Notes Outstanding pursuant to this Master Indenture, the Master Trustee shall transfer all amounts in the Capital Reserve Fund to the Payment Account of the Debt Service Fund.

(c) Notwithstanding anything in this Master Indenture to the contrary, moneys on deposit in the Capital Reserve Fund shall be available to pay fees and expenses of the Master Trustee or any Related Bond Trustee, including fees and expenses of counsel to each of the Master Trustee or any Related Bond Trustee.

#### Section 4.09. *Facility Surplus Fund.*

(a) Any moneys deposited into the Facility Surplus Fund shall be applied by the Master Trustee to cure any deficiency in any of the scheduled payments or deposits required to be made pursuant to this Master Indenture and, upon the acceleration of the principal of all Master Notes Outstanding pursuant to this Master Indenture, the Master Trustee shall transfer all amounts in the Facility Surplus Fund to the Payment Account of the Debt Service Fund to the extent not funded by transfers from the Operating Reserve Fund or Capital Reserve Fund.

(b) Provided no Default or Event of Default exists, the Obligated Group Agent may direct the Master Trustee to apply money on deposit in the Facility Surplus Fund as follows:

(a) To pay the Operating Expenses of the Offtake Purchaser in an amount equal to the Operating Expenses for the Offtake Purchaser for the current month as requested in writing by the Obligated Group Agent based on the Budgeted Operating Expense Amount as set forth in the annual budget of the Offtake Purchaser; provided, however, that the Obligated Group Agent (1) shall not in any month request an amount to pay Operating Expenses of the Offtake Purchaser that is reasonably expected to cause the projected annual Operating Expenses for the Offtake Purchaser to exceed the Budgeted Operating Expense Amount as set forth in the annual budget (as delivered pursuant to this Master Indenture) for the then current Fiscal Year by more than 10%; and (2) shall not in any month request an amount that is, in the aggregate, more than budgeted monthly



Operating Expenses, as approved in such budget for such month by more than 20%, unless the Obligated Group Agent certifies in writing that such costs constitute Operating Expenses;

(b) To pay Debt Service on the Subordinate Master Notes;

(c) To make deposits to Subordinate Debt Service Reserve Account of the Debt Service Reserve Fund in amounts sufficient to cause the total amount on deposit in the Subordinate Debt Service Reserve Account to be an amount not less than the Subordinate Debt Service Reserve Requirement; and

(d) If the Distribution Conditions are satisfied, then amounts remaining in the Facility Surplus Fund shall be transferred by the Master Trustee to the Offtake Purchaser no more often than semiannually at the written direction of the Obligated Group Agent; provided, however, tax distributions to equity members of the Parent or its Affiliates to pay federal, state and local income taxes attributable to such equity members as a result of his, her or its direct or indirect ownership of the Obligated Group or the Offtake Purchaser, which shall be calculated by an Independent Accountant, are not subject to the limitations of clause (iv).

Section 4.10. *Renewal Fund.* Except as otherwise provided in this Master Indenture, the proceeds of any insurance (other than business interruption insurance) or condemnation award which are required to be paid to the Master Trustee pursuant to this Master Indenture and to the Related Financing Documents shall be deposited into the Renewal Fund. Amounts on deposit in the Renewal Fund shall be disbursed as provided in Section 6.11.

Section 4.11. *Property Tax Reserve Fund.*

Moneys deposited into the Property Tax Reserve Fund shall be transferred by the Master Trustee as directed in writing by the Obligated Group Agent to pay property taxes. Upon the acceleration of the principal of all Master Notes Outstanding pursuant to this Master Indenture, the Master Trustee shall transfer all amounts in the Property Tax Reserve Fund to the Payment Account of the Debt Service Fund to the extent not funded by transfers from the Operating Reserve Fund, Capital Reserve Fund or the Facilities Surplus Fund.

Section 4.12. *Investment of Funds and Accounts; Valuation*

(a) Amounts in the Funds and Accounts shall, if and to the extent then permitted by law, be invested in Investment Securities. Investments authorized under this Section shall be made by the Master Trustee at the written direction of the Obligated Group Agent, and may be made by the Master Trustee through its own bond department. Any investment hereunder shall be made in accordance with written instructions of the Obligated Group Agent. The Master Trustee may conclusively rely upon such instructions as to both the suitability and legality of the directed investments. In the event no such instructions are received by the Master Trustee, such amounts shall be invested in Investment Securities described in clause (vii)(a) of the definition thereof, pending receipt of such investment instructions. The Master Trustee may make any and all such investments through its own investment department or that of its affiliates or subsidiaries. Such investments shall mature in such amounts and at such times as may be necessary to provide funds when needed to make payments from such Funds or Accounts. Investments in the Debt Service Reserve Fund shall mature in five years or less or shall provide for liquidation at par when needed

to make payments hereunder. The Master Trustee shall not be responsible or liable for any losses incurred on investments made pursuant to this Section 4.11.

(b) The income or interest earned and gains realized in excess of losses suffered by any Fund or Account held hereunder shall be credited to the Payment Account of the Debt Service Fund.

(c) The Funds and Accounts established hereunder shall be valued as of each Debt Service payment date on the basis of market value; provided, however, a Fund Letter of Credit, unless disaffirmed or terminated, as applicable, shall be valued at the face amount thereof.

(d) The Master Trustee is authorized, in making or disposing of any investment permitted by this Section, to deal with itself (in its individual capacity) or with any one or more of its affiliates, whether it or such affiliate is acting as an agent of the Master Trustee or for any third person or dealing as principal for its own account.

(e) All amounts in the Funds and Accounts held by the Master Trustee at the end of any Business Day shall, at the option of the Master Trustee, to the extent required on the next Business Day to make a payment under this Indenture, be held in cash until the next Business Day.

## ARTICLE V

### REPRESENTATIONS OF MEMBERS

Section 5.01. *Due Authorization of Master Indenture and Master Notes.* Each Member represents in the Master Indenture that: (a) it is duly authorized under the laws of the jurisdiction under which it is organized and under all other applicable provisions of law to execute and deliver the Master Indenture and to provide for the creation and issuance of Master Notes under the Master Indenture as permitted by the Master Indenture; and (b) all internal official action on the part of each Member required by its Organizational Documents and by the laws of the jurisdiction under which it is organized for the execution, delivery and performance of the Master Indenture has been taken and, prior to the creation and issuance of each Master Note under the Master Indenture, all similar internal official action required for the creation and issuance of each Master Note will have been duly and effectively taken by the Member thereof.

Section 5.02. *No Defaults; Noncontravention.* Each Member represents that no event of default by it or event which, with notice or lapse of time or both, would constitute an event of default by it or a default by it under any agreement or instrument to which the Member is a party or by which the Member is or may be bound or to which any of the property or assets of the Member is or may be subject, and which would have a Material Adverse Effect on the Member or which would impair its ability to carry out its obligations under the Master Indenture, under the Related Financing Documents, the Master Mortgage or under the Related Lease, has occurred and is continuing; neither the execution nor the delivery by the Member of the Master Indenture or the Related Financing Documents to which it is party, nor the consummation of any of the transactions in the Master Indenture and therein contemplated nor the fulfillment of, or compliance with, the terms and provisions of the Master Indenture or thereof, will contravene the Organizational Documents of the Member or will conflict with, in any way which is material to the Member, or result in a breach of, any of the terms, conditions or provisions of, or constitute a default under, any corporate, limited liability company or limited partnership restriction or any bond, debenture, note, mortgage, indenture, agreement or other instrument to which the Member is a party or by which the Member is or may be bound or to which any of the property or assets of the Member is or may be subject, or any law or any order, rule or regulation applicable as of the date of the Master Indenture to the Member of any court, or regulatory body, administrative agency or other governmental body having jurisdiction over the Member or its properties or operations, or will result in the creation or imposition of a prohibited lien, charge or other security interest or encumbrance of any nature upon any property or asset of the Member under the terms of any such restriction, bond, debenture, note, mortgage, indenture, agreement, instrument, law, order, rule or regulation.

Section 5.03. *No Litigation.* Each Member represents that, except as disclosed in writing in connection with the offering of the Bonds secured by the initial Master Notes, there is no action, suit, proceeding or investigation at law or in equity before or by any court or governmental agency or body pending or threatened, wherein an adverse decision, ruling or finding (i) would result in any Material Adverse Effect on the condition (financial or otherwise), results of operations, business or prospects of the Member or which would materially and adversely affect the properties of the Member and which has not been disclosed to the Master Trustee and the issuer or the initial purchaser of the Bonds or (ii) would materially and adversely affect the transactions contemplated by, or the validity or enforceability of, any of the Related Financing Documents.

Section 5.04. *Establishing and Preserving the Lien on Collateral.*

(a) The Security Documents create a valid and enforceable Lien on the Gross Revenues and the Project, and all other assets covered thereby.

(b) Each filing or recording of the Master Indenture Security Documents necessary to establish, perfect and preserve the Lien created by has been duly filed or recorded, as applicable.

(c) There is no other lien on the Gross Revenues or the Projects other than Permitted Encumbrances.

## ARTICLE VI

### COVENANTS OF THE OBLIGATED GROUP

Section 6.01. *Covenants as to Corporate Existence, Maintenance of Properties, and Similar Matters; Right of Contest.* Each Member hereby covenants to:

(a) Preservation of Existence. except as otherwise permitted by the Master Indenture, preserve its formal legal existence and all its rights and licenses to the extent necessary or desirable in the operation of its business affairs and be qualified to do business in each jurisdiction where its ownership of property or the conduct of its business requires such qualification; provided, however, that nothing contained in the Master Indenture shall be construed to obligate it to retain or preserve any of its rights or licenses no longer used or, in the judgment of its Governing Person, useful and desirable in the conduct of its business;

(b) Maintenance of Property. at all times cause its business to be carried on and conducted in an efficient manner and its properties to be maintained, preserved and kept in good repair, working order and condition and all needful and proper repairs, renewals and replacements thereof to be made; provided, however, that nothing contained in the Master Indenture shall be construed to obligate it to preserve, repair, renew or replace any personal property, leases on personalty, rights, privileges or licenses no longer used or, in the reasonable judgment of its Governing Person, useful and desirable in the conduct of its business;

(c) Compliance with Laws.

(a) operate or cause each of its Projects financed with proceeds of Tax-Exempt Secured Obligations to be operated as solid waste facilities and infrastructure qualifying under Section 142(a)(6) of the Code (but only to the extent required by the Related Financing Documents) and in compliance with the applicable Related Lease, which facilities may include functionally related and subordinate uses, and maintain all certifications and licenses required for such use;

(b) comply in good faith with all laws, ordinances and regulations, including without limitation all licensure, building, zoning, safety and environmental laws, which thereafter in any manner may affect its Projects or the use or operation thereof; and have the right in good faith to contest or appeal from such laws, ordinances and regulations any decision adverse to the Member based thereon by appropriate proceedings diligently conducted, but all costs, fees and expenses incurred in connection with such proceedings shall be borne by the Member and provided that during such contest or appeal the Member complies therewith unless enforcement is stayed;

(c) not engage in any business other than recycling food products and engaging in activities related thereto, including but not limited to the production of food and feed products, in accordance with clause (i) above;

(d) Payment of Taxes.

(a) prior to the date on which any interest or penalties shall commence to accrue thereon, cause to be paid and discharged all taxes (including but not limited to ad valorem taxes), assessments, water and sewer rents and charges and all license or permit fees, levies, and governmental charges, payments in lieu of any of the foregoing, general or special, ordinary or extraordinary, foreseen or unforeseen, of any kind and nature whatsoever, which are or may have been, or may thereafter be, charged, assessed, levied, or imposed upon or against the Projects financed with proceeds of a Series of Secured Obligations, or any part thereof, by any lawful authority, or which may become a lien thereon and (B) not suffer, and promptly cause to be paid and discharged, any lien or charge whatsoever which by any present or future law may be or become superior, or on a parity with or junior to, either in lien or in distribution out of the proceeds of any judicial sale, the

lien of the Master Mortgage, the Pledge Agreements, or the lien on the Gross Revenues of the Member created under the Master Indenture and (C) cause to be paid, when due, all charges for utilities whether public or private;

(b) notwithstanding the provisions described in (i) above, the Member may in good faith contest, by proper legal proceedings, the validity or amount of any such tax or charge, and may permit such tax or charge to remain unpaid during the period of such contest, provided (i) no Event of Default, or event or condition which, with the giving of notice or the passage of time or both, would constitute an Event of Default, has occurred and is continuing; (ii) the Member maintains and prosecutes with diligence such contest; (iii) the Member shall pay such contested tax or charge and all costs and penalties, if any, and shall deliver to the Master Trustee a written certificate confirming of such payment promptly if such contest is terminated or determined adversely to the Member, and in any event prior to the date any portion of the Projects financed with proceeds of a Series of Secured Obligations may be sold or otherwise transferred because of non-payment of the tax or charge; and (iv) the Member shall deposit with the Master Trustee during such contest cash or a surety bond in the amount of such unpaid tax or charge plus interest and penalties anticipated to accrue thereon which, notwithstanding any provision of the Master Indenture to the contrary, the Master Trustee may use, and shall use at the written direction of the Majority Applicable Holders to pay the same prior to the date any portion of the Projects financed with proceeds of a Series of Secured Obligations may be sold or otherwise transferred because of non-payment of the tax or charge.

(c) Pay or cause to be paid: (i) all taxes, levies, assessments, and charges on account of the use, occupancy, or operation of its Property, including but not limited to all sales, use, occupation, real, and personal property taxes, all permit and inspection fees, occupation and license fees, and all water, gas, electric, light, power, or other utility charges assessed or charged on or against its Property or on account of its use or occupancy thereof or the activities conducted thereon or therein, and (ii) all taxes, assessments, and impositions, general and special, ordinary and extraordinary, of every name and kind, which shall be taxed, levied, imposed, or assessed during the term of this Master Indenture upon all or any part of its Property, or its interest or the interest of any Related Issuer or either of them in and to its Property, or upon its interest or the interest of any Related Issuer or the interest of either of them in this Master Indenture, or the amounts payable hereunder or under the Master Notes. If under applicable law any such tax, levy, charge, fee, rate, imposition, or assessment may at the option of the taxpayer be paid in installments, any Member may exercise such option.

(e) Payment of Other Debt.

(a) promptly pay or otherwise satisfy and discharge all of its obligations and indebtedness and all demands and claims (any such obligation, indebtedness, demands and claims being "Claims") against it as and when the same become due and payable, other than any thereof (exclusive of the Master Notes issued and Outstanding under the Master Indenture) whose validity, amount or collectability is being contested in good faith by appropriate proceedings as described below;

(b) notwithstanding the provisions described in (i) above, the Member may in good faith contest, by proper legal proceedings, the validity or amount of any such Claim as permitted in the provisions described in (i) above, and may permit such Claim to remain unpaid during the period of such contest, provided (A) no Event of Default, or event or

condition which, with the giving of notice or the passage of time or both, would constitute an Event of Default, has occurred and is continuing; (B) the Member maintains and prosecutes with diligence such contest; (C) the Member shall pay such contested Claim and all costs and penalties, if any, and shall deliver to the Master Trustee a written certificate confirming such payment promptly if such contest is terminated or determined adversely to the Member, and in any event prior to the date any portion of the Projects financed with proceeds of a Series of Secured Obligations may be sold or otherwise transferred because of non-payment of the Claim; and (D) the Member shall deposit with the Master Trustee during such contest cash or a surety bond in the amount of such unpaid Claim plus interest and penalties anticipated to accrue thereon in amounts which, notwithstanding any provisions of the Master Indenture to the contrary, the Master Trustee may use, and shall use at the written direction of the Majority Applicable Holders to pay the same prior to the date any portion of the Projects financed with proceeds of a Series of Secured Obligations may be sold or otherwise transferred because of non-payment of the Claim.

(f) Compliance with Master Indenture Security Documents. at all times comply with all terms, covenants and provisions contained in any lien or security interest at such time existing upon its properties or any part thereof or securing any of its Indebtedness and pay or cause to be paid, or to be renewed, refunded or extended, by it, all of its Indebtedness secured by a lien or security interest, as and when the same shall become due and payable.

(g) Special Purpose Entity/Separateness. Until the Secured Obligations have been indefeasibly paid in full, each Member hereby represents, warrants and covenants that:

(a) it is a Limited Special Purpose Entity;

(b) the representations, warranties and covenants described in this Section 6.01(g) survive for so long as any of the Secured Obligations remain outstanding; and

(c) the factual assumptions made in the non consolidation opinion delivered in connection with the initial Master Notes (the “Insolvency Opinion”), including, but not limited to, any exhibits attached thereto, are true and correct in all respects and any assumptions made in any subsequent non consolidation opinion required to be delivered in connection with the Master Indenture (an “Additional Insolvency Opinion”), including, but not limited to, any exhibits attached thereto, will have been and shall be true and correct in all respects. Member has complied and will comply with, all of the assumptions made with respect to Member in the Insolvency Opinion. Member will have complied and will comply with all of the assumptions made with respect to Member in any Additional Insolvency Opinion. Each entity other than Member with respect to which an assumption shall be made in any Additional Insolvency Opinion will have complied and will comply with all of the assumptions made with respect to it in any Additional Insolvency Opinion.

Section 6.02. *Liens on Property.* Each Member covenants not to create or suffer any Liens on its Property that are not Permitted Encumbrances and, at its cost and expense, to promptly discharge or terminate all such Liens. For purposes of this Section 6.02, Permitted Encumbrances shall mean the following:

(a) liens arising by reason of good faith deposits with any Member in connection with tenders, leases of real estate, bids or contracts (other than contracts for the payment of money), deposits by any Member to secure public or statutory obligations, or to secure or in lieu of, surety,

stay or appeal bonds, and deposits as security for the payment of ground rent under any Lease, taxes or assessments or other similar charges;

(b) any lien arising by reason of deposits with, or the giving of any form of security to, any governmental agency or any body created or approved by law or governmental regulation for any purpose at any time as required by law or governmental regulation as a condition to the transaction of any business or the exercise of any privilege or license, or to enable any Member to participate in any funds established to cover any insurance risks or in connection with worker's compensation, unemployment insurance, old age pensions or other social security, or to share in the privileges or benefits required for institutions participating in such arrangements;

(c) rights reserved to or vested in any municipality or public authority by the terms of any right, power, franchise, grant, license, permit or provision of law, affecting any property, to (i) terminate such right, power, franchise, grant, license or permit, provided that the exercise of such right would not materially impair the use of such property for its intended purpose or materially and adversely affect the value thereof, or (ii) purchase, condemn, appropriate or recapture, or designate a purchaser of such property;

(d) any liens on any property for taxes, assessments, levies, fees, water and sewer rents, other governmental and similar charges and payments in lieu of any of the foregoing, and any liens of mechanics, materialmen and laborers for work or services performed or materials furnished in connection with such property (i) which are not due and payable or are not delinquent or (ii) the amount or validity of which are being contested in accordance with the requirements of the Master Indenture;

(e) any lease consented to by the Majority Applicable Holders which, in the judgment of the Member whose property is subject thereto, is reasonably necessary or appropriate for or incidental to the proper and economical operation of such Property, taking into account the nature and terms of the lease and the nature and purposes of the property subject thereto;

(f) utility, access and other easements, rights-of-way, restrictions and other minor defects, encumbrances, and irregularities in the title to any property which do not materially impair the use of such property for its intended purpose or materially and adversely affect the value thereof;

(g) rights reserved to or vested in any municipality or public authority to control or regulate any property or to use such property in any manner, which rights have not been violated and do not materially impair the use of such property for its intended purposes or materially and adversely affect the value thereof;

(h) any lien in favor of the provider of a Credit Facility supporting payment of any Master Note which would be required or permitted to secure the Master Note to which the Credit Facility relates;

(i) any purchase money security interest for equipment acquired by a Member in the ordinary course of business in accordance with the Master Indenture;

(j) liens created by the Related Financing Documents for a Project including from (i) Qualified Escrows, (ii) construction funds or other similar funds established to pay the costs of a Project, (iii) debt service funds or other similar funds established to accumulate funds to pay the principal or redemption price of and interest on Secured Obligations, (iv) depreciation reserve funds or other similar funds established to provide a proper matching between Net Cash Flow and Debt

Service Requirements, and (v) debt service reserve funds, renewal and replacement funds or other reasonably required reserve funds; provided that, in each case, the Master Trustee shall have received an Officer's Certificate certifying that establishment of the fund or account and any obligation of a Member to make deposits therein are upon commercially reasonable terms consistent with prevailing market conditions at the time the fund or account is established;

(k) leases of property and equipment necessary for the operation of a Project in an aggregate amount not to exceed 5%, when calculated on a pro forma basis, of the Revenue of the Obligated Group for the Fiscal Year immediately prior to the incurrence thereof; and

(l) any lien consented to by the Majority Applicable Holders.

Section 6.03. *Permitted Indebtedness.*

(a) Master Notes. The Obligated Group may issue Master Notes to secure or otherwise in consideration of Secured Obligations upon receipt by the Master Trustee of the following:

(a) An Officer's Certificate (i) stating that the proceeds of such Secured Obligations will be sufficient (together with other specified sources, if any) to pay for the acquisition, construction, remodeling, renovation, or equipping or refinancing of the related Project, (ii) stating that no Default or Event of Default has occurred unless cured to the satisfaction of the Majority Applicable Holders and that the requirements of this Section 6.03 have been satisfied for the issuance of Master Notes, and (iii) if such Secured Obligations will be issued to refund, redeem or otherwise refinance existing Secured Obligations, (A) a certification to the effect that such Secured Obligations (together with other available funds, if any) will be sufficient for such purpose and will not, on a *pro forma* basis assuming the issuance of the Secured Obligations as of the first day of the immediately preceding Fiscal Year, result in an increase in the Debt Service Requirements, in the aggregate over the term of the Secured Obligations by more than 5% percent, (B) a certification to the effect that the Members have authorized the redemption of such Secured Obligations, and (C) a copy of the form of all notices required to effect such refunding, redemption or refinancing of such Secured Obligations pursuant to Article III of this Master Indenture and the Related Financing Documents; and

(b) An executed counterpart or certified copy of a Supplemental Indenture, Security Agreement, Master Mortgage or amendment to the same pursuant to which the owner of such Project shall agree to (i) grant a mortgage Lien on the Project to the Master Trustee pursuant to the Master Mortgage, (ii) pledge all of its Property to secure Master Notes issued under this Master Indenture, (iii) become a member of the Obligated Group pursuant to Section 6.13 hereto and agree to become bound by the provisions of this Master Indenture; and

(c) If the Secured Obligation is being incurred to finance a new Project:

(1) an Officer's Certificate of the Obligated Group Agent that (i) the signer is not aware of any facts or circumstances that would prevent the timely application for or receipt of all approvals required to be obtained from any regulatory bodies regarding such Project, whether required to be obtained prior to the commencement of such construction, during the course thereof or upon completion thereof, and (ii) in the case of new Project, a true, complete and correct copy of the executed guaranteed



maximum price construction contract for such construction; and (iii) the Obligated Group's budget, or an amendment thereto, that assumes the issuance of the Secured Obligations and the expenditures relating to the planning, construction and equipping of such Project; and

(2) an Officer's Certificate of the Obligated Group Agent, supported by a certificate or report of an Independent Consultant, that after giving effect to the proposed Secured Obligation and the application of proceeds thereof, the Projected Debt Service Coverage Ratio is forecasted to be at least equal to 1.50x for the first three full Fiscal Years immediately following the placed in service date of the Project; and

(d) If the Secured Obligation constitutes Completion Indebtedness:

(1) an Officer's Certificate of the Obligated Agent, stating that at the time the original Secured Obligations were incurred to finance a related Project, it had reason to believe that the proceeds of such Secured Obligations, together with other moneys then expected to be available to fund such Project, would provide sufficient moneys for the completion of such Project; and

(2) an Officer's Certificate of the Obligated Group Agent, supported by a certificate or report of an Independent Consultant, stating that the proceeds of such Completion Indebtedness, together with other moneys deposited with the Master Trustee to fund such Project, will be sufficient to complete such Project; and

(e) If the Secured Obligation constitutes Refunding Indebtedness, an Officer's Certificate of the Obligated Group Agent stating that, assuming the issuance of such Refunding Indebtedness and the application of the proceeds thereof, the total Debt Service Requirements for the Refunding Indebtedness will result in an increase in the Debt Service Requirements, in the aggregate over the term of the Secured Obligations by more than 5% percent.

(f) if the Master Notes are issued to secure Interest Rate Agreements, without limitation; and

(g) if the Master Notes are issued to secure Reimbursement obligations with respect to credit and or liquidity support for Secured Obligations; and

(h) if the Master Notes are Subordinate Master Notes, such Subordinate Master Notes are not secured by Property of the Offtake Purchaser.

(b) Other Indebtedness. Obligated Group may incur Indebtedness not evidenced or secured by Master Notes in the form of the following:

(a) Non-Recourse Indebtedness that, based on an Officer's Certificate of the Obligated Group Agent delivered to the Master Trustee prior to the incurrence thereof, will not, together with all Outstanding, exceed 5% of the Revenues of the Obligated Group for the Fiscal Years during which such Non-Recourse Indebtedness will be outstanding pursuant to its terms; and

- (b) Trade payables incurred in the ordinary course of business.

Each Member covenants that prior to, or as soon as reasonably practicable after, the incurrence of Indebtedness by such Member pursuant to this 6.03(b) it will deliver to the Master Trustee an Officer's Certificate that evidences compliance with the applicable subsection above, and attaches a copy of the instrument evidencing such Indebtedness.

Section 6.04. *Calculation of Debt Service and Debt Service Coverage.* The various calculations of the amount of Indebtedness of a Person, the amortization schedule of such Indebtedness and the debt service payable with respect to such Indebtedness required under certain provisions of this Master Indenture shall be made in a manner consistent with that adopted in Section 6.03 and this Section 6.04.

- (a) In calculating the Debt Service Requirement for any completed period, the principal amount of any Indebtedness included in such calculation that is paid during such period shall be excluded to the extent such principal amount is paid from the proceeds of other Indebtedness incurred in compliance with the provisions of this Master Indenture.

- (b) In determining the amount of debt service payable on Indebtedness for which the interest thereon for any future period of time is expressed or calculated as a varying rate per annum, a formula rate, or a fixed rate per annum based on a varying index, then for the purpose of making such determination of debt service, interest on such Indebtedness for such period (the "Determination Period") shall be computed by applying the Projected Rate applicable to the Determination Period.

In determining the amount of debt service payable on Balloon Indebtedness or Put Indebtedness, the principal amortization shall be calculated assuming (i) that the principal balance of such Indebtedness on the date of determination is refinanced on the date of determination over a 20 year period, (ii) that such principal balance will bear interest at the Projected Rate, and (iii) that annual debt service on such Balloon Indebtedness after the date of determination will be payable in equal annual installments sufficient to pay both principal and interest.

- (c) The Capitalized Rentals under a Capitalized Lease at the time of any calculation shall be deemed to be the principal payable thereon.

- (d) No Additional Indebtedness shall be deemed to arise when:

- (a) Indebtedness that bears interest at a variable rate of interest is converted to Indebtedness that bears interest at a fixed rate or the method of computing the variable rate on such Indebtedness is changed; or

- (b) The terms upon which Put Indebtedness may be or is required to be tendered for purchase are changed, if such conversion or change is in accordance with the provisions applicable to such variable rate Indebtedness or Put Indebtedness in effect immediately prior to such conversion or change.

- (e) Notwithstanding anything in this Section to the contrary, in the case of any Indebtedness, the amount of principal and interest payable during each Fiscal Year on such Indebtedness after the date of determination may be projected assuming that such principal will be payable over a 20 year period, (iii) that such principal balance will bear interest at the Projected Rate, and (iv) that debt service on such Indebtedness will be payable in equal annual installments sufficient to pay both principal and interest over a 20 year period

(f) If any Member enters into an Interest Rate Agreement with a provider, then during the term of the Interest Rate Agreement and so long as the provider under the Interest Rate Agreement is not in default under the Interest Rate Agreement, for purposes of any calculation of Debt Service, the interest rate on the Indebtedness of the maturity or maturities subject to the Interest Rate Agreement will be determined after giving effect to the Interest Rate Agreement if a national rating agency has assigned to the unsecured obligations of the provider, or the person who guarantees the obligations of the provider to make its payments to the Member, as of the date the Interest Rate Agreement is entered, a rating of at least “A”, otherwise the rate used shall be the higher of the rate on such Indebtedness or the amount due under the Interest Rate Agreement. Any obligations under the Interest Rate Agreement, whether or not secured by a Master Note, will not be separately included in any calculation of Debt Service payable on Indebtedness. No Indebtedness is deemed to arise when an Interest Rate Agreement is entered or terminated. An Obligation issued in a notional amount to evidence or secure an Interest Rate Agreement is not deemed to be Outstanding under the Master Indenture for any purpose other than entitlement to the payments thereon, secured equally and ratably with all other interest payments on Subordinate Obligations.

Section 6.05. *Debt Service Coverage Ratio.*

(a) The Obligated Group, collectively, covenants and agrees to charge such fees and charges sufficient to produce in each fiscal quarter a Debt Service Coverage Ratio of not less than 125%.

(b) If in any fiscal quarter covered by the Officer’s Certificate referred to in Subsection (a) above, the Debt Service Coverage Ratio is less than 125%, the Master Trustee shall promptly require the Obligated Group Agent at its expense to retain an Independent Consultant to make recommendations with respect to such rates, fees and charges and the Obligated Group’s methods of operation and other factors affecting the financial condition of the Obligated Group in order to increase such Debt Service Coverage Ratio to the highest practicable level and, in all events, to at least 125%, in the case where the Debt Service Coverage Ratio was less than 125%.

(c) A copy of the Consultant’s report and recommendations, if any, shall be filed with the Obligated Group Agent and the Master Trustee. The Obligated Group Agent and each other Member of the Obligated Group shall follow each recommendation of the Consultant to the fullest extent feasible unless the Obligated Group Agent delivers to the Master Trustee an opinion of Counsel to the effect that compliance with a particular recommendation would violate a provision of existing law or regulations, in which case the Obligated Group Agent and other Members of the Obligated Group need not attempt to comply with that particular recommendation.

Section 6.06. *Sale, Lease or Other Disposition of Projects.* The Obligated Group covenants that it will not sell, lease or otherwise dispose of or encumber any Project or any part thereof other than as provided herein. The Obligated Group may, however, from time to time:

(a) sell any machinery, fixtures, apparatus, tools, instruments, or other movable property acquired by the Obligated Group in connection with a Project, or any materials used in connection therewith, if the Obligated Group shall determine that such articles are no longer needed or are no longer useful in connection with the acquisition, construction, operation or maintenance of a Project, and the proceeds thereof may be applied to the replacement of the properties so sold or disposed of and, if not so applied, shall be deposited to the Principal Account.

(b) sell or lease such other property forming part of a Project which it may determine is not needed or serves no useful purpose in connection with the maintenance and operation of such Project; the proceeds of any such sale or lease shall be deposited to the Operating Fund.

(c) distribute cash and investments from the Facility Surplus Fund in accordance with this Master Indenture;

(d) the transfer consists of relinquishing a Lease for a Lease on the same Project consented to by the Master Trustee in accordance with the provisions of this Master Indenture;

(e) the transfer is in connection with the posting of cash collateral under a Maser Note securing an Interest Rate Agreement in accordance with the terms of the Interest Rate Agreement; and

(f) dispositions of fixtures, furniture and equipment and effects of any Member to another Member.

Section 6.07. *Merger or Consolidation.*

(a) No Member will merge or consolidate with or into, or convey, transfer or lease substantially all of its assets to any Person (other than another Member) unless:

(a) the entity formed by such transaction (the “Successor Company”) will be a corporation, limited liability partnership or limited liability company organized and existing under the laws of the United States of America or any state or the State of Delaware, and shall expressly assume, by a Supplemental Indenture executed and delivered to the Master Trustee, all of the obligations of the such Member under this Master Indenture and the Security Documents;

(b) the Obligated Group has complied with the conditions set forth in the Master Indenture, the Security Documents and the Related Financing Documents, if any;

(c) the Obligated Group Agent shall have delivered to the Trustee a certificate of an Independent consultant that, immediately after giving effect to such transaction, the Surviving Company’s Net Worth is equal to or greater than that of the replaced Member;

(d) the Obligated Group Agent shall have given written notice to the Master Trustee and each Holder at least fifteen (15) days prior to such transaction;

(e) the Obligated Group Agent shall have delivered to the Trustee an Officers’ Certificate and an Opinion of Counsel, each stating that such transaction and any supplemental indenture complies with this Indenture and, in the case of the Opinion of Counsel, that (i) the Supplemental Indenture is the valid, binding obligation of the Successor Company, enforceable against the Successor Company in accordance with its terms, (ii) all actions necessary to maintain perfection of the security interest in the Trust Estate and the Project have been taken and (iii) if any Master Notes secure Tax-Exempt Obligations, such Obligations will not be adversely affected by such transaction; and

(f) immediately after giving effect to such transaction, no Default would exist under this Master Indenture, the Security Documents and the Financing Documents.

(b) Notwithstanding the forgoing, any merger or consolidation shall be subject, in all instances, to any provision requiring an optional tender of the related Secured Obligations to the extent provided for in the Related Financing Documents.

Section 6.08. *Successor Company Substituted.*

In case of any such consolidation, merger, sale, lease or conveyance, and following such an assumption by the Successor Company, such Successor Company shall succeed to and be substituted for the Company, with the same effect as if it had been named herein. Such Successor Company may cause to be signed, and may issue either in its own name or in the name of the related Member prior to such succession, any or all of the Master Notes issuable hereunder that shall not have been signed by the related Member and delivered to the Master Trustee; and, upon the order of such Successor Company instead of the Related Member and subject to all the terms, conditions and limitations in this Master Indenture, the Master Trustee shall authenticate and shall make available for delivery any Master Notes that shall have been signed and delivered by such Member to the Master Trustee for authentication, and any Master Notes that the Successor Company thereafter shall cause to be signed and delivered to the Master Trustee for that purpose. All of the Master Notes so issued shall in all respects have the same legal rank and benefit under this Indenture as the Master Notes theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Master Notes had been issued at the date of the execution hereof.

In case of any such consolidation, merger, sale, lease or conveyance such changes in phraseology and form (but not in substance) may be made in the Master Notes thereafter to be issued as may be appropriate.

In the event of any such sale or conveyance, the related Member shall be discharged from all obligations and covenants under this Master Indenture, the Master Notes and the Security Documents and may be liquidated and dissolved.

Section 6.09. *Financial Statements, Records and Reports.* The Members covenant that they will keep or cause to be kept proper books of records and accounts in which full, true and correct entries will be made of all dealings or transactions of or in relation to the business and affairs of the Obligated Group in accordance with GAAP consistently applied (i) except to the extent required by the final paragraph of Article I and (ii) except as may be disclosed in the notes to the Audited Financial Statements referred to in subsection (A) below.

(a) As soon as practicable but in no event later than one hundred twenty (120) days after the end of each Fiscal Year, the Obligated Group Agent shall file with the Master Trustee, each Rating Agency and any other party required by the terms of any applicable financing (including, without limitations, any regulatory body), (i) financial statements for each Member on (as the Obligated Group Agent shall determine in its reasonable discretion) an individual or combined basis for some or all of the Members for such Fiscal Year, in each case prepared in accordance with generally accepted accounting principles and examined and reported on by an Independent Public Accountant, (ii) an Officer's Certificate and a certificate of an Independent Public Accountant stating whether, to the best knowledge of signer is in default in the performance of any covenant contained in this Master Indenture (except with respect to the Independent Public Accountant, whose certification shall be limited to the covenant set forth in Section 6.05 hereof and such other financial and operating covenants that are customary for the Independent Public Accountant to certify to) and, if so, specifying each such default of which the signers may have knowledge, (iii) the items required by this Master Indenture with respect to the Debt Service Coverage Ratio, and (iv) if requested by the Master Trustee, evidence in the form of a coverage certificate to the effect that the insurance required by this Master Indenture remains in effect.

(b) No later than forty-five (45) days after the end of each fiscal quarter, the Obligated Group Agent shall file with the parties named above (i) unaudited financial information of the Obligated Group for such preceding fiscal quarter, including a combined statement of operations prepared on a budget comparative basis for such fiscal quarter and Fiscal Year to date, a combined statement of financial position, a combined statement of cash flows and a combined statement of changes in Members' equity; and (ii) Debt Service Coverage calculations required by this Master Indenture.

(c) If an Event of Default shall have occurred and be continuing, each Member shall (i) file with the Master Trustee such other financial statements and information concerning the operations and financial affairs of such Member (or of any consolidated group of companies of which such Member is a member) as the Master Trustee may from time to time reasonably request, and (ii) provide access to the facilities of such Member for the purpose of inspection by the Master Trustee (or its agents or representatives) during regular business hours with reasonable notice.

(d) At least thirty (30) days prior to the start of each Fiscal Year, the Obligated Group Agent shall file a copy with the Master Trustee of a consolidated annual cash budgets for the operations of the Members of the Obligated Group and the Offtake Purchaser for such Fiscal Year and any amendments to such budget, within thirty (30) days of approval by the Members, which budgets, in the aggregate, shall provide for Net Income that results in a Debt Service Coverage Ratio for any quarterly period that is not less than 1.25:1; and

(e) Promptly upon its receipt by any Member or the Obligated Group Agent from the Internal Revenue Service as to an audit of the tax-exempt status of any Tax-Exempt Secured Obligations, or from the Securities Exchange Commission concerning any disclosure relating to any Secured Obligations, the Obligated Group Agent shall file a copy of the same with the Master Trustee.

(f) The Obligated Group Agent or the applicable Member, shall deliver to the Master Trustee prompt written notice of any litigation or regulatory or other proceeding or investigation in which any Member is a party if such litigation, proceeding or investigation, if decided against the Member, would have a Material Adverse Effect, and, to the extent feasible, the status of the Member's defense of such claim or proceeding.

(g) Immediately upon becoming aware of the existence of any condition or event which constitutes a default or an Event of Default under this Master Indenture or an event of default under the Related Financing Documents or the Leases or an Act of Bankruptcy, each Member will cause the Obligated Group Agent to deliver to the Master Trustee a written notice specifying the nature and period of existence thereof and what action the Obligated Group is taking or proposes to take with respect thereto.

The Debt Service Coverage Ratio shall be calculated in accordance with the requirements of the respective definition thereof, by the Obligated Group Agent: (i) quarterly (as of the end of each quarter of the Fiscal Year) for the twelve-month period ending on the last day of such quarter; each quarterly testing shall be performed within forty-five (45) days of the end of the applicable quarter and shall be based upon the quarterly unaudited financial reports for the immediately preceding four quarters required by this Master Indenture; provided, however, that in the first year following issuance of the initial Master Notes under this Master Indenture, such testing shall be based on an annualization of the period from such issuance until the date for which the test is to be computed based upon the quarterly unaudited financial reports for the immediately preceding one, two or three quarters (as applicable) required by this Master Indenture, and (ii) annually (as of the end of each Fiscal Year) for such Fiscal Year; each annual testing shall be performed

within 100 days of the end of such Fiscal Year on the basis of the annual financial statements of the Members for such Fiscal Year required to be delivered pursuant to this Master Indenture.

Section 6.10. *Insurance.* Each Member shall maintain, or cause to be maintained at its sole cost and expense, insurance with respect to its Property, the operation thereof, and its business against such casualties, contingencies, and risks (including but not limited to public liability and employee dishonesty) and in amounts not less than is customary in the case of corporations engaged in the same or similar activities and similarly situated and as is adequate to protect its Property and operations. The Obligated Group Agent shall annually review the insurance each Member maintains as to whether such insurance is customary and adequate. In addition, the Obligated Group Agent shall at least once every three Fiscal Years (commencing with its Fiscal Year beginning with its first full Fiscal Year following the Effective Date) cause a certificate of an Insurance Consultant or Insurance Consultants to be delivered to the Master Trustee to the effect that the insurance then being maintained by the Members is customary in the case of corporations engaged in the same or similar activities and similarly situated and is adequate to protect the Obligated Group's Property and operations. The Obligated Group Agent shall cause copies of its review, or the certificates of the Insurance Consultant or Insurance Consultants, as the case may be, to be delivered promptly to the Master Trustee, to each related Bond Trustee, and to each Related Issuer. The Obligated Group or any Member may self-insure if the Insurance Consultant or Insurance Consultants determines that such self-insurance meets the standards set forth in the first sentence of this paragraph and is prudent under the circumstances. The Master Trustee shall have no obligation or duty to review the sufficiency of insurance maintained by the Obligated Group

Section 6.11. *Damage, Destruction and Condemnation.*

(a) In the event of any damage, destruction, condemnation, taking under the threat of condemnation or other similar action by a governmental entity requiring surrender of a Project (including without limitation, contractual arrangement under a Lease which results in the termination at the option of the landlord under the Lease or a Lease for a negotiated payment to the related Member) with respect to a Project (the "Damaged Project"), the Member owning such Damaged Project (the "Affected Member") shall make a determination as to the amount of Net Proceeds anticipated to result therefrom and as to whether such amount is permitted by the Related Lease to be paid to the Master Trustee within thirty (30) days of the occurrence of such damage, destruction, condemnation, taking or similar action.

(b) If the Net Proceeds of any damage, destruction, condemnation or taking under the threat of condemnation with respect to the Damaged Project as determined by the Affected Member above are equal to or less than \$1,000,000, such Net Proceeds shall be transferred (to the extent permitted to be so transferred to the Master Trustee by the Related Lease) to the Master Trustee for deposit in the Renewal Fund and shall be applied to repair, restore, modify, improve or replace the Damaged Project. To the extent the Related Lease requires Net Proceeds to be held by the landlord, the Affected Member may draw such Net Proceeds only after a written requisition (containing the same information as would be required for a draw from the Renewal Fund) has been delivered to Master Trustee. The Master Trustee is directed in this Master Indenture to make payments from the Renewal Fund (or to approve draws from Net Proceeds held by the landlord under the Related Lease) for such purposes or to reimburse the Affected Member for costs paid by it in connection therewith upon receipt of a requisition signed by an Authorized Representative of the Affected Member or the Obligated Group Agent (upon which the Master Trustee may conclusively rely without making any independent investigation), stating with respect to each payment to be made: (1) the requisition number, (2) the name and address of the Person to whom payment is due, (3) the amount to be paid and (4) that each obligation mentioned therein has been properly incurred, is a proper charge against the Renewal Fund and has not been the basis of any previous withdrawal,

which requisition shall be accompanied by copies of bills, invoices or receipts (as appropriate) for each payment made. Any balance of the Net Proceeds (in the Renewal Fund or released or to be released by the landlord under the Related Lease) remaining after the Damaged Project has been repaired, restored or replaced to a state substantially like that prior to the event of damage, destruction or taking shall be transferred by the Master Trustee to the Revenue Fund for application as a revenue in accordance with this Master Indenture.

(c) If the Net Proceeds of any damage, destruction, condemnation or taking under the threat of condemnation with respect to the Damaged Project as determined by the Affected Member pursuant to paragraph (a) above are greater than \$1,000,000, such Net Proceeds shall be transferred by the Affected Member to the Master Trustee (to the extent permitted to be so transferred to the Master Trustee by the Related Lease) for deposit in the Renewal Fund, and:

(a) The Affected Member shall immediately determine (1) if (A) the repair, reconstruction, restoration or replacement of the Damaged Project or a portion thereof damaged or taken is economically feasible and permitted by the terms of the Related Lease and will restore the Damaged Project to the physical and operating condition as existed before or (B) whether, in any event, such repair, reconstruction, restoration or replacement is the only legal or economically viable alternative under the Related Lease, and (2) if the Affected Member will have sufficient funds from the Net Proceeds, business interruption insurance proceeds and other available funds to make the payments required under this Master Indenture when due, to pay the cost of repairing, reconstructing, restoring or replacing the portion of the Damaged Project affected by such loss, damage or condemnation (including without limitation Architectural Consultants' and attorneys' fees and expenses) and to pay Operation and Maintenance Expenses for such Damaged Project until completion of the repair, construction or replacement of such portion of the Damaged Project, which determination shall be reflected in a report that shall be delivered to the Master Trustee, the Bond Trustee for the Allocable Secured Obligations financing the Damaged Project (the "Affected Secured Obligations"), if any, and any Holder owning at least ten percent (10%) in aggregate principal amount of the Secured Obligations, within ninety (90) days of the occurrence of such damage, destruction, condemnation or taking. If the report determines the foregoing conditions (1 and 2) are satisfied, then within ninety (90) days after delivery thereof, the Affected Member shall deliver to the Master Trustee:

(1) the plans and specifications, prepared by an Architectural Consultant, necessary to effect such repair, reconstruction or replacement and an executed construction contract for such work (with a copy to the Bond Trustee for the Affected Secured Obligations, if any);

(2) cash in an amount equal to the funds, if any, in excess of Net Proceeds and business interruption insurance proceeds required by the report delivered under clause (i) above; and

(3) such other documents and information as the Master Trustee or the Bond Trustee for the Affected Secured Obligations, if any, may reasonably require; and

(d) the Affected Member shall promptly proceed to repair, reconstruct and replace the affected portion of the Damaged Project, including all fixtures, furniture and equipment and effects, to its original condition to the extent possible. Each request for payment shall comply with the



requirements for a construction requisition set forth in the applicable Related Financing Documents.

(e) If the Affected Member's report does not determine that the conditions are satisfied or fails to meet the requirements relating to repair or reconstruction or replacement described in clause (i) above, with respect to Net Proceeds from Damaged Project, the Affected Member shall prepay the Master Note (or that portion of the Master Note) financing the Damaged Project and the Affected Secured Obligations shall be redeemed as set forth in this Master Indenture and described in the second succeeding paragraph below and in accordance with the Related Financing Documents.

(f) If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement undertaken pursuant to this Master Indenture, the Affected Member will nonetheless complete the work and will pay any cost in excess of the amount of the Net Proceeds held by the Master Trustee. Each Member agrees that if, by reason of any such insufficiency of the Net Proceeds, the Affected Member shall make any payments pursuant to the provisions of this Master Indenture, the Affected Member shall not be entitled to any reimbursement therefor from the Master Trustee, nor shall the Affected Member be entitled to any diminution of the amount payable under this Master Indenture or under the Related Financing Documents.

(g) Under the circumstances described in paragraph (ii) above, the Master Note financing the Damaged Project, if any, shall be prepaid and the Affected Secured Obligations, if any, redeemed in full in accordance with the Related Financing Documents and the Net Proceeds shall be transferred by the Master Trustee from the Renewal Fund to the Special Redemption Account of the Debt Service Fund for such purpose. If the Net Proceeds are insufficient to redeem such Master Note (or portion of the Master Note) as necessary to redeem the Affected Secured Obligations in full in accordance with the Related Financing Documents, the Affected Member shall provide or cause to be provided to the Master Trustee for deposit into the Special Redemption Account of the Debt Service Fund moneys which, together with the Net Proceeds, will be sufficient to redeem the Affected Secured Obligations in accordance with the Related Financing Documents. In the event that the Affected Member has completed any repair, reconstruction or replacement of the Damaged Project after the occurrence of any damage, destruction or condemnation or has redeemed the Affected Secured Obligations in accordance with the requirements of this Master Indenture, and there are excess Net Proceeds, such excess shall be transferred by the Master Trustee to the Revenue Fund for application as revenues. The foregoing notwithstanding, the failure to provide sufficient money to redeem the Affected Secured Obligations shall not be considered an Event of Default so long as the Obligated Group delivers the items set forth in this Master Indenture as if the Damaged Project were being sold.

(h) The occurrence of a casualty to or condemnation of any Project or any portion thereof shall not entitle the Obligated Group to any abatement, postponement or reduction in the amounts payable under this Master Indenture or under the Related Financing Documents and each Member waives, to the extent permitted by law, the benefits and provisions of all laws and rights which, by reason of such casualty or condemnation, might relieve the Member from any of such obligations.

(i) The Members and the Master Trustee acknowledge that the amount of Net Proceeds available to the Members and the Master Trustee may be limited by the terms of the Related Lease.

Section 6.12. *Entrance into the Obligated Group.* No Person shall become a Member of the Obligated Group until and unless the following conditions have been satisfied:

(a) Such Person shall execute and deliver to the Master Trustee a Supplemental Master Indenture, which shall be executed by the Master Trustee and the Obligated Group Agent on behalf of the then-current Members, containing (i) the agreement of such Person (A) to become a Member of the Obligated Group and thereby to become subject to compliance with all provisions of this Master Indenture and (B) unconditionally and irrevocably (subject to the right of such Person to cease its status as a Member of the Obligated Group pursuant to Section 6.14) to jointly and severally make payments upon each Master Note at the times and in the amounts provided in each such Master Note and (ii) representations and warranties by such Person substantially similar to those set forth in Article V and provided that any representation regarding incorporation and good standing shall refer to the actual state of incorporation of such person;

(b) The Obligated Group Agent shall, by appropriate action of its Governing Body, approve the admission of such Person to the Obligated Group and each of the Members shall take such action, if any, required to approve the admission of such Person to the Obligated Group;

(c) The Master Trustee shall receive:

(a) a certificate of the Obligated Group Agent that demonstrates that, immediately upon such Person becoming a Member of the Obligated Group (A) the Members would not, as a result of such transaction, be in default in the performance or observance of any covenant or condition to be performed or observed by them hereunder, and (B) the Projected Debt Service Coverage, assuming the entry of such Person into the Obligated Group, is forecasted to be at least equal to 1.25:1 for the first two full Fiscal Years following the entry of such Person into the Obligated Group; and

(b) an Opinion of Counsel to the effect that (A) the instrument described in subsection (a) above has been duly authorized, executed and delivered and constitutes a legal, valid, and binding agreement of such Person, enforceable in accordance with its terms, subject to customary exceptions for bankruptcy, insolvency, fraudulent conveyance, and other laws generally affecting enforcement of creditors' rights and application of general principles of equity and to the exceptions set forth in Exhibit B hereto and (B) if such Person is not a corporation, such Person's covenant to become subject to compliance with all provisions of this Master Indenture and to unconditionally and irrevocably and jointly and severally make payments upon each Master Note at the times and in the amounts provided in each such Master Note in accordance with this Master Indenture is an enforceable obligation of such Person under applicable law, and (iii) if all amounts due or to become due on all Secured Obligations have not been paid to the holders thereof and provision for such payment has not been made in such manner as to have resulted in the defeasance of all Related Financing Documents, an Opinion of Counsel, to the effect that under then-existing law the consummation of such transaction, whether or not contemplated on the date of delivery of any such Related Bond, would not adversely affect the validity of any Related Bond or any exemption from federal income taxation of interest payable on such Bond otherwise entitled to such exemption; provided that in making the calculation called for by subsection (c)(i)(B) above, (I) there shall be excluded from Revenues (x) any Revenues generated by Property of such Person transferred or otherwise disposed of by such Person since the beginning of the Fiscal Year during which such Person's entry into the Obligated Group occurs, and (y) any Revenues generated by Property of the new Member that at the time of such Member's entry into the Obligated

Group will be categorized as Excluded Property and (II) there shall be excluded from Expenses (x) any Expenses related to Property of such Person transferred or otherwise disposed of by such Person since the beginning of the Fiscal Year during which such Person's entry into the Obligated Group occurs and (y) any Expenses related to Property of the new Member that at the time of such Member's entry into the Obligated Group will be categorized as Excluded Property; and provided that the Obligated Group Agent shall deliver copies of any Opinion of Counsel required by clause (ii)(B) and clause (iii) of this subsection (c) to each related Bond Trustee and Related Issuer of any Related Bond with respect to which interest thereon is excluded from federal income taxation; and

(d) Exhibit A is amended to add such Person as a Member.

Each successor, assignee, surviving, resulting, or transferee corporation of a Member must agree to become, and satisfy the above-described conditions to becoming, a Member of the Obligated Group prior to any such succession, assignment, or other change in such Member's corporate status.

Section 6.13. *Cessation of Status as a Member of the Obligated Group.* Each Member covenants that it will not take any action, corporate or otherwise, that would cause it or any successor thereto into which it is merged or consolidated under the terms of this Master Indenture to cease to be a Member of the Obligated Group until and unless the following conditions have been satisfied:

(a) if the Member proposing to withdraw from the Obligated Group is a party to any Related Financing Documents with respect to Secured Obligations that remain outstanding, another Member of the Obligated Group shall issue a Master Note hereunder evidencing or assuming the obligation of the withdrawing Member in respect of such a Series of Secured Obligations or other Related Indebtedness;

(b) prior to cessation of such status, there is delivered to the Master Trustee and each related Bond Trustee and Related Issuer of any Related Bond with respect to which interest thereon is excluded from federal income taxation an Opinion of Counsel to the effect that, under then-existing law, the cessation by the Member of its status as a Member will not adversely affect the validity of any Related Bond or any exemption from federal income taxation of interest payable thereon to which such Bond would otherwise be entitled;

(c) prior to such cessation there is delivered to the Master Trustee an Officer's Certificate to the effect that immediately after the withdrawal of such Member, the Projected Debt Service Coverage, assuming the exit of such Member from the Obligated Group, is forecasted to be at least equal to 1.25x for the first two full Fiscal Years following such exit;

(d) prior to and immediately after such cessation, no event of default exists hereunder and no event shall have occurred that, with the passage of time or the giving of notice, or both, would become such an event of default; and

(e) prior to cessation of such status, the Obligated Group Agent, on behalf of the other Members of the Obligated Group consents in writing to the withdrawal by such Member.

Upon such cessation in accordance with the foregoing provisions, Exhibit A shall be amended to delete therefrom the name of such Person.

Notwithstanding the foregoing, any Member that receives, either directly or indirectly, the proceeds of a Secured Obligation shall not cease to be a Member hereunder until the related Master Note is no longer Outstanding.

Section 6.14. *Right to Perform Members' Covenants; Advances.* In the event any Member shall fail to (a) pay any tax, charge, assessment, or imposition to the extent required hereunder, (b) remove any Lien or terminate any lease to the extent required hereunder, (c) maintain its Property in repair to the extent required hereunder, (d) procure the insurance required hereby, in the manner herein described, or (d) fail to make any other payment or perform any other act required to be performed hereunder, and is not contesting the same in accordance with Section 6.01, then and in each such case the Master Trustee may (but shall not be obligated to) remedy such failure for the account of such Member and make advances for that purpose. No such performance or advance shall operate to release such Member from any such failure and any sums so advanced by the Master Trustee shall be repayable by such Member on demand and shall bear interest at the Master Trustee's announced prime rate per annum from time to time in effect, from the date of the advance until repaid. The Master Trustee shall have the right of entry on such Member's Property or any portion thereof, in order to effectuate the purposes of this Section, subject to the permission of a court of competent jurisdiction, if required by law.

Section 6.15. *Right to Consent, Etc.* Each Member shall have the right to agree in any Related Financing Documents or Supplemental Master Indenture pursuant to which a Master Note is issued that, so long as any Secured Obligations remain outstanding under such Related Financing Documents or such Master Note remains outstanding, any or all provisions of this Master Indenture that provide for approval, consent, direction, or appointment by the Master Trustee, provide that anything must be satisfactory or acceptable to the Master Trustee, allow the Master Trustee to request anything, or contain similar provisions granting discretion to the Master Trustee shall be deemed to also require or allow, as the case may be, the approval, consent, appointment, satisfaction, acceptance, request, or like exercise of discretion by the Related Issuer, a Master Note holder, the related Bond Trustee, and a provider of credit support, or any one thereof, and that all items required to be delivered or addressed to the Master Trustee hereunder shall also be delivered or addressed to the Related Issuer, Master Note holder, related Bond Trustee, and credit support provider, or any one thereof, unless waived thereby. If a Member enters into any such agreements in a Related Financing Documents or Supplemental Master Indenture, such agreements shall be deemed to be included herein as if set forth herein.

Section 6.16. *Designation of Additional Paying Agents.* The Obligated Group Agent may, in its discretion, cause the necessary arrangements to be made through the Master Trustee and to be thereafter continued for the designation of alternate Paying Agents, if any, and for the making available of funds hereunder for the payment of such of the Master Notes as shall be presented when due at the principal office of the Master Trustee, or its successor in trust hereunder, or at the principal corporate trust office of said alternate Paying Agents.

Section 6.17. *Further Assurances.*

(a) The Members will do, execute, acknowledge, and deliver, or cause to be done, executed, acknowledged, and delivered, all such further acts, deeds, conveyances, mortgages, assignments, transfers, and assurances as the Master Trustee reasonably may require for the better assuring, assigning, and confirming unto the Master Trustee, its successors and assigns, all and singular, the security granted hereunder in the "trust estate".

(b) Except as otherwise provided in any applicable mortgage, assignment, deed, or other instrument of conveyance, all right, title, and interest of the Members in and to all improvements, betterments, renewals, substitutions, and replacements of the Property constituting

the “trust estate” or any part thereof, hereafter acquired by a Member, immediately upon such acquisition, and without any further mortgaging, conveyance, or assignment, shall become and be part of the “trust estate” and shall be subject, if applicable to Property of such type, to the security interest of this Master Indenture and/or any subsequently created liens and security interest securing the Master Notes as fully and completely and with the same effect as though owned by the Members at the time this Master Indenture was executed or any and all such other liens and security interests were created, but at any and all times the Members will execute and deliver to the Master Trustee any and all such further assurances, mortgages, conveyances, or assignments thereof and other instruments with respect thereto as the Master Trustee may reasonably require for the purpose of expressly and specifically subjecting the same to the security interest of this Master Indenture or such other subsequently created liens and security interests.

Section 6.18. *Indemnity.* Each Member will pay, and will protect, indemnify, and save the Master Trustee Indemnified Parties harmless from and against any and all liabilities, losses, damages, costs, and expenses (including attorneys’ fees and expenses of the Master Trustee Indemnified Parties), causes of action, suits, claims, demands, and judgments of whatsoever kind and nature (including those arising or resulting from any injury to or death of any person or damage to Property) arising from or in any manner directly or indirectly growing out of or connected with the following:

(a) the use, non-use, condition or occupancy of any of the Property of any Member, any repairs, construction, alterations, renovation, relocation, remodeling, and equipping thereof or thereto, or the condition of any of such Property including adjoining sidewalks, streets, or alleys and any equipment or facilities at any time located on such Property or used in connection therewith, but that are not the result of the gross negligence of the Master Trustee;

(b) violation of any agreement, warranty, covenant, or condition of this Master Indenture, except a violation resulting from the gross negligence or willful misconduct of the Master Trustee;

(c) violation of any contract, agreement, or restriction by any Member relating to its Property, that shall have existed at the commencement of this Master Indenture;

(d) violation of any law, ordinance, regulation, or court order affecting any Property of any Member or the ownership, occupancy, or use thereof;

(e) any statement or information concerning any Member or its officers and members or its Property, contained in any official statement or other offering document furnished to the Master Trustee or the purchaser of any Master Notes or any a Series of Secured Obligations or other Related Indebtedness, that is untrue or incorrect in any material respect, and any omission from such official statement or other offering document of any statement or information that should be contained therein for the purpose for which the same is to be used or that is necessary to make the statements therein concerning any Member, its officers and members, and its Property not misleading in any material respect, provided that the official statement or other offering document has been approved by a Member of the Obligated Group and the indemnified party did not have knowledge of the omission or misstatement, or did not negligently use the official statement or other offering document in regard to the accuracy or completeness of the official statement or other offering document; and

(f) the Master Trustee’s acceptance (or administration) of this Master Indenture or any other Security Document, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder

(other than costs and expenses finally adjudicated to be a result of the Master Trustee's gross negligence or willful misconduct).

Such indemnity shall extend to each person, if any, who "controls" the Master Trustee as that term is defined in Section 15 of the Securities Act of 1933, as amended.

In the event of settlement of any litigation commenced or threatened, such indemnity shall be limited to the aggregate amount paid under a settlement effected with the written consent of the Obligated Group Agent and, to the extent any settlement impacts the indemnification of the Master Trustee Indemnified Parties, the Master Trustee.

The Master Trustee shall promptly notify the Obligated Group Agent in writing of any claim or action brought against the Master Trustee Indemnified Person or any controlling person, as the case may be, in respect of which indemnity may be sought against any Member, setting forth the particulars of such claim or action, and the Obligated Group will assume the defense thereof, including the employment of counsel satisfactory to the Master Trustee Indemnified Person or such controlling person, as the case may be, and the payment of all expenses. The Master Trustee Indemnified Person or any such controlling person, as the case may be, may employ separate counsel in any such action and participate in the defense thereof, and the fees and expenses of such counsel shall not be payable by the Obligated Group unless such employment has been specifically authorized by the Obligated Group Agent, which authorization shall not be unreasonably withheld or unless, in the good faith judgment of the Master Trustee Indemnified Person, that there are defenses available to the Master Trustee Indemnified Person that are not available to the Obligated Group or that are adverse to or in conflict with those available to the Obligated Group and which, in each case, cannot be effectively asserted by common counsel. The obligations of the Members set forth in this Section 6.18 shall survive the termination of this Master Indenture or the resignation or removal of the Master Trustee.

Section 6.19. *Compliance with Related Financing Documents.*

Nothing contained in this Master Indenture shall be construed as relieving any Member of any of its obligations under the terms of any Related Financing Documents. Without limiting the generality of the foregoing, the Members shall not take or cause or permit to be taken any action permitted pursuant to the terms of this Master Indenture except upon compliance with such additional requirements as may be applicable thereto under the terms of such Related Financing Documents or Related Leases including, without limitation, the requirements designed to assure that the exclusion of interest on any Tax Exempt Bond from the gross income of the holders thereof for federal income tax purposes is not adversely affected.

Section 6.20. *Arbitrage and Other Tax Covenants.* The Obligated Group hereby covenants that it will not take any action, and will not fail to take any action, which action or failure would cause the Tax Exempt Secured Obligations to become "arbitrage bonds" as defined in Section 148 of the Code. The Obligated Group further covenants that it will take all such actions after delivery of any Tax Exempt Secured Obligations as may be required in order for interest on such Tax Exempt Secured Obligations to remain excludable from gross income (as defined in Section 61 of the Code) of the Owners.

Section 6.21. *Secondary Market Disclosure.* The Obligated Group covenants and agrees with the Owners, from time to time, of the Secured Obligations issued hereunder to make best efforts to provide, or cause to be provided, on a timely basis, all appropriate information repositories such information and documents as shall be required by applicable Law to enable Owners to purchase and resell the Secured Obligations issued, from time to time, hereunder. For purposes of complying with the above-described provision, the Obligated Group may rely on an opinion of counsel which is familiar with disclosure of information relating to municipal securities. Nothing herein shall, however, require the Obligated Group to provide disclosure in order to enable the purchaser of a security in a "private placement transaction" within the meaning of applicable securities laws, to offer or re-sell such security in other than a "private placement transaction." All financial statements provided to a repository shall be in accordance with generally accepted governmental accounting principles and shall be provided to such repository as soon as practicable after the same becomes available. The financial statements shall contain such information as shall be customary for local governments, such as the Obligated Group. Nothing in this Section 815 is intended to impose upon the Obligated Group, and this Section 815 shall not be construed as imposing upon the Obligated Group, any disclosure obligations beyond those imposed by applicable Law.

## ARTICLE VII EVENTS OF DEFAULT

Section 7.01. *Event of Default.* "Event of Default", as used in this Master Indenture, shall mean any of the following, unless in each case cured within any applicable grace period by a Member and/or the Obligated Group, whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body:

- (a) if the Members of the Obligated Group shall fail to make any payment of principal, redemption price or interest when due under the terms of any Master Note (except to the extent that such failure is a result of a technical error or the manifest error of the Master Trustee and continues for a period of three (3) Business days after the due date); or
- (b) if any Member shall fail to observe or perform any covenant or agreement contained in Sections 6.01, 6.02, 6.03, 6.06, 6.07, 6.10 and 6.14 of this Master Indenture; or
- (c) if any Member shall fail to observe or perform any covenant or agreement contained in this Master Indenture (other than those described in Section 7.01(b)), and such failure continues for a period of forty-five (45) days after written notice of such failure, requiring the same to be remedied, shall have been given by the Master Trustee to the Members of the Obligated Group, the giving of which notice shall be at the discretion of the Master Trustee unless the Master Trustee is requested in writing to do so by the Holders of at least a majority in aggregate principal amount of all Outstanding Senior Master Notes (or, if no Senior Master Notes are outstanding, Subordinate Master Notes), in which event such notice shall be given; or
- (d) if an Event of Default shall occur under the Mortgage, the Security Documents or the Related Financing Documents;
- (e) if any Member shall default in the payment of any Indebtedness, or an event of default as defined in any Related Financing Documents under which any Indebtedness may be issued, secured or evidenced shall occur, which default in payment or event of default shall result

in such Indebtedness becoming or being declared due and payable prior to the date on which it would otherwise become due and payable; or

(f) if an Act of Bankruptcy with respect to any Member, the Parent or the Offtake Purchaser shall occur; or

(g) an “Event of Default” under any a Related Lease shall occur that would allow for termination by the related landlord, and is not waived and with respect to which all grace and cure periods have expired; or

(h) if an event of default or termination event with respect to which any Member is the defaulting party or affected party under any Interest Rate Agreement, shall occur and is not waived and with respect to which all grace and cure periods have expired; or

(i) if any warranty, representation, certification, financial statement or other information made or furnished to induce the Master Trustee to enter into this Master Indenture or allow any Master Note to be issued, or made or furnished, at any time, in or pursuant to the terms of any Related Financing Document by the Obligated Group Agent, the Offtake Purchaser, the Parent or any Member shall prove to have been false or misleading in any material respect when made or furnished; or

(j) If the Master Mortgage no longer constitutes a valid, binding and enforceable lien on a Project in accordance with its terms; or

(k) If the Obligated Group Agent Equity Pledge and Security Agreement and the Obligated Group Security Agreement no longer constitute a valid, binding and enforceable liens on the collateral pledged thereunder; or

(l) If any of the Offtake Provider Security Documents or the Parent Security Documents are no longer valid, binding or enforceable; or

(m) If the Debt Service Coverage Ratio as of any Testing Date is less than 1.10:1.0.

Upon the occurrence of an Event of Default, then, and in every such case, the Master Trustee (A) at the written request of the Holders of at least a majority in aggregate principal amount Outstanding of the Senior Master Notes or (B) in the case of an Event of Default described in paragraph (a) above, without any such request, shall declare the principal of all the Senior Master Notes and the interest accrued thereon to be immediately due and payable and provide notice of the same to the Obligated Group Agent and upon any such declaration, all Debt Service on the Senior Master Notes become immediately due and payable. Notwithstanding the foregoing, the Senior Master Notes shall not be subject to acceleration in the event the applicable Event of Default relates solely to payment of Debt Service on the Subordinate Master Notes.

Upon the occurrence of an Event of Default if no Senior Master Notes remain Outstanding, the Master Trustee (A) at the written request of the Holders of at least a majority in aggregate principal amount Outstanding of the Subordinate Master Notes and (B) without any such request in the case of an Event of Default under (i) above, shall declare the principal of all of the Subordinate Master Notes and the interest accrued thereon to be immediately due and payable and give notice of the same to the Obligated Group Agent and upon such declaration all Debt Service on the Subordinate Master Notes shall become immediately due and payable.



Any declaration pursuant to this Master Indenture as described in the immediately preceding two paragraphs above shall be subject to the condition that if, at any time after the principal of all Notes or other Master Notes of a Class of Master Notes shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as provided in this Master Indenture: (i) the Members of the Obligated Group shall deposit with the Master Trustee a sum sufficient to pay (A) all matured installments of interest upon all Notes or other Master Notes and the principal and premium, if any, of all such Notes or other Master Notes that shall have become due otherwise than by acceleration (with interest on overdue installments of interest, to the extent permitted by law and on such principal and premium, if any, at the respective rates borne by such Notes or other Master Notes to the date of such deposit) and any other amounts required to be paid pursuant to such Notes or other Master Notes, (B) all amounts due on any Note or any other such Master Note other than by reason of acceleration and (C) all amounts due and owing to the Master Trustee; and (ii) any and all Events of Default under this Master Indenture, other than the nonpayment of principal of and accrued interest on Outstanding Master Notes that shall have become due by acceleration.

Section 7.02. *Payment of Master Notes on Default.* Upon the occurrence of an Event of Default as described in this Master Indenture and upon demand of the Master Trustee, the Members shall pay to the Master Trustee, for the benefit of the Holders of all Master Notes then Outstanding: (a) the whole amount that then shall have become due and payable on all such Master Notes for principal or interest, or both, and such other amounts as may be required to be paid on all such Master Notes, with interest upon the overdue principal and installments of interest (to the extent permitted by law) at the respective rates of interest borne by such Master Notes or as provided in the applicable Supplemental Indenture, and (b) such further amount as shall be sufficient to cover the costs and expenses of collection, including compensation to the Master Trustee, its agents, attorneys and counsel, and any expenses incurred by the Master Trustee other than as a result of its gross negligence or bad faith. The Master Trustee shall, immediately upon receipt thereof, apply proceeds received as set forth in Section 7.06 of this Master Indenture.

Section 7.03. *Suit for Moneys Due; Other Remedies.* In case any Member shall fail forthwith to pay the amounts due as described in the preceding caption upon such demand of the Master Trustee and unless such failure is cured in whole by one (1) or more Members of the Obligated Group, the Master Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to and shall, upon direction of the Majority Applicable Holders, and upon being indemnified as provided in this Master Indenture, institute any actions or proceedings at law or in equity (including, without limitation, foreclosure actions) for the collection of the sums so due and unpaid, enforce the terms of this Master Indenture, of one or more of the Mortgages and the Related Financing Documents and each and every right of the Master Trustee under this Master Indenture and thereunder and may prosecute any such actions or proceedings to judgment or final decree, and may enforce any such judgment or final decree against each Member, and collect in the manner provided by law out of the property of the Obligated Group wherever situated the moneys adjudged or decreed to be payable. The Master Trustee, upon the bringing of any action or proceeding at law or in equity as described in this paragraph, as a matter of right, without notice and without giving bond to any member of the Obligated Group, may, to the extent permitted by law, have a receiver appointed of all of the property of the Obligated Group pending such action or proceeding, with such powers as the court making such appointment shall confer.

Section 7.04. *Proceedings in Bankruptcy.* In case there shall be pending proceedings for the bankruptcy or for the reorganization or arrangement of any Member under the United States Bankruptcy Code or any other applicable law, or in case a receiver or trustee shall have been appointed for its property, the Master Trustee, irrespective of whether the principal of Notes of any series shall then be due and payable as therein expressed or any amount in respect of any other Master Note is then payable or by declaration or otherwise, and irrespective of whether the Master Trustee shall have made any demand pursuant to the provisions of this Master Indenture, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal, premium, if any, interest and any other amounts owing and unpaid in respect of Notes of all series and amounts owing and unpaid in respect of any other Master Note, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Master Trustee and of the Holders of the Master Notes allowed in such judicial proceedings relative to such Member of the Obligated Group, its creditors or its property, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute the same after the deduction of its charges and expenses; and any receiver, assignee or trustee in bankruptcy or reorganization is authorized in this Master Indenture by each of such Holders to make such payments to the Master Trustee, and, in the event that the Master Trustee shall consent to the making of such payments directly to such Holders, to pay to the Master Trustee any amount due it for compensation and expenses, including counsel fees incurred by it up to the date of such distribution. To the extent that such payment of compensation, expenses and counsel fees out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, moneys, securities and other property which the Holders of the Master Notes may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Section 7.05. *Suit by Master Trustee.* All rights of action and rights to assert claims under any Master Note may be enforced by the Master Trustee without the possession of such Master Note on any trial or other proceedings instituted by the Master Trustee. In any proceedings brought by the Master Trustee (and also any proceedings involving the interpretation of any provision of this Master Indenture to which the Master Trustee shall be a party), the Master Trustee shall be held to represent all the Holders of Master Notes, and it shall not be necessary to make any Holders of Master Notes parties to such proceedings.

Section 7.06. *Application of Moneys Collected.* : During the continuation of an Event of Default, any amounts collected by the Master Trustee pursuant to the occurrence of an Event of Default under this Master Indenture and all moneys on deposit in the Funds and Accounts established under this Master Indenture shall be applied (after payment of costs and expenses of collection, including fees of Counsel and compensation to the Master Trustee and each Bond Trustee, and any other outstanding fees and expenses of the Master Trustee, including the establishment of a reserve for anticipated fees, costs and expenses of the Master Trustee and each Bond Trustee):

(a) FIRST: for the equal and ratable benefit of the Holders of the Senior Class A-1 Master Notes, at the date or dates fixed by the Master Trustee for the distribution of such moneys, , in each case, to the payment to the Persons entitled thereto of all installments of interest then due on any Senior Class A-1 Master Notes in the order of the maturity of such installments and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due on such date, without any discrimination or preference;

(b) SECOND: To the payment to the Persons entitled thereto of the unpaid principal installments which shall have become due, whether at maturity (including accelerated maturity) or by call for redemption, on any Senior Class A-1 Master Notes in order of their due dates and, if the

amounts available shall not be sufficient to pay in full all principal installments due on the same date, then to the payment thereof ratably, according to the amounts of such principal installments due on such date, without any discrimination or preference;

(c) THIRD: To the payment to the Persons entitled thereto of any additional amounts due and unpaid in respect of Senior Class A-1 Master Notes, in the order of the due dates of such amounts, and if the moneys available therefor shall not be sufficient to pay in full any such additional amounts due on the same date, then to the payment thereof ratably, according to the amounts due thereon, without any discrimination or preference;

(d) FOURTH: To the payment to the Persons entitled thereto of all installments of interest then due on any Senior Class A-2 Master Note in the order of the maturity of such installments and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to such amounts due on such date, without any discrimination or preference

(e) FIFTH: To the payment to the Persons entitled thereto of the unpaid principal installments which shall have become due, whether at maturity (including accelerated maturity) or by call for redemption, on any Senior Class A-2 Master Note in order of their due dates and, if the amounts available shall not be sufficient to pay in full all principal installments due on the same date, then to the payment thereof ratably, according to the amounts of such principal installments due on such date, without any discrimination or preference;

(f) SIXTH: To the payment to the Persons entitled thereto of any additional amounts due and unpaid in respect of Senior Class A-2 Master Notes, in the order of the due dates of such amounts, and if the moneys available therefor shall not be sufficient to pay in full any such additional amounts due on the same date, then to the payment thereof ratably, according to the amounts due thereon, without any discrimination or preference;

(g) SEVENTH To the payment to the Persons entitled thereto of all installments of interest then due on any Subordinate Master Notes in the order of the maturity of such installments and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to such amounts due on such date, without any discrimination or preference;

(h) EIGHTH: To the payment to the Persons entitled thereto of the unpaid principal installments which shall have become due, whether at maturity (including accelerated maturity) or by call for redemption, on any Subordinate Master Notes in order of their due dates and, if the amounts available shall not be sufficient to pay in full all principal installments due on the same date, then to the payment thereof ratably, according to the amounts of such principal installments due on such date, without any discrimination or preference;

(i) NINTH: To the payment to the Persons entitled thereto of any additional amounts due and unpaid in respect of Subordinate Master Notes, in the order of the due dates of such amounts, and if the moneys available therefor shall not be sufficient to pay in full any such additional amounts due on the same date, then to the payment thereof ratably, according to the amounts due thereon, without any discrimination or preference; and

(j) TENTH: to the payment of the remainder, if any, to the Members of the Obligated Group, their successors or assigns, as directed by the Obligated Group Agent, or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

Section 7.07. *Action by Holders.* No Holder of a Master Note shall have any right by virtue of or by availing of any provision of this Master Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Master Indenture or for the appointment of a receiver or trustee, or any other remedy under this Master Indenture, unless the Holders of not less than a majority in aggregate principal amount of the Senior Master Notes then Outstanding (or, if no Senior Notes remain Outstanding, the Subordinate Notes) shall have made written request upon the Master Trustee to institute such action, suit or proceeding in its own name as Master Trustee under this Master Indenture and shall have offered to the Master Trustee such indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby, and the Master Trustee, for 30 days after its receipt of such notice, request and offer of indemnity, shall have neglected or refused to institute any such action, suit or proceeding and no direction inconsistent with such written request shall have been given to the Master Trustee pursuant to this Master Indenture; it being understood and intended, and being expressly covenanted by the Holder of a Senior Master Note and the Master Trustee, that no one or more Holders of Senior Master Notes shall have any right in any manner whatever by virtue of or by availing itself of any provision of this Master Indenture to affect, disturb or prejudice the rights of any other Holder of a Senior Master Note or to obtain or seek to obtain priority over or preference to any other such Holder not specifically provided for in this Master Indenture, or to enforce any right under this Master Indenture, except in the manner provided in this Master Indenture and for the equal, ratable and common benefit of all Master Notes, except that each and every Senior Master Note shall have priority and preference over each and every Subordinate Master Note. For the protection and enforcement of the provisions of this Master Indenture, each and every Holder of a Master Note and the Master Trustee shall be entitled to such relief as can be given either at law or in equity.

The Holder of a Master Note instituting a suit, action or proceeding in compliance with the provisions of this Master Indenture shall be entitled in such suit, action or proceeding to such amounts as shall be sufficient to cover the costs and expenses of collection, including to the extent permitted by applicable law, a compensation to its attorneys.

Notwithstanding any other provision of this Master Indenture, the right of a Holder of a Master Note to receive payment of the principal of and interest on any Note or other Master Note and any other amounts payable thereunder, on or after the respective due dates expressed in such Note or other Master Note, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder, provided that any moneys collected through the exercise of rights and remedies of any Holder against any Member pursuant to the Related Financing Documents for a Master Note (other than rights and remedies relating to liens granted pursuant to this Master Indenture or to funds and accounts established under such Related Financing Documents) shall be paid to the Master Trustee or, with the consent of the Holder, collected directly by the Master Trustee; provided, further however, the right of the Holders of the Senior Master Notes to receive such payments as shall then be due and owing shall be prior and superior in all cases to the right of the Holders of the Subordinate Master Notes to receive such payments.

Section 7.08. *Direction of Proceedings by Holders.* Except as otherwise specifically provided in this Master Indenture, the Majority Applicable Holders shall have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Master Trustee, or exercising any trust or power conferred on the Master Trustee under this Master Indenture or under any Mortgage; provided, however, that, subject to the provisions of this Master Indenture regarding indemnification by the Master Trustee, the Master Trustee shall have the right to decline to follow any such direction if the Master Trustee, being advised by Counsel, determines that the action so directed may not lawfully be taken, or if the Master Trustee in good faith shall, by a responsible officer or officers of the Master Trustee, determine that the proceedings so directed would be illegal or involve it in personal liability, and provided further that nothing in this Master Indenture shall impair the right of the Master Trustee in its discretion to take any action deemed proper by the Master Trustee and which is not inconsistent with such direction by the Majority Applicable Holders.

Section 7.09. *Notice of Default.* The Master Trustee shall, within ten (10) Business Days after the occurrence of an Event of Default (i) mail to all Holders of Master Notes, as the names and addresses of such Holders appear upon the books maintained pursuant to this Master Indenture and (ii) post or cause to be posted on EMMA, notice of such Event of Default known to the Master Trustee, unless such Event of Default shall have been cured before the giving of such notice.

## **ARTICLE VIII**

### **THE MASTER TRUSTEE**

Section 8.01. *Acceptance of the Trusts.* The Master Trustee accepts and agrees to execute the trusts imposed upon it by this Master Indenture, but only upon the terms and conditions set forth herein. The Master Trustee, prior to the occurrence of an event of default and after the curing of all events of default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Master Indenture, and no implied covenants or obligations should be read into this Master Indenture against the Master Trustee. If an event of default under this Master Indenture shall have occurred and be continuing, the Master Trustee shall exercise such of the rights and powers vested in it by this Master Indenture and shall use the same degree of care as a prudent person would exercise or use in the circumstances in the conduct of such person's own affairs. The Master Trustee agrees to perform such trusts only upon and subject to the following express terms and conditions:

(a) The Master Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers, or employees and shall not be answerable for the conduct of the same if appointed in accordance with the standard specified in this Section 8.01, and shall be entitled to advice of counsel concerning all matters of trusts hereof and duties hereunder, and may in all cases pay such compensation to any attorney, agent, receiver, or employee retained or employed by it in connection herewith. The Master Trustee may act upon the opinion or advice of an attorney, surveyor, engineer, or accountant selected by it or selected or retained by any Member. The Master Trustee shall not be responsible for any loss or damage resulting from any action or inaction based on its good faith reliance upon such opinion or advice.

(b) The Master Trustee shall not be responsible for any recital herein, or in the Master Notes (except with respect to the certificate of the Master Trustee endorsed on the Master Notes), or for the investment of moneys as herein provided (provided that no investment shall be made by the Master Trustee except in compliance with the provisions of this Master Trustee applicable to such investment), or for the recording or re-recording, filing or re-filing of this Master Indenture, or any supplement or amendment thereto, or the filing of financing statements, or for the validity of the execution by the Obligated Group Agent of this Master Indenture, or by any Member of any

supplemental indentures or instruments of further assurance, or for the sufficiency of the security for the Master Notes issued hereunder or intended to be secured hereby, or for the value or title of the Property herein conveyed or otherwise as to the maintenance of the security hereof. The Master Trustee may (but shall be under no duty to) require of any Member full information and advice as to the performance of the covenants, conditions, and agreements in this Master Indenture and shall use its best efforts, but without any obligation, to advise the Members of any impending default known to the Master Trustee. The Master Trustee shall have no obligation to perform any of the duties of the Obligated Group hereunder.

(c) The Master Trustee shall not be accountable for the use or application by the Obligated Group of any of the Master Notes or the proceeds thereof or for the use or application of any money paid over by the Master Trustee in accordance with the provisions of this Master Indenture or for the use and application of money received by any Paying Agent. The Master Trustee may become the owner of Master Notes secured hereby with the same rights it would have if it were not Master Trustee.

(d) The Master Trustee shall be protected in acting upon any notice, order, requisition, request, consent, certificate, order, opinion (including an Opinion of Counsel), affidavit, letter, telegram, or other paper or document to have been signed or sent to the Person received from the Obligated Group Agent. Any action taken by the Master Trustee pursuant to this Master 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 Master Note shall be conclusive and binding upon all future owners of the same Master Note and upon Master Notes issued in exchange therefor or in place thereof.

(e) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper, or proceeding, the Master Trustee shall be entitled to rely upon a certificate signed on behalf of any Member by the Chair of such Member's Governing Body, its Treasurer or its Secretary, its chief executive officer, chief financial officer, or any vice president, as sufficient evidence of the facts therein contained and, prior to the occurrence of a default of which the Master Trustee has been notified as provided in subsection (g) of this Section, or of which by said subsection it is deemed to have notice, shall also be at liberty to accept a certificate described in this paragraph to the effect that any particular dealing, transaction, or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Master Trustee may accept a similar certificate to the effect that a resolution in the form therein set forth has been adopted by such Member as conclusive evidence that such resolution has been duly adopted, and is in full force and effect.

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

(g) The Master Trustee shall not be required to take notice or be deemed to have notice of any default hereunder except failure by the Obligated Group to cause to be made any of the payments to the Master Trustee required to be made by Section 2.02 or Section 4.01 unless a Responsible Officer of the Master Trustee shall be specifically notified in writing of such default by a Member, by the Officer's Certificate required by Section 6.08(b), by any Related Issuer, by any related Bond Trustee, by the holders of at least 25% in aggregate principal amount of the Senior Master Notes then outstanding, and all notices or other instruments required by this Master Indenture to be delivered to the Master Trustee must, in order to be effective, be delivered at the

designated corporate trust office of the Master Trustee, and in the absence of such notice so delivered, the Master Trustee may conclusively assume there is no default except as aforesaid.

(h) At any and all reasonable times, the Master Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants, and representatives, shall have the right fully to inspect any and all books, papers, and records of any Member pertaining to the Master Notes, and to take such memoranda from and in regard thereto as may be reasonably desired.

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

(j) Notwithstanding anything contained elsewhere in this Master Indenture, the Master Trustee shall have the right, but not the obligation, to demand, in respect of the authentication of any Master Note, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Master Indenture, any showings, certificates, opinions, appraisals, or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action by the Master Trustee deemed desirable for the purpose of establishing the right of any Member to the authentication of any Master Notes, the withdrawal of any cash, the release of any property, or the taking of any other action by the Master Trustee., but the Master Trustee shall have no duty to take such action.

(k) Before taking any action under this Master Indenture the Master Trustee may require that indemnification satisfactory to it be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability that is adjudicated to have resulted from its gross negligence or willful misconduct in connection with any action so taken.

(l) All moneys received by the Master Trustee or any Paying Agent shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by law or by this Master Indenture. Neither the Master Trustee nor any Paying Agent shall be under any liability for interest on any moneys received hereunder.

(m) None of the provisions of this Master Indenture shall require the Master Trustee to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

(n) The Master Trustee shall have the right to accept and act upon instructions, including funds transfer instructions (“Instructions”) given pursuant to this Master Indenture and delivered using Electronic Means; provided, however, that the Obligated Group shall provide to the Master Trustee an incumbency certificate listing designated persons with the authority to provide such Instructions and containing specimen signatures of such designated persons, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If the Obligated Group elects to give the Master Trustee Instructions using Electronic Means and the Master Trustee in its discretion elects to act upon such Instructions, the Master Trustee’s understanding of such Instructions shall be deemed controlling. The Obligated Group understands and agrees that the Master Trustee cannot determine the identity of the actual sender of such Instructions and that the Master Trustee shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Master Trustee have been sent by such Authorized Officer. The Obligated Group shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Master Trustee and that the Obligated Group and all Authorized Officers are solely responsible to

safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Obligated Group. The Master Trustee shall not be liable for any losses, costs, or expenses arising directly or indirectly from the Master Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Obligated Group agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Master Trustee, including without limitation the risk of the Master Trustee acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Master Trustee and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Obligated Group; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Master Trustee immediately upon learning of any compromise or unauthorized use of the security procedures.

(o) The Master Trustee shall be under no responsibility to approve or evaluate any expert or other skilled person (including, but not limited to, any Consultant, Insurance Consultant, Architectural Consultant or Independent Counsel) selected by the Obligated Group Agent or any Member of the Obligated Group for any of the purposes expressed in this Master Indenture. The Master Trustee has no duty or obligation to monitor compliance by any Member of the Obligated Group with any recommendations of any Consultant. If requested, the Obligated Group Agent shall provide each Master Note holder, related Bond Trustee, Related Issuer or the Master Trustee with a written certification that the Obligated Group is, to the fullest extent practicable, in compliance with the report and recommendations of the Independent Consultant, and the Master Trustee shall be fully protected in relying on such written certification.

(p) The Master Trustee shall be under no obligation to effect, maintain, review, renew or inquire as to the sufficiency of, any policies of insurance carried by, or the self-insurance of, any Member of the Obligated Group, or to report, or make or file claims or proof of loss for, any loss or damage insured against or that may occur, or to keep itself informed or advised as to the payment of any taxes or assessments, or to require any such payment to be made. The furnishing to the Master Trustee of information relating to any policies of insurance or self-insurance of any Member of the Obligated Group shall not impose upon the Master Trustee any responsibility or duty to approve the form of such policy, the qualifications of the company issuing same, the standards of such self-insurance program or any other matters relating thereto.

(q) Delivery to the Master Trustee of financial statements, Consultant reports and recommendations, opinions, calculations, projections, forecasts, estimates or other financial information and documents is for informational purposes only and the Master Trustee's receipt of such information shall not imply a duty to review or analyze such information or constitute constructive notice of any information contained therein or determinable from information contained therein. The Master Trustee shall have no obligation or duty to monitor the financial condition of any Member of the Obligated Group.



Section 8.02. *Fees, Charges and Expenses of Master Trustee and any Additional Paying Agent.* The Master Trustee shall be entitled to payment and/or reimbursement for fees for its services rendered hereunder and all advances, counsel fees and other expenses made or incurred by the Master Trustee in connection with such services. The Master Trustee shall be entitled to payment and reimbursement for the fees and charges of the Master Trustee as Paying Agent and Master Note Registrar for the Master Notes as hereinabove provided. Any additional Paying Agent shall be entitled to payment and reimbursement for its fees and charges as additional Paying Agent for the Master Notes. Upon an Event of Default, but only upon an Event of Default, the Master Trustee and any additional Paying Agent shall have a right of payment prior to payment on account of principal of, or premium, if any, or interest on any Master Note for the foregoing advances, fees, costs, and expenses incurred, including the fees and expenses of its counsel, any advisors or consultants and other agents engaged in connection with an Event of Default. The Master Trustee shall have a first lien on all Funds or accounts held hereunder for payment of its fees and expenses, including all fees and expenses described in this section.

Section 8.03. *Notice to Master Note Holders if Default Occurs.* If an Event of Default occurs of which the Master Trustee is by subsection (g) of Section 7.01 required to take notice, or if notice of default be given as provided in said subsection (g), then the Master Trustee shall give written notice thereof by mail to the last known owners of all Master Notes then outstanding shown by the list of Master Note holders required by the terms of this Master Indenture to be kept at the office of the Master Trustee.

Section 8.04. *Intervention by Master Trustee.* In any judicial proceeding to which any Member is a party and that in the opinion of the Master Trustee and its counsel has a substantial bearing on the interests of owners of the Master Notes, the Master Trustee may intervene on behalf of Master Note holders and, subject to the provisions of Section 7.01(k), shall do so if requested in writing by the owners of at least 25% in aggregate principal amount of all Senior Master Notes then outstanding (or, to the extent that no Senior Master Notes are then outstanding, the Subordinate Master Notes outstanding). The rights and obligations of the Master Trustee under this Section are subject to the approval of a court of competent jurisdiction.

Section 8.05. *Successor Master Trustee.* Any corporation or association into which the Master Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, ipso facto, shall be and become successor Master Trustee hereunder and vested with all of the title to the whole property or trust estate and all the trusts, powers, discretions, immunities, privileges, and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed, or conveyance on the part of and of the parties hereto, anything herein to the contrary notwithstanding.

Section 8.06. *Corporate Master Trustee Required; Eligibility.* There shall at all times be a Master Trustee hereunder, which shall be a bank or trust company organized under the laws of the United States of America or any state thereof, authorized to exercise corporate trust powers, subject to supervision or examination by federal or state authorities, and (except for the Master Trustee initially appointed under this Master Indenture and its successors under Section 7.05) having a reported combined capital and surplus of at least \$250,000,000. If at any time the Master Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner provided in Section 8.07. No resignation or removal of the Master Trustee and no appointment of a successor Trustee shall become effective until the successor Master Trustee has accepted its appointment under Section 8.09.

Section 8.07. *Resignation by the Master Trustee.* The Master Trustee and any successor Master Trustee may at any time resign from the trusts hereby created by giving thirty days' written notice to the Obligated Group Agent and by registered or certified mail to each registered owner of Master Notes then outstanding and to each holder of Master Notes as shown by the list of Master Note holders required by this Master Indenture to be kept at the office of the Master Trustee. Such resignation shall take effect at the end of such thirty days or when a successor Master Trustee has been appointed and has assumed the trusts created hereby, whichever is later, or upon the earlier appointment of a successor Master Trustee by the Master Note holders or by the Obligated Group. Such notice to the Obligated Group Agent may be served personally or sent by registered or certified mail.

Section 8.08. *Removal of the Master Trustee.* The Master Trustee may be removed at any time, by an instrument or concurrent instruments in writing delivered to the Master Trustee and to the Obligated Group Agent, and signed by the owners of a majority in aggregate principal amount of Master Notes then outstanding or, so long as the Obligated Group is not in default under this Master Indenture, by the Obligated Group Agent; provided that, if any Related Issuer so elects, it may sign such an instrument as the owner of the Master Note or Master Notes pledged to secure the Secured Obligations issued by such Related Issuer. So long as no event of default has occurred and is continuing under this Master Indenture and no event shall have occurred that with the passage of time or the giving of notice or both would become such an event of default, the Master Trustee may be removed for cause (including but not limited to maintaining non-competitive fees) at any time by an instrument in writing signed by the Obligated Group Agent and delivered to the Master Trustee. The foregoing notwithstanding, the Master Trustee may not be removed by the Obligated Group Agent unless written notice of the delivery of such instrument or instruments signed by the Obligated Group Agent is mailed to the owners of all Secured Obligations outstanding under any Related Financing Documents, which notice indicates the Master Trustee will be removed and replaced by the successor trustee named in such notice, such removal and replacement to become effective on the 90th day next succeeding the date of such notice, unless the owners of not less than 25% in aggregate principal amount of such Secured Obligations then outstanding under the Related Financing Documents shall object in writing to such removal and replacement. Such notice shall be mailed by first class mail, postage prepaid to the owners of all such Secured Obligations then outstanding at the address of such owners then shown on the registration books of the Related Issuer kept by the related Bond Trustee to evidence registration and transfer of any Series of Secured Obligations or other Related Indebtedness.

Section 8.09. *Appointment of Successor Master Trustee by the Master Note Holders; Temporary Master Trustee.* In case the Master Trustee hereunder shall resign or be removed, or be dissolved, or shall be in the process of dissolution or liquidation, or otherwise becomes incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by the owners of a majority in aggregate principal amount of Master Notes then outstanding, by an instrument or concurrent instruments in writing signed by such owners, or by their attorneys in fact, duly authorized. The foregoing notwithstanding, so long as the Obligated Group is not in default hereunder, the Obligated Group Agent shall have the right to approve any such successor trustee. If a successor trustee shall not have been appointed within 30 days after notice of resignation by or removal of the Master Trustee, the Master Trustee, the Obligated Group Agent or any holder of a Master Note may apply to any court of competent jurisdiction to appoint a successor to act until such time, if any, as a successor shall have been appointed as above provided. The successor so appointed by such court shall immediately and without further act be superseded by any successor appointed as above provided. Every such successor Master Trustee appointed pursuant to the provisions of this Section shall be a trust company or bank in good standing under the law of the jurisdiction in which it was created and by which it exists, having corporate trust powers and subject to examination by federal or state authorities, and having a reported capital and surplus of not less than \$250,000,000.

Section 8.10. *Concerning Any Successor Master Trustee.* Every successor Master Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Obligated Group Agent an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any further act, deed, or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties, and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Obligated Group Agent, or of its successor, execute and deliver an instrument transferring to such successor Master Trustee all the estates, properties, rights, powers, and trusts of such predecessor hereunder, and every predecessor Master Trustee shall deliver all securities and moneys held by it as Master Trustee hereunder to its successor upon payment of all outstanding fees, costs, and expenses of the predecessor Master Trustee. Should any instrument in writing from any Member be required by any successor Master Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged, and delivered by such Member. The resignation of any Master Trustee and the instrument or instruments removing any Master Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article shall be filed and/or recorded by the successor Master Trustee in each recording office, if any, where this Master Indenture shall have been filed and/or recorded.

Section 8.11. *Master Trustee Protected in Relying Upon Resolutions, Etc.* The resolutions, opinions, certificates and other instruments provided for in this Master Indenture may be accepted by the Master Trustee as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection, and authority to the Master Trustee for the release of property and the withdrawal of cash hereunder.

Section 8.12. *Successor Master Trustee as Trustee of Funds, Paying Agent and Master Note Registrar.* In the event of a change in the office of Master Trustee, the predecessor Master Trustee shall cease to be trustee of any funds provided hereunder and Master Note Registrar and Paying Agent for principal of, premium, if any, and interest on the Master Notes, and the successor Master Trustee shall become such Master Trustee, Master Note Registrar and Paying Agent unless a separate Paying Agent or Agents are appointed by the Obligated Group Agent in connection with the appointment of any successor Master Trustee.

Section 8.13. *Maintenance of Records.* The Master Trustee agrees to maintain such records with respect to any and all moneys or investments held by the Master Trustee pursuant to the provisions hereof as are reasonably requested by the Obligated Group Agent. The Master Trustee shall be entitled to standard compensation for its maintenance of any such records.

Section 8.14. *Appointment of Co-Master Trustee.* It is the purpose of this Master Indenture that there shall be no violation of any law of any jurisdiction denying or restricting the right of banks or trust companies to transact business as trustees in that jurisdiction. It is recognized that: (a) if there is litigation under the Master Indenture or other instruments or documents relating to the Master Notes, the Projects, and in particular, in case of the enforcement hereof or thereof upon an Event of Default, or (b) if the Master Trustee should deem that, by reason of any potential conflict of interest among the interests of any Series or Class of Master Notes, any present or future law of any jurisdiction, it may not (i) exercise any of the powers, rights or remedies granted herein to the Master Trustee, (ii) hold title to the properties, in trust, as granted herein, or (iii) take any action which may be desirable or necessary in connection therewith, it may be necessary that the Master Trustee appoint an additional institution as a Co-Master Trustee, which Co-Master Trustee shall satisfy the requirements and qualifications set forth in Section 8.09 of this Master Indenture.

(a) If an Event of Default has occurred and is continuing, the Holders of a majority in aggregate principal amount of the Master Notes may direct the Master Trustee to appoint an additional institution as a Co-Master Trustee with respect to the related Series of Master Notes, which Co-Master Trustee shall satisfy the requirements and qualifications set forth in Section 8.09 of this Master Indenture.

(b) In the event that the Master Trustee appoints an additional institution as a Co-Master Trustee, each and every trust, property, remedy, power, right, duty, obligation, discretion, privilege, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by, vested in or conveyed to the Master Trustee shall be exercisable by, vest in and be conveyed to that Co-Master Trustee, but only to the extent necessary for it to be so vested and conveyed and to enable that Co-Master Trustee to exercise it. Every covenant, agreement and obligation necessary to the exercise thereof by that Co-Master Trustee shall run to and be enforceable by it.

(c) This Article VIII of this Master Indenture is hereby made applicable to any Co-Master Trustee appointed hereunder.

(d) Should any instrument or document in writing from the Obligated Group reasonably be required by any Co-Master Trustee for vesting and conveying more fully and certainly in and to that Co-Master Trustee those trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of actions, immunities, estates, titles, interests and liens, that instrument or document shall be executed, acknowledged and delivered, by the Obligated Group Agent. Any Co-Master Trustee may resign or be removed, and a successor Co-Master Trustee appointed, upon the same terms as provided for the Master Trustee. In addition, any Co-Master Trustee may be removed by the Master Trustee, any Co-Master Trustee may resign and a successor Co-Master Trustee may be appointed pursuant to the terms of this Section.

## **ARTICLE IX**

### **SUPPLEMENTAL MASTER INDENTURES AND AMENDMENTS**

Section 9.01. *Supplemental Master Indentures Not Requiring Consent of Master Note Holders.* Subject to the limitations set forth in Section 9.02 with respect to this Section 9.01, the Members and the Master Trustee may, without the consent of, or notice to, any of the Master Note holders, amend or supplement this Master Indenture, for any one or more of the following purposes:

(a) to provide for the issuance of any Notes or other Master Notes permitted under the Master Indenture;

(b) to evidence the addition of a Member or the succession of another Person to any Member as otherwise permitted in the Master Indenture, or successive successions, and the assumption by the new Member or successor Person of the covenants, agreements and obligations of a Member pursuant to the Master Indenture;

(c) to add to the covenants of any Member such further covenants, restrictions or conditions as its Governing Person and the Master Trustee shall consider to be for the protection of the Holders of Master Notes issued under the Master Indenture, and to make the occurrence, or

the occurrence and continuance, of a default in any of such additional covenants, restrictions or conditions an Event of Default permitting the enforcement of all or any of the several remedies provided in the Master Indenture; provided, however, that in respect of any such additional covenant, restriction or condition such supplemental indenture may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such default or may limit the remedies available to the Master Trustee upon such default;

(d) to cure any ambiguity or to correct or supplement any provision contained in the Master Indenture or in any Supplemental Indenture or in any Mortgage which may be defective or inconsistent with any other provision contained in the Master Indenture, in any Mortgage, or in any Supplemental Indenture, or to make such other provisions in regard to matters or questions arising under the Master Indenture, in any Mortgage or any Supplemental Indenture as shall not be inconsistent with the Master Indenture, any Mortgage, or any Supplemental Indenture and shall not impair the security of the Master Indenture or adversely affect the interests of the Holders of any particular Notes or series of Notes or of any other Master Note issued under the Master Indenture;

(e) to provide for the establishment of additional funds and accounts under the Master Indenture and for the proper administration of and transfers of moneys between any such funds and accounts, provided that, except as otherwise provided in the Master Indenture, all such funds and accounts shall be established for the equal and ratable benefit of the Holders of all Outstanding Master Notes;

(f) to effect any other change that does not materially adversely affect the rights and interests of the Holders of any Master Notes or any Secured Obligations; and

(g) to correct, add or update provisions of the Master Indenture to preserve the exclusion of interest from gross income for federal income tax purposes on any Tax Exempt Secured Obligations.

Section 9.02. *Supplemental Master Indentures Requiring Consent of Master Note Holders.* With the consent of the Majority Applicable Holders, each Member, when authorized by official action of its Governing Person, and the Master Trustee may from time to time and at any time enter into an indenture or indentures supplemental to the Master Indenture (and make corresponding or additional amendments to any or all Mortgages) for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Master Indenture or of any Supplemental Indenture or of modifying in any manner the rights of the Holders of Senior Master Notes or the Subordinate Master Notes; provided, however, that without the consent of the Holders of not less than eighty (80%) percent in aggregate principal amount of all Senior Master Notes then Outstanding, no such Supplemental Indenture shall (i) permit the granting of any liens to secure Indebtedness in any manner other than as expressly permitted under the Master Indenture, (ii) effect a change in the times, amounts or currency of payment of the principal of, premium, if any, or interest on any other amounts payable on any Master Note or a reduction in the principal amount or redemption price or any other amounts payable on any Master Note or the rate of interest thereon, (iii) reduce the aforesaid percentage of Master Notes (or any subset of the same), the Holders of which are required to consent to any such Supplemental Indenture, or (iv) permit the preference or priority of any Master Note over any other Master Note, except for payment priorities of Class A-1 Master Notes over Class A—2 Master Notes and the priority of the Senior Master Notes over the Subordinate Master Notes, which preferences and priorities may not be changed; provided, however, that the matters addressed in clause (ii) above, as to the Subordinate Master Notes and the related Secured Obligations, shall also require the consent of the Holders of not less than 80 percent in aggregate principal amount of all Subordinate Master Notes then Outstanding.

Notwithstanding anything in the Master Indenture to the contrary, any amendment or supplement that adversely affects the rights or obligations of the Holder of a Note securing a Interest Rate Agreement shall require the prior written consent of such Holder. Authentication of such Master Note securing a Interest Rate Agreement will in no manner prejudice the rights of the parties thereto under such agreement, including, without limitation, the right to enforce such Master Note against the Member that is a party thereto in accordance with its terms and without reference to the terms and provisions of the Master Indenture.

Upon request of each Member, the Master Trustee shall provide written notice to all affected Holders of any proposed Supplemental Indenture or amendment to any Mortgage for which consent is to be sought, and upon the request of each Member, and upon the filing with the Master Trustee of evidence of the consent of Holders required under the terms of the Master Indenture, the Master Trustee shall join with each Member in the execution of such Supplemental Indenture or amendment to a Mortgage unless such Supplemental Indenture or amendment to a Mortgage adversely affects the Master Trustee's own rights, duties or immunities under the Master Indenture or otherwise, in which case the Master Trustee may in its discretion, but shall not be obligated to, enter into such Supplemental Indenture.

If at any time the Obligated Group Agent shall request the Master Trustee to enter into any such Supplemental Master Indenture for any of the purposes of this Section, the Master Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such Supplemental Master Indenture to be mailed by first class mail postage prepaid to each holder of a Master Note or, in case less than all of the Master Notes are affected thereby, of a Master Note of the series affected thereby and post the same on EMMA. Such notice shall be prepared by the Obligated Group Agent, briefly set forth the nature of the proposed Supplemental Master Indenture and shall state that copies thereof are on file at the principal corporate trust office of the Master Trustee for inspection by all Master Note holders. The Master Trustee shall not, however, be subject to any liability to any Master Note holder by reason of its failure to mail such notice, and any such failure shall not affect the validity of such Supplemental Master Indenture when consented to and approved as provided in this Section. If the requisite Majority Applicable Holders of the Master Notes or the Master Notes of each series affected thereby, as the case may be, that are outstanding hereunder at the time of the execution of any such Supplemental Master Indenture shall have consented to and approved the execution thereof as herein provided, no holder of any Master Note shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Master Trustee or the Members from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such Supplemental Master Indenture as in this Section permitted and provided, this Master Indenture shall be and be deemed to be modified and amended in accordance therewith.

For the purpose of obtaining the foregoing consents, the determination of who is deemed the holder of a Master Note held by a trustee shall be made in the manner provided in Section 2.07.

To the extent that no Senior Master Notes remain Outstanding at the time of any supplement entered into pursuant to Section 9.02, all required consents of the Holders shall mean the Holders of the Subordinate Master Notes and all references to the Master Notes shall be to the Subordinate Master Notes.

Section 9.03. *Opinion.* In connection with a supplemental indenture or amendments to a related lease under this Article VII, the Obligated Group shall deliver to the Master Trustee, and the Master Trustee shall be fully protected in relying upon, an Opinion of Counsel to the effect that such supplemental indenture or related lease amendments is authorized and permitted pursuant to the terms of this Master Indenture.

Section 9.04. *Amendments to Related Lease.* The Master Trustee may from time to time and at any time, without notice to or consent from any Holder, enter into (or permit the applicable Member to enter into) modifications, changes, supplements, alterations and amendments and replacements of (each a “Lease Modification”) to or of any Related Lease, in accordance with the provisions of the Master Mortgage, to cure any ambiguity or to correct or supplement any provision contained therein which may be defective or inconsistent with any other provision contained therein or to make such other provisions in regard to matters or questions arising thereunder as shall not be inconsistent with the Master Indenture or any indenture supplemental to the Master Indenture, with the Master Mortgage, and shall not impair the security of the Master Indenture or adversely affect the interests of the Holders of any particular Notes or series of Notes or of any other Master Note issued under the Master Indenture, including, without limitation, any Lease Modification that consists solely of an extension of any existing Lease, whether or not the rental payments thereunder increase after the end of the then current term of the Related Lease, provided that such Lease Modification does not cause the Projected Debt Service Coverage Ratio resulting therefrom to fall below the then current Debt Service Coverage Ratio or, if lower, no less than 1.50x.

The Master Trustee shall give prompt notice to the Holders in accordance with the Master Indenture of any proposed Lease Modification not described above and may, with Majority Applicable Holder consent, obtained in accordance with the procedures established in the Master Indenture, execute and deliver any such Lease Modification (or permit the applicable Member to execute and deliver such Lease Modification).

## **ARTICLE X**

### **SATISFACTION OF THIS MASTER INDENTURE**

Section 10.01. *Defeasance.* If the Members shall pay or provide for the payment of the entire indebtedness on all Master Notes (including, for the purposes of this Section 10.01, any Master Notes owned by a Member) outstanding in any one or more of the following ways:

- (a) by delivering to the Master Trustee, for cancellation by it, all Master Notes outstanding; or
- (b) by paying or causing to be paid the principal of (including redemption premium, if any) and interest on all Master Notes outstanding, as and when the same become due and payable; or
- (c) by depositing with the Master Trustee, in trust, at or before maturity, moneys in an amount sufficient to pay or redeem (when redeemable) all Master Notes outstanding (including the payment of premium, if any, and interest payable on such Master Notes to the maturity or redemption date thereof), provided that such moneys, if invested, shall be invested at the direction of the Obligated Group Agent in Government Obligations, in an amount, without consideration of any income or increment to accrue thereon, sufficient to pay or redeem (when redeemable) and discharge the indebtedness on all Master Notes outstanding at or before their respective maturity dates; it being understood that the investment income on such Government Obligations may be used at the direction of the Obligated Group Agent for any other purpose permitted by law; or
- (d) by depositing with the Master Trustee, in trust, before maturity, Government Obligations in such amount as the Master Trustee shall determine (which determination shall be based upon a verification report of a firm of nationally recognized certified public accountants) will, together with the income or increment to accrue thereon, without consideration of any

reinvestment thereof, be fully sufficient to pay or redeem (when redeemable) and discharge the indebtedness on all Master Notes outstanding at or before their respective maturity dates;

and if the Obligated Group shall also pay or cause to be paid all other sums payable hereunder by the Obligated Group and, if any such Master Notes are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given in accordance with the requirements of this Master Indenture, or provisions satisfactory to the Master Trustee shall have been made for the giving of such notice, then and in that case (but subject to the provisions of Section 8.03 this Master Indenture and the estate and rights granted hereunder shall cease, determine, and become null and void, and thereupon the Master Trustee shall, upon written request of the Obligated Group Agent, and upon receipt by the Master Trustee of an Officer's Certificate from the Obligated Group Agent and an Opinion of Counsel acceptable to the Master Trustee, each stating that in the opinion of the signers all conditions precedent to the satisfaction and discharge of this Master Indenture have been complied with, forthwith execute proper instruments acknowledging satisfaction of and discharging this Master Indenture and the lien hereof. The satisfaction and discharge of this Master Indenture shall be without prejudice to the rights of the Master Trustee to charge and to be reimbursed and indemnified by the Obligated Group for any expenditures or liabilities that it may thereafter incur in connection herewith. The foregoing notwithstanding, the liability of the Obligated Group in respect of the Master Notes shall continue, but the holders thereof shall thereafter be entitled to payment only out of the moneys or Government Obligations deposited with the Master Trustee as aforesaid.

Any moneys, funds, securities, or other property remaining on deposit under this Master Indenture (other than said Government Obligations or other moneys deposited in trust as above provided) shall, upon the full satisfaction of this Master Indenture, forthwith be transferred, paid over and distributed to the Obligated Group.

The Obligated Group may at any time surrender to the Master Trustee for cancellation by it any Master Notes previously authenticated and delivered that the Obligated Group may have acquired in any manner whatsoever, and such Master Notes, upon such surrender and cancellation, shall be deemed to be paid and retired.

Section 10.02. *Provision for Payment of a Particular Series of Master Notes or Portion Thereof.* If the Obligated Group shall pay or provide for the payment of the entire indebtedness on all Master Notes of a particular series or a portion of such a series (including, for the purpose of this Section 10.02, any such Master Notes owned by a Member) in one of the following ways:

- (a) by delivering to the Master Trustee, for cancellation by it, all Master Notes of such series or portion thereof outstanding; or
- (b) by paying or causing to be paid the principal of (including redemption premium, if any) and interest on all Master Notes of such series or portion thereof outstanding, as and when the same shall become due and payable; or
- (c) by depositing with the Master Trustee, in trust, at or before maturity, moneys in an amount sufficient to pay or redeem (when redeemable) all Master Notes of such series or portion thereof outstanding (including the payment of premium, if any, and interest payable on such Master Notes to the maturity or redemption date), provided that such moneys, if invested, shall be invested at the direction of the Obligated Group Agent in Government Obligations in an amount, without consideration of any income or increment to accrue thereon, sufficient to pay or redeem (when redeemable) and discharge the indebtedness on all Master Notes of such series or portion thereof outstanding at or before their respective maturity dates; it being understood that the investment



income on such Government Obligations may be used at the direction of the Obligated Group Agent for any other purpose permitted by law; or

(d) by depositing with the Master Trustee, in trust, Government Obligations in such amount as the Master Trustee shall determine (which determination shall be based upon a verification report of a firm of nationally recognized certified public accountants selected by the Obligated Group Agent) will, together with the income or increment to accrue thereon without consideration of any reinvestment thereof, be fully sufficient to pay or redeem (when redeemable) and discharge the indebtedness on all Master Notes of such series or portion thereof at or before their respective maturity dates; and if the Obligated Group shall also pay or cause to be paid all other sums payable hereunder by the Obligated Group with respect to such series of Master Notes or portion thereof, and, if any such Master Notes of such series or portion thereof are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given in accordance with the requirements of this Master Indenture or provisions satisfactory to the Master Trustee shall have been made for the giving of such notice, then in that case (but subject to the provisions of Section 10.01) such Master Notes shall cease to be entitled to any lien, benefit or security under this Master Indenture. The liability of the Obligated Group in respect of such Master Notes shall continue but the holders thereof shall thereafter be entitled to payment (to the exclusion of all other Master Note holders) only out of the moneys or Government Obligations deposited with the Master Trustee as aforesaid.

Section 10.03. *Satisfaction of a Series of Secured Obligations.* The provisions of Section 10.01 and Section 10.02 of this Master Indenture notwithstanding, any Master Note that secures a Related Bond shall not be deemed paid and shall continue to be entitled to the lien, benefit and security under this Master Indenture unless and until such Related Bond shall cease to be entitled to any lien, benefit or security under the Related Financing Documents pursuant to the provisions thereof.

## **ARTICLE XI**

### **MANNER OF EVIDENCING OWNERSHIP OF MASTER NOTES**

Section 11.01. *Proof of Ownership.* Any request, direction, consent or other instrument provided by this Master Indenture to be signed and executed by the Master Note holders may be in any number of concurrent writings of similar tenor and may be signed or executed by such Master Note holders in person or by an agent appointed in writing. Proof of the execution of any such request, direction or other instrument or of the writing appointing any such agent and of the ownership of Master Notes, if made in the following manner, shall be sufficient for any of the purposes of this Master Indenture and shall be conclusive in favor of the Master Trustee and the Obligated Group, with regard to any action taken by them, or either of them, under such request or other instrument, namely:

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

(b) The ownership of Master Notes shall be proved by the registration of such Master Notes.

Any action taken or suffered by the Master Trustee pursuant to any provision of this Master Indenture, upon the request or with the assent of any person who at the time is the holder of any Master

Note or Master Notes, shall be conclusive and binding upon all future holders of the same Master Note or Master Notes or any Master Note or Master Notes issued in exchange therefor.

## ARTICLE XII MISCELLANEOUS

Section 12.01. *Limitation of Rights.* With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Master Indenture or the Master Notes is intended or shall be construed to give to any Person other than the parties hereto, and the holders of the Master Notes, any legal or equitable right, remedy or claim under or in respect to this Master Indenture or any covenants, conditions, and provisions herein contained; this Master Indenture and all of the covenants, conditions, and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto and the holders of the Master Notes as herein provided.

Section 12.02. *Unclaimed Moneys.* Any moneys deposited with the Master Trustee by the Obligated Group in accordance with the terms and covenants of this Master Indenture, in order to redeem or pay any Master Note in accordance with the provisions of this Master Indenture, and remaining unclaimed by the owners of the Master Note for six years after the date fixed for final redemption or of maturity, as the case may be, shall, if the Obligated Group is not at the time to the knowledge of the Master Trustee in default with respect to any of the terms and conditions of this Master Indenture or the Master Notes, be repaid by the Master Trustee to the Obligated Group Agent upon its written request therefor on behalf of the Members, and thereafter the registered owners of the Master Note shall be entitled to look only to the Obligated Group for payment thereof. The Obligated Group hereby covenants and agrees to indemnify and save the Master Trustee harmless from any and all losses, costs, liability, and expense suffered or incurred by the Master Trustee by reason of having returned any such moneys to the Members as herein provided.

Section 12.03. *Severability.* If any provision of this Master Indenture shall be held or deemed to be, or shall in fact be, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

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

Section 12.04. *Notices.* It shall be sufficient service of any notice, complaint, demand or other paper on the Obligated Group Agent if the same shall be delivered using Electronic Means (other than facsimile), or in person or duly mailed by registered or certified mail addressed as follows:

To the Obligated Group Agent:

Do Good Foods Facility Management.

\_\_\_\_\_  
Attention: Chief Financial Officer

To the Master Trustee:

UMB BANK, N.A.  
120 South Sixth Street, Suite 1400  
Minneapolis, MN 55402  
Attn: Katie Carlson  
Vice President, Corporate Trust Services

All notices, approvals, consents, requests and any communications to the Master Trustee hereunder must be in writing in English and must be in the form of a document that is signed manually or by way of an electronic signature (including electronic images of handwritten signatures and digital signatures provided by DocuSign, Orbit, Adobe Sign or any other electronic signature provider acceptable to the Master Trustee). Electronic signatures shall be deemed original signatures for all purposes. If the Obligated Group Agent or any Obligated Group Member chooses to use electronic signatures to sign documents delivered to the Master Trustee, such party agrees to assume all risks arising out of its use of electronic signatures, including without limitation the risk of the Master Trustee acting on an unauthorized document and the risk of interception or misuse by third parties. Notwithstanding the foregoing, the Master Trustee may in any instance and in its sole discretion require that an original document bearing a manual signature be delivered to the Master Trustee in lieu of, or in addition to, any document signed via electronic signature.

Section 12.05. *Master Trustee as Paying Agent and Registrar.* The Master Trustee is hereby designated and agrees to act as principal Paying Agent and Master Note Registrar for and in respect to the Master Notes.

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

Section 12.07. *Applicable Law.* This Master Indenture shall be governed exclusively by the applicable laws of the State of Delaware.

Section 12.08. *Immunity of Officers, Employees and Members.* No recourse shall be had for the payment of the principal of or premium or interest on any of the Master Notes or for any claim based thereon or upon any obligation, covenant, or agreement in this Master Indenture contained against any past, present, or future officer, director, employee, member, or agent of any Member, or of any successor corporation, as such, either directly or through any Member or any successor corporation, under any rule of law or equity, statute, or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, directors, employees, members, or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Master Indenture and the issuance of such Master Notes.

Section 12.09. *Holidays.* If the date for making any payment or the date for performance of any act or the exercising of any right, as provided in this Master Indenture, is not a Business Day, such payment may be made or act performed or right exercised on the next succeeding business day with the same force and effect as if done on the nominal date provided in this Master Indenture.

Section 12.10. *Joint and Several Obligations; Cross Guaranty.* Each Member shall be fully liable and obligated to pay and perform, jointly and severally for all purposes, each covenant, undertaking, promise and obligation made and given in the Master Notes and in this Master Indenture to and in favor of the Master Trustee for the benefit of the Holders of the Master Notes. Each Member, on a joint and several basis, hereby irrevocably guarantees to the Holders the full and prompt payment (whether at stated maturity, by acceleration or otherwise) and performance of, all Indebtedness owed or hereafter owing to the Master Trustee and/or each Holder by each other Member. Each Member agrees that its guaranty obligation hereunder is an unconditional guaranty of payment and performance and not merely a guaranty of collection. The Indebtedness of each Member hereunder and under the Master Notes shall not be subject to any counterclaim, set-off, recoupment, deduction, cross-claim, or defense based upon any claim any Member may have against the Holders or any other Member.

Section 12.11. *Waivers With Respect to Other Member Secured Obligations.* To the extent that a Mortgage or any other Security Document executed by one Member secures Indebtedness under this Master Indenture and the Master Note of another Member (the “Other Member Secured Obligation”), or to the extent that a Member has guaranteed the debt of another Member pursuant to Section 12.10 of this Master Indenture, the Member who executed such Security Document or guaranteed such debt (the “Waiving Member”) hereby agrees to the extent permitted by law, to the provisions of this Section 12.11 (Waivers With Respect to Other Member Secured Obligation). To the maximum extent permitted by applicable law:

(a) The Waiving Member hereby waives any right it may now or hereafter have to require the beneficiary, assignee, or other secured party under such Security Document, as a condition to the exercise of any remedy or other right against it thereunder or under any other Security Document executed by the Waiving Member in connection with the Other Member Secured Obligation: (1) to proceed against any other Member or any other Person, or against any other collateral assigned to the Master Trustee by any Member or any other Person; (2) to pursue any other right or remedy in the Master Trustee’s power; (3) to give notice of the time, place, or terms of any public or private sale of real or personal property collateral assigned to the Master Trustee by any other Member or any other Person; or (4) to make or give (except as otherwise expressly provided in the Security Documents) any presentment, demand, protest, notice of dishonor, notice of protest, or other demand or notice of any kind in connection with the Other Member Secured Obligation or any collateral for the Other Member Secured Obligation.

(b) The Waiving Member hereby waives any defense it may now or hereafter have that relates to: (1) any disability or other defense of any other Member or any other Person; (2) the cessation, from any cause other than full performance, of the Other Member Secured Obligation; (3) the application of the proceeds of the Other Member Secured Obligation, by any other Member or any other Person, for purposes other than the purposes represented to the Waiving Member by any other Member or any other Person, or otherwise intended or understood by the Waiving Member or any other Member; (4) any act or omission by the Master Trustee which directly or indirectly results in or contributes to the release of any other Member or any other Person or any collateral for any Other Member Secured Obligation; (5) the unenforceability or invalidity of any Security Document (other than the Mortgage executed by the Waiving Member that secures the Other Member Secured Obligation) or guaranty with respect to any Other Member Secured Obligation, or the lack of perfection or continuing perfection or lack of priority of any lien (other than the lien of the Mortgage executed by the Waiving Member that secures the Other Member Secured Obligation) which secures any Other Member Secured Obligation; (6) any failure of the Master Trustee to marshal assets in favor of the Waiving Member or any other Person; (7) any modification of any Other Member Secured Obligation, including any renewal, extension, acceleration, or increase in interest rate; (8) any and all rights and defenses arising out of an election of remedies by the Master Trustee, even though that election of remedies, such as a nonjudicial

foreclosure with respect to security for a guaranteed obligation, has destroyed the Waiving Member's rights of subrogation and reimbursement against the principal; (9) any law which provides that the obligation of a surety or guarantor must neither be larger in amount nor in other respects more burdensome than that of the principal or which reduces a surety's or guarantor's obligation in proportion to the principal obligation; (10) any failure of the Master Trustee to file or enforce a claim in any bankruptcy or other proceeding with respect to any Person; (11) the election by the Master Trustee, in any bankruptcy proceeding of any Person, of the application or non-application of Section 1111(b)(2) of the Bankruptcy Code; (12) any extension of credit or the grant of any lien under Section 364 of the Bankruptcy Code; (13) any use of cash collateral under Section 363 of the Bankruptcy Code; or (14) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy proceeding of any Person. The Waiving Member further waives any and all rights and defenses that it may have because the Other Member Secured Obligation is secured by real property; this means, among other things, that: (A) the Master Trustee may collect from the Waiving Member without first foreclosing on any real or personal property collateral pledged by any other Member; (B) if the Master Trustee forecloses on any real property collateral pledged by any other Member, then (i) the amount of the Other Member Secured Obligation may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (ii) the Master Trustee may foreclose on the real property encumbered by the Mortgage executed by the Waiving Member and securing the Other Member Secured Obligation, or otherwise collect from the Waiving Member, even if the Master Trustee, by foreclosing on the real property collateral of any one or more of the other Members, has destroyed any right the Waiving Member may have to collect from such other Members. Subject to the last sentence of Section 9.21 (Joint and Several Obligation; Cross-Guaranty), the foregoing sentence is an unconditional and irrevocable waiver of any rights and defenses the Waiving Member may have because the Other Member Secured Obligation is secured by real property.

(c) The Waiving Member hereby waives the benefit of all principles or provisions of law that are or might be in conflict with the terms of any of its waivers, and agrees that the Waiving Member's waivers shall not be affected by any circumstances that might otherwise constitute a legal or equitable discharge of a surety or a guarantor. The Waiving Member hereby waives the benefits of any right of discharge and all other rights and defenses under any and all statutes or other laws relating to guarantors or sureties, to the fullest extent permitted by law, diligence in collecting the Other Member Secured Obligation, presentment, demand for payment, protest, all notices with respect to the Other Member Secured Obligation that may be required by statute, rule of law, or otherwise to preserve the Master Trustee's rights against the Waiving Member hereunder, including notice of acceptance, notice of any amendment of the Security Documents evidencing the Other Member Secured Obligation, notice of the occurrence of any default or Event of Default, notice of intent to accelerate, notice of acceleration, notice of dishonor, notice of foreclosure, notice of protest, notice of the incurring by the other Member of any obligation or indebtedness and all rights to require the Master Trustee to (1) proceed against the other Member, (2) proceed against any general partner of the other Member, (3) proceed against or exhaust any collateral held by the Master Trustee to secure the Other Member Secured Obligation, or (4) if the other Member is a partnership, pursue any other remedy it may have against the other Member, or any general partner of the other Member.

(d) The Waiving Member understands that the exercise by the Master Trustee of certain rights and remedies contained in a Mortgage executed by any other Member (such as a nonjudicial foreclosure sale) may affect or eliminate the Waiving Member's right of subrogation against such other Member and that the Waiving Member may therefore incur a partially or totally nonreimbursable liability. Nevertheless, the Waiving Member hereby authorizes and empowers

the Master Trustee to exercise, in its sole and absolute discretion, any right or remedy, or any combination thereof, that may then be available, since it is the intent and purpose of the Waiving Member that its waivers shall be absolute, independent and unconditional under any and all circumstances.

(e) The Waiving Member also waives any right or defense based upon an election of remedies by the Master Trustee, even though such election (e.g., nonjudicial foreclosure with respect to any collateral held by the Master Trustee to secure repayment of the Other Member Secured Obligation) destroys or otherwise impairs the subrogation rights of the Waiving Member to any right to proceed against one or more of the other Members for reimbursement.

(f) The Waiving Member agrees to withhold the exercise of any and all subrogation, contribution, and reimbursement rights against all other Members, against any other Person, and against any collateral or security for the Other Member Secured Obligation, until the Other Member Secured Obligation has been indefeasibly paid and satisfied in full, all obligations owed to the Master Trustee under the Security Documents have been fully performed, and the Master Trustee has released, transferred or disposed of all of its right, title, and interest in such collateral or security.

(g) Each Member hereby irrevocably and unconditionally agrees that, notwithstanding Section 12.11(f) hereof, in the event, and to the extent, that its agreement and waiver set forth in Section 12.11(f) is found by a court of competent jurisdiction to be void or voidable for any reason and such Member has any subrogation or other rights against any other Member, any such claims, direct or indirect, that such Member may have by subrogation rights or other form of reimbursement, contribution, or indemnity, against any other Member or to any security or any such Member, shall be, and such rights, claims, and indebtedness are hereby, deferred, postponed, and fully subordinated in time and right of payment to the prior payment, performance, and satisfaction in full of the Indebtedness of the Members under this Master Indenture and the Maser Notes. Until payment and performance in full with interest (including post-petition interest in any case under any chapter of the Bankruptcy Code) of such Indebtedness, each Member agrees not to accept any payment or satisfaction of any kind of Indebtedness of any other Member in respect of any such subrogation rights arising by virtue of payments made pursuant to Sections 12.10 to 12.14 and hereby assigns such rights or indebtedness to the Obligated Group, including (1) the right to file proofs of claim and to vote thereon in connection with any case under any chapter of the Bankruptcy Code and (2) the right to vote on any plan of reorganization. In the event that any payment on account of any such subrogation rights shall be received by any Member in violation of the foregoing, such payment shall be held in trust for the benefit of the Master Trustee, and any amount so collected must be turned over to the Master Trustee for, at the Master Trustee's option, application to the Indebtedness; and

(h) At any time without notice to the Waiving Member, and without affecting or prejudicing the right of the Master Trustee to proceed against the collateral described in any Security Document executed by the Waiving Member and securing the Other Member Secured Obligation, (1) the time for payment of the principal or accreted value, as applicable, of or interest on, or the performance of, the Other Member Secured Obligation may be extended or the Other Member Secured Obligation may be renewed in whole or in part; (2) the time for any other Member's performance of or compliance with any covenant or agreement contained in the Security Documents evidencing the Other Member Secured Obligation, whether presently existing or hereinafter entered into, may be extended or such performance or compliance may be waived; (3) the maturity of the Other Member Secured Obligation may be accelerated as provided in the Note or any other related Security Document; (4) the Master Note or any other related Security Document may be modified or amended by the Master Trustee and the applicable other Member

in any respect, including an increase in the principal amount; and (5) any security for the Other Member Secured Obligation may be modified, exchanged, surrendered or otherwise dealt with or additional security may be pledged or mortgaged for the Other Member Secured Obligation.

(i) It is agreed among each Member, the Master Trustee and each Holder of a Master note that all of the foregoing waivers are of the essence of the transaction contemplated by this Master Indenture and the Security Documents and that but for the provisions of Sections 12.10 to 12.14 and such waivers the Master Trustee would decline to enter into this Master Indenture.

Section 12.12. *Insolvency and Liability of Other Members.* So long as any of the Indebtedness of the Members under this Master Indenture or a Master Note is outstanding, if a petition under any chapter of Title 11 of the United States Code entitled “Bankruptcy” as now and hereafter in effect, or any successor statute (the “Bankruptcy Code”) is filed by or against any Member (the “Subject Member”), each other Member (each, an “Other Member”) agrees to file all claims against the Subject Member in any bankruptcy or other proceeding in which the filing of claims is required by law in connection with Indebtedness hereunder Notes owed by the Subject Member and to assign to the Master Trustee all rights thereunder up to the amount of such Indebtedness. In all such cases, the Person or Persons authorized to pay such claims shall pay to the Master Trustee the full amount thereof and Master Trustee agrees to pay such Other Member, but solely from the Trust Estate, any amounts received in excess of the amount necessary to pay such Indebtedness, and any amounts which are due and payable to the Master Trustee or its counsel. Each Other Member hereby assigns to the Master Trustee all of such Other Member’s rights to all such payments to which such Other Member would otherwise be entitled but not to exceed the full amount of the Indebtedness hereunder. In the event that, notwithstanding the foregoing, any such payment shall be received by any Other Member before the Indebtedness shall have been finally paid in full, such payment shall be held in trust for the benefit of and shall be paid over to Master Trustee upon demand. Furthermore, notwithstanding the foregoing, the liability of each Member hereunder shall in no way be affected by the release or discharge of any Other Member in any creditors’ receivership, bankruptcy, or other proceedings; or the impairment, limitation, or modification of the liability of any Other Member or the estate of any Other Member in bankruptcy resulting from the operation of any present or future provisions of any chapter of the Bankruptcy Code or other statute or from the decision in any court.

Section 12.13. *Preferences, Fraudulent Conveyances, Etc.* If the Master Trustee or any Holder is required to refund, or voluntarily refunds, any payment received from any Member because such payment is or may be avoided, invalidated, declared fraudulent, set aside, or determined to be void or voidable as a preference, fraudulent conveyance, impermissible setoff, or a diversion of trust funds under any Insolvency Law (defined below) or for any similar reason, including any judgment, order, or decree of any court or administrative body having jurisdiction over any Member or any of its property, or upon or as a result of the appointment of a receiver, intervenor, custodian, or conservator of, or trustee or similar officer for, any Member or any substantial part of its property, or otherwise, or any statement or compromise of any claim effected by Master Trustee with any Member or any other claimant (a “Rescinded Payment”), then each Other Member’s liability to the Master Trustee shall continue in full force and effect, or each Other Member’s liability to The Master Trustee shall be reinstated and renewed, as the case may be, with the same effect and to the same extent as if the Rescinded Payment had not been received by the Master Trustee or such Holder, notwithstanding the cancellation or termination of any of the Security Documents, and regardless of whether the Master Trustee contested the order requiring the return of such payment. In addition, each Other Member shall pay, or reimburse the Master Trustee for, all expenses (including all attorneys’ fees, court costs, and related disbursements) incurred by the Master Trustee in the defense of any claim that a payment received by the Master Trustee in respect of all or any part of the Indebtedness must be refunded. The provisions of this Section 12.13 shall survive the termination of this Master Indenture and the Security Documents and any satisfaction and discharge of any Member by virtue of any payment, court order, or any federal or state law. For purposes hereof, “Insolvency Law” means the Bankruptcy Code or any other federal or state law affecting debtor and creditor rights or relating to the bankruptcy, insolvency, reorganization, arrangement, moratorium, readjustment of debt, dissolution, liquidation or similar laws, proceedings, or equitable principles affecting the enforcement of creditors’ rights, as amended from time to time.


Section 12.14. *Maximum Liability of Each Member.* Notwithstanding anything contained in this Master Indenture, the Master Notes or any other Security Document to the contrary, if the obligations of any Member under this Master Indenture or any of the other Security Documents or any Mortgages granted by any Member are determined to exceed the reasonably equivalent value received by such Member in exchange for such obligations or grant of such Mortgages under any Fraudulent Transfer Law (as hereinafter defined), then the liability of such Member shall be limited to a maximum aggregate amount equal to the largest amount that would not render its obligations under this Master Indenture, the Master Notes or all the other Security Documents subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any applicable provisions of comparable state law (collectively, the “Fraudulent Transfer Laws”), in each case after giving effect to all other liabilities of such Member, contingent or otherwise, that are relevant under the Fraudulent Transfer Laws (specifically excluding, however, any liabilities of such Member in respect of Indebtedness to any other Member or any other Person that is an affiliate of the other Member to the extent that such Indebtedness would be discharged in an amount equal to the amount paid by such Member in respect of the Indebtedness) and after giving effect (as assets) to the value (as determined under the applicable provisions of the Fraudulent Transfer Laws) of any rights to subrogation, reimbursement, indemnification, or contribution of such Member pursuant to applicable law or pursuant to the terms of any agreement including the Contribution Agreement by and among the Members entered into on the date of this Master Indenture, as the same may be amended, restated, modified or supplemented from time to time.

*Section 12.15. Liability Cumulative.* The liability of each Member under Sections 12.10 to 12.14 of this Master Indenture is in addition to and shall be cumulative with all liabilities of such Member to the Master Trustee under this Master Indenture and all the other Security Documents to which such Member is a party.



IN WITNESS WHEREOF, DO GOOD FOODS FORT WAYNE LLC, as a member of the Obligated Group by its duly authorized officer, and DO GOOD FOODS FACILITY MANAGEMENT, LLC, in its name and on behalf of itself and the Members of the Obligated Group by its duly authorized officer, have caused these presents to be signed, and to evidence its acceptance of the trusts hereby created UMB BANK, N.A. has caused these presents to be signed in its name and on its behalf by its duly authorized officer, all as of the day and year first above written.

DO GOOD FOODS FACILITY MANAGEMENT LLC,  
for itself and as Obligated Group Agent

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

Name: David Buffa  
Title: General Counsel

DO GOOD FOODS FORT WAYNE LLC,

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

Name: David Buffa  
Title: General Counsel

UMB BANK, N.A.,  
as Master Trustee

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

Name: Katie Carlson  
Title: Vice President

[Signature Page to Master Trust Indenture]

IN WITNESS WHEREOF, DO GOOD FOODS FORT WAYNE LLC, as a member of the Obligated Group by its duly authorized officer, and DO GOOD FOODS FACILITY MANAGEMENT, LLC, in its name and on behalf of itself and the Members of the Obligated Group by its duly authorized officer, have caused these presents to be signed, and to evidence its acceptance of the trusts hereby created UMB BANK, N.A. has caused these presents to be signed in its name and on its behalf by its duly authorized officer, all as of the day and year first above written.

DO GOOD FOODS FACILITY MANAGEMENT LLC,  
for itself and as Obligated Group Agent

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

Name: David Buffa  
Title: General Counsel

DO GOOD FOODS FORT WAYNE LLC,

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

Name: David Buffa  
Title: General Counsel

UMB BANK, N.A.,  
as Master Trustee

By: 

Name: Katie Carlson  
Title: Vice President

[Signature Page to Master Trust Indenture]

**EXHIBIT A**

**LIST OF OBLIGATED GROUP MEMBERS**

## **EXHIBIT B**

### **LIST OF EXCEPTIONS**

The provisions of this Master Indenture pursuant to which each Member of the Obligated Group covenants to jointly and severally pay any Master Note issued by a Member other than itself may not be enforceable if such payment is to be made pursuant to any loan violating applicable usury laws.

---

**SUBORDINATE TRUST INDENTURE**

between

CITY OF FORT WAYNE, INDIANA

and

UMB Bank, N.A., as Bond Trustee

Dated as of March 1, 2023

Relating to:

\$25,000,000

City of Fort Wayne, Indiana

Economic Development Solid Waste Facility Revenue Bonds

(Do Good Foods Fort Wayne LLC Project)

Subordinate Series 2023

(Federally Taxable)

---

**TABLE OF CONTENTS**

	<b>Page</b>
ARTICLE I. DEFINITIONS AND INTERPRETATION .....	4
Section 1.1    Definitions. ....	4
Section 1.2    Interpretation.....	16
ARTICLE II. AUTHORIZATION, ISSUANCE, CONDITIONS AND TERMS OF BONDS .....	17
Section 2.1    Authorization and Issuance of Bonds. ....	17
Section 2.2    Method and Place of Payment. ....	17
Section 2.3    Payment of Principal and Interest of Bonds; Acceptance of Terms and Conditions.....	18
Section 2.4    Calculation and Payment of Interest. ....	18
Section 2.5    Maximum Interest Rate. ....	18
Section 2.6    Book Entry System. ....	18
Section 2.7    Execution and Authentication of Bonds. ....	19
Section 2.8    Delivery of Bonds.....	20
ARTICLE III. Redemption of Bonds.....	20
Section 3.1    Optional, Mandatory Sinking Fund and Special Mandatory Redemption of Bonds. ....	20
Section 3.2    Extraordinary Optional Redemption; Damage or Condemnation.....	21
Section 3.3    Mandatory Redemption; Failure to Satisfy the Release Conditions by the Release Date. ....	21
Section 3.4    General Provisions.....	21
Section 3.5    Optional Tender of Bonds upon Disposition of Project or Change in Control. ....	22
ARTICLE IV. GENERAL TERMS AND PROVISIONS OF BONDS .....	24
Section 4.1    Date of Bonds. ....	24
Section 4.2    Form and Denominations.....	24
Section 4.3    Legends.....	24
Section 4.4    Medium of Payment.....	24
Section 4.5    Bond Details. ....	24
Section 4.6    Interchangeability; Transfer and Registry. ....	25
Section 4.7    Bonds Mutilated, Destroyed, Stolen or Lost.....	25
Section 4.8    Cancellation and Destruction of Bonds. ....	26
Section 4.9    Requirements With Respect To Transfers. ....	26
Section 4.10   Registrar.....	26
Section 4.11   Principal Balance; Annual Report. ....	26
ARTICLE V. FUNDS AND ACCOUNTS.....	26
Section 5.1    Creation of Funds.....	26
Section 5.2    Costs of Issuance Fund. ....	28
Section 5.3    Project Fund.....	28
Section 5.4    Debt Service Fund. ....	29
Section 5.5    Debt Service Reserve Fund.....	31
Section 5.6    Intentionally Left Blank.....	31
Section 5.7    Escrow Fund. ....	31
Section 5.8    Investment of Funds and Accounts; Valuation.....	32

ARTICLE VI. PROCEDURES FOR REDEMPTION OF BONDS .....	32
Section 6.1    Privilege of Redemption and Redemption Price.....	32
Section 6.2    Selection of Bonds to be Redeemed. ....	32
Section 6.3    Notice of Redemption.....	33
Section 6.4    Payment of Redeemed Bonds.....	33
Section 6.5    Cancellation of Redeemed Bonds.....	34
Section 6.6    Purchase In Lieu of Redemption.....	34
Section 6.7    Non-presentment of Bonds.....	34
ARTICLE VII. PARTICULAR COVENANTS .....	35
Section 7.1    No Pecuniary Liability on Issuer or Officers.....	35
Section 7.2    Payment of Principal; Redemption Price and Tender Price, if any, and Interest.....	35
Section 7.3    Further Assurances.....	35
Section 7.4    Inspection of Project Facilities Books.....	36
Section 7.5    Rights under Financing Documents.....	36
Section 7.6    Creation of Liens, Indebtedness.....	36
Section 7.7    Recording and Filing.....	36
ARTICLE VIII. EVENTS OF DEFAULT; REMEDIES OF BONDHOLDERS .....	37
Section 8.1    Events of Default; Acceleration of Due Dates.....	37
Section 8.2    Enforcement of Remedies.....	38
Section 8.3    Application of Revenues and Other Moneys After Default.....	39
Section 8.4    Actions by Bond Trustee.....	40
Section 8.5    Required Bondholders Control Proceedings.....	40
Section 8.6    Individual Bondholder Action Restricted.....	40
Section 8.7    Effect of Discontinuance of Proceedings.....	41
Section 8.8    Remedies Not Exclusive.....	41
Section 8.9    Delay or Omission Upon Default.....	41
ARTICLE IX. BOND TRUSTEE AND PAYING AGENT .....	41
Section 9.1    Appointment and Acceptance of Duties.....	41
Section 9.2    Indemnity.....	42
Section 9.3    Rights and Responsibilities of Bond Trustee.....	42
Section 9.4    Compensation.....	45
Section 9.5    Additional Payments.....	45
Section 9.6    Evidence on Which Bond Trustee May Act.....	45
Section 9.7    Evidence of Signatures of Owners of the Bonds and Ownership of Bonds. .....	46
Section 9.8    Bond Trustee and Paying Agent Deal in Bonds and With Borrower.....	46
Section 9.9    Resignation or Removal of Bond Trustee.....	46
Section 9.10   Successor Bond Trustee.....	47
Section 9.11   [Reserved].....	48
Section 9.12   Moneys Held for Particular Bonds.....	48
Section 9.13   Continuation Statements.....	48
Section 9.14   Obligation to Report Defaults.....	48
Section 9.15   Payments Due on non-Business Day.....	49
Section 9.16   Appointment of Co-Bond Trustee.....	49
ARTICLE X. AMENDMENTS OF INDENTURE.....	49
Section 10.1   Limitation on Modifications.....	49

Section 10.2	Supplemental Indentures Without Consent of Owners of the Bonds. ....	50
Section 10.3	Supplemental Indentures With Consent of Owners of the Bonds. ....	51
Section 10.4	Supplemental Indenture Part of the Indenture. ....	52
ARTICLE XI. AMENDMENTS OF FINANCING DOCUMENTS .....		52
Section 11.1	Rights of Borrower. ....	52
Section 11.2	Amendments of Financing Documents Not Requiring Consent of Owners of the Bonds. ....	52
Section 11.3	Amendments of Financing Documents Requiring Consent of Owners of the Bonds. ....	52
ARTICLE XII. DEFEASANCE; DISCHARGE OF INDENTURE .....		53
Section 12.1	Defeasance. ....	53
ARTICLE XIII. GENERAL PROVISIONS .....		55
Section 13.1	Notices. ....	55
Section 13.2	Bondholder Directions and Consents. ....	55
Section 13.3	Parties Interested Herein. ....	56
Section 13.4	Content of Certificates. ....	56
Section 13.5	Waiver of Personal Liability. ....	56
Section 13.6	No Obligation to Enforce Assigned Rights. ....	56
Section 13.7	Binding Effect. ....	57
Section 13.8	No impairment of Rights. ....	57
Section 13.9	Issuer’s Performance. ....	57
Section 13.10	Effective Date; Counterparts. ....	58
Section 13.11	Date for Identification Purposes Only. ....	58
Section 13.12	Holidays. ....	58
Section 13.13	Governing Law; Jurisdiction. ....	58
Section 13.14	Non-Liability of Issuer. ....	58
Section 13.15	Limited Liability. ....	59
ARTICLE XIV. subordination provisions .....		60
APPENDIX A – FORM OF BONDS .....		A-1
APPENDIX B – FORM OF REQUISITION		



## TRUST INDENTURE

THIS SUBORDINATE TRUST INDENTURE (as amended and supplemented from time to time, this “**Indenture**”), made and dated as of March 1, 2023, by and between the CITY OF FORT WAYNE, INDIANA, a municipal corporation organized and existing under the Constitution and laws of the State of Indiana (together with its successors and assigns, the “**Issuer**”) and UMB Bank, N.A., as Bond Trustee, a national banking association, existing, and authorized to accept and execute trusts of the character herein set out under and by virtue of the laws of the United States (together with its successors and assigns, the “**Bond Trustee**”),

### WITNESSETH THAT:

WHEREAS, Do Good Foods Facility Management LLC and Do Good Foods Fort Wayne, LLC (collectively, the “**Borrower**”) has applied for the financial assistance of the Issuer to finance the acquisition, construction, equipping and/or improvement of the facilities as more particularly described in the hereinafter-defined Loan Agreement (the “**Project Facilities**”); and

WHEREAS, based on representations of the Borrower but without independent investigation, the Issuer finds that the financing of the Project Facilities will increase employment opportunities and increase diversification of economic development in the City of Fort Wayne, Indiana (the “**City**”), will improve and promote the economic stability, development and welfare in the City, will encourage and promote the expansion of industry, trade and commerce in the City and the location of other new industries in the City; that the public benefits to be accomplished, in tending to overcome insufficient employment opportunities and insufficient diversification of industry, are greater than the cost of public services (as that phrase is used in I.C. 36-7-11.9 and I.C. 36-7-12) (collectively, the “**Act**”) which will be required by the Project Facilities; and, therefore, that the financing of the Project Facilities and working capital by the issuance of the Bonds (as hereinafter defined) under the Act: (a) will be of benefit to the health and general welfare of the City; and (b) complies with the Act; and

WHEREAS, pursuant to the laws of the State of Indiana, particularly (i) Indiana Code Title 36, Article 7, Chapters 11.9 and 12, as amended (collectively, the “**Act**”) and Special Ordinance No. S-22-06-02, adopted by the Common Council of the Issuer on July 12, 2022, as amended by Special Ordinance No. S-22-09-19, adopted by the Common Council of the Issuer on September 13, 2022, as supplemented by Special Ordinance No. \_\_\_\_, adopted by the Common Council of the Issuer on March 14, 2023 (collectively, the “**Bond Ordinance**”) the Issuer has authorized the issuance of its \$25,000,000 City of Fort Wayne, Indiana Economic Development Solid Waste Facility Revenue Bonds (Do Good Foods Fort Wayne LLC Project), Subordinate Series 2023 (Federally Taxable) (the “**Bonds**”) the proceeds of which will be loaned to the Borrower (the “**Loan**”) pursuant to the terms of and used for the purpose of: (i) financing the costs of the acquisition of the assets consisting of, and capital improvements to, the Project Facilities, (ii) funding operating and other working capital costs of the Project Facilities, (iii) funding capitalized interest on the Bonds, (iv) funding costs of issuance of the Bonds.

WHEREAS, the Issuer will issue the Bonds pursuant to the terms of the Bond Ordinance (as hereinafter defined) and this Indenture, and lend the proceeds thereof to the Borrower pursuant to that certain Loan Agreement, dated as of March 1, 2023 (the “**Loan Agreement**”), between the Issuer and the Borrower specifying the terms and conditions of the Loan to provide for financing of the Project Facilities and of the payments by the Borrower to the Issuer of amounts sufficient for the payment of the principal of, premium, if any, or interest on the Bonds and costs incidental thereto; and

WHEREAS, the Bonds will be secured by that certain Subordinate Master Indenture Promissory Note No. 2023 (the “**Series 2023 Subordinate Master Note**”) issued by the Members of the Obligated

Group (hereinafter defined), evidencing the joint and several obligation of the Members of the Obligated Group under that certain Master Trust Indenture, dated as of December 1, 2022, as supplemented from time to time, including by the Third Supplemental Master Trust Indenture, dated as of March 1, 2023 (collectively, the “**Master Trust Indenture**”), each between the Members of the Obligated Group and UMB Bank, N.A., as Master Trustee (the “**Master Trustee**”); and

WHEREAS, in order to provide for the authentication and delivery of Bonds, to establish and declare the terms and conditions upon which Bonds are to be issued and secured and to secure the payment of the principal (or Redemption and/or Tender Price) thereof and interest thereon, the Issuer has authorized the execution and delivery of this Indenture; and

WHEREAS, all acts and proceedings required by law and all other things necessary to make the Bonds, when executed by the Issuer, authenticated and delivered by the Bond Trustee and issued as in this Indenture provided, the valid, binding, and legal obligations of the Issuer and to constitute this Indenture a valid and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done and performed, and the creation, execution, and delivery of this Indenture, and the creation, execution, and issuance of the Bonds subject to the terms hereof, have in all respects been duly authorized;

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

#### GRANTING CLAUSES

That the Issuer in consideration of the premises and the acceptance by the Bond Trustee of the trusts hereby created and of the purchase and acceptance of any Bonds by the holders and owners thereof, and of the sum of One Dollar, lawful money of the United States of America, to it duly paid by the Bond Trustee at or before the execution and delivery of these presents, and for other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to secure the payment of the principal, Redemption Price or Tender Price, if any, and interest on all Bonds according to their tenor and effect and all other amounts due in connection therewith and the performance and observance by the Issuer of all the covenants expressed or implied herein and in the Bonds, does hereby grant, bargain, sell, convey, pledge, and assign unto, and grant a security interest in and to, the Bond Trustee, and unto its respective successors in trust, and to their respective assigns, forever, for the securing of the performance of the obligations of the Issuer hereinafter set forth, the following (except in all cases with regard to the Issuer’s retention of the Unassigned Rights):

#### I.

The General Financing Documents (as such term is defined in Article I below), including, without limitation, the Loan Agreement and the Note, and including all extensions and renewals of the term thereof, if any, together with all right, title, and interest of the Issuer therein (including rights, title and interests of the Borrower pledged to the Issuer to secure the Borrower’s obligations to the Issuer pursuant to the Loan Agreement) including, but without limiting the generality of the foregoing, the present and continuing right to claim, collect, and receive any of the moneys, income, revenues, issues, profits, and other amounts payable or receivable thereunder, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Issuer is or may become entitled to do under the Loan Agreement and the Note;

#### II.

Subject only to the rights of the Issuer to apply amounts under the provisions of this Indenture, the pledge and assignment of the Trust Estate (as hereinafter defined) hereby made shall immediately attach

thereto and shall be effective, binding and enforceable from and after the time of the delivery by the Bond Trustee of the first bonds authenticated and delivered under this Indenture. The security so pledged and any assignment then or thereafter received by the Bond Trustee from the Issuer as security for the Bonds shall immediately be subject to the lien of such pledge and assignment and the lien of such pledge and assignment shall be valid and binding against the Issuer, purchasers thereof, creditors and all other parties having claims against the Issuer irrespective of whether such parties have notice thereof and without the need for any physical delivery, recordation, filing or further act;

### III.

All Funds (as such term is defined in Article I below) and moneys and securities therein; and

### IV.

All moneys and securities from time to time held by the Bond Trustee or the Paying Agent under the terms of this Indenture and any and all other real or personal property of every name and nature concurrently herewith or from time to time hereafter by delivery or by writing of any nature conveyed, mortgaged, pledged, assigned, or transferred as and for additional security hereunder by the Issuer or by anyone in its behalf, or with its written consent, to the Bond Trustee or the Paying Agent, which are hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof;

TO HAVE AND TO HOLD all and singular the above described trust estate (as the same is further defined herein, the “**Trust Estate**”), whether now owned or hereafter acquired, unto the Bond Trustee and its respective successors and assigns in trust forever to its and their own proper use and behalf:

BUT IN TRUST NEVERTHELESS, for the benefit and security of all present and future holders of the Outstanding Bonds, without preference, priority or distinction as to participation in the lien, benefit and protection of this Indenture of one Bond over or from the others, except as otherwise expressly provided herein or in the Master Indenture, and for enforcement of payment of the Bonds in accordance with their terms and all other sums payable hereunder or on the Bonds and for the performance of and compliance with the obligations, covenants and conditions of this Indenture, as if all the Bonds at any time Outstanding had been authenticated, executed and delivered simultaneously with the execution and delivery of this Indenture, all as herein set forth;

PROVIDED, HOWEVER, that if the Issuer, or its successors or assigns, shall well and truly pay, or cause to be paid, the principal, Redemption Price, if any, or Tender Price, if any, and interest on, the Bonds due or to become due thereon, and all other amounts due thereunder, at the times and in the manner mentioned in the Bonds according to their tenor, and shall cause the payments to be made on the Bonds as required under Article VI hereof, or shall provide, as permitted hereby, for the payment thereof by depositing with the Bond Trustee the entire amount due or to become due thereon, and shall well and truly keep, perform, and observe all the covenants and conditions pursuant to the terms of this Indenture to be kept, performed, and observed by it, and shall pay or cause to be paid to the Bond Trustee all sums of money due or to become due to it in accordance with the terms and provisions of the Loan Agreement and the Note, and this Indenture, then upon the final payment thereof this Indenture and the rights hereby granted shall cease, determine, and be void; otherwise this Indenture to be and remain in full force and effect.

THIS TRUST INDENTURE FURTHER WITNESSETH, and it is expressly declared, that all Bonds issued and secured hereunder are to be issued, authenticated, and delivered and all of the property, rights, and interests, including, without limitation, the loan payments and other amounts hereby assigned and pledged, are to be dealt with and disposed of under, upon, and subject to the terms, conditions,

stipulations, covenants, agreements, trusts, uses, and purposes as hereinafter expressed, and the Issuer has agreed and covenanted, and does hereby agree and covenant, with the Bond Trustee and with the respective holders and owners of the Bonds as follows:

**ARTICLE I.**  
**DEFINITIONS AND INTERPRETATION**

**Section 1.1**     **Definitions.**

Terms capitalized herein but not defined herein shall have the meanings ascribed thereto under the Loan Agreement. In addition, as used in this Indenture:

“**Account**” means any account within a special trust fund as established under this Indenture.

“**Act**” means Indiana Code Title 36, Article 7, Chapters 11.9 and 12, as amended, and other applicable provisions of law.

“**Accredited Investor**” means as to any beneficial owner of the Bonds an “accredited investor” as defined in Section 501(a) of Regulation D promulgated under the Securities Act of 1933, as amended.

“**Act of Bankruptcy**” means with respect to any Person, the filing of a petition in bankruptcy (or the other commencement of a bankruptcy or similar proceeding) by or against such Person, under the Federal Bankruptcy Code or any other applicable bankruptcy, insolvency, reorganization or similar law, now or thereafter in effect; provided, however, that no involuntary petition in bankruptcy, or appointment of a trustee, custodian or receiver, without the consent of such Person, shall constitute an Act of Bankruptcy until one hundred and twenty (120) days shall have elapsed from the date of filing thereof, during which time such Person has been unable to obtain the dismissal of the petition or appointment.

“**Approving Opinion**” means an opinion of Bond Counsel (addressed and delivered to the Issuer and the Bond Trustee) that an action being taken is authorized by the Act and this Indenture and complies with the terms of the Loan Agreement.

“**Authorized Denominations**” means \$100,000 and any integral multiple of \$5,000 in excess thereof.

“**Authorized Representative**” means, in the case of the Issuer, any Authorized Signatory of the Issuer, in the case of the Borrower, any officer of the Do Good Foods Facility Management LLC who is authorized to take such action pursuant to a certified resolution duly adopted by its board or other governing body, and, when used with reference to the performance of any act, the discharge of any duty, or the execution of any certificate or other document, any officer, employee or other person authorized to perform such act, discharge such duty or execute such certificate or other document, provided the Bond Trustee receives written evidence of such person’s authorization.

“**Authorized Signatory**” means any officer, director or other person designated by the Issuer (whether such designation is in connection with the issuance of the Bonds or otherwise) or by the Issuer’s Bylaws as an ‘Authorized Signatory’ empowered to, among other things, execute and deliver on behalf of the Issuer, this Indenture, the Issuer Finance Documents, and the Bonds.

“**Beneficial Owner**” means, so long as the Bonds are negotiated in the Book-Entry System, any Person who acquires a beneficial ownership interest in a Bond held by the Securities Depository. If at any

time the Bonds are not held in the Book-Entry System, Beneficial Owner means Owner for purposes of this Indenture.

**“Bond Counsel”** means an attorney or firm of attorneys selected by the Borrower and not unacceptable to the Bond Trustee, recognized, by inclusion in the listing of attorneys in the Bond Buyer’s Municipal Market Place as most recently issued, as a national expert in the field of municipal finance.

**“Bond Ordinance”** means Special Ordinance No. S-22-06-02, adopted by the Common Council of the Issuer on July 12, 2022, as amended by Special Ordinance No. S-22-09-19, adopted by the Common Council of the Issuer on September 13, 2022, as supplemented by Special Ordinance No. \_\_\_\_, adopted by the Common Council of the Issuer on March 14, 2023.

**“Bond Trustee”** means the commercial bank, trust company or other entity which may from time to time be appointed to serve as Bond Trustee as provided in Section 9.1 hereof. The initial Bond Trustee shall be UMB Bank, N.A. in its capacity as Bond Trustee hereunder.

**“Bond Trustee Indemnified Persons”** means the Bond Trustee and each and all of the Bond Trustee’s respective past, present and future directors, board members, officers, employees, Authorized Signatories, attorneys, agents and advisers (including, without limitation, counsel and financial advisers) and each of their respective heirs, successors and assigns.

**“Bondholder,” “holder,” or “owner”** or words of similar import when used with reference to Bonds shall, unless otherwise specified, mean any person who shall be the registered owner of any Outstanding Bond.

**“Bonds”** means \$25,000,000 City of Fort Wayne, Indiana Economic Development Solid Waste Facility Revenue Bonds (Do Good Foods Fort Wayne LLC Project), Subordinate Series 2023 (Federally Taxable).

**“Book-Entry System”** means the system maintained by the Securities Depository described in Section 2.6 hereof.

**“Borrower Financing Documents”** means all documents and agreements executed and delivered by the Borrower on the Date of Delivery as security for or in connection with the issuance of the Bonds, including the Loan Agreement, the Note, the Lease, the Estoppel and Recognition Agreement, and the General Certificate of the Borrower, and all other documents executed in connection therewith.

**“Business Day”** means any day other than a Saturday, Sunday or a day on which banking institutions in New York, New York and/or the cities in which the principal corporate trust or principal operations offices of the Bond Trustee to whom a payment is to be made, as applicable, are located are authorized or obligated by law or executive order to be closed or the New York Stock Exchange is closed.

**“Capitalized Interest Account”** means the account by that name in the Project Fund established pursuant to Section 5.1 hereof.

**“Cede & Co.”** means the nominee for The Depository Trust Company (DTC) who shall act as securities depository for the Bonds.

**“Change in Control”** shall have the meaning set forth in Section 4.5 of the Loan Agreement.

**“Change in Control Notice”** shall have the meaning set forth in Section 4.5 of the Loan Agreement.

“**Code**” means the Internal Revenue Code of 1986, as amended, and the treasury regulations promulgated thereunder.

“**Collateral Agent**” means UMB Bank, N.A., in its capacity as collateral agent under the Collateral Agency Agreement, together with its successors or assigns in such capacity.

“**Collateral Agency Agreement**” means a collateral agency, intercreditor and accounts agreement, in form and substance satisfactory to the majority of the Holders of Senior Master Notes (as such term is defined in the Master Indenture, to be executed and delivered by the Collateral Agent, a Depository Bank, DGF LLC and the Secured Parties from time to time a party thereto, as the same may be amended, supplemented or modified from time to time according to its terms.

“**Completion Date**” means the earlier of the date of completion of the Project or final disbursement from the Project Fund as that date shall be certified as provided in Section 3.9 of the Loan Agreement.

“**Consent and Agreement**” means the Consent and Agreements to be delivered to Master Trustee pursuant to the Security Agreements.

“**Costs of Issuance**” means all items of expense directly or indirectly payable by or reimbursable to the Issuer or the Borrower and related to the authorization, issuance, sale and delivery of the Bonds, including but not limited to costs of preparation and reproduction of documents, printing expenses, filing and recording fees, initial fees and charges of the Bond Trustee, underwriting fees, legal fees and charges, fees and disbursements of consultants and professionals, fees and charges for preparation, execution and safekeeping of the Bonds and any other cost, charge or fee incurred in connection with the original issuance of the Bonds which constitutes a “cost of issuance” within the meaning of Section 147(g) of the Code.

“**Costs of Issuance Fund**” means the fund by that name established pursuant to Section 5.1 hereof.

“**Costs of the Project**” means the sum of the items, or any such item, authorized to be paid from the Project Fund pursuant to the provisions of Section 3.9 of the Loan Agreement, but shall not include any Costs of Issuance.

“**Date of Delivery**” means the date that the Bonds are initially delivered pursuant to Section 2.8 hereof.

“**Debt Service**” means the principal and redemption price of and interest due on or under the Bonds.

“**Debt Service Fund**” means the Fund so designated, established and maintained pursuant to Section 5.1 hereof and the accounts therein.

“**Debt Service Requirements**” means, for any specified period, the amounts payable to the Bondholders in respect of the principal of (including scheduled mandatory redemptions of principal) and interest on any and all Bonds.

“**Debt Service Reserve Fund**” means the Fund so designated, established and maintained pursuant to the Master Indenture and the accounts therein, including the Class A-1 Debt Service Reserve Account and the Class A-2 Debt Service Reserve Account.

“**Default**” means any event or condition that will, with the lapse of time, or the giving of notice, or both, become an Event of Default.

“**Defeasance Collateral**” means:

(a) non-callable direct obligations of the United States of America, non-callable and non-prepayable direct federal agency obligations the timely payment of principal of and interest on which are fully and unconditionally guaranteed by the United States of America, non-callable direct obligations of the United States of America which have been stripped by the United States Treasury itself or by any Federal Reserve Bank (not including “CATS,” “TRS” and “TIGRS”) and the interest components of REFCORP bonds for which the underlying bond is non-callable (or non-callable before the due date of such interest component) for which separation of principal and interest is made by request to the Federal Reserve Bank of New York in book-entry form, and shall exclude investments in mutual funds and unit investment trusts;

(b) non-callable obligations the timely payment of principal and interest on which are fully and unconditionally guaranteed by the United States of America; and

(c) bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local government unit of any such state (i) which are not callable at the option of the obligor or otherwise prior to maturity or as to which irrevocable notice has been given by the obligor to call such bonds or obligations on the date specified in the notice, (ii) timely payment of which is fully secured by a fund consisting only of cash or obligations of the character described in clause (a) or (b) which fund may be applied only to the payment when due of such bonds or other obligations, and (iii) which are rated “AAA” by S&P or Fitch or “Aaa” by Moody’s Investors Service.

“**DTC**” or “The Depository Trust Company” means the limited-purpose trust company organized under the laws of the State of New York which shall act as securities depository for the Bonds, and any successor thereto.

“**DGF LLC**” means Do Good Foods LLC, a Delaware limited liability, together with its successors or assigns.

“**Electronic Means**” means following communications methods: a portable document format (“pdf”) or other replicating image attached to an unsecured e-mail, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Bond Trustee, or another method or system specified by the Bond Trustee as available for use in connection with its services hereunder.

“**Escrow Release Conditions**” means each of the following conditions, which conditions may be waived in whole or in part in writing jointly by the Required Bondholders: (i) the release of all of the escrow deposit held under the Senior Trust Indenture, (ii) the sale of equity interests in KDC Agribusiness LLC, other capital contributions to KDC Agribusiness LLC or a combination thereof that, in the aggregate, are no less than \$100,000,000, (iii) all required actions have been taken for KDC Agribusiness Fairless Hills LLC to become a member of the Obligated Group and its manufacturing facility to constitute a “Project” as defined in the Master Indenture pursuant to the terms thereunder, (iv) payment of title policy fee, and (v) the delivery of the Escrow Release Documents (as defined below).

“**Escrow Release Date**” means, after satisfaction of the Escrow Release Conditions, any date established by the Borrower as the date on which the Escrow Deposit shall be released.

“**Escrow Release Documents**” means the following documents: (i) the Subordinate Parent Guaranty; (ii) the Subordinate Purchaser Guaranty Agreement; (iii) the Subordinate Equity Pledge and Security Agreement; (iv) the Subordinate Pledge and Security Agreement; (v) the UCC-1 financing statements securing the UCC collateral pledged in (iii) and (iv); (vi) the Consent and Agreement; (vii) Title

Policy; (viii) Insurance Certificate; (ix) Collateral Agency Agreement; (x) Non-Disturbance Agreement SDNA; (xi) Estoppel Certificate; and (xii) Memorandum of Lease.

**“Escrow Termination Date”** means February 1, 2023 or such later date as may be approved by Required Bondholders in writing.

**“Estoppel and Recognition Agreement”** means that certain Lessor Estoppel Certificate dated March 1, 2023, by the Lessor.

**“Event of Default”** has the meaning given such term in Section 8.1 hereof.

**“Favorable Opinion of Bond Counsel”** means, with respect to any action the occurrence of which requires such an opinion, an unqualified Opinion of Counsel, which shall be a Bond Counsel, to the effect that such action is permitted under the Act and this Indenture.

**“Fiscal Year”** means a period of twelve consecutive months ending on December 31 or on such other date as may be specified in an Officer’s Certificate delivered to the Bond Trustee.

**“Fitch”** means Fitch, Inc., and any successor or assign thereto which is a nationally recognized statistical rating organization, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Fitch” shall be deemed to refer to any other nationally recognized securities rating agency selected by the Borrower.

**“Fund”** means any special trust fund established pursuant to Article V hereof.

**“Fund Letter of Credit”** means the irrevocable, transferable letter of credit, if any, consented to by the Required Bondholders, deposited in an applicable Fund in lieu of or in partial substitution for cash or securities on deposit therein, which shall be payable or available to be drawn upon on any date that moneys therein are required to be transferred; provided that the issuer providing such letter of credit shall be a banking association, bank or trust company or branch thereof whose letter of credit results in the rating of municipal obligations secured by such letter of credit to be rated in any of the three highest rating categories of Moody’s and S&P at the time such Fund Letter of Credit is issued and while the Bonds are Outstanding.

**“General Financing Documents”** means the Borrower Financing Documents, the Obligated Group Financing Documents and the Issuer Financing Documents.

**“Governing Person”** means the governing board of an entity or such other Person having control over the actions or determinations of an entity or other Person.

**“Governmental Obligations”** means:

(i) direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America;

(ii) evidences of ownership of a proportionate interest in specified direct obligations of, or specified obligations the timely payment of the principal of and the interest on which are unconditionally and fully guaranteed by, the United States of America, which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian;



(iii) obligations issued by the Bond Ordinance Funding Corporation pursuant to the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (the “FIRRE Act”), (A) the principal of which obligations is payable when due from payments of the maturing principal of non-interest bearing direct obligations of the United States of America which are issued by the Secretary of the Treasury and deposited in the Funding Corporation Principal Fund established pursuant to the FIRRE Act, and (B) the interest on which obligations, to the extent not paid from other specified sources, is payable when due by the Secretary of the Treasury pursuant to the FIRRE Act; and

(iv) obligations which are (A) issued by any state or political subdivision thereof or any agency or instrumentality of such a state or political subdivision, (B) fully secured as to principal and interest by obligations described in clause (i), (ii) or (iii) above and (C) rated at the time of purchase in one of the two highest ratings categories by Moody’s, Fitch and S&P, including the Rating Agency then rating the Bonds, if any (or, upon discontinuation of any such rating service, by such other nationally recognized rating service or services as may be acceptable to the Bond Trustee).

“**Indebtedness**” shall have the meaning set forth in the Master Trust Indenture.

“**Indenture**” means this Indenture as from time to time amended or supplemented by Supplemental Indentures in accordance with Article X hereof.

“**Insurance Certificate**” means the certificate required by Section 4.10(b) of the First Supplemental Master Trust Indenture.

“**Interest Accrual Period**” means the period during which a Bond accrues interest payable on the next Interest Payment Date. Each Interest Accrual Period shall commence on (and include) the last Interest Payment Date to which interest has been paid (or, if no interest has been paid, from the date of original authentication and delivery of the Bonds) to, but not including, the Interest Payment Date on which interest is to be paid. If, at the time of authentication of any Bond, interest is in default or overdue on the Bonds, such Bond shall bear interest from the date to which interest has previously been paid in full or made available for payment in full on Outstanding Bonds.

“**Interest Payment Date**” means each date on which interest is to be paid and is each June 1 and December 1, commencing on June 1, 2023.

“**Investment Securities**” means and include any of the following to the extent the same are legal investments under the laws of any applicable jurisdiction:

(i) cash deposits (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with Government Obligations);

(ii) Government Obligations;

(iii) obligations of the following federal agencies so long as such obligations are backed by the full faith and credit of the United States of America: (a) U.S. Export-Import Bank (Eximbank), (b) Rural Economic Community Development Administration, (c) Federal Financing Bank, (d) General Services Administration, (e) U.S. Maritime Administration, (f) U.S. Department of Housing and Urban Development (PHAs), (g) Small Business Administration, (h) Government National Mortgage Association (GNMA), (i) Federal Housing Administration, and (j) Farm Credit System Financial Assistance Corporation;

(iv) direct obligations of any of the following federal agencies which obligations are not fully guaranteed by the full faith and credit of the United States of America: (a) senior debt obligations rated in the highest long-term rating category by at least two nationally recognized Rating Agencies issued by the Federal National Mortgage Association (FNMA) or Federal Home Loan Mortgage Corporation (FHLMC), (b) senior debt obligations of the Federal Home Loan Bank System, and (c) senior debt obligations of other United States government sponsored agencies bearing the same or higher ratings as Government Obligations;

(v) U.S. dollar denominated deposit accounts, federal funds and bankers' acceptances with domestic commercial banks which either (a) have a rating on their short-term certificates of deposit on the date of purchase in the highest short-term rating category of at least two nationally recognized Rating Agencies, (b) are insured at all times by the Federal Deposit Insurance Corporation or (c) are collateralized with Government Obligations at 102% of the value thereof, valued daily. All such certificates must mature no more than 360 days after the date of purchase (ratings on holding companies are not considered as the rating of the bank);

(vi) commercial paper which is rated at the time of purchase in the highest short-term rating category of at least two nationally recognized Rating Agencies and which matures not more than 270 days after the date of purchase;

(vii) investments in (a) money market funds registered under the Investment Company Act of 1940, as amended, whose shares are registered under the Securities Act of 1933, as amended, and rated in the highest short-term rating category of at least two nationally recognized Rating Agencies, including, without limitation, funds for which the Bond Trustee, its affiliates and subsidiaries provide investment advisory or other management services, and (b) public sector investment pools operated pursuant to SEC Rule 2a-7 in which the issuer's deposit shall not exceed 5% of the aggregate pool balance at any time and such pool is rated in one of the two highest short-term rating categories of at least two nationally recognized Rating Agencies;

(viii) pre-funded municipal obligations defined as follows: any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local government unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice and (a) which are rated, based on an irrevocable escrow account or fund (the "escrow"), in the highest long-term rating category of at least two nationally recognized Rating Agencies (without regard to gradations), or (b)(1) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or Government Obligations, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (2) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this clause (viii) on the maturity date or dates specified in the irrevocable instructions referred to above, as appropriate;

(ix) general obligations of states with a short-term rating in one of the two highest rating categories and a long-term rating in one of the two highest rating categories of at least two nationally recognized Rating Agencies. In the event such obligations are variable rate obligations, the interest rate on such obligations must be reset not less frequently than annually;

(x) investment agreements with a Qualified Investment Provider;

(xi) other forms of investments (including repurchase agreements and investment agreements) with a Qualified Financial Institution;

(xii) repurchase agreements relating to securities described in clauses (i), (ii), (iii), (iv), (vi), (viii) and (ix) above, with Qualified Investment Provider which agreement shall provide that (A) such securities have a value of at least 103% (valued on each interest payment date for the Bonds) of the specified repurchase price and are deposited with the Bond Trustee or with a third party custodian, (B) the provider will repurchase such securities without penalty upon request of the Bond Trustee in order to use the proceeds for any purpose for which the Fund from which the investment was made may be used, (C) if such rating falls below “A3” or “A-,” respectively by either Moody’s and S&P, the provider must notify the Bond Trustee and repurchase such securities without penalty within five (5) Business Days of such downgrade and (D) the Bond Trustee is expressly authorized to liquidate such securities in the event of the insolvency of the provider or the commencement by or against the provider of a case under the federal Bankruptcy Code or the appointment or taking possession by a trustee or custodian of the assets of the provider; and

(xiii) a guaranteed investment contract with a defined termination date, secured by Government Obligations or other security not unacceptable to the Rating Agencies then rating the Bonds, if any, in an amount at least equal to the amount invested under the contract and pledged to the Bond Trustee.

“**Issuer**” means the City of Fort Wayne, Indiana and its successors and assigns.

“**Issuer Financing Documents**” means all documents and agreements executed and delivered by the Issuer on the Date of Delivery as security for or in connection with the issuance of the Bonds, including this Indenture, the Loan Agreement and all other documents executed by the Issuer in connection therewith.

“**Issuer Indemnified Persons**” means, collectively, each and all of the Issuer’s respective past, present and future directors, board members, governing members, trustees, commissioners, elected or appointed officials, officers, employees, Authorized Signatories, attorneys, contractors, subcontractors, agents and advisers (including, without limitation, counsel and financial advisers) and each of their respective heirs, successors and assigns.

“**Lease**” means that certain Lease Agreement, dated May 14, 2022, as amended by a First Amendment to Lease Agreement dated September 22, 2022, a Second Amendment to Lease Agreement dated November 14, 2022, and a Third Amendment to Lease dated as of the Date of Delivery, by and between Lessor, as landlord, and Do Good Foods Fort Wayne LLC, as tenant, as the same may be amended, modified, supplemented or restated from time to time.

“**Lessor**” means GJ GTW II, LLC, and its successors or assigns.

“**Letter of Representations**” means the Letter of Representations of the Issuer to DTC.

“**Loan Agreement**” means the Loan Agreement of even date herewith between the Issuer and the Borrowers, and any amendments and supplements thereto.

“**Master Indenture Security Documents**” means the Completion Guaranty, the Parent Guaranty, the Purchaser Guaranty, the Master Mortgage, the Collateral Agency Agreement, the Equity Pledge and Security Agreement and the Pledge and Security Agreement, each as defined in the Master Trust Indenture and, subject to the terms and conditions of the Collateral Agency Agreement, the Security Agreement, each Pledge Agreement and each other Security Document (each as defined in the Collateral Agency Agreement).

**“Master Trust Indenture”** means that certain Master Trust Indenture dated as of December 1, 2022, as amended and supplemented prior to the date hereof, including by a Third Supplemental Master Trust Indenture, dated as of March 1, 2023, each between the Members of the Obligated Group and the Master Trustee, as the same may be further amended and supplemented from time to time.

**“Master Trustee”** means UMB Bank, N.A., as Master Trustee under the Master Trust Indenture and its successors and assigns thereunder.

**“Material Adverse Effect”** means any event, circumstance or condition that could reasonably be expected to have a material adverse effect on (a) the business, operations, financial condition, properties or prospects of the Obligated Group, taken as a whole, (b) the ability of the Obligated Group, taken as a whole, to perform its obligations under any Obligated Group Financing Document or Borrower Financing Document, (c) the validity or enforceability of the Loan Agreement or any other Obligated Group Financing Document or Borrower Financing Document, or any material provision thereof or any material transaction contemplated thereby, or (d) the rights and remedies of the Bondholders under any of the General Financing Documents, in the reasonable determination of the Required Bondholders.

**“Maturity Date”** means December 1, 2028.

**“Maximum Rate”** means the not to exceed interest rate set forth in the Bond Ordinance (fifteen percent (15%) per annum). In no event shall such rate exceed the highest rate allowed by law.

**“Member of the Obligated Group”** means those members of the Obligated Group, from time to time, that are parties to the Master Trust Indenture.

**“Moody’s”** means Moody’s Investors Service, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and any successor or assign thereto which is a nationally recognized statistical rating organization, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency selected by the Borrower.

**“Note”** means the promissory note from the Borrower to the Issuer in the principal amount equal to the principal amount of the Bonds and evidencing the loan made to the Borrower under the Loan Agreement.

**“Notice Parties”** means the Issuer, the Bond Trustee, the Paying Agent, the Master Trustee and the Borrower.

**“Obligated Group”** shall have the meaning set forth in the Master Trust Indenture.

**“Obligated Group Agent”** means the Obligated Group member designated as such pursuant to the Master Trust Indenture.

**“Obligated Group Financing Documents”** means the Master Trust Indenture, the Master Note and the Master Indenture Security Documents.

**“Officer’s Certificate”** means a certificate or report signed by an Authorized Representative of the Borrower or Obligated Group. When an Officer’s Certificate is required hereunder or under any Borrower Financing Document or Obligated Group Financing Documents to set forth matters relating to more than one Borrower or member of the Obligated Group, such Officer’s Certificate shall be signed by an Authorized Representative of the Borrower or the Obligated Group Agent.

**“Operating and Working Capital Costs”** means the Borrower’s short-term expenses, including inventory, payments on short-term debt, and day-to-day operating expenses for the Project to the extent set forth in the operating budget.

**“Opinion of Counsel”** means a written legal opinion from a firm of attorneys experienced in the matters to be covered in the opinion addressed to the Bond Trustee.

**“Outstanding,”** when used with reference to a Bond or Bonds, as of any particular date, means all Bonds which have been authenticated and delivered hereunder, except:

(1) Any Bonds canceled by the Bond Trustee because of payment or redemption prior to maturity or surrendered to the Bond Trustee for cancellation;

(2) Any Bond (or portion of a Bond) paid or redeemed or for the payment or redemption of which there has been separately set aside and held in the Redemption Account of the Debt Service Fund moneys in an amount sufficient to effect payment of the principal or Redemption Price or Tender Price thereof, together with accrued interest on such Bond to the payment or redemption date, which payment or redemption date shall be specified in irrevocable instructions given to the Bond Trustee to apply such moneys to such payment on the date so specified;

(3) Bonds in exchange for or in lieu of which other Bonds shall have been authenticated and delivered under Article IV hereof; and

(4) Any Bond deemed to have been paid as provided in Section 12.1(b) hereof.

**“Owner”** means the registered owner of a Bond, including the Securities Depository, if any, or its nominee.

**“Paying Agent”** means the commercial bank, trust company or other entity which may from time to time be appointed to serve as Paying Agent as provided in Section 9.1 hereof. Until such time as an alternate Paying Agent is appointed, the Paying Agent shall be the Bond Trustee.

**“Person”** means an individual, a corporation, a partnership, an association, a joint venture, a trust, an unincorporated organization or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

**“Principal and Interest Account”** means the Account so designated, established within the Debt Service Fund pursuant to Section 5.1 hereof.

**“Principal Payment Date”** means any date upon which the principal amount of Bonds is due hereunder, including the Maturity Date, any Redemption Date, or the date the maturity of any Bond is accelerated pursuant to the terms hereof or otherwise.

**“Project Fund”** means the account so designated, established and maintained pursuant to Section 5.1 hereof and the accounts therein.

**“Qualified Financial Institution”** means a bank, trust company, national banking association, insurance company, other financial services company or government or quasi-governmental agency whose unsecured long term debt obligations (in the case of a bank, trust company, national banking association, other financial services company, government or quasi-governmental agency) or whose claims paying abilities (in the case of an insurance company) are rated in any of the three highest rating categories (without

regard to gradation) by one or more of Moody's, Fitch and S&P, including the Rating Agency then rating the Bonds (i.e., the equivalent of A or higher).

**“Qualified Investment Provider”** means a financial institution or insurance company which has (or the parent company or guarantor of which has), at the date of execution of the applicable investment agreement, an outstanding issue of unsecured, uninsured and unguaranteed debt obligations or a claims paying ability rated in either of the two highest long-term rating categories by Moody's, Fitch or S&P, including the Rating Agency, if any, then rating the Bonds (without regard to gradations).

**“Rating Agencies”** means any of Moody's, S&P or Fitch, which is then providing a rating on the Bonds.

**“Record Date”** means the fifteenth (15th) day (whether or not a Business Day) of the month next preceding each Interest Payment Date.

**“Redemption Account”** means the Account so designated, established within the Debt Service Fund pursuant to Section 5.1 hereof.

**“Redemption Date”** means the date fixed for redemption of Bonds subject to redemption in any notice of redemption given in accordance with the terms hereof.

**“Redemption Price”** means an amount equal to the principal of and premium, if any, and accrued interest, if any, on the Bonds to be paid on the Redemption Date.

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

**“Revenue Fund”** means the Fund so designated, established and maintained pursuant to the Master Trust Indenture.

**“S&P”** means Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business, and any successor or assign thereto which is a nationally recognized statistical rating organization, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “S&P” shall be deemed to refer to any other nationally recognized securities rating agency selected by the Borrower.

**“Sale Proceeds”** means all amounts already or constructively received from the sale of the Bonds, including amounts used to pay underwriter's discount or compensation.

**“Scheduled Debt Service”** means Debt Service that consists of interest and principal due and payable without regard to unscheduled redemptions or accelerations.

**“Securities Depository”** means The Depository Trust Company, 711 Stewart Avenue, Garden City, New York 11530, Fax -516/227-4039 or 4190 and such other securities depository as the Borrower may designate in a certificate of the Borrower delivered to the Bond Trustee.

**“Senior Trust Indenture”** means that certain Trust Indenture dated as of December 1, 2022, between the Borrower and the Bond Trustee, as the same may be amended and supplemented from time to time.

**“Series”** means any series of Bonds.

**“Sinking Fund Payment”** means the amount required by the Indenture as payable on a single future date for the retirement of any Outstanding Bonds that are expressed to mature after such future date, but does not include any amounts payable by reason only of the maturity of a Bond.

**“State”** means the State of Indiana.

**“Subordinate Equity Pledge and Security Agreement”** shall have the meaning set forth in the Master Trust Indenture.

**“Subordinate Pledge and Security Agreement”** shall have the meaning set forth in the Master Trust Indenture.

**“Subordinate Parent Guaranty”** shall have the meaning set forth in the Master Trust Indenture.

**“Subordinate Purchaser Guaranty”** shall have the meaning set forth in the Master Trust Indenture.

**“Supplemental Indenture”** means any indenture supplemental hereto or amendatory hereof, adopted by the Issuer in accordance with Article X hereof.

**“Tender Date”** shall have the meaning set forth in Section 4.5 of the Loan Agreement.

**“Tender Election Notice”** shall have the meaning set forth in Section 4.5 of the Loan Agreement.

**“Tender Period”** shall have the meaning set forth in Section 4.5 of the Loan Agreement.

**“Tender Price”** shall have the meaning set forth in Section 4.5 of the Loan Agreement.

**“Term”** when used with reference to the Loan Agreement, means the term of the Loan Agreement determined as provided in Article III thereof.

**“Title Policy”** means the title insurance policies required for each Project pursuant to the Master Trust Indenture.

**“Trust Estate”** means all property and rights granted to the Bond Trustee pursuant to the granting clauses of this Indenture, as the same may be amended or supplemented from time to time.

**“Unassigned Rights”** means the rights of the Issuer under Sections 2.2(c), 5.2(a)(ii), 5.2(c), and 7.13 of the Loan Agreement, and, to the extent not expressly provided in such Sections (or in any other Section hereof or thereof), the Issuer’s rights under the Loan Agreement and this Indenture to (i) inspect books and records; (ii) give or receive notices, approvals, consents, requests, and other communications; (iii) receive payment or reimbursement of expenses, including, without limitation, “Additional Payments, as defined in the Loan Agreement; (iv) immunity from an limitation of liability; (v) indemnification by the Borrower or any other Person; and (vi) to enforce, in its own name and on its own behalf, those provisions hereof and of the Loan Agreement and any other document, instrument or agreement entered into with respect to the Bonds that provides generally for the foregoing enumerated rights or any similar rights of the Issuer or any Issuer Indemnified Person. For avoidance of doubt, the “Unassigned Rights” referenced in clauses (iv), (v) and (vi), above shall include (but not be limited to) the rights of the Issuer Indemnified Persons to immunity from and limitation of liability and indemnification by the Borrower as provided in the Loan Agreement and the rights of any such Issuer Indemnified Person to enforce such right in his, her or its own name.

**Section 1.2 Interpretation.**

(a) In this Indenture:

(i) Any capitalized word or term used but not defined herein shall have the meaning ascribed to such word or term in the Loan Agreement.

(ii) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Indenture, refer to this Indenture, and the term “hereafter” means after, and the term “heretofore” means before, the date of execution of this Indenture.

(iii) Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(iv) Words importing persons include firms, associations, partnerships (including limited partnerships), limited liability companies, trusts, corporations and other legal entities, including public bodies, as well as natural persons.

(v) Any headings preceding the texts of the Articles and Sections of this Indenture, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Indenture, nor shall they affect its meaning, construction or effect.

(vi) All approvals, consents and acceptances required to be given or made by any person or party hereunder shall be at the reasonable discretion of the party whose approval, consent or acceptance is required except to the extent otherwise specified herein.

(vii) This Indenture shall be governed by and construed in accordance with the applicable laws of the State.

(viii) Unless otherwise provided herein, all references to a particular time are to New York City Time.

(b) Whenever the Issuer is named or referred to, it shall be deemed to include its successors and assigns whether so expressed or not. All of the covenants, stipulations, obligations, and agreements by or on behalf of, and other provisions for the benefit of, the Issuer contained in this Indenture shall bind and inure to the benefit of such successors and assigns and shall bind and inure to the benefit of any officer, board, commission, issuer, agency or instrumentality to whom or to which there shall be transferred by or in accordance with law any right, power or duty of the Issuer, or of its successors or assigns, the possession of which is necessary or appropriate in order to comply with any such covenants, stipulations, obligations, agreements or other provisions hereof.

(c) If any one or more of the covenants or agreements provided herein on the part of the Issuer or the Bond Trustee to be performed should be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed separable from the remaining covenants and agreements hereof, and shall in no way affect the validity of the other provisions of this Indenture or of the Bonds.



(d) For purposes hereof, the Bond Trustee shall not be deemed to have knowledge of any fact or the occurrence of any event unless and until an officer of the Bond Trustee's corporate trust administration department has written notice thereof or actual knowledge thereof, provided that the Bond Trustee shall be deemed to have knowledge of any default in payments due on the Bonds or under Section 3.1(c) of the Loan Agreement.

**ARTICLE II.**  
**AUTHORIZATION, ISSUANCE, CONDITIONS AND TERMS OF BONDS**

**Section 2.1 Authorization and Issuance of Bonds.**

(a) Bonds of the Issuer issued hereunder shall be subject to the terms, conditions and limitations established herein. No Bonds may be authenticated and delivered except in accordance with this Article II.

(b) There shall be issued under and secured by this Indenture the City of Fort Wayne, Indiana Economic Development Solid Waste Facility Revenue Bonds (Do Good Foods Fort Wayne LLC Project), Subordinate Series 2023 (Federally Taxable), in a principal amount of \$25,000,000.

(c) The Bonds shall mature on December 1 of each year set forth below and bear interest, payable on each Interest Payment Date, at the rate per annum set forth in the following table.

<u>Year</u>	<u>Amount</u>	<u>Interest Rate</u>
2028	\$25,000,000	___%

(d) The Bonds shall be numbered from one upward, in consecutive numerical order. Bonds issued in exchange shall be numbered in such manner as the Bond Trustee in its discretion shall determine.

**Section 2.2 Method and Place of Payment.**

(a) Unless otherwise provided in any writing with or from the Securities Depository, the interest on the Bonds shall be paid by the Paying Agent on the Interest Payment Dates by wire transfer of immediately available funds to an account specified by the Owner in a writing delivered to the Paying Agent. Any such specified account shall remain in effect until revised by such Owner by an instrument in writing delivered to the Paying Agent. The principal of and premium, if any, on each Bond shall be payable on the Principal Payment Date, upon surrender thereof at the office of the Paying Agent.

(b) Except as may be specifically set forth herein, the Paying Agent, the Bond Trustee, the Borrower and the Issuer may treat the owner of a Bond as the absolute owner thereof for all purposes, whether or not such Bond shall be overdue, and the Paying Agent, the Bond Trustee, the Borrower, and the Issuer shall not be affected by any knowledge or notice to the contrary; and payment of the principal of and premium, if any, and interest on such Bond shall be made only to such Owner, which payments shall be valid and effectual to satisfy and discharge the liability of such Bond to the extent of the sum or sums so paid. All Bonds at maturity or on earlier redemption paid pursuant to the provisions of this Section shall be cancelled by the Paying Agent.

**Section 2.3 Payment of Principal and Interest of Bonds; Acceptance of Terms and Conditions.**

(a) The interest on the Bonds shall become due and payable on the Interest Payment Dates in each year to and including the Maturity Date, on each Redemption Date, and on the date of any acceleration prior thereto. The principal of the Bonds shall become due and payable on the Principal Payment Dates.

(b) By the acceptance of its Bond, the Owner and each Beneficial Owner thereof shall be deemed to have agreed to all the terms and provisions of such Bond as specified in such Bond and this Indenture including, without limitation, the applicable interest rates, mandatory and optional purchase and redemption provisions applicable to such Bond, method and timing of purchase, redemption, payment, etc. Such Owner and each Beneficial Owner further agree that if, on any date upon which one of its Bonds is to be purchased, redeemed or paid at maturity or earlier due date, funds are on deposit with the Paying Agent or the Bond Trustee to pay the full amount due on such Bond, then such Owner or Beneficial Owner shall have no rights under this Indenture other than to receive such full amount due with respect to such Bond and that interest on such Bond shall cease to accrue as of such date.

**Section 2.4 Calculation and Payment of Interest.**

(a) Interest shall be calculated on the basis of a 360 day year comprised of twelve 30-day months. Payment of interest on each Bond shall be made on each Interest Payment Date for such Bond for unpaid interest accrued during the Interest Accrual Period to the Owner of record of such Bond on the applicable Record Date.

(b) In the absence of manifest error, the record of interest rates maintained by the Paying Agent shall be conclusive and binding upon the Paying Agent, the Bond Trustee, the Issuer, the Borrower, the Owners and the Beneficial Owners.

**Section 2.5 Maximum Interest Rate.**

Notwithstanding any provision herein to the contrary, at no time, whether as a result of an Event of Default or otherwise, shall the Bonds bear interest at an interest rate higher than the Maximum Rate.

**Section 2.6 Book Entry System.**

Initially the Bonds will be issued as book-entry only bonds and the Letter of Representations with DTC and the provisions of such Letter of Representations shall be incorporated herein by reference; provided, however, that a Supplemental Indenture authorizing a Series of Bonds may include provisions superseding the provisions of the Letter of Representations with respect to such Series.

Unless otherwise provided in the Supplemental Indenture authorizing a Series of Bonds, the Bonds shall be initially issued in the form of a single, fully-registered certificate in the aggregate principal amount of each maturity or in more than one such certificate if and to the extent, required by DTC. So long as the Bonds are held in the Book-Entry System the registered owner of all of the Bonds shall be DTC, and the Bonds shall be registered in the name of Cede & Co., as nominee for DTC. The Bond Trustee and the Issuer may treat DTC (or its nominee) as the sole and exclusive registered owner of the Bonds registered in its name for the purposes of payment of the principal of or interest on the Bonds, giving any notice permitted or required to be given to registered owners under this Indenture and the Letter of Representations, registering the transfer of Bonds, obtaining any consent or other action to be taken by

registered owners and for all other purposes whatsoever; and neither the Bond Trustee nor the Issuer shall be affected by any notice to the contrary. Neither the Bond Trustee nor the Issuer shall have any responsibility or obligation to any DTC Participant, any person claiming a beneficial ownership interest in the Bonds under or through DTC or any DTC Participant, or any other person which is not shown on the registration books of the Bond Trustee as being a registered owner, with respect to the accuracy of any records maintained by DTC or any DTC Participant; the payment of DTC or any DTC Participant of any amount in respect of the principal of or interest on the Bonds; any notice which is permitted or required to be given to registered owners under this Indenture and the Letter of Representations; or any consent given or other action taken by DTC as registered owner. The Bond Trustee shall pay from monies available hereunder all principal of, and interest on the Bonds only to or “upon the order” of DTC (as that term is used in the Uniform Commercial Code as adopted in the State), and all such payments shall be valid and effective to fully satisfy and discharge the Issuer’s obligations with respect to the principal of and interest on the Bonds to the extent of the sum or sums so paid. So long as the Bonds are held in the Book-Entry System, no person other than DTC shall receive an authenticated bond certificate. Upon delivery by DTC to the Bond Trustee of DTC’s written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions of the Supplemental Indenture and this Indenture with respect to transfers of Bonds, the term “Cede & Co.” in the Supplemental Indenture and this Indenture shall refer to such new nominee of DTC; provided, however, registered ownership of the Bonds, or any portions thereof, may not be transferred except (i) to any successor of DTC or its nominee, provided that any such successor shall be qualified under any applicable laws to provide the service proposed to be provided by it; (ii) to any substitute depository or its successor; or (iii) to any person as provided in Section 4.6.

In the event that (i) DTC or its successor (or substitute depository or its successor) resigns or is removed from its functions as depository, and no substitute depository can be obtained, or (ii) the Issuer determines following direction from the Borrower to discontinue the use of the Book Entry System the ownership of Bonds may then be transferred to any person or entity as provided in this Indenture and the Bonds shall no longer be held in the Book-Entry System. In any such event, the Issuer shall deliver a written request to the Bond Trustee, together with a supply of bond certificates, to issue Bonds as provided in this Indenture in any authorized denomination. Upon receipt of all then Outstanding Bonds by the Bond Trustee, together with the aforementioned written request of the Issuer new Bonds shall be issued and authenticated in such denominations and registered in the names of such persons as are requested in such written request.

The Bondholders have no right to require the use of the Book Entry System.

Whenever DTC requests the Issuer to do so, the Issuer will cooperate with DTC in taking appropriate action after written notice to arrange for another securities depository to maintain custody of certificates evidencing the Bonds.

#### **Section 2.7 Execution and Authentication of Bonds.**

(a) After their authorization as provided in this Article, Bonds may be executed by or on behalf of the Issuer by an Authorized Signatory of the Issuer and delivered to the Bond Trustee for authentication. Each Bond shall be executed in the name of the Issuer by the manual or facsimile signature of any one or more Authorized Representatives of the Issuer.

(b) In case any officer who shall have signed any of the Bonds shall cease to be such officer before the Bonds so signed shall have been authenticated and delivered by the Bond Trustee, such Bonds may nevertheless be authenticated and delivered as herein provided as if the person who so signed such Bonds had not ceased to be such officer. Any Bond may be signed on behalf

of the Issuer by any person who, on the date of such act, shall hold the proper office, notwithstanding that at the date of such Bond such person may not have held such office.

(c) The Bonds shall each bear thereon a certificate of authentication, in the form set forth in Appendix A hereto, executed manually by the Bond Trustee. Only such Bonds as shall bear thereon such certificate of authentication shall be entitled to any right or benefit under this Indenture and no Bond shall be valid or obligatory for any purpose until such certificate of authentication shall have been duly executed by the Bond Trustee. Such certificate of the Bond Trustee upon any Bond executed on behalf of the Issuer shall be conclusive evidence that the Bond so authenticated has been duly authenticated and delivered under this Indenture and that the holder thereof is entitled to the benefits hereof.

## **Section 2.8 Delivery of Bonds.**

The Bonds shall be executed in the form and manner set forth herein and shall be deposited with the Bond Trustee and thereupon shall be authenticated by the Bond Trustee. Upon payment to the Bond Trustee of the proceeds of sale thereof, such Bonds shall be delivered by the Bond Trustee to or upon the order of the purchasers thereof, but only upon receipt by the Bond Trustee of:

(i) A certified copy of the Issuer's resolution authorizing the issuance of such Bonds and the execution and delivery of this Indenture and the other Issuer Financing Documents;

(ii) Original executed counterparts, or certified copies, of the General Financing Documents;

(iii) A written request and authorization to the Bond Trustee on behalf of the Issuer to authenticate and deliver such Bonds to the purchasers therein identified upon payment to the Bond Trustee, for the account of the Issuer, of a sum specified in such request and authorization, plus any accrued interest on such Bonds to the date of such delivery. The proceeds of such payment shall be (i) paid over to the Bond Trustee and deposited in the Escrow Fund as provided in Section 5.1 hereof; and

(iv) A written opinion by Bond Counsel (or reliance letter) addressed to the Bond Trustee to the effect that this Indenture and the issuance of such Bonds has been duly authorized and that all conditions precedent to the delivery thereof have been fulfilled; and

(v) Bond Purchase Agreement and Investor Letters.

## **ARTICLE III. REDEMPTION OF BONDS**

### **Section 3.1 Optional, Mandatory Sinking Fund and Special Mandatory Redemption of Bonds.**

#### **(a) Optional Redemption.**

On or after December 1, 2026, the Bonds are subject to optional redemption upon the written direction of the Obligated Group Agent to the Bond Trustee, in whole or in part at any time, at a redemption price equal to 106% of the principal amount of the Bonds so redeemed, plus accrued interest thereon, to the redemption date. Upon the delivery of such written request by the Obligated Group Agent

to the Bond Trustee, the Issuer shall be deemed, without any action on the Issuer's part, to have exercised its option to redeem the Bonds under this clause (a) of Section 3.1.

(b) **Mandatory Sinking Fund Redemption of Bonds.**

The Bonds described below are subject to mandatory sinking fund redemption in part by lot on June 1 and December 1 of the years and in the respective principal amounts set forth below, at a Redemption Price equal to the principal amount thereof, from mandatory Sinking Fund payments which will be made in amounts sufficient to redeem, on June 1 and December 1 of each of the following years, the principal amount of the Bonds set forth opposite such year below, subject to adjustment as described in Section 6.2 hereof :

<b><u>YEAR</u></b> <b><u>(DATE)</u></b>	<b><u>Amount</u></b>
--	----------------------

\*Final Maturity.

**Section 3.2 Extraordinary Optional Redemption; Damage or Condemnation.**

The Bonds are subject to redemption in whole or in part, on any date, at a Redemption Price equal to the principal amount thereof to the extent required by the Master Trust Indenture following certain damage or condemnation events, as set forth in the Master Trust Indenture. Bonds redeemed as described in this paragraph shall be redeemed at a Redemption Price equal to the principal amount thereof.

**Section 3.3 Mandatory Redemption; Failure to Satisfy the Release Conditions by the Release Date.**

The Bonds are subject to mandatory redemption in whole on the Escrow Termination Date, at a Redemption Price equal to the principal amount thereof, plus accrued interest to the Escrow Termination Date, following a failure to satisfy the Escrow Release Conditions.

**Section 3.4 General Provisions.**

(a) Upon any redemption of Bonds there shall also be due and payable, concurrently with the payment of the Redemption Price, interest accrued on the Bonds and all other amounts then due under the Loan Agreement and the Master Note.

(b) Redemption of Bonds permitted or required by this Article III shall be made as follows, and the Bond Trustee shall give the notice of redemption as described in Section 6.3 hereof in respect of each such Redemption:

(i) Redemption shall be made pursuant to the general optional redemption provisions of Sections 3.1(a) and 3.1(b) on the dates permitted in such subsection and in such principal amounts and maturities as the Borrower shall request in a written notice to the Bond Trustee and the Issuer in accordance with Section 6.2 of the Loan Agreement and the requirements of the Master Trust Indenture.

(ii) Redemption shall be made pursuant to the mandatory sinking fund redemption provisions of Section 3.1(c) as and when required by such subsection without the necessity of any request by, or notification from the Issuer or from the Borrower.

(iii) Redemption shall be made pursuant to the extraordinary redemption provisions of Section 3.2 at such date or dates as the Borrower shall specify in a written notice to the Issuer and Bond Trustee in accordance with Section 6.2 of the Loan Agreement and the requirements of the Master Trust Indenture.

(iv) Redemption shall be made pursuant to the provisions of Section 3.3 at the earliest possible date following receipt of the certificate prescribed in Section 3.3 and payments made by the Borrower prescribed in Section 6.1 of the Loan Agreement, without the necessity of any instructions or further act of the Issuer or the Borrower.

(c) If, on any date set hereunder for the redemption of Bonds, moneys for the redemption of such Bonds or any portions thereof to be redeemed, together with interest to such redemption date, shall be held by the Bond Trustee so as to be available therefor on said date and if notice of redemption shall have been given as required in this Indenture, then, from and after such redemption date interest on such Bonds or portions thereof so called for redemption shall cease to accrue and become payable. If said moneys shall not be so available on such redemption date, such Bonds or portions thereof shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption.

### **Section 3.5 Optional Tender of Bonds upon Disposition of Project or Change in Control.**

(a) In the event of a Change in Control, the outstanding Bonds shall become subject to optional tender to the Bond Trustee at the election by any Beneficial Owner for purchase by the Bond Trustee, from funds paid by the Borrower, at a purchase price equal to the Tender Price thereof plus interest accrued thereon to the Tender Date.

(b) Upon receipt by the Bond Trustee of a Change in Control Notice from the Borrower as provided in Section 4.5(a) of the Loan Agreement, the Bond Trustee shall forward a copy of the Change in Control Notice to each Holder of Bonds via DTC, at his address appearing in the security register and post a copy of the same to EMMA.

(c) Upon receipt of a Change in Control Notice, each Beneficial Owner shall have the right, in its discretion, to elect whether or not to tender all or a portion of its Bonds by submitting to the Bond Trustee a Tender Election Notice no later than the expiration of the Tender Period. Each Tender Election Notice shall include the name and mailing address of the Beneficial Owner and the aggregate principal amount of the Bonds such Beneficial Owner will tender on the Tender Date. The Bond Trustee may conclusively rely on the accuracy of such information and shall promptly forward each Tender Election Notice to the Borrower and the Issuer.

(d) Failure by a Beneficial Owner to submit a Tender Election Notice on or prior to the last date for the submission of Tender Election Notices specified by the Borrower in the Change

in Control Notice shall conclusively constitute a waiver of its right to tender Bonds pursuant to the applicable Change in Control Notice.

(e) A Tender Election Notice provided by a Beneficial Owner in response to a Change in Control Notice may be withdrawn if the Bond Trustee receives, not later than three (3) Business Days prior to the Tender Date, a facsimile transmission, or written notice (including a notice delivered by Electronic Means), specifying, as applicable:

(i) the name of the Beneficial Owner;

(ii) the principal amount of the Bonds delivered for purchase by the Beneficial Owner as to which such notice of withdrawal is being submitted;

(iii) a statement that such Beneficial Owner is withdrawing his election to have such principal amount of such Bonds purchased; and

(iv) the principal amount, if any, of such Bonds (which shall be an Authorized Denomination) that remains subject to the original Tender Election Notice and that has been or will be delivered for purchase by the Borrower.

(f) The failure by the Bond Trustee to forward any Change in Control Notice to any Beneficial Owner entitled to receive such notice or to post the same to EMMA, or any defect therein, shall not in any way change the rights of each such Beneficial Owner to (i) submit a Tender Election Notice prior to expiration of the Tender Period and (ii) elect to have all or a portion of its Bonds purchased on the Tender Date. Any Change in Control Notice mailed by the Bond Trustee, in the manner provided for herein for the giving of notices generally, shall be conclusively presumed to have been given, whether or not the Beneficial Owner actually receives such notice.

(g) All Bonds tendered for purchase shall be purchased by the Bond Trustee at the Tender Price, together with all accrued interest on such Tendered Bonds, on the Tender Date with funds provided therefor by the Borrower pursuant to Section 4.5 of the Loan Agreement, together with written instructions allocating such funds between Series of Bonds. The Trustee shall deposit funds provided under this paragraph in the Debt Service Fund.

(h) Bonds that are subject to optional tender for purchase, for which there has been irrevocably deposited in trust with the Bond Trustee on or prior to the Tender Date an amount of money sufficient to pay the Tender Price thereof and all accrued interest due on such Tender Date, will be deemed to have been surrendered for purchase on such Tender Date.

(i) No owner of undelivered Bonds deemed surrendered for purchase pursuant to subparagraph (h) above shall be entitled to any payment (including interest to accrue subsequent to the related Tender Date) other than the Tender Price for such Bonds and the accrued interest thereon to the Tender Date, and any such undelivered Bonds shall no longer be entitled to the benefit and security of this Indenture, except for the purpose of the payment of the Tender Price thereof, and the Bond Trustee will not register any further transfers of such undelivered Bonds.

**ARTICLE IV.**  
**GENERAL TERMS AND PROVISIONS OF BONDS**

**Section 4.1**     **Date of Bonds.**

Each Bond shall be dated and bear interest from the Date of Delivery, except in the case of Bonds delivered in any exchange or transfer hereunder on or subsequent to the first Interest Payment Date of the Bond for which it is exchanged or transferred, which shall be dated and bear interest from the Interest Payment Date next preceding the date of such delivery, unless, as shown by the records of the Bond Trustee, interest on the Bond surrendered in exchange for such Bond shall be in default, in which case such Bond shall be dated as of the date to which interest has been paid in full on the Bond so surrendered, and such Bond shall bear interest from such date.

**Section 4.2**     **Form and Denominations.**

Unless otherwise provided in the Supplemental Indenture authorizing a series of Bonds, Bonds shall be issued in fully registered form, without coupons, in Authorized Denominations not exceeding the aggregate principal amount of Bonds of the same Series, maturity and interest rate as the Bond for which the denomination is to be specified. Subject to the provisions of Section 4.3 hereof, the Bonds shall be in substantially the form set forth in Appendix A to this Indenture, with such variations, omissions and insertions as are permitted or required by this Indenture.

**Section 4.3**     **Legends.**

(a) Each Bond shall contain on the face thereof the following statement: “The Bonds are limited obligations of the Issuer and are not a debt or liability of the Issuer, the State or any political subdivision or any tax or to make any appropriation for payment of the Bonds. The Bonds are payable solely from the funds pledged for their payment in accordance with this Indenture and the Loan Agreement. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof, including the Issuer, or any political subdivision approving the issuance of the Bonds nor the faith and credit of the Issuer shall be pledged to the payment of the principal of, premium, if any, or interest on the Bonds. The Issuer has no taxing power.”

(b) The Bonds may in addition contain or have endorsed thereon such provisions, specifications and descriptive words not inconsistent with the provisions of this Indenture as may be necessary or desirable to comply with custom or otherwise as may be determined by the Issuer prior to the delivery thereof.

**Section 4.4**     **Medium of Payment.**

The principal or Redemption Price, if any, of and interest on the Bonds shall be payable in any coin or currency of the United States of America which, on the respective dates of payment thereof, is legal tender for the payment of public and private debts. Such payment may be made as provided in Section 2.2 hereof.

**Section 4.5**     **Bond Details.**

Subject to the provisions hereof, the Bonds shall be dated, shall mature in such years and such amounts, shall bear interest at such rate or rates per annum, shall be subject to redemption on such terms and conditions and shall be payable as to the payment of the principal (or Redemption and/or Tender Price, if any) and interest at such place or places as shall be specified in this Indenture.



**Section 4.6 Interchangeability; Transfer and Registry.**

(a) Each Bond shall be transferable only upon compliance with the restrictions on transfer set forth on such Bond and only upon the books of the Issuer, which shall be kept for the purpose at the principal office of the Bond Trustee, by the registered owner thereof in person or by his attorney duly authorized in writing, upon presentation thereof together with a written instrument of transfer satisfactory to the Bond Trustee duly executed by the registered owner or his duly authorized attorney. Upon the transfer of any Bond the Issuer shall prepare and execute and the Bond Trustee shall authenticate and deliver in the name of the transferee one or more new Bonds of the same aggregate principal amount, Series and maturity as the surrendered Bond.

(b) Any Bond, upon surrender thereof at the corporate trust operations office of the Bond Trustee in Kansas City, Missouri (or some other place as may be designated by the Bond Trustee from time to time) with a written instrument of transfer satisfactory to the Bond Trustee, duly executed by the registered owner or his attorney duly authorized in writing, may, at the option of the owner thereof, be exchanged for an equal aggregate principal amount of Bonds of the same Series and maturity of any other authorized denominations.

(c) Except as otherwise specifically provided herein, the Issuer, the Borrower, the Bond Trustee and any Paying Agent may deem and treat the person in whose name any Bond shall be registered as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal and Redemption Price, if any, of and interest on such Bond and for all other purposes, and all payments made to any such registered owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the Issuer, the Bond Trustee, the Borrower nor any Paying Agent shall be affected by any notice to the contrary.

(d) No Bond shall be owned except by a Qualified Institutional Buyer or Accredited Investor in an Authorized Denomination. Each registered owner or beneficial owner of a Bond agrees by purchase of the Bond to abide by these limitations. In addition, no underwriter or placement agent for the Bonds shall deposit the Bonds in any trust or account under its control and sell any shares, participatory interests or certificates in such trust or account, and any initial purchaser of the Bonds from an underwriter or a placement agent shall not deposit the Bonds in any trust or account under its control and sell any shares, participatory interests or certificates in such trust or account except to Qualified Institutional Buyers and Accredited Investors in Authorized Denominations. The Bond Trustee shall have no obligation to determine compliance with this subsection (d).

**Section 4.7 Bonds Mutilated, Destroyed, Stolen or Lost.**

In case any Bond shall become mutilated or be destroyed, stolen or lost, the Issuer shall execute and thereupon the Bond Trustee shall authenticate and deliver, a new Bond of like Series, maturity and principal amount as the Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond or in lieu of and substitution for the Bond destroyed, stolen or lost, upon filing with the Bond Trustee of evidence satisfactory to the Issuer and the Bond Trustee that such Bond has been destroyed, stolen or lost and proof of ownership thereof, and upon furnishing the Issuer and the Bond Trustee with indemnity satisfactory to them and complying with such other requirements as the Issuer and the Bond Trustee may prescribe and paying such expenses as the Issuer and Bond Trustee may incur. All Bonds so surrendered to the Bond Trustee shall be canceled by it. Any such new Bonds issued pursuant to this Section in substitution for Bonds alleged to be destroyed, stolen or lost shall constitute original additional contractual obligations on the part of the Issuer, whether

or not the Bonds so alleged to be destroyed, stolen or lost be at any time enforceable by anyone, and shall be equally secured by and entitled to equal and proportionate benefits with all other Bonds issued hereunder in any moneys or securities held by the Issuer, the Bond Trustee or any Paying Agent for the benefit of the owners of the Bonds.

**Section 4.8 Cancellation and Destruction of Bonds.**

All Bonds paid or redeemed in full, either at or before maturity, shall be delivered to the Bond Trustee when such payment or redemption is made, and such Bonds together with all Bonds purchased by the Bond Trustee, shall thereupon be promptly canceled. Bonds so canceled shall be cremated or otherwise destroyed by the Bond Trustee, who shall execute a certificate of cremation or destruction in duplicate under signature of one of its authorized officers describing the Bonds so cremated or otherwise destroyed, and one executed certificate shall be filed with the Issuer and the other executed certificate shall be retained by the Bond Trustee.

**Section 4.9 Requirements With Respect To Transfers.**

In all cases in which the privilege of transferring Bonds is exercised, the Issuer shall execute and the Bond Trustee shall authenticate and deliver Bonds in accordance with the provisions of this Indenture. All Bonds surrendered in any such transfer shall forthwith be canceled by the Bond Trustee. For every such transfer of Bonds, the Issuer or the Bond Trustee may, as a condition precedent to the privilege of making such transfer, make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such transfer. The Bond Trustee shall not be required to transfer any Bond (i) during the period from the close of business on the last Business Day on or preceding the fifteenth (15<sup>th</sup>) day of the calendar month next preceding each Interest Payment Date until the first Business Day following such interest payment date, or (ii) for which notice of redemption has been given.

**Section 4.10 Registrar.**

The Bond Trustee shall also be Registrar for the Bonds, and shall maintain a register showing the names of all registered owners of Bonds, Bond numbers and amounts, and other information appropriate to the discharge of its duties hereunder. The Bond Trustee shall make available to the Borrower for its inspection during normal business hours the registration books for the Bonds, as may be requested by the Borrower in connection with any purchase or tender offer by it with respect to the Bonds.

**Section 4.11 Principal Balance; Annual Report.**

The Bond Trustee shall maintain a record of the principal amount of Bonds Outstanding at any time hereunder. On or before the first day of each calendar year, the Bond Trustee shall deliver to the Master Trustee, the Issuer and the Borrower a written report stating the principal amount of Bonds Outstanding as of such date.

**ARTICLE V.  
FUNDS AND ACCOUNTS**

**Section 5.1 Creation of Funds**

- (a) The Bond Trustee hereby establishes and creates the following special trust Funds:
  - (i) Costs of Issuance Fund

- (A) Proceeds Account
- (B) Borrower Account
- (ii) Debt Service Fund
  - (A) Principal and Interest Account
  - (B) Redemption Account
- (iii) Project Fund
  - (A) Project Account
  - (B) Capitalized Interest Account
  - (C) Working Capital Account
- (iv) Escrow Fund

(b) All of the Funds created hereunder shall be held by the Bond Trustee, including one or more depositories in trust for the Bond Trustee. All moneys and investments deposited with the Bond Trustee or any Paying Agent shall be held in trust and applied only in accordance with this Indenture and shall be trust funds for the purposes of this Indenture.

(c) The Bond Trustee shall establish separate accounts or subaccounts within each named Fund or Account for each Borrower if requested to do so by the Borrower.

(d) On the Date of Delivery, the Bond Trustee shall cause to be deposited

(i) to the Escrow Fund proceeds of the Bonds received in the aggregate cash amount of \$\_\_\_\_\_ (which includes \$\_\_\_\_\_ to fund the interest to accrue on the Bonds for the period between the Issuer Date and the Escrow Termination Date, which shall be used to fund the accrued interest on the bonds if the Escrow Release Conditions are not satisfied and, to the extent such Conditions are satisfied, shall be transferred to the Capitalized Interest Account within the Project Fund) (the “Escrow Deposit”).

(ii) to the Borrower Account of the Costs of Issuance Fund, the funds of the Borrower received in a cash amount of \$\_\_\_\_\_.

(e) The Bond Trustee shall transfer the Escrow Deposit as set forth in (i) through (ix) below on the Escrow Release Date if the Escrow Release Conditions are satisfied and the Borrower shall have delivered the following to the Bond Trustee: (1) a certificate of the Borrower, dated the Escrow Release Date, that (A) all Escrow Release Conditions have been satisfied, together with evidence thereof in a form acceptable to the Required Bondholders; and (B) no Default or Event of Default under this Indenture or the Loan Agreement or Default or Event of Default under the Master Indenture (as defined therein) has occurred and is continuing as of such date; and (2) written evidence of the approval of the Required Bondholders.

(i) \$\_\_\_\_\_ to the Proceeds Account within the Costs of Issuance Fund;

(ii) \$\_\_\_\_\_ to the Master Trustee for deposit into the Subordinate Debt Service Reserve Account within the Debt Service Reserve Fund;

(iii) \$\_\_\_\_\_ to the Project Account within the Project Fund;

(iv) \$\_\_\_\_\_ to the Capitalized Interest Account within the Project Fund;

(f) If, on the Escrow Termination Date, the Escrow Release Conditions have not been satisfied, the Bond Trustee shall transfer the Escrow Deposit to the Redemption Fund to be used, together with other funds provided by the Borrower, to fund the mandatory redemption of the Bonds pursuant to Section 3.3.

## **Section 5.2 Costs of Issuance Fund.**

(a) The Costs of Issuance Fund will be funded as provided in Section 5.1 hereof or at the written direction of the Borrower. The moneys in each account of the Costs of Issuance Fund shall be held by the Bond Trustee in trust and applied to the payment of Costs of Issuance for the Bonds, upon (i) with respect to funds in the Borrower Account, at the Date of Delivery, the delivery of a Closing Memorandum setting forth the costs of issuance to be funded from the Borrower Account and (ii) thereafter, a sequentially numbered Requisition of the Borrower filed with the Bond Trustee, in the form attached hereto as Appendix B, together with the related invoices, signed by an Authorized Representative of the Borrower. Each Requisition of the Borrower shall be sufficient evidence to the Bond Trustee of the facts stated therein and the Bond Trustee may conclusively rely upon and shall have no duty to confirm the accuracy of such facts. All payments from the Costs of Issuance Fund shall be reflected in the Bond Trustee's regular accounting statements.

(b) Any amounts remaining in the Proceeds Account six months following the Date of Delivery shall be transferred to the Project Account or the Working Capital Account, as directed in writing by the Borrower. Any amounts remaining in the Borrower Account six months following the Date of Delivery shall be released to the Borrower.

## **Section 5.3 Project Fund.**

(a) The Project Fund will be funded as provided in Section 5.1 hereof. The moneys in each account of the Project Fund shall be held by the Bond Trustee in trust and applied to the payment of (i) Costs of the Project, (ii) Operating and Working Capital Expenditures and (iii) Capitalized Interest.

(b) Before each payment is made from the Project Fund (including any accounts established therein) by the Bond Trustee, there shall be filed with the Bond Trustee a sequentially numbered Requisition of the Borrower conforming with the requirements of this Section and Section 3.9 of the Loan Agreement, and in the form attached hereto as Appendix B, stating with respect to each payment to be made:

(i) the requisition number;

(ii) the name and address of the Person to whom payment is due;

(iii) the purpose for which such payment is to be made;

(iv) the amount to be paid;

(v) that each obligation mentioned therein has been properly incurred and is a proper charge against the Project Fund;

(vi) that none of the items for which payment is requested has been previously paid or reimbursed from the Project Fund;

(vii) that each item for which payment is requested is or was necessary in connection with the acquisition, construction, installation, equipping or financing of the Project or, with respect to any payment from the Working Capital Account, Operating and Working Capital Costs;

(viii) that it has obtained and will maintain an invoice evidencing each item for payment, including invoices for costs previously paid and for which reimbursement is being requested by the Borrower, of Costs of the Project or Operating and Working Capital Costs due and payable, or previously paid and for which reimbursement is being requested; and

(ix) With respect to any payment prior to the final completion of a restoration of the Project from the Renewal Fund established under the Master Trust Indenture, the payment request, together with all previously requested payments, does not exceed 90% of the value of the work performed from time to time.

(c) Each such Requisition of the Borrower shall be sufficient evidence of the facts stated therein, and the Bond Trustee may conclusively rely upon and shall have no duty to confirm the accuracy of such facts. Upon receipt of each such Requisition of the Borrower, signed by an Authorized representative of the Borrower and the Inspecting Engineer and, on the Completion Date, accompanied by a Certificate of Substantial Completion in the form attached hereto as Appendix B, the Bond Trustee shall thereupon disburse moneys in the Project Account into the Working Capital Account.

(d) Reserved.

(e) Notwithstanding anything to the contrary herein, in the event of redemption of all of the Bonds pursuant to Section 3.1 hereof or an Event of Default that causes acceleration of the Bonds, any moneys then remaining in the Project Fund shall be transferred to the Redemption Account and shall be used to redeem the Bonds or in accordance with Section 3.1.

(f) Moneys in the Capitalized Interest Account shall be transferred by the Bond Trustee on the dates set forth below, commencing June 1, 2023, to the Interest Account in the following amounts to pay interest due and payable on the Bonds on each Interest Payment Date to and including December 1, 202\_, and a portion of the interest due and payable on the Bonds June 1, 202\_ in accordance with the following schedule.

<u>Date of Transfer</u>	<u>Transfer Amount</u>
-------------------------	------------------------

**Section 5.4 Debt Service Fund.**

(a) The Bond Trustee shall promptly deposit the following receipts in the Debt Service Fund:

(i) Any amount required pursuant to Section 5.1 hereof to be deposited from the proceeds of the Bonds.

(ii) All amounts received by the Bond Trustee pursuant to the Master Trust Indenture, in satisfaction of the obligations under Section 3.1 of the Loan Agreement.

(iii) Any other amounts required to be paid or transferred to the Debt Service Fund for payment of principal and interest due on, or the Tender Price with respect to the Bonds.

(iv) Any amounts received by the Bond Trustee pursuant to Article VI thereof.

(v) All other receipts, when and if required by the Borrower Financing Documents, the Obligated Group Financing Documents or any subsequent agreement or by this Indenture to be paid into the Debt Service Fund.

(b) Moneys in the Debt Service Fund shall be used to pay principal, Redemption Price or Tender Price, if any, or interest with respect to the Bonds. There shall be paid from the Principal and Interest Account to the Paying Agent, on each Interest Payment Date, the amounts required for the payment of the principal and interest due on the Bonds on such date. Such amounts shall be applied by the Paying Agent to the payment of principal and interest on the Bonds when due.

(c) Amounts in the Redemption Account (or in the Obligated Group's subaccount in the Payment Account established under the Master Trust Indenture) may be applied by the Bond Trustee (or by the Master Trustee on behalf of the Bond Trustee), upon specific written direction of the Borrower Representative, to the purchase of Bonds at prices not exceeding the Redemption Price thereof applicable on the next redemption date plus accrued interest and all other amounts then due under the Borrower Financing Documents and the Obligated Group Financing Documents in connection with such redemption, provided no Event of Default has occurred and is continuing. Such redemption date shall be the earliest date upon which Bonds are subject to redemption from such amounts. Any amount in the Redemption Account not so applied to the purchase of Bonds by forty-five (45) days prior to the next date on which the Bonds are so redeemable shall be applied to the redemption of Bonds on such redemption date; provided that if such amount aggregates less than \$5,000, it need not be then applied to such redemption. The Bonds to be redeemed shall be selected by the Bond Trustee in the manner provided in Section 6.2 hereof. Amounts in the Redemption Account to be applied to the redemption of Bonds shall be paid to the Paying Agent on or before the redemption date and applied by it on such redemption date to the payment of the Redemption Price of the Bonds being redeemed plus interest on such Bonds accrued to the redemption date and all other amounts then due under the Borrower Financing Documents and the Obligated Group Financing Documents in connection with such redemption.

(d) The moneys in the Redemption Account shall be used, at the written direction of the Borrower, to redeem Bonds in Authorized Denominations to the maximum degree permissible, and at the earliest possible dates at which the Bonds can be redeemed pursuant to Section 3.1 of this Indenture or, as otherwise requested in writing by the Borrower, if such request includes a certificate of the Borrower that such application of such moneys is permitted by this Indenture and the Loan Agreement. Notwithstanding Section 3.1 hereof, the moneys in the Redemption Account shall be invested at the written instruction of the Borrower and all such investment income shall be expended or reinvested as provided above.

(e) Provided that no Default or Event of Default has occurred and is continuing under the Loan Agreement, the Issuer shall receive a credit in respect of the Sinking Fund Payment for any Bonds that have been delivered by the Issuer or the Borrower to the Bond Trustee for cancellation on or before the forty-fifth (45th) day next preceding any Sinking Fund Payment due date and for any Bonds that prior to such date have been purchased or redeemed (otherwise than through the application of the Sinking Fund Payments) and canceled by the Bond Trustee and not theretofore applied as a credit against any Sinking Fund Payment; provided that such Bonds are of the same series and maturity as the Bonds for which a sinking fund payment is otherwise due. Each Bond so delivered shall be credited by the Bond Trustee at 100% of the principal amount thereof on the obligation of the Issuer on such Sinking Fund Payment date for such Bonds and any excess over such amount shall be credited on future Sinking Fund Payments in ascending chronological order, and the principal amount of Bonds to be redeemed by application of Sinking Fund Payments shall be accordingly reduced.

(f) To the extent the Borrower wishes to avail itself of these provisions, the Borrower Representative shall on or before the forty-fifth (45th) day next preceding each Sinking Fund Payment date furnish the Bond Trustee with the certificate of an Authorized Representative if and to whatever extent the provisions of this Section are to be availed of with respect to such Sinking Fund Payment, stating, in the case of the credit provided for, that such credit has not theretofore been applied against any Sinking Fund Payment and confirming that immediately available cash funds for the balance of the next succeeding prescribed Sinking Fund Payment will be paid on or prior to the next succeeding Sinking Fund Payment date.

(g) Any amounts remaining in the Debt Service Fund after payment in full of all Outstanding Bonds, the fees, charges and expenses of the Issuer, the Bond Trustee and any Paying Agent and all other amounts required to be paid hereunder or under the Borrower Financing Documents and the Obligated Group Financing Documents shall be paid upon the expiration or sooner termination of the Loan Agreement to the Master Trustee, so long as the Master Trust Indenture remains in full force and effect, and, thereafter, to or upon the direction of the Borrower.

#### **Section 5.5 Debt Service Reserve Fund.**

The Bonds are secured by a portion of the Debt Service Reserve Fund. To the extent money on deposit in the Debt Service Fund is insufficient to pay the principal of, premium, if any, or interest on the Bonds when due, the Bond Trustee shall request a transfer of funds from the trust estate held under the Master Indenture for deposit into the Debt Service Fund.

#### **Section 5.6 Intentionally Left Blank.**

#### **Section 5.7 Escrow Fund.**

(a) The Bond Trustee shall hold the Escrow Deposit as cash in the Escrow Fund pending distribution on the Escrow Release Date or the Escrow Termination Date. Interest earned in the Escrow Fund shall remain in the account.

(b) The Bond Trustee shall not sell or otherwise dispose of the cash and no further investment or reinvestment of monies in the Escrow Fund shall be permitted or made on behalf of the Issuer. The Bond Trustee shall apply such amounts (i) to the Mandatory Redemption of the Bonds pursuant to Section 3.3 on the Escrow Termination Date or (ii) if the Escrow Release Conditions are satisfied, as provided in Section 5.1(e).

## **Section 5.8 Investment of Funds and Accounts; Valuation**

(a) Amounts in the Funds and Accounts shall, if and to the extent then permitted by law, be invested in Investment Securities. Investments authorized under this Section shall be made by the Bond Trustee at the written direction of the Borrower, and may be made by the Bond Trustee through its own bond department. Any investment hereunder shall be made in accordance with written instructions of the Borrower. The Bond Trustee may conclusively rely upon such instructions as to both the suitability and legality of the directed investments. In the event no such instructions are received by the Bond Trustee, such amounts shall be invested in Investment Securities described in clause (vii)(a) of the definition thereof, pending receipt of such investment instructions. The Bond Trustee may make any and all such investments through its own investment department or that of its affiliates or subsidiaries. Such investments shall mature in such amounts and at such times as may be necessary to provide funds when needed to make payments from such Funds or Accounts. The Bond Trustee shall not be responsible or liable for any losses incurred on investments made pursuant to this Section 5.8.

(b) Except as provided in Sections \_\_\_ hereof, the income or interest earned and gains realized in excess of losses suffered by any Fund or Account held hereunder shall be transferred into the Principal and Interest Account of the Debt Service Fund.

(c) The Funds and Accounts established hereunder shall be valued as of each Interest Payment Date on the basis of market value; *provided, however*, a Fund Letter of Credit, unless disaffirmed or terminated, shall be valued at the face amount thereof.

(d) The Bond Trustee is authorized, in making or disposing of any investment permitted by this Section, to deal with itself (in its individual capacity) or with any one or more of its affiliates, whether it or such affiliate is acting as an agent of the Bond Trustee or for any third person or dealing as principal for its own account.

(e) All amounts in the Funds and Accounts held by the Bond Trustee at the end of any Business Day shall, at the option of the Bond Trustee, to the extent required on the next Business Day to make a payment under this Indenture, be held in cash until the next Business Day.

## **ARTICLE VI. PROCEDURES FOR REDEMPTION OF BONDS**

### **Section 6.1 Privilege of Redemption and Redemption Price.**

Bonds or portions thereof subject to redemption prior to maturity shall be redeemable, upon mailed notice as provided in this Article, at the times, at the Redemption Prices and upon such terms, in addition to and consistent with the terms contained in this Article, as shall be specified in Article III hereof or in any Supplemental Indenture authorizing the issuance of such Bonds, or in such Bonds.

### **Section 6.2 Selection of Bonds to be Redeemed.**

In connection with any partial redemption other than a sinking fund redemption, the Borrower shall specify the Bonds to be redeemed and the maturities to be redeemed and if no maturities are so specified, the Bond Trustee shall make a pro rata redemption among the maturities of Bonds Outstanding (and the mandatory sinking fund amounts shall also be reduced on a pro rata basis). So long as the Bonds are in book-entry form, when Bonds are called, allocation within each maturity shall be made by DTC or any successor securities depository and not by the Issuer or the Bond Trustee. In the event the Bonds are not



in book-entry form and there is a redemption of less than all the Outstanding Bonds of like Series and maturity, the Bond Trustee shall select by lot, using such method of selection as it shall deem proper in its discretion, the Bonds to be redeemed in Authorized Denomination, provided that the unredeemed portion of the Bonds remaining Outstanding shall be in Authorized Denomination. For purposes of this Section, Bonds or portions of Bonds which have theretofore been selected by lot for redemption shall not be deemed Outstanding.

### **Section 6.3 Notice of Redemption.**

When redemption is required or permitted by this Indenture, upon notification of the Bond Trustee by the Borrower of such redemption not less than five (5) Business Days (or such lesser period which is acceptable to the Bond Trustee) prior to the date on which the Bond Trustee must give notice to Holders as provided in this Section or the Letter of Representation between the Issuer and DTC (if the book entry system is still in effect), the Bond Trustee shall give notice, which notice may state, if the Borrower so instructs, that it is subject to the receipt of the redemption moneys by the Bond Trustee on or before the date fixed for redemption and which notice shall be of no effect unless such moneys are so received on or before such date of such redemption in the name of the Issuer, specifying the subsection of Article III hereof and, if applicable, the Section of the Supplemental Indenture, under which the redemption is to be made, the Series, maturities, numbers and amounts of the Bonds or portions thereof to be redeemed, the redemption date and the place or places where amounts due upon such redemption will be payable and the conditions, if any, that must be met as a prerequisite to such redemption. Such notice shall further state that on such date there shall become due and payable upon each Bond or portion thereof to be redeemed the Redemption Price thereof together with interest accrued to the redemption date and all other amounts then due under the Loan Agreement and the Master Note, and that from and after such date interest thereon shall cease to accrue and be payable. Notice of redemption shall be given by the Bond Trustee in the name and on behalf of the Issuer by mailing a copy of each such notice to the registered owner of the Bond sent electronically to DTC at least twenty (20) but not more than sixty (60) days prior to the date fixed for redemption. Such notice shall be effective upon transmission by the Bond Trustee to DTC, and any failure to receive such notice shall not affect the validity of the proceedings for redemption. In the event of a postal interruption, the Bond Trustee shall give notice by other appropriate means selected by the Bond Trustee in its discretion.

In the case of an optional or extraordinary optional redemption pursuant to Section 3.1 hereof, unless moneys sufficient to pay the Redemption Price of the Bonds called for redemption is received by the Bond Trustee prior to the giving of such notice of redemption, such notice shall state that said redemption shall be conditioned upon the receipt of such moneys by the Bond Trustee on or prior to the date fixed for redemption. If such moneys are not received or if such condition is not satisfied, such notice shall be of no force and effect, the Issuer shall not redeem such Bonds, the Redemption Price shall not be due and payable and the Bond Trustee shall give notice, in the same manner in which the notice of redemption was given, that such moneys were not so received and that such Bonds will not be redeemed.

### **Section 6.4 Payment of Redeemed Bonds.**

(a) Notice having been given in the manner provided in Section 6.3 hereof, and the conditions stated in such notice as prerequisite for redemption having been met, the Bonds or portions thereof so called for redemption shall become due and payable on the redemption dates so designated at the Redemption Price, plus interest accrued to the redemption date and all other amounts then due under the Loan Agreement and the Master Note. If, on the redemption date, moneys for the redemption of all the Bonds or portions thereof to be redeemed, together with interest to the redemption date, and all other amounts then due under the Loan Agreement and the Master Note, shall be held by the Paying Agent so as to be available therefor on such date and if

notice of redemption shall have been given as aforesaid, then, from and after the redemption date, interest on the Bonds or portions thereof so called for redemption shall cease to accrue and become payable. If such moneys shall not be so available on the redemption date, such Bonds or portions thereof shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption.

(b) Payment of the Redemption Price together with interest shall be made to or upon the order of the registered owner, only upon presentation of the Bond for cancellation or notation as provided in Section 6.5 hereof.

#### **Section 6.5 Cancellation of Redeemed Bonds.**

(a) All Bonds redeemed in full under the provisions of this Article shall forthwith be canceled and destroyed by the Bond Trustee and a certificate of destruction furnished to the Issuer, and no Bonds shall be executed, authenticated, issued or delivered in exchange or substitution therefor or for or in respect of any paid portion of a fully registered Bond. In the event that a portion only of a Bond shall be so called for redemption, then, at the option of the registered owner hereof if such owner is a Securities Depository, such Bond may be either submitted to the Bond Trustee for notation thereon of the payment of the portion of the principal hereof called for redemption or surrendered for redemption. If so surrendered, one or more new Bonds shall be issued for the unredeemed portion hereof.

(b) If there shall be called for redemption less than all of a Bond, the Issuer shall execute and the Bond Trustee shall authenticate and deliver, upon the surrender of such Bond, without charge to the owner thereof, for the unredeemed balance of the principal amount of the Bond so surrendered, Bonds of like Series and maturity in any of the authorized denominations.

#### **Section 6.6 Purchase In Lieu of Redemption.**

(a) Any Bonds called for redemption pursuant to this Article VI may be purchased by the Borrower, or by any party designated in writing by the Borrower, on the date upon which such Bonds were to have been redeemed (the “**Purchase in Lieu of Redemption Date**”), at the Redemption Price thereof. The Borrower shall deliver a written direction to the Bond Trustee of the party to purchase the Bonds pursuant to this Section, not later than the Business Day immediately preceding the Purchase in Lieu of Redemption Date. Bonds to be purchased pursuant to this Section which are not delivered to the Bond Trustee on the Purchase in Lieu of Redemption Date shall be deemed to have been so purchased, and the purchaser of such Bonds shall be the Owner of the Bonds for all purposes under this Indenture.

(b) The purchase of Bonds pursuant to this Section shall not be deemed to constitute a redemption of such Bonds or an extinguishment of the debt evidenced thereby.

#### **Section 6.7 Non-presentment of Bonds.**

In the event any Bond shall not be presented for payment when the remaining principal thereof becomes due, either at final maturity, or at the date fixed for redemption thereof, or otherwise, and funds sufficient to pay any such Bond shall have been made available to the Bond Trustee for the benefit of the holder or holders thereof, all liability of the Issuer to the holder thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Bond Trustee to pay such funds to the person or persons entitled thereto in the case of a fully registered Bond or, if the person is not known to the Bond Trustee, hold such funds, without liability for interest thereon, for

the benefit of the holder of such Bond, who shall thereafter be restricted exclusively to such funds, for any claim of whatever nature on his part under this Indenture or on, or with respect to, such Bond. Subject to applicable escheat laws, funds remaining with the Bond Trustee as described above and unclaimed for two years shall be deposited in the Redemption Account of the Debt Service Fund or, in the event there are no longer any Bonds Outstanding, shall be paid to the Master Trustee so long as the Master Trust Indenture remains in full force and effect, and, thereafter, to or upon the direction of the Borrower. Upon deposit or payment of such funds with the Master Trustee or to the Borrower, the Bond Trustee shall certify the amount thereof and the identifying numbers of the particular Bonds whose holders have a claim against such funds (which holders shall also be identified, if known) and deliver such certificate to the Borrower. Thereafter, such holders shall have an unsecured claim against the Borrower with respect to the payment of such unrepresented Bonds and shall have no further claim whatever against the Issuer or the Bond Trustee.

## **ARTICLE VII. PARTICULAR COVENANTS**

### **Section 7.1 No Pecuniary Liability on Issuer or Officers.**

(a) No provision, covenant or agreement contained in this Indenture or in the Bonds or any obligations herein or therein imposed upon the Issuer or the breach thereof, shall constitute or give rise to a charge upon its general credit, or impose upon the Issuer a pecuniary liability except only to the extent of the Trust Estate described in the granting clauses set forth at the beginning of this Indenture, and no bondholder or any other person shall have any right to make any claim against the Issuer under this Indenture or under any Bond beyond such limitation. In making the agreements, provisions and covenants set forth in this Indenture, the Issuer has not obligated itself except with respect to the Project Facilities and the application of the revenues derived in connection therewith as hereinabove provided, as further set forth in Section 13.13 of this Indenture.

(b) All covenants, stipulations, promises, agreements and obligations of the Issuer contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the Issuer and not of any Member of the Issuer or any other Issuer Indemnified Person (as defined in the Loan Agreement) in his or her individual capacity. No recourse shall be had for the payment of the principal or Redemption Price, if any, of or interest on the Bonds, for the performance of any obligation hereunder, or for any claim based thereon or hereunder against any of the aforementioned Persons or against any natural person executing the Bonds. No such Person is or shall become personally liable for any such payment, performance or other claim, and in no event shall any monetary or deficiency judgment be sought or secured against any such Person.

### **Section 7.2 Payment of Principal; Redemption Price and Tender Price, if any, and Interest.**

The Issuer covenants that it will promptly pay, but solely from the Trust Estate, the principal (or Redemption Price or Tender Price, if any), of and interest on every Bond issued under this Indenture, together with all other amounts due under the Loan Agreement, at the place, on the dates and in the manner provided herein and in the Bonds according to the true intent and meaning thereof.

### **Section 7.3 Further Assurances.**

The Issuer covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such indentures supplemental hereto and such further acts, instruments and transfers as the other may reasonably require for the better assuring, transferring,

conveying, pledging, assigning and confirming unto the Bond Trustee all and singular the property and rights assigned hereby and the amounts pledged hereby to the payment of the principal (or Redemption Price or Tender Price, if any), of and interest on the Bonds and all other amounts due under the Loan Agreement.

**Section 7.4     Inspection of Project Facilities Books.**

The Issuer covenants and agrees that all books and documents in its possession relating to the Project Facilities and the revenues derived from the Loan Agreement shall at all times be open to inspection by such accountants or other agencies as the Bond Trustee or the Master Trustee may from time to time designate. The Issuer does not represent or covenant that it will maintain current or complete books or records with respect to the Project Facilities in its possession.

**Section 7.5     Rights under Financing Documents.**

The General Financing Documents, originals or duly executed counterparts of which have been filed with the Bond Trustee, set forth the covenants and obligations of the Issuer and the Borrower, including provisions that subsequent to the issuance of Bonds and prior to their payment in full or provision for payment thereof in accordance with the provisions hereof, the General Financing Documents may not be effectively amended, changed, modified, altered or terminated without the written consents provided for therein, and reference is hereby made to the same for a detailed statement of the covenants and obligations of the Borrower thereunder. It is agreed that the Bond Trustee may and is hereby granted the right to enforce all rights of the Issuer other than the Unassigned Rights and all obligations of the Borrower, under and pursuant to the General Financing Documents, including, without limitation the Master Note and the security interests created thereby or securing the same. Nothing in this Section shall permit any reduction in the payments required to be made by the Borrower and the members of the Obligated Group, as applicable, under or pursuant to the Loan Agreement and the Master Note or any alteration in the terms of payment thereof. All covenants and agreements on the part of the Issuer shall, except as otherwise specifically provided herein, be for the benefit of the holders from time to time of the Bonds and may be enforced in the manner provided by Article VIII hereof on behalf of such holders by the Bond Trustee.

**Section 7.6     Creation of Liens, Indebtedness.**

The Issuer shall not create or consent to any lien or charge upon or pledge of the Master Note or the amounts to be paid thereunder, except the lien, charge and pledge created by this Indenture and the Bonds. The Issuer shall not incur any Indebtedness or issue any evidence of Indebtedness, other than the Bonds herein authorized, secured by a lien on or pledge of such revenues and income.

**Section 7.7     Recording and Filing.**

(a) The Issuer covenants that it will cooperate with the Borrower and the Bond Trustee to the extent necessary to allow the Borrower to cause the General Financing Documents, this Indenture and all supplements thereto and hereto, as well as such other security agreements, financing statements, and other instruments as may be required from time to time to be kept, to be recorded and filed in such manner and in such places as may be required by law in order to fully preserve and protect the security of the holders and owners of the Bonds and the rights of the Bond Trustee hereunder. The Issuer is under no obligation to record or file any such documents itself. The Bond Trustee shall file or cause to be filed all continuation statements with respect to those financing statements filed at the time of the issuance of the Bonds as further provided in Section 9.13 hereof.

(b) Pursuant to the Uniform Commercial Code in effect in the State, a pledge made by the Issuer in respect to Bonds is valid and binding from the time it is made, the money or property so pledged and thereafter received by the Issuer shall immediately be subject to the lien of the pledge without physical delivery or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Issuer irrespective of whether the parties have notice. This Indenture is not required to be recorded or filed under the provisions of the Uniform Commercial Code to be valid.

(c) The Issuer hereby irrevocably authorizes Bond Counsel at any time and from time to time to file or cause to be filed in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (a) indicate the collateral (i) as all assets of the Issuer pledged under this Indenture or words of similar effect, regardless of whether any particular asset comprised in the collateral falls within the scope of Article 9 of the Uniform Commercial Code of the State, or (ii) as being of an equal or lesser scope or with greater detail, and (b) contain any other information required by Article 9 of the Uniform Commercial Code of the state of the Issuer's location for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether the Issuer is an organization, the type of organization and any organization identification number issued to the Issuer, and (ii) in the case of a financing statement filed as a fixture filing or indicating collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the collateral relates. The Issuer agrees to furnish any such information to Bond Counsel promptly upon request. The Issuer also ratifies its authorization for Bond Counsel to have filed in any Uniform Commercial Code jurisdiction any like initial financing statements or amendments thereto if filed prior to the date hereof.

## **ARTICLE VIII.**

### **EVENTS OF DEFAULT; REMEDIES OF BONDHOLDERS**

#### **Section 8.1 Events of Default; Acceleration of Due Dates.**

(a) Each of the following events is hereby defined as and shall constitute an “**Event of Default**”:

(i) payment of any installment of principal, Redemption Price, Tender Price of, or interest on, any Bond is not made when due; or

(ii) if the Issuer shall fail to observe or perform any covenant or agreement contained in this Indenture, which failure would have a Material Adverse Effect, and such failure continues for a period of forty-five (45) days after written notice of such failure, requiring the same to be remedied, shall have been given by the Bond Trustee to the Borrower and the Issuer, the giving of which notice shall be at the discretion of the Bond Trustee unless the Bond Trustee is requested in writing to do so by the Required Bondholders, in which event such notice shall be given; provided, however, that if such observance or performance requires work to be done, actions to be taken, or conditions to be remedied, which by their nature cannot reasonably be done, taken or remedied within such 45-day period but can be done, taken or remedied within a reasonable period of time (not to exceed 90 days in total from the date of written notice of such failure), no Event of Default shall be deemed to have occurred or to exist if, and so long as, the Borrower or the Issuer, as the case may be, shall commence such work, action or other remedy within such 45-day period and shall diligently and continuously prosecute the same to completion; or

(iii) any Event of Default as specified in the Obligated Group Financing Documents or the Borrower Financing Documents shall occur and has not been waived.

(iv) the occurrence of an Act of Bankruptcy with respect to the Issuer, in which case the Bonds shall be deemed to be automatically accelerated, and all principal of and interest on the Bonds shall become immediately due and payable.

(b) Subject to the provisions of subsection (c) below, upon the occurrence of an Event of Default then and in every such case, the Bond Trustee (A) shall at the written request of the Required Bondholders or (B) in the case of an Event of Default under subsection (a)(i) above, without any such request, may declare the principal of all the Bonds and the interest accrued thereon to be immediately due and payable and provide notice of the same to the Master Trustee, the Borrower and the Issuer and upon any such declaration, all principal of and interest on the Bonds become immediately due and payable.

(c) Any declaration pursuant to subsection (b) above shall be subject to the condition that if, at any time after the principal of all Bonds shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided: (i) the Borrower shall deposit or cause to be deposited with the Bond Trustee a sum sufficient to pay (A) all matured installments of interest upon all Bonds and the principal and premium, if any, of all such Bonds that shall have become due otherwise than by acceleration (with interest on overdue installments of interest, to the extent permitted by law and on such principal and premium, if any, at the respective rates borne by such Bonds to the date of such deposit) and any other amounts required to be paid pursuant to such Bonds, and (B) the expenses and fees of the Bond Trustee and the Master Trustee (including without limitation attorneys' fees and expenses); and (ii) any and all Events of Default under this Indenture, other than the nonpayment of principal of and accrued interest on Outstanding Bonds that shall have become due by acceleration, shall have been remedied, then and in every such case, the Bond Trustee may and, if requested by the Required Bondholders, shall waive all Events of Default and rescind and annul such declaration and its consequences, but no such waiver or rescission and annulment shall extend to or affect any subsequent Event of Default.

## **Section 8.2 Enforcement of Remedies.**

(a) Upon the happening and continuance of any Event of Default, then and in every case, but subject to the provisions of Section 9.2 hereof, the Bond Trustee, as Bond Trustee of an express trust, shall be entitled and empowered to, and shall, upon direction of the Required Bondholders, proceed to protect and enforce its rights and the rights of the Bondholders under the Act, the Bonds, the General Financing Documents, including, without limitation, the Master Note and this Indenture, and under any agreement executed in connection with the foregoing, forthwith by such suits, actions or special proceedings in equity or at law, or by proceedings in the office of any board or officer having jurisdiction, whether for the specific performance of any covenant or agreement contained in this Indenture, the General Financing Documents or in aid of the execution of any power granted therein or in the Act or for the enforcement of any legal or equitable rights or remedies as the directions of the Required Bondholders shall require.

(b) When the Bond Trustee incurs expenses or renders services after the occurrence of an act of bankruptcy with respect to the Issuer or the Borrower, the expenses and the compensation for the services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law.

(c) In the enforcement of any right or remedy under this Indenture or under the Act, the Bond Trustee shall be entitled to sue for, enforce payment on and receive any or all amounts then or during any default becoming, and any time remaining, due hereunder for principal (or Redemption Price or Tender Price, if any), interest or otherwise under any of the provisions of the General Financing Documents, this Indenture or of the Bonds, and unpaid, with interest on overdue payments at the applicable rate or rates of interest specified in the Bonds or any Supplemental Indentures, together with any and all costs and expenses of collection and of all proceedings under the General Financing Documents, this Indenture, and the Bonds, without prejudice to any other right or remedy of the Bond Trustee or of the Bondholders, and to recover and enforce judgment or decree against the appropriate party or parties, but solely as provided in the General Financing Documents, including, without limitation, this Indenture and the Bonds, for any portion of such amounts remaining unpaid, with interest, costs, and expenses, and to collect in any manner provided by law, the moneys adjudged or decreed to be payable.

(d) Regardless of the happening of an Event of Default, the Bond Trustee, if requested in writing by the Required Bondholders and furnished with security and indemnity satisfactory to it, shall institute and maintain such suits and proceedings as it may be advised shall be necessary or expedient to prevent any impairment of the security under this Indenture by any acts which may be unlawful or in violation of the Indenture or of any resolution authorizing the Bonds, and such suits and proceedings as the Bond Trustee may be advised shall be necessary or expedient to preserve or protect its interests and the interests of the Bondholders; but no such request shall be otherwise than in accordance with the provisions of law and of this Indenture.

### **Section 8.3 Application of Revenues and Other Moneys After Default.**

(a) To the extent not required under the Master Note or the Master Trust Indenture to be delivered to the Master Trustee and applied under the Master Trust Indenture (moneys received from the Master Trustee not being subject to the foregoing proviso), all moneys received by the Bond Trustee pursuant to any right given or action taken under the provisions of this Article or from the Master Trustee and any other moneys held as part of the Trust Estate, after payment of *first* (i) the cost and expenses of the proceedings resulting in the collection of such moneys, the fees, expenses, liabilities and advances incurred or made by the Bond Trustee and any Paying Agent, including attorneys' fees, and (ii) the fees, costs and expenses of the Issuer and the Issuer Indemnified Persons and any other payments due them in respect of the Unassigned Rights (including, without limitation, indemnification payments); *provided*, that payment of amounts due to the Issuer or the Issuer Indemnified Persons under this Section shall not absolve the Borrower from liability therefor except to the extent of the amounts received from the Bond Trustee, shall be deposited in the Principal and Interest Account of the Debt Service Fund and all moneys so deposited in such Fund and available for payment of the Bonds shall be applied as follows, whether or not the principal of all Outstanding Bonds shall have become or have been declared due and payable:

FIRST: To the payment to the Holders of the Bonds entitled thereto of all installments of interest then due on any Bonds in the order of the maturity of such installments and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to such amounts due on such date, without any discrimination or preference;

SECOND: To the payment to the Holders of the Bonds entitled thereto of the unpaid principal installments which shall have become due, whether at maturity or by call for redemption, on any Bonds in order of their due dates and, if the amounts available shall not be

sufficient to pay in full all principal installments due on the same date, then to the payment thereof ratably, according to the amounts of such principal installments due on such date, without any discrimination or preference; and

THIRD: To the payment to the Holders entitled thereto of any additional amounts due and unpaid in respect of Bonds, in the order of the due dates of such amounts, and if the moneys available therefor shall not be sufficient to pay in full any such additional amounts due on the same date, then to the payment thereof ratably, according to the amounts due thereon, without any discrimination or preference.

(b) Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times, and from time to time, as the Bond Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Bond Trustee shall apply such funds, it shall fix the date upon which such application shall be made. The Bond 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 Bonds until such Bonds shall be presented to the Bond Trustee for appropriate endorsement or for cancellation if fully paid.

(c) Whenever all Bonds and interest thereon and all other amounts due under the Loan Agreement and the Master Note have been paid under the provisions of this Section and all fees, expenses and charges of the Bond Trustee and Paying Agent have been paid, any balance remaining in the Debt Service Fund shall be paid to the Master Trustee for deposit to the Revenue Fund established under the Master Trust Indenture and if the Master Trust Indenture is no longer in full force and effect, to or upon the order of the Borrower.

#### **Section 8.4     Actions by Bond Trustee.**

All rights of action under this Indenture or under any of the Bonds may be enforced by the Bond Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto and any such suit or proceedings instituted by the Bond Trustee shall be brought in its name as Bond Trustee without the necessity of joining as plaintiffs or defendants any holders of the Bonds, and any recovery of judgment, subject to the provisions of Section 8.3 hereof, shall be for the benefit of the holders of the Outstanding Bonds subject to the priorities and preferences provided for herein.

#### **Section 8.5     Required Bondholders Control Proceedings.**

The Required Bondholders shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Bond 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 the Indenture, or for any other proceedings hereunder; but such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture.

#### **Section 8.6     Individual Bondholder Action Restricted.**

(a) No owner of the Bonds shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of any provision of this Indenture or the execution of any trust under this Indenture or for any remedy under this Indenture unless such owner shall have previously given to the Bond Trustee written notice of the happening of an Event of Default, as provided in this Article, and (1) the Required Bondholders shall have filed a written



request with the Bond Trustee, and shall have offered it reasonable opportunity, either to exercise the powers granted in this Indenture or by the Act or by the laws of the State or to institute such action, suit or proceeding in its own name, and shall have offered to the Bond Trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and (2) the Bond Trustee shall have refused to comply with such request for a period of sixty (60) days after receipt by it of such notice, request and offer of indemnity, it being understood and intended that no owner of any Bond shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the pledge created by the Indenture, or to enforce any right under the Indenture, except in the manner herein provided; and that all proceedings at law or in equity to enforce any provision of the Indenture shall be instituted, had and maintained in the manner provided in the Indenture and for the equal benefit of all owners of the Outstanding Bonds.

(b) Nothing herein or in the Bonds contained shall affect or impair the right of any owner of the Bonds to enforce payment of the principal (or Redemption Price or Tender Price, if any), of and interest on any Bond or other amounts due under the Loan Agreement and the Master Note at and after the maturity thereof, or the obligation of the Borrower to pay the principal or Redemption Price or Tender Price, if applicable, of and interest on each of the Bonds or other amounts due under the Loan Agreement and the Master Note to the respective owners thereof at the time, place, from the source and in the manner herein and in such Bonds expressed.

**Section 8.7 Effect of Discontinuance of Proceedings.**

In case any proceeding taken by the Bond Trustee on account of any Event of Default shall have been dismissed, discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer, the Bond Trustee, and the owners of the Bonds shall be restored, respectively, to their former positions and rights hereunder, and all rights, remedies, powers and duties of the Bond Trustee shall continue as though no such proceedings had been taken.

**Section 8.8 Remedies Not Exclusive.**

No remedy by the terms of this Indenture enforced upon or reserved to the Bond Trustee or to the owners of the Bonds is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

**Section 8.9 Delay or Omission Upon Default.**

No delay or omission of the Bond Trustee or of the owner of any Bond to exercise any right or power arising upon any Event of Default shall impair any right or power or shall be construed to be a waiver of any such default or any acquiescence therein; and every power and remedy given by this Article to the Bond Trustee and the owner of any Bond, respectively, may be exercised from time to time and as often as may be deemed expedient by the Bond Trustee or by the owner of the Bonds.

**ARTICLE IX.  
BOND TRUSTEE AND PAYING AGENT**

**Section 9.1 Appointment and Acceptance of Duties.**

(a) UMB Bank, N.A. is hereby appointed as Bond Trustee. The Bond Trustee shall signify its acceptance of the duties and obligations of the Bond Trustee by executing this Indenture. All provisions of this Article shall be construed as extending to and including all the rights, duties

and obligations imposed upon the Bond Trustee under the Loan Agreement and the other General Financing Documents as fully for all intents and purposes as if this Article were contained in the Loan Agreement and the other General Financing Documents. The Bond Trustee accepts the trusts imposed upon it by this Indenture and agrees to perform said trusts, but only upon and subject to the provisions hereof, and no implied covenants or obligations shall be read into this Indenture against the Bond Trustee.

(b) The Bond Trustee is hereby appointed as Paying Agent for the Bonds. The corporate trust operations offices of the Bond Trustee are designated as the respective offices or agencies of the Issuer for the payment of the principal (or Redemption Price or Tender Price, if any) and the interest on the Bonds.

## **Section 9.2 Indemnity.**

(a) Except with respect to the Bond Trustee's payment in accordance with this Indenture of the principal (or Redemption Price or Tender Price, if any) and interest, on the Bonds from moneys delivered to the Bond Trustee for payment thereof, the Bond Trustee shall be under no obligation to take any action, institute any suit, or to take any remedial proceeding under this Indenture, or to enter any appearance in or in any way defend any suit in which it may be made defendant, or to take any steps in the execution of the trusts hereby created or in the enforcement of any rights and powers hereunder, until it shall be indemnified and provided with adequate security to its satisfaction against any and all costs and expenses, outlays, and counsel fees and other disbursements, and against all liability not due to its willful misconduct, gross negligence or bad faith. Such indemnification shall be provided by the Borrower and shall not be provided by the Issuer.

(b) The Bond Trustee Indemnified Persons shall be indemnified for and held harmless by the Borrower as provided in Section 7.10 of the Loan Agreement. No provision of this Indenture shall require the Bond Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

## **Section 9.3 Rights and Responsibilities of Bond Trustee.**

(a) The Bond Trustee shall have no responsibility in respect of the validity or sufficiency of this Indenture or the security provided hereunder or the due execution hereof by the Issuer, or in respect of the title or the value of the Project Facilities, or in respect of the validity of any Bonds authenticated and delivered by the Bond Trustee in accordance with this Indenture or to see to the recording, re-recording, filing or re-filing of the Indenture or any financing statement (except the filing of continuation statements as provided in Section 9.13 hereof) or any other document or instrument whatsoever. The recitals, statements and representations contained herein and in the Bonds shall be taken and construed as made by and on the part of the Issuer and not by the Bond Trustee, and it does not assume any responsibility for the correctness of the same; except that the Bond Trustee shall be responsible for its representation contained in its certificate of authentication on the Bonds. The obligation hereunder to pay or reimburse the Bond Trustee for expenses, advances, reimbursements and to indemnify and hold harmless the Bond Trustee pursuant to Section 9.2 shall constitute additional indebtedness hereunder and shall survive the satisfaction and discharge of all obligations under this Indenture.

(b) The Bond Trustee shall not be liable or responsible because of the failure of the Issuer to perform any act required of it by the Indenture or the Issuer Financing Documents or

because of the loss of any moneys arising through the insolvency or the act or default or omission of any depository other than itself in which such moneys shall have been deposited. The Bond Trustee shall not be responsible for the application of any of the proceeds of the Bonds or any other moneys deposited with it and paid out, invested, withdrawn or transferred in accordance herewith or for any loss resulting from any such investment. The Bond Trustee shall not be liable in connection with the performance of its duties hereunder except for its own willful misconduct, negligence or bad faith. The immunities and exemptions from liability of the Bond Trustee shall extend to its directors, officers, employees, attorneys and agents.

(c) The Bond Trustee, prior to the occurrence of an Event of Default (as defined in Section 8.1 hereof) of which the Bond Trustee is deemed to have knowledge pursuant to Section 9.14 hereof, and subsequent to an Event of Default that has been cured, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred of which the Bond Trustee is deemed to have knowledge (as defined in Section 9.14 hereof) and which has not been cured, the Bond Trustee shall exercise such of the rights and powers vested in it hereby and use the same degree of care and skill in exercising any rights or remedies or performing any of its duties hereunder as a prudent person would exercise under the circumstances in the conduct of his or her own affairs.

(d) The Bond Trustee shall have the right to consult with counsel chosen and may act upon the opinion or advice of such counsel. The Bond Trustee shall not be responsible for any loss or damage resulting from any action or inaction based on its good faith reliance upon such opinion or advice.

(e) The Bond Trustee shall not be liable or responsible for the failure of the Borrower to effect or maintain insurance on the Project Facilities as provided in the Borrower Financing Documents and the Obligated Group Financing Documents nor shall it be responsible for any loss by reason of want or insufficiency in insurance or by reason of the failure of any insurer in which the insurance is carried to pay the full amount of any loss against which it may have insured the Issuer, the Borrower, the Bond Trustee or any other person. The Bond Trustee shall not be liable or responsible for the failure of the Borrower to comply with any provision of the Loan Agreement or any other General Financing Document.

(f) The Bond Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers, or employees and shall not be answerable for the conduct of the same if appointed hereunder, and shall be entitled to advice of counsel concerning all matters of trusts hereof and duties hereunder, and may in all cases pay such compensation to any attorney, agent, receiver or employee retained or employed by it in connection herewith.

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

(h) The Bond Trustee shall not be required to take notice or be deemed to have notice of any default hereunder (except failure to be made any of the payments to the Bond Trustee required to be made by Article V) unless the Bond Trustee shall be specifically notified in writing of such default by the Issuer, the Borrower or the Borrower, or by the Required Bondholders and all notices or other instruments required by this Indenture to be delivered to the Bond Trustee must, in order to be effective, be delivered at the designated corporate trust office of the Bond Trustee,

and in the absence of such notice so delivered the Bond Trustee may conclusively assume there is no default except as aforesaid.

(i) Within 48 hours' notice during regular business hours, the Bond Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right fully to inspect any and all books, papers and records of the Borrower pertaining to the Bonds, and to take such memoranda from and in regard thereto as may be desired.

(j) The Bond Trustee shall not be required to give any bond or surety in respect to the execution of its trusts and powers hereunder or otherwise with respect to the Project Facilities.

(k) The Bond Trustee shall have the right, but shall not be required, to demand, with respect to the execution of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required, as a condition of such action by the Bond Trustee deemed desirable for the purpose of establishing the right to the withdrawal of any cash, the release of any property, or the taking of any other action by the Bond Trustee.

(l) The Bond Trustee has the right to take no action in connection with any environmental hazards that may exist at the Project Facilities and shall have no duty to take any action with respect to the environmental condition of the Trust Estate or any portion thereof if the Bond Trustee, in its individual capacity, determines that any such action would materially and adversely subject the Bond Trustee to environmental liability for which the Bond Trustee has not been adequately indemnified.

(m) The Bond Trustee shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions") given pursuant to this Indenture and delivered using Electronic Means; provided, however, that the Borrower shall provide to the Bond Trustee an incumbency certificate listing designated persons with the authority to provide such Instructions and containing specimen signatures of such designated persons, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If the Borrower elects to give the Bond Trustee Instructions using Electronic Means and the Bond Trustee in its discretion elects to act upon such Instructions, the Bond Trustee's understanding of such Instructions shall be deemed controlling. The Borrower understands and agrees that the Bond Trustee cannot determine the identity of the actual sender of such Instructions and that the Bond Trustee shall conclusively presume that directions that purport to have been sent by an Authorized Representative listed on the incumbency certificate provided to the Bond Trustee have been sent by such Authorized Representative. The Borrower shall be responsible for ensuring that only Authorized Representatives transmit such Instructions to the Bond Trustee and that the Borrower and all Authorized Representatives are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Borrower. The Bond Trustee shall not be liable for any losses, costs, or expenses arising directly or indirectly from the Bond Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Borrower agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Bond Trustee, including without limitation the risk of the Bond Trustee acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Bond Trustee and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Borrower; (iii) that the security procedures (if any)

to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Bond Trustee immediately upon learning of any compromise or unauthorized use of the security procedures.

**Section 9.4 Compensation.**

The Bond Trustee and Paying Agent shall be entitled to receive and collect from the Borrower to the Master Trustee as provided herein and in the General Financing Documents payment for fees for services rendered hereunder and all advances, counsel fees and expenses and other expenses made or incurred by the Bond Trustee or Paying Agent in connection therewith (including, without limitation, upon the occurrence of an Event of Default and during its continuance, as provided in Section 8.3(a) hereof). In the event that it should become necessary for the Bond Trustee to perform extraordinary services, the Bond Trustee shall be entitled to additional compensation therefor and to reimbursement for extraordinary expenses in connection therewith; provided that if such extraordinary services or extraordinary expenses are occasioned by the gross negligence or willful misconduct of the Bond Trustee it shall not be entitled to compensation or reimbursement therefor.

**Section 9.5 Additional Payments.**

The Bond Trustee shall transfer all Additional Payments owed to the Issuer that may come into the Bond Trustee's possession promptly upon receipt thereof from the Borrower to the Issuer at the address specified herein for notice to the Issuer or as otherwise directed by the Issuer.

**Section 9.6 Evidence on Which Bond Trustee May Act.**

(a) In case at any time it shall be necessary or desirable for the Bond Trustee to make any investigation concerning any fact preparatory to taking or not taking any action, or doing or not doing anything, as such Bond Trustee, and in any case in which this Indenture, the General Financing Documents provide for permitting or taking any action, it may rely conclusively, without independent investigation upon any certificate required or permitted to be filed with it under the provisions hereof or of the General Financing Documents or of the Obligated Group Financing Documents, and any such certificate shall be evidence of such fact and protect it in any action that it may or may not take, or in respect of anything it may or may not do, in good faith, by reason of the supposed existence of such fact. Prior to the occurrence of a default of which the Bond Trustee has been notified as provided in Section 9.3(h) hereof, the Bond Trustee may also accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient and may at its discretion secure such further evidence deemed necessary or advisable but shall in no case be bound to secure the same.

(b) The Bond Trustee may rely and shall be protected and shall incur no liability in acting or proceeding, or in not acting or not proceeding, in good faith, reasonably and in accordance with the terms of this Indenture, the General Financing Documents, upon any resolution, order, notice, request, consent, waiver, certificate, statement, affidavit, requisition, bond or other paper or document which it shall believe to be genuine and to have been adopted or signed by the proper board or person, subject to Section 9.3(m) or to have been prepared and furnished pursuant to any of the provisions of this Indenture, the General Financing Documents, or upon the written opinion of any attorney (who may be an attorney for the Issuer or the Borrower), engineer, appraiser, or accountant. The Bond Trustee may rely conclusively on any such certificate or other document and shall not be required to make any independent investigation in connection therewith.

**Section 9.7 Evidence of Signatures of Owners of the Bonds and Ownership of Bonds.**

(a) Any request, consent, revocation of consent or other instrument which this Indenture may require or permit to be signed and executed by the owners of the Bonds may be in one or more instruments of similar tenor, and shall be signed or executed by such owners of the Bonds in person or by their attorneys appointed in writing. Proof of (i) the execution of any such instrument, or of any instrument appointing any such attorney, or (ii) the holding by any person of the Bonds shall be sufficient for any purpose of this Indenture (except as otherwise herein expressly provided) if made in the following manner:

(i) The fact and date of the execution by any owner of the Bonds or his attorney of such instruments may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds, that the person signing such request or other instrument acknowledged to him the execution thereof or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer. Where such execution is by an officer of a corporation or a member of an association, a limited liability company or a partnership, on behalf of such corporation, association, limited liability company or partnership, such certificate or affidavit shall be accompanied by sufficient proof of his authority if requested by the Bond Trustee.

(ii) The ownership of registered Bonds and the amount, numbers and other identification, and date of owning the same shall be proved by the registry books.

(b) Except as otherwise provided in Section 10.3 hereof with respect to revocation of a consent, any request or consent by the owner of any Bond shall bind all future owners of such Bond in respect of anything done or suffered to be done by the Issuer or the Bond Trustee or any Paying Agent in accordance therewith.

**Section 9.8 Bond Trustee and Paying Agent Deal in Bonds and With Borrower.**

Any national banking association, bank or trust company acting as a Bond Trustee or Paying Agent, and its directors, officers, employees or agents, may in good faith buy, sell, own, hold and deal in any of the Bonds and may join in any action which any owner of the Bonds may be entitled to take and may otherwise deal with the Borrower with like effect as if such association, bank or trust company were not such Bond Trustee or Paying Agent. The Bond Trustee or any Paying Agent, in its individual capacity, either as principal or agent, may also engage in or be interested in any financial or other transaction with the Issuer or the Borrower, and may act as depository, Bond Trustee or agent for any committee or body of Owners secured hereby or other obligations of the Issuer as freely as if it did not act in any capacity hereunder.

**Section 9.9 Resignation or Removal of Bond Trustee.**

(a) The Bond Trustee may resign and thereby become discharged from the trusts created under this Indenture by notice in writing to be given to the Issuer and the Borrower and to the owners of the Bonds by electronic transmission to DTC and posted on EMMA not less than sixty (60) days before such resignation is to take effect, but such resignation shall not take effect until the appointment of a successor Bond Trustee pursuant to Section 9.10 hereof and such successor Bond Trustee shall accept such trust.

(b) The Bond Trustee may be removed at any time thirty (30) days after an instrument or concurrent instruments in writing is filed with the Bond Trustee by the Required Bondholders

or their attorneys-in-fact duly authorized, but such removal shall not take effect until the appointment of a successor Bond Trustee pursuant to Section 9.10 hereof and such successor Bond Trustee shall accept such trust. The Bond Trustee shall promptly give notice of such filing to the Issuer.

**Section 9.10 Successor Bond Trustee.**

(a) If, on the effective date of resignation or removal pursuant to Section 9.9 herein or if the Bond Trustee is dissolved or otherwise become incapable of acting or shall be adjudged a bankrupt or insolvent, or if a receiver, liquidator or conservator thereof, or of its property, shall be appointed, or if any public officer shall take charge or control of the Bond Trustee or of its property or affairs, the position of Bond Trustee shall thereupon become vacant.

(b) Within thirty (30) days after such vacancy shall have occurred, the Required Bondholders, by an instrument or concurrent instruments in writing, signed by such owners of the Bonds or their attorneys-in-fact thereunto duly authorized and filed with the Issuer, shall appoint a successor Bond Trustee, which shall immediately and without further act, supersede any Bond Trustee theretofore appointed. If no appointment of a successor Bond Trustee shall be made pursuant to the foregoing provisions of this Section, the owner of any Bond then Outstanding or any retiring Bond Trustee may apply to any court of competent jurisdiction to appoint a successor Bond Trustee. Such court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Bond Trustee.

(c) Any Bond Trustee appointed under this Section shall be a national banking association or a bank or trust company duly organized under the laws of the State or under the laws of any state of the United States authorized to exercise corporate trust powers. At the time of its appointment, any successor Bond Trustee shall have a capital stock and surplus aggregating not less than \$50,000,000.

(d) Every successor Bond Trustee shall execute, acknowledge and deliver to its predecessor, and also to the Issuer and the Borrower, an instrument in writing accepting such appointment, and thereupon such successor Bond Trustee, without any further act, deed, or conveyance, shall become fully vested with all moneys, estates, properties, rights, immunities, powers and trusts, and subject to all the duties and obligations of its predecessor with like effect as if originally named as such Bond Trustee, and thereupon the duties and obligations of the predecessor shall cease and terminate; but such predecessor shall, nevertheless, on the written request of its successor or of the Issuer, and upon payment of the compensation, expenses, charges and other disbursements of such predecessor which are due and payable pursuant to Section 9.4 hereof, execute and deliver an instrument transferring to such successor Bond Trustee all the estate, properties, rights, immunities, powers and trusts of such predecessor, except any indemnification rights. Every predecessor Bond Trustee, upon payment of the fees and expenses owed to such predecessor Bond Trustee, shall also deliver all property and moneys held by it under the Indenture to its successor. Should any instrument in writing from the Issuer be required by any successor Bond Trustee for more fully and certainly vesting in such Bond Trustee, the estate, properties, rights, immunities, powers and trusts vested or intended to be vested in the predecessor Bond Trustee any such instrument in writing shall, on request, be executed, acknowledged and delivered by the Issuer.

(e) Any company into which the Bond Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Bond Trustee may sell or

transfer all or substantially all of its corporate trust business, provided such company shall be a national banking association or a bank or trust company duly organized under the laws of any state of the United States, shall have a capital stock and surplus aggregating not less than \$50,000,000 and shall be authorized by law to perform all the duties imposed upon it by the Indenture, shall be the successor to such Bond Trustee, both in its capacity as Bond Trustee and its capacity as Paying Agent if the Bond Trustee is serving as Paying Agent, without the execution or filing of any paper or the performance of any further act.

(f) Any Bond Trustee which becomes incapable of acting as Bond Trustee shall pay over, assign and deliver to its successor any moneys, funds or investments held by it hereunder in the manner provided in Sections 9.9(a) and 9.10.

**Section 9.11 [Reserved].**

**Section 9.12 Moneys Held for Particular Bonds.**

The amounts held by the Bond Trustee or Paying Agent for the payment of the interest, principal (or Redemption Price or Tender Price, if any) due on any date with respect to particular Bonds, on and after such date and pending such payment, shall be set aside on its books and held in trust by it for the owners of the Bonds entitled thereto. Such funds shall be invested in Investment Securities at the written direction of the Borrower for the account of the Borrower or shall otherwise remain uninvested.

**Section 9.13 Continuation Statements.**

The Bond Trustee is authorized to file and shall file continuation statements for the financing statements filed at the time of issuance of the Bonds (a copy of which is provided to the Bond Trustee) to be filed in the applicable state offices so as to continue the perfected status thereof pursuant to the Uniform Commercial Code of the applicable states. In addition, unless the Bond Trustee shall have been notified in writing that any such initial filing or description of collateral was or has become defective, the Bond Trustee shall be fully protected in (i) relying on such initial filing and description in filing any financing or continuation statements or modifications thereto pursuant to this Section and (ii) filing any continuation statements in the same filing offices as the initial filings were made. The Borrower shall be responsible for the customary fees charged by the Bond Trustee for the preparation and filing of continuation statements and for the costs incurred by the Bond Trustee and its counsel in the preparation and filing of all continuation statements hereunder.

**Section 9.14 Obligation to Report Defaults.**

Subject to Section 9.3(h) hereof, the Bond Trustee shall deliver to the Issuer, the Master Trustee and the Borrower a written notice stating the existence of any condition or event of which it has received written notice and which constitutes, or with the giving of notice or the passage of time would constitute, an Event of Default and requesting the Borrower to notify it of the action it purposes to take with respect thereto. The Bond Trustee shall not be deemed to have notice of any Event of Default or condition or event which, with the giving of notice or the passage of time would constitute an Event of Default, unless and until it has received actual written notice thereof from the Borrower, Issuer, or Owners of at least 10% in aggregate principal amount of Bonds then Outstanding (provided that the Bond Trustee shall be deemed to have received written notice with respect to any event specified in subSection 8.1(a)(i) hereof).



**Section 9.15 Payments Due on non-Business Day.**

In any case where the date of payment maturity of interest on or principal of the Bonds or the date fixed for redemption of any Bonds shall be a day other than a Business Day, then payment of such amount shall be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such date.

**Section 9.16 Appointment of Co-Bond Trustee.**

(a) The Bond Trustee represents that it has the power and authority to perform all functions required of the Bond Trustee under the General Financing Documents. Without limiting the foregoing, it is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction denying or restricting the right of banking corporations or associations to transact business as Bond Trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture or the Loan Agreement, and in particular in case of the enforcement of either the Loan Agreement or the Indenture on default, or in case the Bond Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Bond Trustee or hold title to the properties, in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Bond Trustee appoint an additional individual or institution as a separate trustee or co-trustee. The following provisions of this Section are adapted to these ends.

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

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

**ARTICLE X.  
AMENDMENTS OF INDENTURE**

**Section 10.1 Limitation on Modifications.**

This Indenture shall not be modified or amended in any respect except as provided in and in accordance with and subject to the provisions of this Article.

**Section 10.2 Supplemental Indentures Without Consent of Owners of the Bonds.**

(a) Subject to the terms and conditions contained in this Article and Article XI, the Issuer and the Bond Trustee may, from time to time and at any time, adopt Supplemental Indentures with the prior written consent of the Borrower and without prior notice to, and without the consent of, the owners of the Bonds for any of the following purposes:

(i) To cure any ambiguity or to correct or supplement any provision contained herein or in any Supplemental Indenture which may be defective or inconsistent with any other provision contained herein or in any Supplemental Indenture, or to make such other provisions in regard to matters or questions arising under this Indenture or any Supplemental Indenture as shall not be inconsistent with this Indenture or adversely affect the interests of the Holders of any particular Bonds or series of Bonds;

(ii) To grant to or confer upon the Bond Trustee for the benefit of the owners of the Bonds any additional rights, remedies, powers, authority or security which may lawfully be granted or conferred and which are not contrary to or inconsistent with this Indenture as theretofore in effect;

(iii) To add to the covenants and agreements of the Issuer in this Indenture other covenants and agreements to be observed by the Issuer which are not contrary to or inconsistent with this Indenture as theretofore in effect;

(iv) To add to the limitations and restrictions in this Indenture other limitations and restrictions to be observed by the Issuer which are not contrary to or inconsistent with this Indenture as theretofore in effect;

(v) To confirm, as further assurance, any pledge under, and the subjection to any lien or pledge created or to be created by, this Indenture, of the properties of the Project Facilities, or revenues or other income from or in connection with the Project Facilities or of any other moneys, securities or funds, or to subject to the lien or pledge of this Indenture additional revenues, properties or collateral;

(vi) To authorize different authorized denominations of the Bonds and to make correlative amendments and modifications to this Indenture regarding exchangeability of Bonds of different authorized denominations, redemptions of portions of Bonds of particular authorized denominations and similar amendments and modifications of a technical nature;

(vii) To change any of the specified times of day or the number of days specified for the giving of notices in Article III and to make corresponding changes to the period for notice of redemption of the Bonds; provided that no change in the specified times of day to a later time and no decreases in any such number of days shall become effective until 30 days after the Bond Trustee has given notice to the Bondholders;

(viii) To provide for any uncertificated system of registering the Bonds or to provide for the change to or from a Book-Entry System for the Bonds;

(ix) To conform with amendments to the Master Trust Indenture;

(x) To evidence the succession of a new trustee or the appointment by the Bond Trustee or the Issuer of a co-trustee; or

(xi) To make any change related to the Bonds that does not adversely affect the interests of any Bondholder.

(b) Before the Issuer and the Bond Trustee shall adopt any Supplemental Indenture pursuant to this Section, there shall have been filed with the Bond Trustee an Opinion of Counsel satisfactory to the Bond Trustee to the effect that (i) such Supplemental Indenture is authorized or permitted by this Indenture and complies with its terms, and (ii) upon execution, the Supplemental Indenture will be valid and binding upon the Issuer and the Bond Trustee in accordance with its terms.

### **Section 10.3 Supplemental Indentures With Consent of Owners of the Bonds.**

(a) Subject to the terms and provisions contained in this Article, the Required Bondholders and the Borrower shall have the right from time to time, to consent to and approve the adoption by the Issuer and the Bond Trustee of any Supplemental Indenture as shall be deemed necessary or desirable by the Issuer or the Bond Trustee for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained herein. Nothing herein contained shall permit, or be construed as permitting, (i) without the consent of the owners of 80% of the aggregate principal amount of the Outstanding Bonds (A) a change in the terms of redemption or maturity of the principal of or the interest on any Outstanding Bond, or a reduction in the principal amount or redemption price of any Outstanding Bond or the rate of interest thereon without the consent of the owner of such Bond, or (B) the creation of a lien upon or pledge of revenues or other income from or in connection with the Loan Agreement other than the lien or pledge created by this Indenture or the Master Trust Indenture, or (C) a reduction in the aggregate principal amount of the Bonds or any subset of the same required for consent to such Supplemental Indenture or (ii) without the consent of all of the owners of the Outstanding Bonds, a preference or priority of any Bond or Bonds over any other Bond or Bonds, except as otherwise provided in Section 8.3.

(b) If at any time the Issuer or the Bond Trustee shall determine to adopt any Supplemental Indenture for any of the purposes of this Section, it shall cause notice of the proposed Supplemental Indenture to be mailed, postage prepaid, to all owners of the Bonds. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture, and shall state that a copy thereof is on file at the offices of the Bond Trustee for inspection by all owners of the Bonds.

(c) Within one year after the date of such notice, the Issuer and the Bond Trustee may execute such Supplemental Indenture in substantially the form described in such notice, only if there shall have first been filed with the Issuer and the Bond Trustee (i) the written consents of the required percentage of owners of the Bonds then Outstanding so affected, and (ii) an Opinion of Counsel stating that such Supplemental Indenture is authorized or permitted by this Indenture and complies with its terms, and that upon adoption it will be valid and binding upon the Issuer in accordance with its terms. Each valid consent shall be effective only if accompanied by proof of the owning, at the date of such consent, of the Bonds with respect to which such consent is given. A certificate or certificates by the Bond Trustee that it has examined such proof and that such proof is sufficient in accordance with this Indenture shall be conclusive that the consents have been given by the owners of the Bonds described in such certificate or certificates. Any such consent shall be binding upon the owner of the Bonds giving such consent and upon any subsequent owner of such Bonds and of any Bonds issued in exchange therefor (whether or not such subsequent owner thereof

has notice thereof), unless such consent is revoked in writing by the owner of such Bonds giving such consent or a subsequent owner thereof by filing such revocation with the Bond Trustee prior to the adoption of such Supplemental Indenture.

(d) If the owners of not less than the percentage of Bonds required by this Indenture shall have consented to and approved the execution thereof as herein provided, no owner of any Bond shall have any right to object to the enactment of such Supplemental Indenture, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the Issuer from adopting the same or from taking any action pursuant to the provisions thereof.

(e) Upon the adoption of any Supplemental Indenture pursuant to the provisions of this Section, this Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Issuer, the Bond Trustee and all owners of Bonds then Outstanding shall thereafter be determined, exercised and enforced under this Indenture, subject in all respects to such modifications and amendments.

#### **Section 10.4 Supplemental Indenture Part of the Indenture.**

Any Supplemental Indenture adopted in accordance with the provisions of this Article shall thereafter form a part of this Indenture and all the terms and conditions contained in any such Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes. The Bond Trustee shall execute any Supplemental Indenture adopted in accordance with the provisions of Sections 10.2 or 10.3 hereof; provided, however, that the Bond Trustee may, but shall not be obligated to, enter into any such instrument which adversely affects the Bond Trustee's own rights, duties or immunities under this Indenture or otherwise.

### **ARTICLE XI. AMENDMENTS OF FINANCING DOCUMENTS**

#### **Section 11.1 Rights of Borrower.**

Anything herein to the contrary notwithstanding, any supplement or amendment of the Borrower Financing Documents will not be effective until consented to in writing by the Borrower.

#### **Section 11.2 Amendments of Financing Documents Not Requiring Consent of Owners of the Bonds.**

The Issuer and the Bond Trustee may, without the consent of and without prior notice to the owners of the Bonds, consent to any amendment, change or modification of the General Financing Documents for the purpose of carrying out any of the purposes set forth in Section 10.2, curing any ambiguity or formal defect therein or to otherwise modify the same in a manner which is not adverse to the interests of the owners of the Bonds, as evidenced to the Bond Trustee by an Opinion of Counsel, upon which the Bond Trustee may conclusively rely. The Bond Trustee shall have no liability to any owner of the Bonds or any other person for any action taken by it in good faith pursuant to this Section.

#### **Section 11.3 Amendments of Financing Documents Requiring Consent of Owners of the Bonds.**

(a) Except as provided in the General Financing Documents and Section 11.2 hereof and in 13.2(a) and (b) below, the Issuer and the Bond Trustee shall not consent to any amendment,

change or modification of the General Financing Documents, without mailing of notice and the written approval or consent of the Required Bondholders, provided that the written approval or consent of the owners of 80% in aggregate principal amount of the Bonds at the time Outstanding, given and procured as in Section 10.3 hereof provided, shall be required for any amendment that causes any of the following effects: (1) a reduction in the aggregate principal amount of the Bonds required for consent to remedies or waivers of remedies in connection with the occurrence of an Event of Default thereunder, (2) an extension of the dates on which the Borrower's payments with respect to the Bonds are due, (3) a reduction in the principal amount or interest rate payable by the Borrower and the other members of the Obligated Group, as applicable, under the Loan Agreement and the Master Note, (4) the creation of any lien other than a lien securing all Bondholders and ratably securing all of the Bonds at any time Outstanding or (5) the elimination or diminution of the liens securing the Bonds except to the extent necessary and appropriate in connection with a reduction in any such lien permitted by the General Financing Documents.

(b) If at any time the Borrower shall request the consent of the Bond Trustee to any such proposed amendment, change or modification, the Bond Trustee shall cause notice of such proposed amendment, change or modification to be mailed in the same manner as is provided in Article X hereof with respect to Supplemental Indentures. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the principal office of the Bond Trustee for inspection by all owners of the Bonds. The Issuer and the Bond Trustee, as applicable, may rely upon an opinion of Bond Counsel to the effect that any proposed amendment, change or modification to the General Financing Documents is authorized or permitted by this Indenture and complies with its terms, and upon execution, such amendment, change or modification will be valid and binding upon the Issuer in accordance with its terms.

## **ARTICLE XII.**

### **DEFEASANCE; DISCHARGE OF INDENTURE**

#### **Section 12.1 Defeasance.**

(a) If the Issuer shall pay or cause to be paid to the holders of all Outstanding Bonds, the principal and interest and Redemption Price or Tender Price, if any, to become due thereon, at the times and in the manner stipulated therein and in this Indenture and any Supplemental Indenture authorizing the issuance of such Bonds, then the pledge of any revenues and other moneys, securities, funds and property hereby pledged and all other rights granted hereby with respect to such Bonds shall be discharged and satisfied. In such event, the Bond Trustee shall, upon the request of the Issuer or the Borrower, execute and deliver to the Issuer or the Borrower all such instruments as may be desirable to evidence such discharge and satisfaction and after all amounts owed to the Bond Trustee have been paid, the Bond Trustee shall pay over or deliver to the Master Trustee, so long as the Master Trust Indenture remains in full force and effect, and thereafter, to or upon the direction of the Borrower, all moneys or securities held by it pursuant to this Indenture which are not required for the payment or redemption of such Bonds not theretofore surrendered for such payment or redemption. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the holders of all Outstanding Bonds of a particular Series the principal or Redemption Price or Tender Price, if applicable, and interest due or to become due thereon, at the times and in the manner stipulated therein in this Indenture and in the Supplemental Indenture authorizing a Series, such Bonds or Series of Bonds shall cease to be entitled to any lien, benefit or security hereunder and all covenants, agreements and obligations of the Issuer to the holders of such Bonds or Series of Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

(b) Bonds shall, prior to the maturity or redemption date thereof, be deemed to have been paid with the effect expressed in subsection (a) of this Section if (A) in case any of said Bonds are to be redeemed on any date prior to their maturity, the Issuer shall have given to the Bond Trustee in form satisfactory to it irrevocable instructions to mail as provided in Article VI notice of redemption on said date of such Bonds, (B) there shall have been deposited with the Bond Trustee either cash in an amount which shall be sufficient, or Defeasance Collateral the principal of and the interest on which when due (without further reinvestment) will provide moneys which, together with the cash, if any, deposited with the Bond Trustee at the same time, shall be sufficient, in the opinion of a nationally recognized certified public accountant, to pay when due the principal or Redemption Price or Tender Price, if any, of and interest due and to become due on said Bonds on and prior to the redemption date or maturity date thereof as the case may be, and (C) in the event said Bonds do not mature and are not by their terms subject to redemption within the next succeeding sixty (60) days, the Issuer shall have given the Bond Trustee in form satisfactory to it irrevocable instructions to mail, as soon as practicable, a notice to the holders of such Bonds that the deposit required by (B) above has been made with the Bond Trustee and that said Bonds are deemed to have been paid in accordance with this Section and stating such maturity or redemption date upon which moneys are to be available for the payment of the principal or Redemption Price or Tender Price, if any, on said Bonds. Neither Defeasance Collateral nor moneys deposited with the Bond Trustee pursuant to this Section nor principal or interest payments on any such Defeasance Collateral shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal or Redemption Price or Tender Price, if any, of and interest on said Bonds; but if any cash received from such principal or interest payments on such Defeasance Collateral deposited with the Bond Trustee, is not then needed for such purpose, the Bond Trustee shall notify the Issuer of such receipt, and upon written direction from the Issuer shall to the extent practicable, reinvest such amounts in Defeasance Collateral maturing at times and in amounts sufficient to pay when due the principal or Redemption Price or Tender Price, if any, and interest to become due on said Bonds on and prior to such redemption date or maturity date thereof, as the case maybe, and interest earned from such reinvestments shall be paid over to the Master Trustee, so long as the Master Trust Indenture remains in full force and effect, and, thereafter, to or upon the direction of the Borrower, as received by the Bond Trustee, free and clear of any trust, lien or pledge hereunder.

(c) If, through the deposit of moneys by the Issuer or otherwise, the Bond Trustee shall hold pursuant to this Indenture, moneys sufficient to pay the principal and interest to maturity on all Outstanding Bonds, or in the case of Bonds in respect of which the Issuer shall have taken all action necessary to redeem prior to maturity, sufficient to pay the Redemption Price or Tender Price, if any, and interest to such redemption date, then at the request of the Issuer all moneys held by the Bond Trustee hereunder shall be held by the Bond Trustee for the payment or the redemption of Outstanding Bonds.

(d) Anything in this Indenture to the contrary notwithstanding, subject to applicable escheat laws, any moneys held by the Bond Trustee in trust for the payment and discharge of any of the Bonds which remain unclaimed for two years after the date when all of the Bonds have become due and payable either at their stated maturity dates or by call for earlier redemption, if such moneys were held by the Bond Trustee at such date, or for two years after the date of deposit of such moneys if deposited with the Bond Trustee after the said date when all of the Bonds became due and payable, shall be paid over to the Master Trustee, so long as the Master Trust Indenture remains in full force and effect, and, thereafter, shall be paid over to or upon the direction of the Borrower, free and clear of any trust, lien or pledge hereunder, and the Bond Trustee shall thereupon be released and discharged.

(e) A Supplemental Indenture may provide that any or all of the provisions of this Section 12.1 are applicable or not applicable, and that other provisions of like or different effect are applicable, to the Series of Bonds authorized by such Supplemental Indenture.

**ARTICLE XIII.**  
**GENERAL PROVISIONS**

**Section 13.1 Notices.**

Any notice, request, demand communication or other paper shall be sufficiently given and shall be deemed given when delivered or, if to Bondholders, mailed by first class mail, and otherwise on the third Business Day after sent by certified mail, return receipt requested, postage prepaid or by trackable overnight delivery (or, if earlier, when received or refused), addressed as follows:

If to the Issuer: The City of Fort Wayne, Indiana  
Attention: Law Department  
200 E. Berry Street, Suite 320  
Fort Wayne, Indiana 46802

If to the Borrower  
Representative:

If to the Bond Trustee: UMB BANK, N.A.  
120 South Sixth Street, Suite 1400  
Minneapolis, MN 55402  
Attn: Katie Carlson  
Vice President  
Corporate Trust Services

A duplicate copy of each notice required to be given hereunder by the Bond Trustee to either the Issuer or the Borrower shall also be given to the other. Any notice party may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

**Section 13.2 Bondholder Directions and Consents.**

(a) Notwithstanding anything herein to the contrary, during any period when the Book Entry System is in effect, when any consent or direction is permitted to or required of any Bondholder or group of Bondholders or when any notice is required to be given to any Bondholder hereunder or under the General Financing Documents, the Bond Trustee shall comply with terms of this Section.

(b) During any period when the Book Entry System is in effect, any notices required to be delivered to the Bondholders shall be delivered also to each Beneficial Owner at the address most recently given by the Beneficial Owner to the Bond Trustee in writing, if any, and posted to EMMA. Such notice shall be delivered in the manner required for notices to the Bondholders established herein, except with respect to the address to which such notice is sent.

(c) Any consent or direction permitted or required of any Bondholder or group of Bondholders may be obtained from the Beneficial Owners directly. To the extent any Beneficial Owner delivers a consent or direction directly to the Bond Trustee such direction or consent shall

be counted towards the total for determining whether the requisite portion of the Bondholders have consented to or directed any action.

(d) If any consent, approval or agreement is requested or required of the Bond Trustee in its capacity as holder of the Master Note, the Bond Trustee, absent specific direction of the Required Bondholders, the Bond Trustee may (but in no instance shall be obligated to) take such action as it deems appropriate after giving notice to Bondholders if, in the Bond Trustee's reasonable judgment (which may be formed in conclusive reliance upon advice of counsel), such action is not contrary to the provisions hereof and will not materially adversely affect the Bondholders. The Bond Trustee may request Required Bondholder consent to any action requested of it under this Indenture.

### **Section 13.3 Parties Interested Herein.**

Except as otherwise specifically provided herein, nothing in this Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the Issuer, the Bond Trustee, the Borrower, the Master Trustee, the Paying Agent, if any, and the registered owners of the Bonds, any right, remedy or claim under or by reason of this Indenture or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Indenture contained by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the Bond Trustee, the Borrower, the Paying Agent, if any, and the registered owners of the Bonds.

### **Section 13.4 Content of Certificates.**

Notwithstanding any provision hereof to the contrary, whenever any certificate or opinion is required by the terms of this Indenture to be given by the Issuer on its own behalf, any such certificate or opinion may be made or given by an Authorized Signatory (and in no event individually) and may be based (i) insofar as it relates to factual matters, upon a certificate of or representation by the Bond Trustee or the Borrower; and (ii) insofar as it relates to legal or accounting matters, upon a certificate or opinion of or representation by counsel or an accountant, in each case under clause (i) and (ii) without further investigation or inquiry by such Authorized Signatory or otherwise on behalf of the Issuer.

### **Section 13.5 Waiver of Personal Liability.**

No Issuer Indemnified Person shall be individually or personally liable for the payment of any principal of, premium, if any, or interest on the Bonds or any costs incidental thereto or any sum hereunder or under the Loan Agreement or any claim based hereon or thereon, or be subject to any personal liability or accountability by reason of the execution and delivery of this Indenture or the Loan Agreement.

### **Section 13.6 No Obligation to Enforce Assigned Rights.**

Notwithstanding anything to the contrary in this Indenture or the Loan Agreement, the Issuer shall have no obligation to and instead the Bond Trustee and/or the Bondholders, as the case may be, in accordance with this Indenture or the Loan Agreement, shall have the right, without any direction from or action by the Issuer, to take any and all steps, actions and proceedings, to enforce any or all rights of the Issuer (other than the Unassigned Rights) under this Indenture or the Loan Agreement, including, without limitation, the rights to enforce the remedies upon the occurrence and continuation of an Event of Default and the obligations of the Borrower under the Loan Agreement.



**Section 13.7 Binding Effect.**

Notwithstanding any provision hereof to the contrary, it is specifically acknowledged and agreed that, to the extent of their rights hereunder (including, without limitation, their rights to immunity and exculpation from pecuniary liability) each Issuer Indemnified Person is a third-party beneficiary of this Indenture entitled to enforce such rights in his, her, its or their own name.

**Section 13.8 No impairment of Rights.**

Nothing herein shall be deemed or construed to limit, impair or affect in any way the Issuer (or any Issuer Indemnified Person's) right to enforce the Unassigned Rights, regardless of whether there is then existing an Event of Default (including, without limitation, a payment default), or any action based thereon or occasioned by an Event of Default or alleged Event of Default, and regardless of any waiver or forbearance granted by the Bond Trustee or any Bondholder in respect thereof. Any default or Event of Default in respect of the Unassigned Rights may only be waived with the Issuer's written consent.

**Section 13.9 Issuer's Performance.**

None of the provisions of this Indenture or the Loan Agreement shall require the Issuer to expend or risk its own funds or otherwise to incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder or thereunder, unless payable from the Trust Estate, or unless the Issuer shall first have been adequately indemnified by the Borrower to its satisfaction against the cost, expense, and liability which may be incurred thereby. The Issuer shall not be under any obligation hereunder or under the Loan Agreement to perform any administrative service with respect to the Bonds or the Project Facilities (including, without limitation, record keeping and legal services), it being understood that such services shall be performed or provided by the Bond Trustee or the Borrower. The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions expressly contained in this Indenture, the Loan Agreement, and any and every Bond executed, authenticated and delivered under this Indenture; provided, however, that the Issuer shall not be obligated to take any action or execute any instrument pursuant to any provision hereof unless and until it shall have (i) been directed to do so in writing by the Borrower, the Bond Trustee, or the Bondholder having the authority to so direct; (ii) received from the Borrower, the Bond Trustee, or the Bondholder requesting such action or execution assurance satisfactory to the Issuer that the Issuer's expenses incurred or to be incurred in connection with taking such action or executing such instrument have been or will be paid or reimbursed to the Issuer; and (iii) if applicable, received in a timely manner the instrument or document to be executed, in form and substance satisfactory to the Issuer.

In complying with any provision herein or in the Loan Agreement, including but not limited to any provision requiring the Issuer to "cause" another Person to take or omit any action, the Issuer shall be entitled to rely conclusively (and without independent investigation or verification) (i) on the faithful performance by the Bond Trustee or the Borrower, as the case may be, of their respective obligations hereunder and under the Loan Agreement and (ii) upon any written certification or opinion furnished to the Issuer by the Bond Trustee or the Borrower, as the case may be. In acting, or in refraining from acting, under this Indenture, the Issuer may conclusively rely on the advice of its counsel. The Issuer shall not be required to take any action hereunder or under the Loan Agreement that it reasonably believes to be unlawful or in contravention hereof or thereof.

**Section 13.10 Effective Date; Counterparts.**

This Indenture shall become effective on delivery. It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 13.11 Date for Identification Purposes Only.**

The date of this Indenture shall be for identification purposes only and shall not be construed to imply that this Indenture was executed on such date.

**Section 13.12 Holidays.**

If the date for making any payment or the date for performance of any act or the exercising of any right, as provided in this Bond Indenture, is not a Business Day, such payment may be made or act performed or right exercised on the next succeeding business day with the same force and effect as if done on the nominal date provided in this Bond Indenture.

**Section 13.13 Governing Law; Jurisdiction.**

The effect and meaning of this Indenture and the rights of all parties hereunder shall be governed by, and construed in accordance with, the laws of the State of Indiana. All claims of whatever character arising out of this Indenture, or under any statute or common law relating in any way, directly or indirectly, to the subject matter hereof or to the dealings between the Issuer and any other party hereto, if and to the extent that such claim potentially could or actually does involve Issuer or any Issuer Indemnified Person, shall be brought in any state or federal court of competent jurisdiction located in Allen County, Indiana. By executing and delivering this Indenture, each party hereto irrevocably: (i) accepts generally and unconditionally the exclusive jurisdiction and venue of such courts; (ii) waives any defense of forum non conveniens; and (iii) agrees not to seek removal of such proceedings to any court or forum other than as specified above. The foregoing shall not be deemed or construed to constitute a waiver by the Issuer of any prior notice or procedural requirements applicable to actions or claims against or involving joint powers commissions or governmental units of the State of Indiana that may exist at the time of and in connection with such matter.

**Section 13.14 Non-Liability of Issuer.**

(a) The Issuer shall not be obligated to pay the principal (or Redemption Price or Tender Price) of, premium, if any, or interest on the Bonds or any costs incidental thereto, except from the Trust Estate. Neither the faith and credit nor the taxing power of the Issuer, the State or any other political subdivision or agency thereof or any political subdivision approving the issuance of the Bonds, nor the faith and credit of the Issuer, is pledged to the payment of the principal of, premium, if any, or interest on the Bonds or any costs incidental thereto. The Issuer has no taxing power. The Issuer shall not be directly, indirectly, contingently or otherwise liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Indenture, the Bonds or the Loan Agreement, except only to the extent amounts are received for the payment thereof from the Borrower under the Loan Agreement.

(b) The Bond Trustee hereby acknowledges that the Issuer's sole source of moneys to repay the Bonds will be provided by the Trust Estate, and hereby agrees that if such amounts shall ever prove insufficient to pay all principal of, premium, if any, and interest on the Bonds as the

same shall become due (whether by maturity, redemption, acceleration or otherwise) or any costs incidental thereto, then the Bond Trustee shall give notice to the Borrower in accordance with Article VIII of this Indenture to pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal, premium, if any, or interest, or costs incidental thereto including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Bond Trustee, the Borrower, the Issuer or any third party, subject to any right of reimbursement from the Bond Trustee, the Issuer or any such third party, as the case may be, therefor.

**Section 13.15 Limited Liability.**

THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS SHALL BE SPECIAL AND LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM PAYMENTS OR PREPAYMENTS TO BE MADE ON THE MASTER NOTE, AS APPLICABLE TO EACH SERIES, AND OTHER AMOUNTS PAYABLE UNDER THE LOAN AGREEMENT (EXCEPT FOR UNASSIGNED RIGHTS AND EXCEPT TO THE EXTENT PAID OUT OF MONEYS ATTRIBUTABLE TO BOND PROCEEDS OR THE INCOME FROM THE TEMPORARY INVESTMENT THEREOF AND, UNDER CERTAIN CIRCUMSTANCES, PROCEEDS FROM INSURANCE AND CONDEMNATION AWARDS) AND SHALL BE A VALID CLAIM OF THE RESPECTIVE HOLDERS THEREOF ONLY AGAINST THE FUNDS ESTABLISHED UNDER THIS BOND INDENTURE AND OTHER MONEYS HELD BY THE BOND TRUSTEE FOR THE BENEFIT OF THE BONDS AND THE PAYMENTS DUE OR TO BECOME DUE UPON OR UNDER THE MASTER NOTE, AS APPLICABLE TO EACH SERIES, AND THE LOAN AGREEMENT (EXCEPT FOR UNASSIGNED RIGHTS) ALL OF WHICH ARE HEREBY ASSIGNED AND PLEDGED HEREUNDER FOR THE EQUAL AND RATABLE PAYMENT OF THE BONDS AND SHALL BE USED FOR NO OTHER PURPOSE THAN TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS, EXCEPT AS MAY BE OTHERWISE EXPRESSLY AUTHORIZED IN THIS BOND INDENTURE.

THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS DO NOT CONSTITUTE A DEBT OR LIABILITY OF THE STATE OR OF ANY AGENCY OR POLITICAL SUBDIVISION THEREOF, OR A PLEDGE OF THE FAITH AND CREDIT OF THE ISSUER, THE STATE OR OF ANY POLITICAL SUBDIVISION OR AGENCY THEREOF, BUT SHALL BE PAYABLE SOLELY FROM THE FUNDS PLEDGED THEREFOR IN ACCORDANCE WITH THIS BOND INDENTURE AND THE MASTER NOTE. THE ISSUANCE OF THE BONDS UNDER THE PROVISIONS OF THE ACT DOES NOT, DIRECTLY, INDIRECTLY OR CONTINGENTLY, OBLIGATE THE ISSUER, THE STATE OR ANY AGENCY OR POLITICAL SUBDIVISION THEREOF TO LEVY ANY FORM OF TAXATION FOR THE PAYMENT THEREOF OR TO MAKE ANY APPROPRIATION FOR THEIR PAYMENT AND THE BONDS AND THE INTEREST PAYABLE THEREON DO NOT NOW AND SHALL NEVER CONSTITUTE A DEBT OF THE ISSUER, THE STATE OR ANY AGENCY OR POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF THE CONSTITUTION OR THE STATUTES OF THE STATE AND DO NOT NOW AND SHALL NEVER CONSTITUTE A CHARGE AGAINST THE CREDIT OR TAXING POWER OF THE ISSUER, THE STATE OR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF. NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF SHALL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF, REDEMPTION PREMIUM, IF ANY, OR INTEREST ON THE BONDS OR FOR THE PERFORMANCE OF ANY PLEDGE, OBLIGATION OR AGREEMENT OF ANY KIND WHATSOEVER WHICH MAY BE UNDERTAKEN BY THE ISSUER. NO BREACH BY THE ISSUER OF ANY SUCH PLEDGE, OBLIGATION OR AGREEMENT MAY IMPOSE ANY LIABILITY, PECUNIARY OR OTHERWISE, UPON THE ISSUER, THE STATE OR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF OR ANY

CHARGE UPON ITS OR THEIR GENERAL CREDIT OR AGAINST ITS OR THEIR TAXING POWER.

**ARTICLE XIV.**  
**SUBORDINATION PROVISIONS**

*[The remainder of this page is left blank intentionally.]*

IN WITNESS WHEREOF, the Issuer has caused these presents to be signed in its name and behalf by an Authorized Signatory of the Issuer, and to evidence its acceptance of the trusts hereby created the Bond Trustee has caused these presents to be signed in its name and behalf by its duly authorized officer, as of the date first above written.

CITY OF FORT WAYNE, INDIANA

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

UMB BANK, N.A., as Bond Trustee

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

Name: Katie Carlson

Title: Vice President

[Signature Page to Amended and Restated Trust Indenture]

**APPENDIX A**  
**FORM OF BOND**

No. R-1:

Principal Amount: \$25,000,000

\$25,000,000  
City of Fort Wayne, Indiana  
Economic Development Solid Waste Facility Revenue Bonds  
(Do Good Foods Fort Wayne LLC Project),  
Subordinate Series 2023  
(Federally Taxable)

THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THIS BOND AND SUCH OTHER BONDS OF WHICH IT FORMS A PART, DO NOT CONSTITUTE A DEBT OR LIABILITY OF THE STATE OF INDIANA (THE "STATE") OR OF ANY AGENCY OR POLITICAL SUBDIVISION THEREOF, OR A PLEDGE OF THE FAITH AND CREDIT OF THE ISSUER, THE STATE OR OF ANY POLITICAL SUBDIVISION OR AGENCY THEREOF, BUT SHALL BE PAYABLE SOLELY FROM THE FUNDS PLEDGED THEREFOR IN ACCORDANCE WITH THE BOND INDENTURE AND THE OBLIGATIONS THE ISSUANCE OF THE BONDS UNDER THE PROVISIONS OF THE ACT DOES NOT, DIRECTLY, INDIRECTLY OR CONTINGENTLY, OBLIGATE THE ISSUER, THE STATE OR ANY AGENCY OR POLITICAL SUBDIVISION THEREOF TO LEVY ANY FORM OF TAXATION FOR THE PAYMENT THEREOF OR TO MAKE ANY APPROPRIATION FOR THEIR PAYMENT AND THE BONDS AND THE INTEREST PAYABLE THEREON DO NOT NOW AND SHALL NEVER CONSTITUTE A DEBT OF THE ISSUER, THE STATE OR ANY AGENCY OR POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF THE CONSTITUTION OR THE STATUTES OF THE STATE AND DO NOT NOW AND SHALL NEVER CONSTITUTE A CHARGE AGAINST THE CREDIT OR TAXING POWER OF THE ISSUER, THE STATE OR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF. NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF SHALL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF, REDEMPTION PREMIUM, IF ANY, OR INTEREST ON THE BONDS OR FOR THE PERFORMANCE OF ANY PLEDGE, OBLIGATION OR AGREEMENT OF ANY KIND WHATSOEVER WHICH MAY BE UNDERTAKEN BY THE ISSUER. NO BREACH BY THE ISSUER OF ANY SUCH PLEDGE, OBLIGATION OR AGREEMENT MAY IMPOSE ANY LIABILITY, PECUNIARY OR OTHERWISE, UPON THE ISSUER, THE STATE OR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF OR ANY CHARGE UPON ITS OR THEIR GENERAL CREDIT OR AGAINST ITS OR THEIR TAXING POWER.

<u>Dated Date</u>	<u>Maturity Date</u>	<u>Interest Rate</u>	<u>CUSIP Number</u>
_____, 2023	_____, 20__	____%	_____

REGISTERED OWNER:        CEDE & CO.

PRINCIPAL AMOUNT:        \_\_\_\_\_ (\$\_\_\_\_\_)

The City of Fort Wayne, Indiana (together with its successors and assigns, the "Issuer"), a municipal corporation organized and existing under the Constitution and laws of the State of Indiana (the "State"), created and existing under and by virtue of the laws of the State, acknowledges itself indebted, and for value received hereby promises to pay, from such sources as are described in the Indenture (hereinafter defined), to the

Registered Owner set forth above or its registered assigns, the Principal Amount specified above on the Maturity Date specified above (or upon earlier redemption), upon presentation hereof at the corporate trust office of UMB Bank, N.A., as Bond Trustee (together with its successors and assigns, the “Bond Trustee”), and to pay, from such sources as are described in the Indenture, interest on said principal sum to the registered owner of this Bond from the Dated Date set forth above until the Issuer’s obligation with respect to the payment of said Principal Amount shall be discharged, at the Interest Rate per annum specified above. Interest on this Bond shall be payable June 1, 2023 and on each June 1 and December 1 thereafter (each an “Interest Payment Date”). The Bonds are issuable in Authorized Denominations.

Interest shall be payable by mailing by first class mail on the Interest Payment Date a check or draft for such interest payable to the person entitled thereto (such person being the registered owner of record on the books of the Issuer applicable to such Interest Payment Date) at his or her address as it appears on the bond register of the Issuer as maintained by the Bond Trustee as of the fifteenth (15<sup>th</sup>) day of the month immediately preceding the Interest Payment Date, except that a registered owner of at least \$1,000,000 in principal amount of the Bonds shall be paid interest by wire transfer or other reasonable method in immediately available funds to an account in the United States or place within the United State designated by such Holder if such registered owner makes a written request to the Bond Trustee on or prior to the Interest Payment Date specifying such account information as the Bond Trustee may require, such wire transfer or other special payment to be at the expense of the Holder; provided, however, that while this Bond is held in the Book-Entry System (as defined in the Indenture), principal of and interest on this Bond shall be paid as provided in the Indenture. Payment shall be made in any coin or currency which is than legal tender of the United States of America. The amount of interest to be paid is to be computed on the basis of a 360-day year consisting of twelve 30-day months. Notwithstanding any provision to the contrary, at no time, whether as a result of an Event of Default or otherwise, shall this Bond bear interest at an interest rate higher than the Maximum Rate.

This Bond is one of the Bonds of the Issuer designated City of Fort Wayne, Indiana Economic Development Solid Waste Facility Revenue Bonds (Do Good Foods Fort Wayne LLC Project), Subordinate Series 2023 (Federally Taxable) (herein called the “Bonds”), authorized to be issued and so issued in fully registered form in the aggregate principal amount of \$25,000,000 under and pursuant to the Act (as defined in the Indenture), and a Trust Indenture, dated as of March 1, 2023 (the “Indenture”), by and between the Issuer and the Bond Trustee. Capitalized terms used herein and not defined herein shall have the meaning assigned to such terms in the Indenture.

Reference is hereby made to the Act, the Indenture and the Loan Agreement, and all supplements and amendments thereto, for a description of the rights thereunder of the registered Owner of the Bonds, of the payments and funds pledged and assigned as security for payment of the bonds and the nature and extent thereof, of the terms on which the Bonds are issued and the terms and conditions on which the bonds will be deemed to be paid at or prior to maturity or redemption upon provision for payment thereof in the manner set forth in the Indenture, of the rights, duties and immunities of the Bond Trustee and of the rights and obligations of the Issuer thereunder, to all of the provisions of which Indenture the registered Owner of this Bond, by acceptance hereof, assents and agrees.

A copy of the Indenture is on file at the trust office of the Bond Trustee in St. Louis, Missouri, and reference to the Indenture and any and all supplements thereto and modifications and amendments thereof and to the Act is made for a description of the pledges and covenants securing the Bonds, the nature, extent, and manner of enforcement of such pledges, the rights and remedies of the registered owners of the Bonds with respect thereto, and the terms and conditions upon which the Bonds have been issued and may be issued thereunder. To the extent and in the manner permitted by the terms of the Indenture, the provisions of the Indenture or any indenture amendatory thereof or supplemental thereto may be modified or amended by the Issuer, as provided therein, including in certain cases, without the consent of the holders of the Bonds. The holder of this Bond shall have no right to enforce the provisions of the Indenture, to institute action to enforce

the provisions of the Indenture or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds issued thereunder and then outstanding, together with accrued interest thereon, may become or may be declared due and payable before the maturity thereof.

The Bonds are subject to redemption in whole or in part prior to maturity at such times, under such circumstances, and at such redemption prices as are provided in the Indenture.

Neither the members of the Issuer nor any person executing this Bond shall be liable personally hereon or shall be subject to any personal liability or accountability by reason of its execution.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon shall have been signed by the Bond Trustee or its Agent.

It Is Hereby Certified, Recited, and Declared that all acts, conditions, and things required by the Constitution and statutes of the State and the Indenture to exist, to have happened, and to have been performed precedent to and in connection with the issuance of this Bond, exist, have happened, and have been performed in due time, form, and manner as required by law and that the issue of the Bonds, together with all other indebtedness of the Issuer, is within every debt and other limit prescribed by law.

[The remainder of this page is left blank intentionally.]



IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name by the manual signature of the Mayor and countersigned by its Controller and attested by its Clerk.

DATED: March \_\_, 2023

[SEAL]

CITY OF FORT WAYNE, INDIANA

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

Name: Tom Henry

Title: Mayor

ATTEST:

COUNTERSIGNED:

By:

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

\_\_\_\_\_

Name:

Name:

Title: Controller

Title: Clerk

**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds issued under the provisions of and described in the within-mentioned Indenture.

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

UMB Bank, N.A., as Bond Trustee

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

Authorized Signer

**ASSIGNMENT**

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

(Please insert Social Security Number or other identifying number of assignee)

(Please print or Typewrite Name and Address of Assignee)

the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

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

Signature Guaranteed

NOTICE: Signature(s) must be guaranteed by an eligible guaranty institution.

\_\_\_\_\_  
Signature

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

**APPENDIX B**

**FORM OF PROJECT FUND REQUISITION**

To: UMB Bank, N.A., as trustee  
Attn: Katie Carlson

Re: City of Fort Wayne, Indiana  
Economic Development Solid Waste Facility Revenue Bonds  
(Do Good Foods Fort Wayne LLC Project)  
Subordinate Series 2023  
(Federally Taxable)

Requisition No.\_\_\_\_ Project Fund – \_\_\_\_\_ Account

The undersigned, on behalf of Do Good Foods Facility Management LLC and Do Good Foods Fort Wayne, LLC (the “Borrower”), hereby requests payment, from the Account of the Project Fund identified above for the Project identified above, the total amount shown below to the order of the payee or payees named below, as payment or reimbursement for costs incurred or expenditures made in connection with the Project. The payee(s), the purpose and the amount of the disbursement requested are as follows:

Payee (name and address)	Purpose	Amount
-----------------------------	---------	--------

Total:

The undersigned hereby certifies as follows:

1. The information above has been completed correctly and accurately.
3. Each obligation mentioned herein is described in Section 3.9 of the Loan Agreement relating to the Project, has been properly incurred and is a proper charge against the Project Fund, and each item for which payment is requested is or was necessary in connection with the acquisition, construction, installation, equipping or operation of the Project. None of the items for which payment is requested has been reimbursed previously from the Project Fund, and none of the payments herein requested will result in a breach of the representations and agreements in Section 2.2 of the Loan Agreement relating to the Project. The amount requisitioned, together with all amounts requisitioned to date, have in the aggregate been used to pay, or to reimburse the Borrower, affiliates thereof or a related person thereto for, expenditures properly allocable to costs of the Project.
4. There exists no Event of Default under any Borrower Loan Document or any event, condition or act which would constitute an Event of Default under any Borrower Loan Document, but for the requirement that notice be given or time elapse or both.
5. Pursuant to Section 4.2 and 4.19 of the Loan Agreement, the Borrower covenants and agrees to keep proper record of all invoices of any amounts requisitioned hereunder through the maturity of the Bonds.

6. None of the amounts for which this requisition is made has been the basis for any prior disbursement from the Project Fund.

7. The amount hereby requested has been paid or is to be paid or shall be paid from the moneys requested and that insofar as the payment is for work, materials, supplies, or equipment, the work has been performed and the materials, supplies or equipment have been installed in the Project or have been delivered to the Project.

8. We have no knowledge of any vendor's, mechanic's or other liens, bailment leases, conditional sale contracts or security interests or laborers' claims which should be satisfied or discharged before the payments as requisitioned are made or which will not be discharged by such payment. All Persons furnishing material to or performing work on the Project have been fully paid to date or will be fully paid out of the proceeds of this requisition (to the extent of amounts then due and payable).

10. None of the items for which such requisition is made constitutes equipment (including fixtures) other than equipment listed on any accompanying schedule and having a description sufficient for identification of any such equipment, together with all UCC-1 financing statements and UCC-3 financing statement changes necessary to perfect the Trustee's security interest in such equipment and executed by all the necessary parties other than the Trustee.

11. Capitalized terms used but not otherwise defined herein will have the meanings ascribed to such terms in the Trust Indenture dated as of March 1, 2023 relating to the Bonds.

12. [To be included upon achievement of Substantial Completion:] The certificate evidencing Substantial Completion in the form of Appendix B to the Trust Indenture is attached to this Requisition. [Attach Certificate of Substantial Completion]

Dated:

**DO GOOD FOODS FACILITY  
MANAGEMENT, LLC**

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

**DO GOOD FOODS FORT WAYNE, LLC**

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

[Continued on following page]

FORM OF COSTS OF ISSUANCE FUND REQUISITION

To: UMB Bank, N.A., as trustee  
Attn: Katie Carlson

Re: City of Fort Wayne, Indiana  
Economic Development Solid Waste Facility Revenue Bonds  
(Do Good Foods Fort Wayne LLC Project)  
Subordinate Series 2023  
(Federally Taxable)

Requisition No. \_\_\_\_\_ Costs of Issuance Fund - \_\_\_\_\_ Account

The undersigned, on behalf of Do Good Foods Facility Management LLC and Do Good Foods Fort Wayne, LLC (the "Borrower"), hereby requests payment, from the Account of the Costs of Issuance Fund identified above for the Project identified above, the total amount shown below to the order of the payee or payees named below, as payment or reimbursement for costs incurred or expenditures made in connection with the Project. The payee(s), the purpose and the amount of the disbursement requested are as follows:

Payee (name and address)	Purpose	Amount
-----------------------------	---------	--------

Total:

The undersigned hereby certifies as follows:

Each obligation mentioned herein is described in Article II of the Trust Indenture dated March 1, 2023 (the "Indenture") relating to the Bonds, has been properly incurred and is a proper charge against the Costs of Issuance Fund, and each item for which payment is requested is or was necessary in connection with the issuance of the Bonds. None of the items for which payment is requested has been reimbursed previously from the Costs of Issuance Fund, and none of the payments herein requested will result in a breach of the representations and agreements in Section 2.2 of the Loan Agreement relating to the Project. Invoices evidencing each obligation mentioned herein are attached hereto.

Capitalized terms used but not otherwise defined in this Requisition will have the meanings ascribed to such terms in the Indenture.

Dated:

**DO GOOD FOODS FACILITY  
MANAGEMENT, LLC**

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

**DO GOOD FOODS FORT WAYNE, LLC**

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



---

**SUBORDINATE LOAN AGREEMENT**

By and between

CITY OF FORT WAYNE, INDIANA,

DO GOOD FOODS FACILITY MANAGEMENT, LLC

and

DO GOOD FOODS FORT WAYNE, LLC

Dated as of March 1, 2023

Relating to:

\$25,000,000

City of Fort Wayne, Indiana

Economic Development Solid Waste Facility Revenue Bonds

(Do Good Foods Fort Wayne LLC Project)

Subordinate Series 2023

(Federally Taxable)

---

## Table of Contents

	<u>Page</u>
Article I	
DEFINITIONS AND INTERPRETATION .....	2
Section 1.1.    Definitions .....	2
Section 1.2.    Interpretation .....	3
Article II	
REPRESENTATIONS AND WARRANTIES .....	4
Section 2.1.    Representations by the Issuer .....	4
Section 2.2.    Representations by the Borrower .....	5
Article III	
THE LOAN.....	7
Section 3.1.    Loan Clauses .....	7
Section 3.2.    Other Amounts Payable and Other Obligations .....	8
Section 3.3.    Additional Payments .....	8
Section 3.4.    Manner of Payment .....	9
Section 3.5.    Obligation Unconditional .....	9
Section 3.6.    Usury .....	10
Section 3.7.    Effective Date and Term .....	10
Section 3.8.    Security for The Borrower’s Performance .....	10
Section 3.9.    Project Covenants.....	11
Article IV	
COVENANTS OF the BORROWER.....	12
Section 4.1.    Compliance with Master Trust Indenture.....	12
Section 4.2.    Records; Financial Reports .....	13
Section 4.3.    Further Assurances and Corrective Instruments.....	13
Section 4.4.    Covenant by Borrower as to Compliance with Trust Indenture .....	13
Section 4.5.    Change in Control .....	13
Section 4.6.    Right of Access to the Project. ....	14
Section 4.7.    Qualification in the State.....	14
Section 4.8.    Intentionally Left Blank. ....	15
Section 4.9.    Intentionally Left Blank. ....	15
Section 4.10.    Changes to the Project.....	15
Section 4.11.    Sale, Lease or Disposition.....	15
Section 4.12.    Maintenance and Repair; Taxes, Utility and Other Charges.....	15
Section 4.13.    Maintenance of Permits.....	15
Section 4.14.    Maintenance of Leasehold Interest.....	15
Section 4.15.    Continuing Disclosure Agreement. ....	16
Section 4.16.    Maintenance of Existence. ....	16
Section 4.17.    Right to Documents.....	16
Section 4.18.    Notice of Internal Revenue Service Audits.....	16
Section 4.19.    Books and Records.....	16
Section 4.20.    Establishing and Preserving the Lien on Collateral; Continuation Statements.....	16
Section 4.21.    Insurance. ....	16
Section 4.22.    Offtake Contract.....	18

Section 4.23.	Restrictions on Creation of Liens.....	18
Article V		
EVENTS OF DEFAULT AND REMEDIES .....		18
Section 5.1.	Events of Default.....	18
Section 5.2.	Remedies on Default .....	19
Section 5.3.	No Duty to Mitigate Damages.....	20
Section 5.4.	Remedies Cumulative.....	20
Section 5.5.	Notice of Default by Bond Trustee .....	20
Article VI		
PREPAYMENT PROVISIONS .....		20
Section 6.1.	Optional and Extraordinary Prepayment.....	20
Section 6.2.	Notice of Prepayment.....	21
Article VII		
GENERAL.....		21
Section 7.1.	Trust Indenture .....	21
Section 7.2.	Benefit of and Enforcement by Bondholders .....	21
Section 7.3.	Amendments.....	22
Section 7.4.	Notices.....	22
Section 7.5.	Non-Liability of Issuer .....	22
Section 7.6.	Waiver of Personal Liability .....	23
Section 7.7.	Prior Agreements Superseded .....	23
Section 7.8.	Execution of Counterparts.....	23
Section 7.9.	Expenses.....	23
Section 7.10.	Indemnification and Release. ....	23
Section 7.11.	No Obligation to Enforce Assigned Rights .....	25
Section 7.12.	Issuer's or Bond Trustee's Performance .....	25
Section 7.13.	No impairment of Rights.....	26
Section 7.14.	Closing Expenses .....	26
Section 7.15.	Survival of Provisions .....	26
Section 7.16.	Third Party Beneficiaries.....	26
Section 7.17.	Governing Law.....	27
Section 7.18.	Waiver of Jury Trial .....	27
Section 7.19.	Electronic Transactions .....	27
EXHIBIT A - DESCRIPTION OF THE PROJECT		
EXHIBIT B - DESCRIPTION OF PROJECT COSTS		
EXHIBIT C - FORM OF CONSTRUCTION PROGRESS REPORT		

## LOAN AGREEMENT

THIS SUBORDINATE LOAN AGREEMENT (as amended and supplemented from time to time, the “**Loan Agreement**”), made and dated as of March 1, 2023, by and between the CITY OF FORT WAYNE, INDIANA, a municipal corporation organized and existing under the Constitution and laws of the State of Indiana (together with its successors and assigns, the “**Issuer**”) and DO GOOD FOODS FACILITY MANAGEMENT LLC and DO GOOD FOODS FORT WAYNE LLC, each a Delaware limited liability company (collectively with their respective successors and assigns, the “**Borrower**”).

### WITNESSETH THAT :

WHEREAS, the Borrower or its affiliate has applied for the financial assistance of the Issuer to finance the acquisition, construction, equipping and/or improvement of the facilities as more particularly described in this Loan Agreement (the “**Project Facilities**”), to be leased and operated by the Borrower; and

WHEREAS, based on representations of the Borrower but without independent investigation, the Issuer finds that the financing of the Project Facilities will increase employment opportunities and increase diversification of economic development in the City of Fort Wayne, Indiana (the “**City**”), will improve and promote the economic stability, development and welfare in the City, will encourage and promote the expansion of industry, trade and commerce in the City and the location of other new industries in the City; that the public benefits to be accomplished, in tending to overcome insufficient employment opportunities and insufficient diversification of industry, are greater than the cost of public services (as that phrase is used in I.C. 36-7-11.9 and I.C. 36-7-12) (collectively, the “**Act**”) which will be required by the Project Facilities; and, therefore, that the financing of the Project Facilities and working capital by the issuance of the Bonds (as hereinafter defined) under the Act: (a) will be of benefit to the health and general welfare of the City; and (b) complies with the Act;

WHEREAS, pursuant to the Act, the Issuer has authorized the issuance of its \$25,000,000 City of Fort Wayne, Indiana Economic Development Solid Waste Facility Revenue Bonds (Do Good Foods Fort Wayne LLC Project), Subordinate Series 2023 (Federally Taxable) (the “**Bonds**”), the proceeds of which will be loaned to the Borrower (the “**Loan**”) and used for the purpose of: (i) financing the costs of the acquisition of the assets consisting of, and capital improvements to, the Project Facilities, (ii) funding operating and other working capital costs of the Project Facilities, (iii) funding capitalized interest on the Bonds, (iv) funding the debt service reserve funds relating to the Bonds, and (v) paying the costs of issuance of the Bonds; and

WHEREAS, the Issuer will issue the Bonds pursuant to the terms of the EDC Resolution and Bond Ordinance (each as hereinafter defined) and a Subordinate Trust Indenture, dated as of March `1, 2023 (the “**Trust Indenture**”), between the Issuer and UMB Bank, N.A. a national banking association, as Bond Trustee, specifying the terms and conditions of the Bonds; and

WHEREAS, the Bonds will be secured by that certain Do Good Foods Obligated Group Subordinate Master Note, Series 2023 (the “**Subordinate Master Note**”), issued to the Bond Trustee by, and evidencing a joint and several obligation of, the Members of the Obligated Group (hereinafter defined) under that certain Master Trust Indenture, dated as of December 1, 2022, (as amended, restated, supplemented and modified from time to time, the “**Master Trust Indenture**”), including by the Third Supplemental Master Trust Indenture, dated as of March 1, 2023 (the “**Third Supplemental MTI**”), each between the Members of the Obligated Group and UMB Bank, N.A., a national banking association, as Master Trustee (the “**Master Trustee**”);

WHEREAS, the Issuer and the Borrower have each duly authorized the execution, delivery and performance of this Loan Agreement;

NOW, THEREFORE, in consideration of the premises and of the mutual representations, covenants and agreements herein set forth, the Issuer and the Borrower, binding itself and its successors and assigns, does promise, covenant and agree as follows (provided that in the performance of the agreement of the Issuer herein contained, any obligation it may incur for the payment of money shall not constitute an indebtedness or other liability of the State or of a political subdivision of the State, except the Issuer, but any such obligation shall be payable solely out of the Trust Estate, the Subordinate Master Note or the Trust Indenture and from any amounts otherwise available under the Trust Indenture for the payment of the Bonds):

## **ARTICLE I**

### **DEFINITIONS AND INTERPRETATION**

Section 1.1. Definitions. For the purposes of this Loan Agreement, the following words and terms shall have the respective meanings set forth as follows, and any capitalized word or term used but not defined herein is used as defined in the Trust Indenture :

“**Affiliate**” shall mean, with respect to any Person, another Person which controls, is controlled by or is under common control with such Person.

“**Bond Ordinance**” means Special Ordinance No. S-22-06-20 adopted by the Common Council of the Issuer on July 12, 2022, as amended by Special Ordinance No. R-73-22, adopted by the Common Council of the Issuer on September 13, 2022, as supplemented by Special Ordinance No. \_\_\_\_\_, adopted by the Common Council of the Issuer on March 14, 2023.

“**Closing Date**” means the date of issuance of the Bonds.

“**Subordinate Completion Guaranty**” means the Subordinate Guaranty from the Parent Corporation to the Bond Trustee, dated as of the date hereof, pursuant to which the Parent agrees to unconditionally guarantee the Borrower’s obligation to complete lien-free construction of each Project, as the same may be amended, restated, supplemented or otherwise modified from time to time pursuant to the terms thereof.

“**Continuing Disclosure Agreement**” means the Continuing Disclosure Agreement, dated as of December 1, 2022, by the Borrower for the benefit of the Master Trustee.

“**Construction Monitor**” means E3 Consulting LLC, a Delaware Limited Liability Company.

“**EDC Resolution**” means Resolution No. 6-17-2022, adopted by the Fort Wayne Economic Development Commission on June 16, 2022, as amended by Resolution No. 8-18-2022, adopted by the Fort Wayne Economic Development Commission on August 18, 2022, as supplemented by Resolution No. 2-23-2023 adopted by the Fort Wayne Economic Development Commission on February 23, 2023.

“**Event of Default**” means an Event of Default as defined in Section 5.1 hereof.

“**Extraordinary Services**” and “**Extraordinary Expenses**” means all services rendered or all expenses incurred, as applicable, by the Bond Trustee under the Trust Indenture other than Ordinary Services or Ordinary Expenses, as applicable.

“**Highest Lawful Rate**” means the maximum rate of nonusurious interest allowed from time to time by law as is now in effect or, to the extent permitted by law, such higher rate as may hereafter be in effect, but in no instance shall such rate exceed the Maximum Rate.

“**Indemnified Parties**” means (a) the Issuer; (b) every Indemnified Party; (c) the Bond Trustee Indemnified Persons; (d) the past, present or future official, trustee, commissioner, incorporator, director, officer, employee or agent (including, without limitation, legal counsel and financial advisors) of the Issuer; and (e) any other Person acting for or on behalf of the Issuer or the Bond Trustee.

“**Lease**” means the Lease Agreement, dated May 14, 2022, as amended by a First Amendment to Lease Agreement dated September 22, 2022, a Second Amendment to Lease Agreement dated November 14, 2022, and a Third Amendment to Lease Agreement dated as of December 1, 2022 between the Borrower, as tenant and GJ GTW II, LLC, as landlord, as the same may be amended, modified, supplemented or restated from time to time.

“**Material Adverse Effect**” means any event, circumstance or condition that could reasonably be expected to have a material adverse effect on (a) the business, operations, financial condition, properties or prospects of the Obligated Group, taken as a whole, (b) the ability of the Obligated Group, taken as a whole, to perform its obligations under any Obligated Group Financing Document or the ability of the Borrower to perform its obligations under any Borrower Financing Document, (c) the validity or enforceability of this Loan Agreement, any other Borrower Financing Document or any Obligated Group Financing Document, or any material provision thereof or any material transaction contemplated thereby, or (d) the rights and remedies of the Bondholders under any of the General Financing Documents, in the reasonable determination of the Required Bondholders.

“**Member of the Obligated Group**” means those members of the Obligated Group, from time to time, that are parties to the Master Trust Indenture.

“**Obligated Group**” shall have the meaning set forth in the Master Trust Indenture.

“**Ordinary Services**” and “**Ordinary Expenses**” means those services normally rendered or those expenses normally incurred, as applicable, by a trustee under instruments similar to the Trust Indenture prior to the occurrence of an event of default, including without limitation, fees and expenses of the Bond Trustee as Paying Agent, and bond registrar, and as custodian of the Debt Service Fund and the other Funds under the Trust Indenture .

“**Parent Corporation**” means KDC Agribusiness LLC and its successors and assigns.

“**Person**” means any individual, corporation, partnership, joint venture, association, joint-stock company, limited liability company, trust, unincorporated organization or government or any agency or political subdivision thereof.

“**Project**” means the land, facilities, equipment and other property financed by the proceeds of the Bonds, and includes, without limitation, the Project Facilities.

Section 1.2. Interpretation. In this Loan Agreement:

(a) The terms “**hereby**,” “**hereof**,” “**hereto**,” “**herein**,” “**hereunder**” and any similar terms, as used in this Loan Agreement, refer to this Loan Agreement, and the term “**hereafter**” means after, and the term “**heretofore**” means before, the date of this Loan Agreement.

(b) Words of the masculine gender mean and include correlative words of the feminine and neutral genders and words importing the singular number mean and include the plural number and vice versa.

(c) Words importing persons include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Loan Agreement, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Loan Agreement, nor shall they affect its meaning, construction or effect.

(e) Nothing contained in this Loan Agreement shall be construed to cause the Borrower to become the agent for the Issuer or the Bond Trustee for any purpose whatsoever, nor shall the Issuer or the Bond Trustee be responsible for any shortage, discrepancy, damage, loss or destruction of any part of a Project Facility wherever located or for whatever cause.

(f) All approvals, consents and acceptances required to be given or made by any person or party hereunder shall be at the reasonable discretion of the party whose approval, consent or acceptance is required, except to the extent otherwise specified herein.

(g) If any provision of this Loan Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect any of the remaining provisions hereof.

(h) Unless otherwise provided herein, all references to a particular time are to New York City time.

## **ARTICLE II** **REPRESENTATIONS AND WARRANTIES**

Section 2.1. Representations by the Issuer. The Issuer represents that:

(a) The Issuer is a municipal corporation organized and existing under the Constitution and laws of the State and will do or cause to be done all things within its power necessary to preserve its existence during the term of the Bonds.

(b) The Issuer has full power and authority under the Act to adopt its Bond Ordinance, to enter into and to perform its obligations under the Financing Documents.

(c) When executed and delivered by the respective parties thereto, the Issuer Financing Documents will constitute the legal, valid and binding obligations of the Issuer enforceable in accordance with their respective terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, by the application of equitable principles, by the exercise of judicial discretion in appropriate cases and by the limitation on legal remedies against joint powers commissions or governmental units of the State. By official action of the Issuer prior to or concurrently herewith, the Issuer has authorized and approved the execution and delivery of the Issuer Financing Documents and the consummation by the Issuer of the transactions contemplated thereby.

(d) Each of the Issuer's representations, warranties and certifications contained in this Loan Agreement and the Purchase Contract is true and correct in all material respects as of the date they were made.

Section 2.2. Representations by the Borrower. The Borrower represents and warrants to the Issuer that, as of the date of execution of this Loan Agreement and as of the date of delivery of the Bonds to the initial purchasers thereof (such representations and warranties survive the issuance of the Bonds and are to remain operative and in full force and effect regardless of the issuance of the Bonds or any investigations by or on behalf of the Issuer or the results thereof):

(a) The Borrower has been duly organized, validly exists and is in good standing under the laws of its state of organization, has full legal right, power and authority to enter into this Loan Agreement and the other Borrower Financing Documents, and to carry out and consummate all transactions contemplated hereby and by the Borrower Financing Documents, and by proper organizational action has duly authorized the execution, delivery and performance of this Loan Agreement and the Borrower Financing Documents.

(b) The officers of the Borrower executing this Loan Agreement and the Borrower Financing Documents are duly and properly in office and fully authorized to execute the same.

(c) This Loan Agreement and the Borrower Financing Documents will constitute the legal, valid and binding agreements of the Borrower, enforceable against the Borrower by the Bond Trustee in accordance with their terms, including without limitation, by the Bond Trustee for the benefit of the Owners of the Bonds, and the Unassigned Rights constitute the legal, valid, and binding agreements of the Borrower enforceable against the Borrower (A) by the Issuer in its own right, or (B) in the case of the right of any Indemnified Party (including, without limitation, the right of any Indemnified Party to indemnification and immunity from liability), by such Indemnified Party in his, her or its own right in accordance with their respective terms; except in each case as enforcement may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally, by the application of equitable principles regardless of whether enforcement is sought in a proceeding at law or in equity and by public policy.

(d) The execution and delivery of this Loan Agreement and the Borrower Financing Documents, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under the organizational documents of the Borrower, any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any trust indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, which conflict, violation, breach, default, lien, charge or encumbrance might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Loan Agreement and the Borrower Financing Documents, or the financial condition, assets, properties or operations of the Borrower.

(e) No consent or approval of any bond trustee or holder of any indebtedness of the Borrower or any guarantor of indebtedness of or other provider of credit or liquidity of or to the Borrower, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority (except with respect to any state securities or "blue sky" laws) is necessary in connection with the execution and delivery by the Borrower of this Loan Agreement, the other Borrower Financing Documents or the Obligated Group Financing Documents, or the consummation of any transaction herein or therein



contemplated, or the fulfillment of or compliance with the terms and conditions hereof or thereof, except as have been obtained or made and as are in full force and effect.

(f) There is no action, suit, proceeding, inquiry or investigation, before or by any court or federal, state, municipal or other governmental authority, pending, or to the knowledge of the Borrower, after reasonable investigation, threatened, against or affecting the Borrower or the assets, properties or operations of the same which, if determined adversely to the Borrower or its interests, would have a material adverse effect upon the consummation of the transactions contemplated by, or the validity or enforceability of, this Loan Agreement and the other Borrower Financing Documents, or upon the financial condition, assets, properties or operations of the Borrower, and the Borrower is not in default (and no event has occurred and is continuing which with the giving of notice or the passage of time or both could constitute a default) with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Loan Agreement or the other Borrower Financing Documents or the financial condition, assets, properties or operations of the Borrower. The Borrower enjoys the peaceful and undisturbed possession of all of the premises upon which it is operating its facilities.

(g) All tax returns (federal, state, and local) required to be filed by or on behalf of the Borrower have been filed, and all taxes shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by the Borrower in good faith, have been paid or adequate reserves have been made for the payment thereof, which reserves, if any, are reflected in the audited financial statements described therein.

(h) No written information, exhibit or report furnished to the Issuer by the Borrower in its application for financing or by the Borrower or its representatives in connection with the negotiation of this Loan Agreement or the Borrower Financing Documents, regardless of whether the Issuer is a party thereto (including, without limitation, any financial statements, whether audited or unaudited, and any other financial information provided in connection therewith) contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that the representation and warranty in this Section 2.2, Clause (h) is made only to the Issuer and may not be relied upon by any other Person.

(i) The Borrower has title to the Project Facility (as described in Exhibit A attached hereto) and leasehold title to the Project Site sufficient to carry out the purposes of this Agreement.

(j) The Project consists of those facilities described in Exhibit A attached hereto.

(k) The Borrower is not in default under any document, instrument or commitment to which it is a party or which it or any of its property is subject which default would or could affect its ability to carry out its obligations under the Borrower Financing Documents or the Obligated Group Financing Documents.

(l) The Costs of the Project have been determined in accordance with sound engineering/construction and accounting principles.

(m) No event has occurred and no condition exists which would constitute an Event of Default or which, with the passing of time or with the giving of notice or both, would become an Event of Default.

(n) The Borrower and the Project (and to the Borrower's best knowledge after diligent inquiry, the Project Site) comply in all material respects with all applicable Environmental Regulations, including,

without limitation, regulations governing air pollution, soil and water pollution, the use, generation, storage, treatment, removal, handling or disposal of Hazardous Substances, other materials or wastes, and the emission of electromagnetic or nuclear radiation, and the Borrower is not, to its best knowledge after diligent inquiry, the subject of any claim, proceeding, notice or other communication regarding any Hazardous Substances and does not have any material contingent liability in connection with any release of any Hazardous Substances into the environment.

(o) To the Borrower's best knowledge after diligent inquiry, neither the Borrower, the Project or the Project Site is the subject of a federal, state or local investigation evaluating whether any remedial action is needed to respond to any alleged violation of or condition regulated by an Environmental Regulation or to respond to a release of any Hazardous Substances into the environment.

(p) Any certificate signed by the Authorized Representative of the Borrower and delivered pursuant to the Borrower Financing Documents shall be deemed a representation and warranty by it to the Issuer and the Bond Trustee of the statements made therein.

### **ARTICLE III** **THE LOAN**

#### Section 3.1. Loan Clauses.

(a) Subject to the conditions and in accordance with the terms of this Loan Agreement, the Issuer agrees (i) to issue the Bonds and cause the Bond Trustee to deposit such amounts in accordance with the terms of the Trust Indenture and (ii) to loan the proceeds of the Bonds to the Borrower in exchange for loan payments equal to the principal and interest due on the Bonds on each Interest Payment Date and Principal Payment Date. Concurrently with the sale of the Bonds, and to further evidence the Borrower's obligation to make loan payments under this Loan Agreement, the Borrower has executed and delivered each of the Borrower Financing Documents.

(b) The Loan shall be made available at the time of delivery of the Bonds and receipt of payment therefor by the Issuer against receipt by the Bond Trustee of the Subordinate Master Notes, duly executed and delivered to evidence the pecuniary indebtedness of the Obligated Group incurred pursuant to the Master Indenture in connection with the Loan, which Master Note is issued pursuant to and secured by the trust estate pledged under the Master Trust Indenture, and the pledge of the Subordinate Master Note to the Bond Trustee to secure the payment of the Bonds. As and for the Loan, the Issuer shall apply the proceeds of the Bonds as provided in the Trust Indenture on the terms and conditions therein prescribed.

(c) On the Business Day immediately prior to any date on which principal, premium, Redemption Price or Tender Price of, or interest on, the Bonds is due, if insufficient moneys are then on deposit in the Debt Service Fund (taking into account any amounts to be transferred to or credited to the Debt Service Fund pursuant to Section 5.4 of the Trust Indenture) or the Escrow Fund (taking into account any amounts credited to the Escrow Fund pursuant to Section 5.1 of the Trust Indenture) and available therefor, the Borrower shall, prior to 10:00 a.m. on such date, pay (or cause the Master Trustee to pay in accordance with the Master Trust Indenture) to the Bond Trustee for deposit in the Debt Service Fund or the Escrow Fund (the "**Equity Contribution Escrow Deposit**") the amount necessary (in immediately available funds) for the payment of such principal, Redemption Price, Tender Price, interest, and premium, if any, due on such date. In addition, the Borrower shall pay or cause the Master Trustee to pay to the Bond Trustee, as and when the same shall become due, all other amounts due under the General Financing Documents, together with interest thereon at the then applicable rate as set forth herein.

(d) The Borrower shall have the option to prepay its payment obligations hereunder in whole or in part at the times and in the manner provided in Article VI hereof and in accordance with the Trust Indenture. The Borrower hereby agrees to prepay its payment obligations hereunder in the amount required to effect a redemption (at the applicable Redemption Price) of the Bonds in whole or in part at the times and in the manner provided in Article VI hereof and in accordance with the Trust Indenture.

(e) At its option, to be exercised on or before the forty-fifth (45th) day next preceding the date any Bonds are to be redeemed from mandatory sinking fund payments, provided no Event of Default has occurred and is continuing, the Borrower may deliver Bonds to the Bond Trustee which are subject to mandatory sinking fund payment redemption in an aggregate principal amount not in excess of the principal amount of Bonds to be so redeemed on such date. Each Bond so delivered shall be credited by the Bond Trustee at a hundred percent (100%) of the principal amount thereof against the obligation of the Borrower to make the next payment with respect to principal on the Bonds.

(f) If the Bond Trustee has not received payment by Noon, New York City time, on the Business Day prior to the date on which principal or Redemption Price or Tender Price of or interest on the Bonds is due, the Bond Trustee shall immediately make oral demand to the Master Trustee for such amount with overnight confirmation.

(g) The Borrower also agrees to pay, on or before each Tender Date, the Tender Price of all Bonds subject to tender for purchase on such Tender Date pursuant to Section 3.5 of the Indenture, together with all accrued interest due on such tendered Bonds on the Tender Date.

#### Section 3.2. Other Amounts Payable and Other Obligations.

(a) The Borrower hereby further expressly agrees to pay or cause to be paid by the Obligated Group in accordance with the Master Trust Indenture an amount equal to (i) the initial and annual fees of the Bond Trustee for the Ordinary Services of the Bond Trustee rendered and its Ordinary Expenses incurred under the Trust Indenture, including its fees and expenses as Registrar and in connection with preparation of new Bonds upon exchanges or transfers, and the fees and expenses of Bond Trustee's counsel, (ii) the fees and expenses of the Bond Trustee, and any Paying Agents on the Bonds for acting as such as provided in the Trust Indenture, including the fees and expenses of its and their counsel, (iii) the fees and expenses of the Bond Trustee for Extraordinary Services rendered by it and Extraordinary Expenses incurred by it under the Trust Indenture, including counsel fees and expenses, (iv) the fees and expenses of the Issuer, including the fees and expenses of its counsel, incurred by the Issuer as a result of an Event of Default or otherwise enforcing this Loan Agreement, and (v) any other sums required to be paid by the Borrower under the terms of the Trust Indenture and by the Obligated Group under the Master Trust Indenture and the Subordinate Master Note. Scheduled fees and expenses shall be paid on or before the scheduled due date. Unscheduled fees and expenses will be paid on the specified due date, or if the due date is fewer than 30 days from receipt, within 30 days of receipt.

(b) The Borrower agrees to fund, replenish and maintain all amounts required to be funded, replenished and maintained in the Funds and Accounts established in and as required by Article V of the Trust Indenture .

(c) The Borrower agrees to perform all obligations required to be performed by it under the Trust Indenture in accordance with its terms.

Section 3.3. Additional Payments. In addition to the payments set forth in Section 3.1 and 3.2 hereof, the Borrower shall also pay to the Issuer or to the Bond Trustee, as the case may be, "**Additional Payments,**" as follows:

(a) All taxes and assessments of any type or character charged to the Issuer or to the Bond Trustee affecting the amount available to the Issuer or the Bond Trustee from payments to be received hereunder or in any way arising due to the transactions contemplated hereby (including taxes and assessments assessed or levied by any public agency or governmental authority of whatsoever character having power to levy taxes or assessments), but excluding franchise taxes based upon the capital and/or income of the Bond Trustee and taxes based upon or measured by the net income of the Bond Trustee; provided, however, that the Borrower shall have the right to protest any such taxes or assessments and to require the Issuer or the Bond Trustee, at the Borrower's expense, to protest and contest any such taxes or assessments levied upon them and that the Borrower shall have the right to withhold payment of any such taxes or assessments pending disposition of any such protest or contest unless such withholding, protest or contest would adversely affect the rights or interests of the Issuer or the Bond Trustee;

(b) The fees and expenses of such accountants, consultants, attorneys and other experts as may be engaged by the Issuer or the Bond Trustee in connection with the performance of its duties hereunder or in the Trust Indenture and to prepare audits, financial statements, reports, opinions or provide such other services required under this Loan Agreement, the Borrower Financing Documents or the Trust Indenture, including, but not limited to, any audit or inquiry by any governmental body; and

(c) The fees and expenses of the Issuer or any agent or attorney selected by the Issuer to act on its behalf in connection with this Loan Agreement, the Borrower Financing Documents, the Bonds, or the Trust Indenture, including, without limitation, any and all expenses incurred in connection with the authorization, issuance, sale and delivery of any such Bonds or in connection with any litigation, investigation, inquiry or other proceeding which may at any time be instituted involving this Loan Agreement, the Borrower Financing Documents, the Bonds, or the Trust Indenture or any of the other documents contemplated thereby, or in connection with the reasonable supervision or inspection of the Borrower, its properties, assets or operations or otherwise in connection with the administration of this Loan Agreement and the Borrower Financing Documents.

Such Additional Payments shall be billed to the Borrower by the Issuer or the Bond Trustee from time to time, together with a statement certifying that the amount billed has been incurred or paid by the Issuer or the Bond Trustee for one or more of the above items. After such a demand, amounts so billed shall be paid by the Borrower within thirty (30) days after receipt of the bill by the Borrower.

Any invoice furnished to the Borrower by the Issuer or the Bond Trustee pursuant to this Section 3.3 shall be deemed to constitute a written notice under Section 5.1(b) sufficient to cause the 30 day period specified in said Section 5.1(b) to commence.

Section 3.4. Manner of Payment. The payments provided for in Section 3.1 hereof shall be made by wire transfer in immediately available funds at the time and place of payment directly to the Bond Trustee for the account of the Issuer and shall be deposited in the Debt Service Fund or the Debt Service Reserve Fund, as appropriate. The Additional Payments under Section 3.3 and the payments provided for in Section 3.2 shall be made in the same manner directly to the entitled party or to the Bond Trustee for its own use or disbursement to the Paying Agents, if any. The payments provided for in Section 3.3 hereof shall be made in the manner set forth therein. To the extent the Borrower does not pay any amount owed hereunder by its due date, the Bond Trustee shall immediately notify the Master Trustee and request payment from funds available under the Master Trust Indenture in accordance with its items.

Section 3.5. Obligation Unconditional. The obligations of the Borrower under this Loan Agreement and the other Borrower Financing Documents shall be absolute and unconditional, irrespective of any defense or any rights of setoff, recoupment or counterclaim it might otherwise have against the Issuer or the Bond Trustee. The Borrower will not suspend or discontinue any such payment or terminate this

Loan Agreement (other than in the manner provided for hereunder) for any cause, including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, failure of title, or commercial frustration of purpose, or any damage to or destruction of the Project Facilities, or the taking by eminent domain of title to or the right of temporary use of all or any part of the Project Facilities, or any change in the tax or other laws of the United States, the State or any political subdivision of either thereof; or any failure of the Issuer or the Bond Trustee to perform and observe any agreement or covenant, whether expressed or implied, or any duty, liability or obligation arising out of or connected with the Borrower Financing Documents.

Section 3.6. Usury. Notwithstanding any provision of the General Financing Documents to the contrary, it is hereby agreed by and between the Issuer and the Borrower that in no event (including without limitation the acceleration of maturity of the Bonds or the redemption of the Bonds pursuant to the General Financing Documents) shall the amount of loan payments contracted for, charged, received, reserved or taken in connection with the loan arrangements made hereunder, if and to the extent such loan payments (or a portion thereof) are treated as interest for purposes of State law (“**Interest**”), exceed the amount of interest which could have been contracted for, charged, reserved, received or taken at the Highest Lawful Rate. For purposes of this Section, to the maximum extent permitted by law, the rate of interest attributable to loan payments shall be determined by: (i) spreading payments over the term of this loan payments; (ii) if appropriate, characterizing payments as a premium for the privilege of making an optional prepayment of an obligation; and (iii) giving effect to the provisions of any other General Financing Document which require the cancellation or refunding of Interest. Excess interest, if any after the application of the foregoing provisions, provided for in the General Financing Documents shall be cancelled automatically as of the date of such acceleration, redemption or purchase or, if theretofore paid, shall be credited to future loan payments or if all loan payments have been, or would thereby be, paid in full, refunded to the Borrower (provided, however, that, so long as the Master Trust Indenture remains in full force and effect, any refund shall be paid to the Master Trustee for deposit to the Revenue Fund, as defined in the Master Trust Indenture, for application as revenues in accordance with the Master Trust Indenture). However, in lieu of such cancellation or refund, the Bond Trustee shall (if requested by the holders of all of the Outstanding Bonds affected), to the extent permitted by applicable law, delay the date on which any payment is due hereunder or under any of the General Financing Documents until the earliest Business Day that will result in the payment of Interest at a rate not in excess of the Highest Lawful Rate.

Section 3.7. Effective Date and Term.

(a) This Loan Agreement shall become effective upon its execution and delivery by the parties hereto, shall remain in full force from such date and, subject to the provisions hereof (including particularly Articles V and VI), and shall expire on such date as the Trust Indenture shall be discharged and satisfied in accordance with the provisions of Article XII thereof. The Borrower’s obligations under Sections 3.3, 7.10 and 7.11 hereof, however, shall survive the expiration of this Loan Agreement in accordance with the provisions of said Section.

(b) Within sixty (60) days of such expiration the Issuer shall deliver to the Borrower any documents and take or cause the Bond Trustee, at the Borrower’s expense, to take any such reasonable actions as may be necessary to effect the cancellation, release and satisfaction of the Trust Indenture and the General Financing Documents.

Section 3.8. Security for The Borrower’s Performance. This Loan Agreement represents the general obligation of the Borrower and the obligations created hereunder are secured by the Subordinate Master Note issued pursuant to the Master Trust Indenture. The Subordinate Master Notes are joint and several general obligation of each Member of the Obligated Group and is secured by such mortgages, liens and security interests as are provided under the Master Trust Indenture. The full faith and credit of each

Member of the Obligated Group is pledged to pay all sums due or to become due hereunder and under the Subordinate Master Note. The obligations hereunder are secured by the terms and provisions of the Master Trust Indenture. This Loan Agreement constitutes a Related Financing Document, as defined in the Master Trust Indenture.

Section 3.9. Project Covenants.

(a) The Borrower agrees that it will acquire, construct, improve, install and equip, or complete the acquisition, construction, improvement, installation and equipping of, the Project, materially in accordance with the description of the Project prepared by the Borrower and submitted to the Issuer, including any and all supplements, amendments and additions or deletions thereto or therefrom, it being understood that the approval of the Issuer shall not be required for changes in such description which do not materially alter the purpose and description of the Project as set forth in Exhibit A hereto.

(b) The Borrower agrees that it will incur expenses in accordance with the description of the Project Costs as set forth in Exhibit B attached hereto, it being understood that the approval of the Required Bondholders shall be required for changes in such description that materially alter the purpose and description of the Project Costs as set forth in Exhibit B hereto. The Borrower shall not make any changes to the Project Costs that would affect the qualification of the Project as a “project” under the Act.

(c) In the event that the Borrower desires to alter or change the Project, and such alteration or change materially alters the purpose and/or description of the Project as described in Exhibit A hereto, the Borrower shall be required to deliver the following to the Issuer and the Bond Trustee:

- (i) a certificate of an Authorized Representative of the Borrower describing in detail the proposed changes and stating that they will not adversely affect the Project qualifying as facilities that may be financed pursuant to the Act;
- (ii) a copy of the proposed form of amended or supplemented Exhibit A hereto;
- (iii) an Approving Opinion addressed to the Bond Trustee with a copy to be delivered to the Issuer relating to such proposed changes; and
- (iv) written approval of the Required Bondholders.

(d) As soon as practicable after the construction, acquisition, installation, equipping and improvement of the Project is completed, an Authorized Representative of the Borrower, on behalf of the Borrower, shall evidence the Completion Date by providing a certificate to the Bond Trustee and the Master Trustee upon which the Bond Trustee and the Master Trustee may conclusively rely and to the Issuer stating that the construction of the Project has been completed substantially in accordance with the plans, specifications and work orders therefor, and all labor, services, materials and supplies used in the construction have been paid or provided for and there are no liens filed against the Project, which certificate shall attach a copy of the Certificate of Substantial Completion delivered pursuant to Section 5.3(c) of the Trust Indenture. Notwithstanding the foregoing, such certificate may state that it is given without prejudice to any rights of the Borrower against third parties for any claims or for the payment of any amount not then due and payable which exists at the date of such certificate or which may subsequently exist so long as there are no liens filed against the Project or such liens have been bonded in accordance with applicable law.

(e) In the event the moneys in the Project Fund available for payment of the Costs of the Project are or will be insufficient to pay the costs of construction, installation and equipping of the Project in full, the Borrower agrees to pay directly, or to deposit in the Project Fund moneys sufficient to pay, any costs of completing the construction, installation and equipping of the Project in excess of the moneys available for such purpose in the Project Fund. The Issuer makes no express or implied warranty that the moneys deposited in the Project Fund and available for payment of the Costs of the Project, under the provisions of this Agreement will be sufficient to pay all amounts that may be incurred for such costs. The Borrower agrees that if, after exhaustion of the moneys in the Project Fund, the Borrower should pay, or deposit moneys in the Project Fund for the payment of, any portion of the Costs of the Project pursuant to the provisions of this Section, it shall not be entitled to any reimbursement therefor from the Issuer, from the Bond Trustee or from the Holders of any of the Bonds, nor shall it be entitled to any diminution of the amounts payable under this Section.

(f) During the period in which the Project is under construction, the Borrower shall furnish the Issuer, the Bond Trustee and the Master Trustee monthly progress reports prepared by the Construction Monitor and certified by the Borrower in the form attached as Exhibit C attached hereto.

(g) The Borrower agrees that it will maintain and keep the Project, or cause the Project to be maintained and kept, in good repair, working order and condition except for ordinary wear and tear and that it will make or cause to be made all repairs and replacements, in each case as it deems necessary to operate such Project in substantial conformity to the use currently contemplated by the Borrower Financing Documents as of the date hereof.

In the event that the Borrower fails to perform its obligations under this Section, the Issuer, the Bond Trustee or the Master Trustee may (but is under no obligation to) perform such obligations for the Borrower. Any money advanced by the Issuer, the Bond Trustee or the Master Trustee in discharge of such obligations under this Section are additional obligations of the Borrower to the one making the advance, are due from the Borrower in immediately available funds on demand and bear interest at the stated interest rate of the Bonds from the date of the advance until paid.

(h) In the event of a material default of any contractor or subcontractor under any construction contract or any other contract made in connection with the Project, or in the event of a material breach of warranty with respect to any materials, workmanship or performance, the Borrower will promptly proceed, either separately or in conjunction with others, to pursue diligently its remedies against the contractor or subcontractor in default and against any surety on a bond securing the performance of such contract. Any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, after deduction of expenses incurred in such recovery and after reimbursement to the Borrower of any amounts therefor paid by the Borrower and not previously reimbursed to the Borrower for correcting or remedying of the default which gave rise to the proceedings against the contractor, subcontractor or surety, shall be paid into the Project Fund if received before the completion of the Project, and otherwise shall be paid into the Redemption Account of the Debt Service Fund.

#### **ARTICLE IV** **COVENANTS OF THE BORROWER**

Section 4.1. Compliance with Master Trust Indenture. The Borrower covenants and agrees that, during the term of this Loan Agreement, it will at all times cause all other Members of the Obligated Group to comply with the requirements of the Master Trust Indenture, including the Third Supplemental MTI.

Section 4.2. Records; Financial Reports. The financial reports required by Section 6.09 of the Master Trust Indenture also shall be filed with the Bond Trustee and any Bondholder who is a registered Owner of at least \$1,000,000 principal amount of Bonds and who requests such reports from the Obligated Group in writing. The Bond Trustee shall have no responsibility to review any such statements submitted to it. The Borrower shall keep complete and accurate lists and other records containing all information necessary to reflect the use of proceeds of the Bonds and from time to time upon request of the Issuer will furnish copies thereof to the Issuer.

Section 4.3. Further Assurances and Corrective Instruments. The Issuer (subject to Section 7.12 hereof) and the Borrower agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project Facility or for carrying out the intention of or facilitating the performance of this Loan Agreement.

Section 4.4. Covenant by Borrower as to Compliance with Trust Indenture . The Borrower covenants and agrees that it will comply with the provisions of the Trust Indenture and that the Bond Trustee and the Bondholders shall have the power and authority provided in the Trust Indenture . The Borrower further agrees to aid in the furnishing to the Issuer or the Bond Trustee of opinions that may be required under the Trust Indenture. The Borrower covenants and agrees that the Bond Trustee shall be entitled to and shall have all the rights, including the right to enforce against the Borrower the provisions of the Borrower Financing Documents, pertaining to the Bond Trustee notwithstanding the fact that the Bond Trustee is not a party to the Borrower Financing Documents.

Section 4.5. Change in Control. The Borrower covenants and agrees that during the term of this Loan Agreement it shall not take any action, or omit to take any action, that would result in a Change in Control of the Project, except in compliance with Section 3.5 of the Trust Indenture, and satisfaction of the following:

(a) Within 10 days after any Change in Control or, in the case of a Change in Control described in clauses (ii) and (iii) of the definition thereof, at least 30 days prior to such Change in Control but after it is publicly announced, the Borrower shall notify the Bond Trustee, the Master Trustee and the Issuer in writing (such notice being referred to herein as a “**Change in Control Notice**”) of the Change in Control and post a copy of such Change in Control Notice to EMMA, which Change in Control Notice shall specify:

(i) that a Change in Control has occurred or will occur and the date of such event;

(ii) the circumstances and relevant facts regarding such Change in Control, including without limitation any conditions precedent to the effectiveness thereof;

(iii) the date, which shall be no less than 15 days nor more than 30 days (or such later date as is necessary to comply with any applicable securities laws) after the date of the Change in Control Notice (such period being referred to as the “**Tender Period**”), by which each Beneficial Owner may notify the Bond Trustee of its election to tender its Bonds to the Bond Trustee for purchase by the Borrower by delivering a written notice (a “**Tender Election Notice**”) of its election to tender all or a portion of its Bonds;

(iv) that the outstanding Bonds will become subject to optional tender on the date specified in such Tender Election Notice, which date shall be not less than 15 days nor more than 30 days (or such later date as is necessary to comply with any applicable securities laws) after expiration of the Tender Period (the date of purchase herein referred



to as the “**Tender Date**”) by any Beneficial Owner to the Bond Trustee (for purchase by the Borrower) at a tender price equal to one hundred and one percent (101%) of the aggregate principal amount of the Bonds tendered (the “**Tender Price**”), plus accrued interest on the Bonds so tendered, to be paid to a tendering Beneficial Owner on the Tender Date;

(v) that any Bonds not tendered will continue to accrue interest at then applicable rate of interest thereof;

(vi) that, unless the Borrower defaults in the payment of the Tender Price on the Tender Date, any tendered Bonds shall cease to accrue interest after the Tender Date;

(vii) that a Beneficial Owner who has submitted a Tender Election Notice may withdraw the same by written notice to the Bond Trustee, the Issuer and the Borrower no less than three (3) Business Days prior to the Tender Date by telegram, telex, facsimile transmission, electronic image scan or letter, specifying, as applicable: (I) the name of the Beneficial Owner; (II) the principal amount of the Bonds subject to the Tender Election Notice as to which such notice of withdrawal is being submitted; (III) a statement that such Beneficial Owner is withdrawing its Tender Election Notice with respect to all or a portion of its Bonds subject to the Tender Election Notice; and (IV) the principal amount, if any, of such Bonds (which shall be an Authorized Denomination) that remains subject to the original Tender Election Notice and that has been or will be delivered to the Bond Trustee for purchase by the Borrower; and

(viii) such other procedures that a Beneficial Owner must follow to effect a tender of the Bonds (or to withdraw its acceptance and tender); provided that such other procedures may not impose limitations or additional burdens on the right of Beneficial Owners to tender their Bonds as provided herein.

(b) The Borrower shall purchase all Bonds for which a Tender Election Notice has been submitted (and to the extent not properly withdrawn) on the Tender Date at the Tender Price.

(c) The Borrower shall deposit funds with the Bond Trustee on or before each Tender Date in an aggregate amount equal to the Tender Price of all Bonds tendered for purchase on such Tender Date and the interest accrued and payable on such Tender Date in order to provide the Trustee with sufficient moneys to enable the Trustee to pay the Tender Price to each tendering Beneficial Owner on the Tender Date, plus interest accrued on such Bonds to the Tender Date.

(d) For purposes hereof, “Change in Control” has the meaning set forth in Article I of the Master Indenture.

Section 4.6. Right of Access to the Project. The Borrower agrees that during the term of this Agreement, the Issuer, the Bond Trustee, and the duly authorized agents of either of them shall have the right during normal business hours to enter upon each site where any part of the Project is located and to examine and inspect the Project; provided that twenty-four hours’ notice shall be given to the Borrower prior to such examination or inspection and such examination or inspection will not materially interrupt operations of the Project.

Section 4.7. Qualification in the State. The Borrower shall maintain its existence, its entity status, franchises, rights, and privileges under the laws of the state of its formation or organization (as applicable). The Borrower shall continue to be duly qualified and in good standing to transact business in

the State and if the failure to do so would adversely affect its operation of the Project or the validity, enforceability, or the ability of the Borrower to perform its obligations under the Master Indenture or any other Borrower Loan Document. Neither the Borrower, nor any partner, member, manager, officer, or director of the Borrower shall make or allow any material change to their organizational documents or organizational structure, including changes relating to the control of the Borrower, except as provided in the Master Indenture.

Section 4.8. Intentionally Left Blank.

Section 4.9. Intentionally Left Blank.

Section 4.10. Changes to the Project. The Borrower shall not make any changes to the Project or to the operation thereof that would affect the qualification of the Project under the Act.

Section 4.11. Sale, Lease or Disposition. The Borrower shall not sell, transfer, lease or otherwise dispose of, or permit the sale, transfer, lease or disposal of, all or substantially all of the Project except as set forth in the Master Indenture.

Section 4.12. Maintenance and Repair; Taxes, Utility and Other Charges. The Borrower agrees to maintain the Project, or cause the Project to be maintained, for so long as they have an interest in the Project (a) in as reasonably safe condition as its operations shall permit, (b) in good repair and in good operating condition, ordinary wear and tear excepted, making from time to time all necessary repairs thereto and renewals and replacements thereof and (c) in a manner consistent with the laws of the State, including, without limitation, all environmental laws.

The Borrower agrees to pay or cause to be paid, for so long as it has an interest in the Project, all taxes, governmental charges of any kind lawfully assessed or levied upon the Project or any part thereof, including any taxes levied against any portion of the Project which, if not paid, will become a charge on the revenues or other receipts from the Project prior to or on a parity with the charge thereon and the pledge or assignment thereof to be created therefrom or under the Master Indenture, all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of any portion of the Project (except to the extent that the failure to do so would not result in a material adverse effect on the financial condition of the Borrower) and all assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Project; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Borrower shall be obligated to pay only such installments as are required to be paid during their ownership of the Project. The Borrower may, at its expense and in its name, in good faith, contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during that period of such contest and any appeal therefrom unless by such nonpayment the Project or any part thereof (i) will be subject to seizure, tax sale, loss, forfeiture or similar taking, in which case the Borrower shall pay the taxes to avoid seizure, tax sale, loss, forfeiture or similar taking and may continue its contest by claim for refund or (ii) subject the Project to a lien that is not bonded in accordance with applicable law.

Section 4.13. Maintenance of Permits. The Borrower agrees to maintain, or cause to be maintained, all certificates, approvals, permits, licenses and authorizations reasonably necessary for the construction, as applicable, use or operation of the Project; except to the extent that the failure to do so would not result in a material adverse effect on the financial condition of the Borrower.

Section 4.14. Maintenance of Leasehold Interest. The Borrower shall cause the Lease to remain in effect through the maturity date of the Bonds, including by the timely exercise of any available options

to extend the term thereof, in accordance with the provisions thereof, to cause the term so extended to exceed the date on which the principal and interest on the Bonds is paid in full.

Section 4.15. Continuing Disclosure Agreement. The Borrower shall, and shall cause the Obligated Group to, comply with the provisions of the Continuing Disclosure Agreement.

Section 4.16. Maintenance of Existence. Except as otherwise provided in the Master Trust Indenture, the Borrower agrees that during the term of this Loan Agreement the Borrower (a) will maintain its corporate existence, (b) will not dissolve, (c) will not sell, lease, transfer or otherwise dispose of all or substantially all of its assets, (d) will not receive from any other corporation by sale, lease, transfer or otherwise all or substantially all of its assets, (e) will not consolidate with or merge into another corporation and (f) will not permit one or more other corporations to consolidate with or merge into it.

Section 4.17. Right to Documents. So long as any Bonds remain outstanding, the Borrower agrees that any items required to be delivered or addressed to the Master Trustee under the Master Trust Indenture will also be delivered to the Bond Trustee and, at the request of the Issuer, be delivered or addressed to the Issuer.

Section 4.18. Intentionally Left Blank.

Section 4.19. Books and Records. The Borrower shall, and cause each Member of the Obligated Group to, at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with GAAP, consistently applied, in which complete and accurate entries shall be made of all material transactions of or in relation to the business, properties and operations of such Member of the Obligated Group, including requisitions of the Borrower filed with the Bond Trustee in the form attached as Appendix B to the Trust Indenture.

Section 4.20. Establishing and Preserving the Lien on Collateral; Continuation Statements.

The Borrower agrees to file the UCC financing statements and continuation statements required to be filed, if any, to establish, perfect and preserve the Lien of the Borrower Financing Documents related to the Project in the office of the Secretary of State of Delaware and the local records where the Project is located in the State, and to provide copies of such filings to the Bond Trustee and the Master Trustee. The Borrower covenants and agrees to file, continuation statements in compliance with the applicable uniform commercial code applicable to each UCC financing statement of the Issuer and the Borrower in effect relating to the Bonds every five years at its sole cost and expense and to provide copies of such continuation filings to the Bond Trustee and the Master Trustee at least sixty days prior to the expiration of the effectiveness of each financing statement. In addition, the Borrower, on demand, will execute and deliver and hereby authorizes the Bond Trustee and the Master Trustee to execute in the name of the Borrower, or without any signature of Borrower to the extent the Bond Trustee and the Master Trustee may lawfully do so, one or more financing statements, continuation statements, chattel mortgages, deeds of trust or other instruments, to evidence more effectively the security interest of the Bond Trustee in the Trust Estate and of the Master Trustee in the Project subject to the Lien of the Indenture and the Borrower Financing Documents (provided the Bond Trustee shall have no obligation to do so).

Section 4.21. Insurance.

(a) The Borrower shall provide, maintain and keep in force or cause to be provided, maintained and kept in force, the following insurance coverages relating to the Project, paying as the same become due and payable all premiums with respect thereto:

(i) Insurance against loss or damage to the Project and all improvements there-in (including, during any period of time when the Borrower or Owner/Operator are making alterations, repairs or improvements to the building, improvements and betterments coverage), all subject to standard form exclusions, with uniform standard extended coverage endorsements limited only as may be provided in the standard form of extended coverage endorsement at the time in use in the State, as applicable, in an amount equal to the full replacement value of the Project and the equipment located therein.

(ii) Commercial comprehensive general liability and automobile liability insurance against claims arising in, on or about the Project, including in, on or about the sidewalks or premises adjacent to the Project, providing coverage limits not less than \$1,000,000 per occurrence and \$2,000,000 in aggregate.

(iii) Business interruption or rent loss insurance (or a combination of the two) equal to eighteen months' operating expenses.

(b) All the insurance coverage required by this Section 4.21 may be subject to deductible clauses in such amounts as are customary for facilities of similar size, type and character within the State. On or before each December 31, commencing December 31, 2023, the Borrower shall employ, at its expense, an Insurance Consultant to review the insurance coverage required by this Section and to render to the Master Trustee a certificate confirming the adequacy of such coverage and as to its recommendations, if any, for adjustments thereto. The insurance coverage required by this Section may be reduced or otherwise adjusted by the Borrower without the consent of the Master Trustee, provided that all coverages after such reduction or other adjustment are certified by the Insurance Consultant to be adequate and customary for facilities of like size, type and character, taking into account the availability of such insurance, the terms upon which such insurance is available, the cost of such available insurance and the effect of such terms and such cost upon the Borrower's fees, rentals and charges for the use of the Project, and provided further that the amount of insurance shall not be reduced below the full replacement value of the Project and the equipment located therein and shall not provide for less than 18 months of business interruption insurance.

(c) The insurance coverage required by this Section 4.21 shall be increased or otherwise adjusted by the Borrower if, as a result of such review, the Insurance Consultant finds that the existing coverage is inadequate. The insurance coverage required by this Section, and modification thereof permitted or required by this subsection, shall at all times be adequate and customary for facilities of like size, type and character, and the Borrower shall request that the Insurance Consultant so certify in the report required by this Section. The Borrower shall pay any fees charged by such Insurance Consultant and any expenses incurred by the Master Trustee.

(d) All policies maintained (or caused to be maintained) by the Borrower pursuant to this Section shall be taken out and maintained with generally recognized, responsible insurance companies rated not less than "A" by A.M. Best (or any successor), authorized to write insurance in the State, as applicable, which may include "captive" insurance companies or governmental insurance pools, selected by the Borrower. The insurance policies required by this Section shall name the Master Trustee, the Bond Trustee and the Borrower as insureds as their respective interests may appear (provided that with respect to insurance maintained pursuant to this Section, the Master Trustee shall also be named as a mortgagee, and the Master Trustee shall also be named as an additional insured on the policies required by subsections (a)(ii) and (a)(iii) of this Section 4.21, and, provided further that all insurance proceeds for losses, and except for worker's compensation and liability insurance, shall be paid directly to the Master Trustee). Such policies or certificates of insurance shall provide that the insurer will endeavor to mail not less than

30 nor more than 60 days' written notice to the Master Trustee of any amendment or cancellation prior to expiration of such policy.

(e) The Borrower shall deliver to the Master Trustee (i) upon the Escrow Release Date, a certificate of the Borrower confirming it has obtained the insurance which the Borrower is then required to maintain pursuant to this Section 4.21, (ii) at least 15 days prior to the expiration of any such policies a certificate of the Borrower confirming the renewal thereof, if then required by this Section 4.21, and the payment of all premiums then due with respect thereto, and (iii) promptly upon request by the Issuer or the Bond Trustee, but in any case within 90 days after the end of each fiscal year, a certificate of an Authorized Representative of the Borrower setting forth the particulars as to all insurance policies maintained by the Borrower pursuant to this Section 4.21 and certifying that such insurance policies are in full force and effect, that such policies comply with the provisions of this Section 4.21 and that all premiums then due thereon have been paid.

(f) The Master Trustee and the Bond Trustee shall have no duty to review or analyze any insurance policies or certificates, or other material delivered to the Master Trustee or the Bond Trustee under the terms of this Section. The Master Trustee and the Bond Trustee shall not be deemed to have notice of any information contained therein or Event of Default that may be disclosed in any manner therein.

Section 4.22. Offtake Contract. Any offtake contract entered into between the Borrower or the Obligated Group and Do Good Foods LLC shall be collaterally assigned to the Master Trustee, which assignment shall be in form and substance acceptable to the Master Trustee.

Section 4.23. Restrictions on Creation of Liens. Notwithstanding anything to the contrary herein or in the Trust Indenture, for so long as the Third Supplemental MTI is in effect, no liens may be imposed on the Project except pursuant to Section 6.02 of the Master Trust Indenture, as modified by Section 4.06 of the Third Supplemental MTI.

## **ARTICLE V**

### **EVENTS OF DEFAULT AND REMEDIES**

#### Section 5.1. Events of Default.

“**Event of Default**,” as used herein, shall mean any of the following events, whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body:

(a) if the Borrower shall fail:

(i) to make or cause to be made any payment of principal, Redemption Price or Tender Price or interest pursuant to Sections 3.1(c) or 3.1(d) hereof or when due hereunder; or

(ii) to make any deposit or other payment required to be made to the Bond Trustee hereunder prior to the earlier of (1) the 10<sup>th</sup> Business Day following the due date of such deposit or payment in accordance with the terms hereof, or (2) the date on which any payment is required to be made by the Bond Trustee on the Bonds from any such amount; or

(iii) to comply with the covenants contained in Section 4.1, Section 4.4, Section 4.5, Section 4.7, Section 4.8, Section 4.9, Section 4.10, Section 4.11, Section 4.14, Section 4.15, Section 4.16, Section 4.18, Section 4.20, Section 4.21 and Section 4.23; or

(b) if the Borrower shall fail to observe or perform any covenant or agreement contained in this Loan Agreement or any Borrower Financing Document and such failure continues for a period of 30 days after written notice of such failure, requiring the same to be remedied, shall have been given by the Bond Trustee to the Borrower, the giving of which notice shall be at the discretion of the Bond Trustee unless the Bond Trustee is requested in writing to do so by the Holders of at least a majority in aggregate principal amount of the Outstanding Bonds; provided, however, that if such observance or performance requires work to be done, actions to be taken, or conditions to be remedied, which by their nature cannot reasonably be done, taken or remedied within such 30-day period but can be done, taken or remedied within a reasonable period of time, no Event of Default shall be deemed to have occurred or to exist if, and so long as, the Borrower shall commence such work, action or other remedy within such 30-day period and shall diligently and continuously prosecute the same to completion, provided, further, however, that in no event shall such period extend beyond 90 days after the date the Bond Trustee gives notice of such failure; or

(c) if any warranty, representation, certification, financial statement or other information made or furnished to induce the Issuer to enter into this Loan Agreement or allow any Bonds to be issued, made or furnished, at any time, in or pursuant to the terms of the Borrower Financing Documents by the Borrower or the Borrower shall prove to have been false or misleading in any material respect when made or furnished; or

(d) if an Event of Default under the Master Trust Indenture shall occur and is not waived or cured to the satisfaction of the Master Trustee; or

(e) the occurrence of an Act of Bankruptcy with respect to the Borrower or any Member, which Act of Bankruptcy shall be deemed to automatically accelerate the Subordinate Master Note.

Section 5.2. Remedies on Default.

(a) Whenever any Event of Default shall have occurred, the Bond Trustee, or the Issuer where so provided herein, may take any one or more of the following actions:

(i) The Subordinate Master Note and the corresponding obligations of the Borrower hereunder may be accelerated or shall be accelerated in the same manner and subject to the same conditions as specified in Sections 8.1(b) and 8.1(c) of the Trust Indenture with respect to acceleration of the Bonds, and, to the extent any Bond is accelerated, the Subordinate Master Note shall be accelerated to the same extent.

(ii) The Issuer, without the consent of the Bond Trustee or any Bondholder, may proceed to enforce the obligations of the Borrower to the Issuer in respect of the Unassigned Rights.

(iii) The Bond Trustee may take whatever action at law or in equity it may have to collect the amounts then due and thereafter to become due, or to enforce the performance or observance of the obligations, agreements, and covenants of the Borrower under the Borrower Financing Documents, including, to the extent permitted by applicable law, by mandamus or by the appointment of a receiver in equity of the Borrower with such powers as the court making such appointment shall grant, including the power to charge and collect

rents, purchase price payments, and loan payments and to apply the revenues from the Project Facilities in accordance with the Borrower Financing Documents.

(iv) The Bond Trustee may exercise any and all rights it may have under the General Financing Documents, including, without limitation, the requirement that the Borrower obtain the prior written consent of the Bond Trustee to the taking of any action otherwise permitted by the General Financing Documents.

(b) In the event that any Event of Default or any proceeding taken by the Issuer or by the Bond Trustee thereon shall be waived or determined adversely to the Issuer or the Bond Trustee, then the Event of Default shall be annulled and the Issuer, the Bond Trustee and the Borrower shall be restored to their former rights hereunder, but no such waiver or determination shall extend to any subsequent or other default or impair any right consequent thereon.

(c) Notwithstanding anything to the contrary in this Loan Agreement, the Issuer shall have no obligation to and instead the Bond Trustee may, without further direction or consent from the Issuer, take any and all steps, actions and proceedings, to enforce any and all rights of the Issuer (other than the Unassigned Rights and those specifically retained by the Issuer pursuant to the Trust Indenture ) under the Trust Indenture or this Loan Agreement, including, without limitation, the rights to enforce the remedies upon the occurrence and continuation of an Event of Default and the obligations of the Borrower hereunder.

Section 5.3. No Duty to Mitigate Damages. Unless otherwise required by law, none of the Issuer, the Bond Trustee nor any Bondholder shall be obligated to do any act whatsoever or exercise any diligence whatsoever to mitigate the damages to the Borrower if an Event of Default shall occur.

Section 5.4. Remedies Cumulative. No remedy herein conferred upon or reserved to the Issuer or the Bond Trustee is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to every remedy given under this Loan Agreement or now or hereafter existing at law or in equity or by statute. Delay or omission to exercise any right or power accruing upon any default or failure by the Issuer or the Bond Trustee to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon default by the Borrower hereunder shall not impair any such right or power or be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce, by injunction or other appropriate legal or equitable remedy, strict compliance by the Borrower with all of the covenants and conditions hereof; or of the right to exercise any such rights or remedies, if such default by the Borrower be continued or repeated.

Section 5.5. Notice of Default by Bond Trustee. Subject to Section 9.3(h) of the Trust Indenture, if the Bond Trustee has actual notice of an Event of Default hereunder, the Bond Trustee shall promptly deliver written notice of the same to the Bondholders and, except to the extent notice of the same has been delivered thereto by another Person (or was sent by such Person) to the Master Trustee, the Issuer, and the Borrower.

## **ARTICLE VI**

### **PREPAYMENT PROVISIONS**

Section 6.1. Optional and Extraordinary Prepayment.

(a) The Borrower shall have, and is hereby granted, the option to prepay its obligations hereunder as a whole, or in part, at any time by delivering a written notice to the Bond Trustee in accordance with the Trust Indenture, with a copy to the Issuer, setting forth the amount to be prepaid, the amount of

Bonds requested to be redeemed with the proceeds of such payment (to the extent authorized by and in the manner required by the Master Trust Indenture and the Trust Indenture or any Supplemental Trust Indenture authorizing the issuance of such Bonds), and the date on which such Bonds are to be redeemed. Such prepayment must be sufficient to provide moneys for the payment of interest and Redemption Price or Tender Price in accordance with the terms of the Bonds requested to be redeemed with such prepayment and all other amounts then due under the Borrower Financing Documents. In the event of any complete prepayment of the Borrower's obligations hereunder, the Borrower shall, at the time of such prepayment, also pay or provide for the payment of all fees and expenses of the Issuer, the Bond Trustee and Paying Agent (including without limitation attorneys' fees and expenses) accrued and to accrue through the final payment of all the Bonds. Any such prepayments shall be applied to the redemption of Bonds in the manner provided in Article III and VI of the Trust Indenture, and credited against payments due hereunder in the same manner.

(b) The Borrower shall be required to prepay its loan payments in whole or in part to the extent and at the times necessary to effect a mandatory redemption in the manner and at the times required by Article III of the Trust Indenture.

(c) The Borrower may prepay its loan payments in whole or in part to effect an extraordinary optional redemption to the extent, in the manner and at the times permitted pursuant to the Trust Indenture.

(d) In any such case, the loan payment shall be a sum sufficient, together with other funds deposited with the Bond Trustee and available for such purpose, to redeem the Bonds called for the redemption under the Trust Indenture at the applicable Redemption Price or Tender Price, and with respect to any final payment of the Bonds all other amounts due under this Loan Agreement and the Subordinate Master Note.

Section 6.2. Notice of Prepayment. To exercise any options granted in this Article, or to consummate the acceleration of the loan payments as set forth in this Article, the written notice to the Bond Trustee and the Issuer shall be signed by an Authorized Representative of the Borrower and shall specify therein the date of prepayment, which date shall be not less than thirty (30) days nor more than ninety (90) days from the date the notice is received by the Bond Trustee. A duplicate copy of any written notice hereunder shall also be filed with the Issuer by the Borrower.

## **ARTICLE VII** **GENERAL**

### Section 7.1. Trust Indenture .

(a) Moneys received from the sale of the Bonds and all loan payments made by the Borrower and all other moneys received by the Issuer or the Bond Trustee under the General Financing Documents shall be applied solely and exclusively in the manner and for the purposes expressed and specified in the Trust Indenture and in the Bonds and as provided in this Loan Agreement.

(b) The Borrower shall have and may exercise all the rights, powers and authority given the Borrower in the Trust Indenture and in the Bonds, and the Trust Indenture and the Bonds shall not be modified, altered or amended in any manner which adversely affects such rights, powers and authority or otherwise adversely affects the Borrower without the prior written consent of the Borrower.

Section 7.2. Benefit of and Enforcement by Bondholders. The Issuer and the Borrower agree that this Loan Agreement is executed in part to induce the purchase by others of the Bonds and for the further securing of the Bonds, and accordingly that all covenants and agreements on the part of the Issuer



and the Borrower as to the amounts payable with respect to the Bonds and Master Note hereunder are hereby declared to be for the benefit of the holders from time to time of the Bonds and may be enforced as provided in the Trust Indenture on behalf of the Bondholders by the Bond Trustee.

Section 7.3. Amendments. This Loan Agreement may be amended only in accordance with the requirements of the Trust Indenture.

Section 7.4. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or on the third Business Day after mailed by certified mail, postage prepaid, or trackable overnight delivery, (or if earlier, when received or refused) addressed as follows:

Issuer:

The City of Fort Wayne, Indiana  
Attention: Law Department  
200 E. Berry Street, Suite 320  
Fort Wayne, Indiana 46802

Borrower:

Do Good Foods LLC  
1545 US Highway 206 Suite 100  
Bedminster, NJ 07921  
Attention: David Buffa  
General Counsel

Bond Trustee & Master Trustee:

UMB Bank, N.A.  
120 South Sixth Street, Suite 1400  
Minneapolis, Minnesota 55402  
Attention: Katie Carlson  
Vice President, Corporate Trust Services

A duplicate copy of each notice, certificate or other communication given hereunder by either the Issuer or the Borrower to the other shall also be given to the Bond Trustee. The Issuer, the Borrower and the Bond Trustee may, by written notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 7.5. Non-Liability of Issuer. The Issuer shall not be obligated to pay the principal (or Redemption Price or Tender Price) of, premium, if any, or interest on the Bonds or any costs incidental thereto, except from the Trust Estate. Neither the faith and credit nor the taxing power of the Issuer, the State or any other political subdivision or agency thereof or any political subdivision approving the issuance of the Bonds, nor the faith and credit of the Issuer, is pledged to the payment of the principal of, premium, if any, Redemption Price or Tender Price, if any, or interest on the Bonds or any costs incidental thereto. The Issuer has no taxing power. The Issuer shall not be directly, indirectly, contingently or otherwise liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Loan Agreement, the Bonds or the Trust Indenture, except only to the extent amounts are received for the payment thereof from the Borrower under this Loan Agreement, and except as may result solely from the Issuer's own willful misconduct.

The Borrower hereby acknowledges that the Issuer's sole source of moneys to repay the Bonds will be provided by the payments made by the Borrower to the Bond Trustee pursuant to this Loan Agreement, together with investment income on certain funds and accounts held by the Bond Trustee under the Trust Indenture, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal (or Redemption Price or Tender Price), premium, if any, and interest on the Bonds as the same shall become due (whether by maturity, redemption, acceleration, mandatory tender or otherwise) or any costs incidental thereto, then upon notice or demand from the Bond Trustee, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal (or Redemption Price or Tender Price), premium, if any, or interest when due, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Bond Trustee, the Borrower, the Issuer or any third party, subject to any right of reimbursement from the Bond Trustee, the Issuer or any such third party, as the case may be, therefor.

Section 7.6. Waiver of Personal Liability. No Indemnified Party or any manager, director, officer, agent or employee of the Borrower or its manager shall be individually or personally liable for the payment of any principal (or Tender Price or Redemption Price), premium, if any, or interest on the Bonds or any costs incidental thereto or any sum hereunder or under the Trust Indenture or be subject to any personal liability or accountability by reason of the execution and delivery of this Loan Agreement or the Trust Indenture.

Section 7.7. Prior Agreements Superseded. This Loan Agreement, together with all agreements executed by the parties concurrently herewith or in conjunction with the sale of the Bonds, shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Issuer and the Borrower relating to the leasing of property and financing of the Project Facilities, including those contained in any commitment letter executed in anticipation of the issuance of the Bonds.

Section 7.8. Execution of Counterparts. This Loan Agreement may be executed simultaneously in several counterparts each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 7.9. Expenses. The Borrower shall pay and indemnify the Issuer, the Indemnified Parties and the Bond Trustee against all fees, costs and charges, including fees and expenses of attorneys, accountants, consultants and other experts, incurred in good faith (and with respect to the Bond Trustee, without gross negligence and arising out of or in connection with this Loan Agreement, the other Borrower Financing Documents, the Bonds or the Trust Indenture . These obligations and those in Section 7.10 shall remain valid and in effect notwithstanding repayment of the Loan hereunder or the Bonds or termination of this Loan Agreement or the Trust Indenture.

Section 7.10. Indemnification and Release.

(a) To the fullest extent permitted by law, the Borrower hereby fully and forever and irrevocably releases and agrees to indemnify, hold harmless and defend the Indemnified Parties against any and all fees, costs and charges, losses, damages, claims, actions, liabilities and expenses of any conceivable nature, kind or character (including, without limitation, fees and expenses of attorneys, accountants, consultants and other experts, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject under any statutory law or regulation (including, without limitation, federal or state securities laws and regulations and federal tax laws or regulations) or at common law or otherwise (collectively, "Liabilities"), arising out of or based upon or in any way relating to:

(i) the Bonds, the Trust Indenture, this Loan Agreement, the Borrower Financing Documents or the execution or amendment hereof or thereof or in connection with transactions contemplated hereby or thereby, including the issuance, sale or resale of the Bonds;

(ii) the performance or observance by or on behalf of the Issuer of those things on the part of the Issuer agreed to be performed or observed hereunder and under the Trust Indenture and the documents identified in Subsection (i), above;

(iii) any act or omission of the Borrower or any of its affiliates or affiliated persons, agents, contractors, servants, employees, tenants or licensees in connection with any of the Project Facilities, the operation of the Project Facilities, or the condition, environmental or otherwise, occupancy, use, or possession, the Project Facilities or any part thereof;

(iv) any lien or charge upon payments by the Borrower to the Issuer and the Bond Trustee hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Issuer or the Bond Trustee in respect of any portion of the Project Facilities;

(v) any violation of any Environmental Regulations with respect to, or the release of any Hazardous Substances from, the Project Facilities or any part thereof;

(vi) the defeasance and/or redemption, in whole or in part, of the Bonds;

(vii) any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact contained in any offering or disclosure document or disclosure or continuing disclosure document for the Bonds or any of the documents relating to the Bonds, or any omission or alleged omission from any offering or disclosure document or disclosure or continuing disclosure document for the Bonds of any material fact necessary to be stated therein in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading;

(viii) the Bond Trustee's acceptance or administration of the trust of the Trust Indenture, or the exercise or performance of any of its powers or duties thereunder or under any of the documents relating to the Bonds to which it is a party;

(ix) any injury to, or death of, any Person or damage to property in or upon any Project Facility or growing out of, or connected with, the use, nonuse, condition or occupancy of any Project Facility;

except (A) in the case of the foregoing indemnification of the Indemnified Parties, to the extent such damages are caused by the gross negligence or willful misconduct of the Indemnified Parties seeking indemnification; or (B) in the case of the foregoing indemnification of the Indemnified Parties, to the extent such damages are caused by the willful misconduct of such Person otherwise seeking indemnification.

**THE BORROWER EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE INDEMNIFIED PARTIES SHALL BE RELEASED FROM, AND INDEMNIFIED HEREUNDER AGAINST, LIABILITIES ARISING FROM THE INDEMNIFIED PARTIES' OWN NEGLIGENCE OF ANY KIND, DESCRIPTION OR DEGREE**

**(EXPRESSLY WAIVING THE STATUTORY AND COMMON-LAW CONTRIBUTORY OR COMPARATIVE NEGLIGENCE LAWS OF INDIANA AND ANY OTHER STATE OR JURISDICTION), OR BREACH OF CONTRACTUAL DUTY, WITHOUT REGARD TO OR THE NECESSITY OF ANY BREACH OR FAULT ON THE PART OF BORROWER, EXCEPT INsofar AS AND TO THE EXTENT THAT ANY SUCH LIABILITIES ARISE FROM THE WILLFUL MISCONDUCT OF THE PERSON SEEKING INDEMNIFICATION.**

In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel selected by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and participate in the investigation and defense thereof, and the Borrower shall pay the fees and expenses of such separate counsel; provided, however, that such Indemnified Party may only employ separate counsel at the expense of the Borrower if in the judgment of such Indemnified Party a conflict of interest exists by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel.

The rights of any Persons to indemnity hereunder and rights to payment of fees and reimbursement of expenses shall survive the final payment or defeasance of the Bonds and in the case of the Bond Trustee any resignation or removal. The provisions of this Section shall 7.10 shall remain valid and in effect notwithstanding repayment of the loan hereunder or payment, redemption or defeasance of the Bonds or termination of this Loan Agreement of the Trust Indenture.

Insofar as any document or instrument issued or delivered in connection with the Bonds (including without limitation, the documents referred to in Subsection (a) above) purports to constitute an undertaking by or impose an obligation upon the Borrower to provide indemnification to the Indemnified Parties, the indemnification provisions or provisions of such document shall not be deemed, interpreted or construed in any way as a modification of or limitation upon the Borrower's obligations or the rights of the Indemnified Parties under this Section 7.10, and the provisions of this Section 7.10 shall in every respect supersede the indemnification provisions of any such other document and shall apply thereto as if fully set forth therein.

Section 7.11. No Obligation to Enforce Assigned Rights. Notwithstanding anything to the contrary in this Loan Agreement or the Trust Indenture, the Issuer shall have no obligation to and instead the Bond Trustee and/or the Bondholders, as the case may be, in accordance with this Loan Agreement or the Trust Indenture, shall have the right, without any direction from or action by the Issuer, to take any and all steps, actions and proceedings, to enforce any or all rights of the Issuer (other than the Unassigned Rights) under this Loan Agreement or the Trust Indenture, including, without limitation, the rights to enforce the remedies upon the occurrence and continuation of an Event of Default and the obligations of the Borrower under this Loan Agreement.

Section 7.12. Issuer's or Bond Trustee's Performance. None of the provisions of this Loan Agreement or the Trust Indenture shall require the Issuer or the Bond Trustee to expend or risk its own funds or otherwise to incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder or thereunder, unless payable from the Trust Estate, or unless the Issuer or the Bond Trustee shall first have been adequately indemnified to its satisfaction against the cost,

expense, and liability which may be incurred thereby. The Issuer shall not be under any obligation hereunder or under the Trust Indenture to perform any administrative service with respect to the Bonds or the Project Facilities (including, without limitation, record keeping and legal services), it being understood that such services shall be performed or provided by the Bond Trustee or the Borrower. The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions expressly contained in this Loan Agreement, the Trust Indenture and any and every Bond executed, authenticated and delivered under the Trust Indenture ; provided, however, that the Issuer shall not be obligated to take any action or execute any instrument pursuant to any provision hereof unless and until it shall have (i) been directed to do so in writing by the Borrower or the Bondholder having the authority to so direct; (ii) received from the Borrower or the Bondholder requesting such action or execution assurance satisfactory to the Issuer that the Issuer's expenses incurred or to be incurred in connection with taking such action or executing such instrument have been or will be paid or reimbursed to the Issuer; and (iii) if applicable, received in a timely manner the instrument or document to be executed, in form and substance satisfactory to the Issuer.

In complying with any provision herein or in the Trust Indenture, including, but not limited to, any provision requiring the Issuer to "cause" another Person to take or omit any action, the Issuer shall be entitled to rely conclusively (and without independent investigation or verification) (i) on the faithful performance by the Bond Trustee or the Borrower, as the case may be, of their respective obligations hereunder and under the Trust Indenture and (ii) upon any written certification or opinion furnished to the Issuer by the Bond Trustee or the Borrower, as the case may be. In acting, or in refraining from acting, under this Loan Agreement or the Trust Indenture, the Issuer may conclusively rely on the advice of its counsel. The Issuer shall not be required to take any action hereunder or under the Trust Indenture that it reasonably believes to be unlawful or in contravention hereof or thereof.

Section 7.13. No impairment of Rights. Nothing herein shall be deemed or construed to limit, impair or affect in any way the Issuer (or any Indemnified Party's) right to enforce the Unassigned Rights, regardless of whether there is then existing an Event of Default (including, without limitation, a payment default), or any action based thereon or occasioned by an Event of Default or alleged Event of Default, and regardless of any waiver or forbearance granted by the Bond Trustee or any Bondholder in respect thereof. Any default or Event of Default in respect of the Unassigned Rights may only be waived with the Issuer's written consent.

Section 7.14. Closing Expenses. In addition to and without in any way limiting its obligations to pay and indemnify the Issuer and the Indemnified Parties against fees, costs and charges arising out of or in connection with this Loan Agreement, the Borrower Financing Documents, the Bonds or the Trust Indenture.

Section 7.15. Survival of Provisions. The provisions of this Loan Agreement and the Trust Indenture and any other document in connection with the issuance of the Bonds to which the Issuer is a party concerning (a) the interpretation of this Loan Agreement; (b) the governing law, jurisdiction and venue; (c) the Issuer's right to rely on written representations of others contained herein or in any other document or instrument issued or entered into in respect of the Bonds, regardless of whether the Issuer is a party thereto; (d) the indemnification rights and exculpation from liability of the Issuer and the Indemnified Parties; and (e) any other provision of this Loan Agreement not described or enumerated above that expressly provides for its survival, shall survive in full force and effect notwithstanding the payment or redemption in full, or defeasance of the Bonds, the discharge of the Trust Indenture, and the termination or expiration of this Loan Agreement.

Section 7.16. Third Party Beneficiaries. Notwithstanding any provision hereof to the contrary, it is specifically acknowledged and agreed that, to the extent of their rights hereunder (including, without

limitation, their rights to immunity and exculpation from pecuniary liability) each Indemnified Party is a third-party beneficiary entitled to enforce such rights in his, her, its, or their own name.

Section 7.17. Governing Law. THIS LOAN AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF INDIANA, WITHOUT REGARD TO ITS CONFLICTS OF LAWS PROVISIONS. All claims of whatever character arising out of this Loan Agreement, or under any statute or common law relating in any way, directly or indirectly, to the subject matter hereof or to the dealings between the Issuer and any other party hereto, if and to the extent that such claim potentially could or actually does involve the Issuer or any Indemnified Party, shall be brought in any state or federal court of competent jurisdiction located in Allen County, Indiana. By executing and delivering this Loan Agreement, each party hereto irrevocably: (i) accepts generally and unconditionally the exclusive jurisdiction and venue of such courts; (ii) waives any defense of *forum non conveniens*; and (iii) agrees not to seek removal of such proceedings to any court or forum other than as specified above. The foregoing shall not be deemed or construed to constitute a waiver by the Issuer of any prior notice or procedural requirements applicable to actions or claims against or involving joint powers commissions or governmental units of the State that may exist at the time of and in connection with such matter.

Section 7.18. Waiver of Jury Trial. THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS LOAN AGREEMENT OR ANY RELATED DOCUMENT.

Section 7.19. Electronic Transactions. The parties hereto agree that the transactions described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

IN WITNESS WHEREOF, the parties to this Loan Agreement have caused this Loan Agreement to be executed all as of the date first above written.

**CITY OF FORT WAYNE, INDIANA**

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

**DO GOOD FOODS FACILITY  
MANAGEMENT, LLC**

By: \_\_\_\_\_  
Name: David Buffa  
Title: General Counsel

**DO GOOD FOODS FORT WAYNE, LLC**

By: \_\_\_\_\_  
Name: David Buffa  
Title: General Counsel

## **EXHIBIT A**

### **DESCRIPTION OF THE PROJECT**

The proceeds of the Bonds will be used to (i) finance the costs of the acquisition of the assets consisting of, and capital improvements to, an animal feed manufacturing facility located in Fort Wayne, Indiana (the “DGF Fort Wayne Project Facility”) to be owned and operated by Do Good Foods Fort Wayne LLC, a wholly owned subsidiary of the Borrower and an Obligated Group Member, (ii) fund operating and other working capital costs of the DGF Fort Wayne Project Facility, (iii) fund capitalized interest on the Bonds, (iv) fund any required reserve funds relating to the Bonds and (v) pay the costs of issuance of the Bonds.



## EXHIBIT B

### DESCRIPTION OF THE PROJECT COSTS

The following table summarizes the estimated capital development and construction costs, including pre-operations and financing costs.

<b>Sources of Funds</b>		
	Tax-Exempt Bonds	\$135,000,000
	Taxable Bonds	\$18,220,000
	Subordinate Debt (taxable)	\$25,000,000
<b>Total Sources of Funds</b>		<b>\$178,220,000</b>

<b>Uses of Funds</b>		
<b>Facility Capital Costs</b>		
	Torcon Construction Agreement Price	\$112,938,300
	Owners Contingency	\$5,481,900
	<b>Subtotal Capital Costs</b>	<b>\$118,420,200</b>
<b>Financing Costs and Reserves</b>		
	Escrow Interest	\$1,765,753
	Debt Service Reserve Fund	\$17,718,419
	Capitalized Interest	\$35,217,300
	Cost of Issuance	\$5,098,328
	<b>Subtotal Financing Costs and Reserves</b>	<b>\$59,799,800</b>
<b>Total Uses of Funds</b>		<b>\$178,220,000</b>

## EXHIBIT C

### FORM OF CONSTRUCTION MONITOR REPORT

#### Introduction

The following report has been prepared by E3 Consulting Services, LLC (“E3”) to provide its assessment of the status of the design, procurement, construction, and start-up of the Project Company, LLC project being constructed in Anywhere USA. the “Project”) for progress through the end of [MONTH] 2023.

[Description of Project]

[Description of Project Participants]

[Summary of Key Milestones]

In preparing this report, E3 has reviewed the Monthly Progress Reports prepared and submitted by [Contractor and Project Sponsor]. E3 last visited the Project site and met with the Borrower and EPC Contractor on [date].

#### CURRENT STATUS

The following table summarizes the status of Project completion under the EPC Contract.

*Table 1  
EPC Completion Status*

	<b>Engineering</b>	<b>Procurement</b>	<b>Construction</b>	<b>Startup</b>	<b>Total</b>
<b>Planned % Complete</b>					
<b>Actual % Complete</b>					
<b>Variance</b>					

The following is a summary of key Engineering, Procurement, Construction and Start-up activities completed during the reporting period:

#### **Engineering**

[Engineering progress summary]

#### **Procurement**

[Procurement Progress Summary]

#### **Construction**

[Construction progress summary].

**Start-up and Commissioning**

[Start-up summary]

**Overall Completion Status**

[Completion status summary and discussion of significant variances from plan and proposed remedies]

**EPC CONSTRUCTION BUDGET STATUS**

The following table shows the current budget status for the EPC Contractor.

*Table 2  
EPC Budget Status*

<b>Milestone Event</b>	<b>Prior Month (Feb 2023)</b>	<b>Current Month (Mar 2023)</b>
<b>Original Contract Amount</b>		
<b>Net Changes by Change Order</b>		
<b>Current Contract Amount</b>		
<b>Total Completed to Date</b>		
<b>Total Retainage to Date</b>		
<b>Total Earned Less Retainage</b>		
<b>Balance to Complete (including change orders)</b>		
<b>Amount Completed this Month</b>		
<b>Retainage this Month</b>		
<b>Current Payment Due (less retainage)</b>		

**Change Orders**

[Commentary on recent change orders]

The following table is a list of approved change orders.

*Table 5  
Change Orders and Other Proposed Budget Changes*

<b>Change Order/Budget Revision Description</b>	<b>Cost</b>	<b>Status/Comments</b>

<b>Total</b>	<b>\$0</b>	

[Comments on potential/pending change orders]

**Construction Drawdown Summary**

The following table is comparison of the actual monthly construction drawdowns compared to the original closing drawdown budget.

*Table 4  
Monthly Construction Drawdown Summary (Actual vs. Budget)*

[Insert comments on any significant variances between the actual and expected drawdown schedule]

**CONSTRUCTION SCHEDULE STATUS**

The following table shows a few of the key construction dates, which are based on the Notice to Proceed date. E3 will report on any significant changes or modifications to the schedule as construction continues.

*Table 3  
Construction Schedule Status*

<b>Event</b>	<b>Original Schedule Date</b>	<b>Current Schedule Date</b>	<b>Comments</b>

[Commentary on schedule status]

[Conclusions regarding likelihood the Project will be completed on schedule]

**OVERALL PROJECT BUDGET STATUS**

The following table provides a summary of overall Project costs actually invoiced and paid through the end of the month as compared to the Closing Budget.

*Table 4  
Project Budget Status (Actuals through [MONTH] 2023)*

[Commentary on budget status]

[Conclusion on Project Budget – “Based on the information provided by the Borrower and EPC Contractor and our observations of construction progress, E3 is of the opinion that there are sufficient funds currently held in the Construction Fund under the Indenture to complete the Project on schedule pursuant to the current construction schedule and on budget pursuant to the current Project budget”]

[Discuss exceptions to the above conclusion and remedies proposed by the Borrower].

**SAFETY**

[Summary of site safety statistics and comments on any trends or issues]

**ENVIRONMENTAL/PERMITTING**

[Summary of permitting activity and issues]

**WATCH ITEMS**

1. [Comments on any significant issues to be followed over the next few months]

Respectfully Submitted,

---

Name  
Title  
Phone  
Email

**Attachment A – Project Site Photographs**  
**[MONTH], 2023**

---

**APPENDIX A**  
**FORM OF BOND**

No. R-1:

Principal Amount: \$25,000,000

\$25,000,000  
City of Fort Wayne, Indiana  
Economic Development Solid Waste Facility Revenue Bonds  
(Do Good Foods Fort Wayne LLC Project),  
Subordinate Series 2023  
(Federally Taxable)

THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THIS BOND AND SUCH OTHER BONDS OF WHICH IT FORMS A PART, DO NOT CONSTITUTE A DEBT OR LIABILITY OF THE STATE OF INDIANA (THE "STATE") OR OF ANY AGENCY OR POLITICAL SUBDIVISION THEREOF, OR A PLEDGE OF THE FAITH AND CREDIT OF THE ISSUER, THE STATE OR OF ANY POLITICAL SUBDIVISION OR AGENCY THEREOF, BUT SHALL BE PAYABLE SOLELY FROM THE FUNDS PLEDGED THEREFOR IN ACCORDANCE WITH THE BOND INDENTURE AND THE OBLIGATIONS THE ISSUANCE OF THE BONDS UNDER THE PROVISIONS OF THE ACT DOES NOT, DIRECTLY, INDIRECTLY OR CONTINGENTLY, OBLIGATE THE ISSUER, THE STATE OR ANY AGENCY OR POLITICAL SUBDIVISION THEREOF TO LEVY ANY FORM OF TAXATION FOR THE PAYMENT THEREOF OR TO MAKE ANY APPROPRIATION FOR THEIR PAYMENT AND THE BONDS AND THE INTEREST PAYABLE THEREON DO NOT NOW AND SHALL NEVER CONSTITUTE A DEBT OF THE ISSUER, THE STATE OR ANY AGENCY OR POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF THE CONSTITUTION OR THE STATUTES OF THE STATE AND DO NOT NOW AND SHALL NEVER CONSTITUTE A CHARGE AGAINST THE CREDIT OR TAXING POWER OF THE ISSUER, THE STATE OR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF. NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF SHALL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF, REDEMPTION PREMIUM, IF ANY, OR INTEREST ON THE BONDS OR FOR THE PERFORMANCE OF ANY PLEDGE, OBLIGATION OR AGREEMENT OF ANY KIND WHATSOEVER WHICH MAY BE UNDERTAKEN BY THE ISSUER. NO BREACH BY THE ISSUER OF ANY SUCH PLEDGE, OBLIGATION OR AGREEMENT MAY IMPOSE ANY LIABILITY, PECUNIARY OR OTHERWISE, UPON THE ISSUER, THE STATE OR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF OR ANY CHARGE UPON ITS OR THEIR GENERAL CREDIT OR AGAINST ITS OR THEIR TAXING POWER.

<u>Dated Date</u>	<u>Maturity Date</u>	<u>Interest Rate</u>	<u>CUSIP Number</u>
_____, 2023	_____, 20__	____%	_____

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: \_\_\_\_\_ (\$\_\_\_\_\_)

The City of Fort Wayne, Indiana (together with its successors and assigns, the "Issuer"), a municipal corporation organized and existing under the Constitution and laws of the State of Indiana (the "State"), created and existing under and by virtue of the laws of the State, acknowledges itself indebted, and for value received

hereby promises to pay, from such sources as are described in the Indenture (hereinafter defined), to the Registered Owner set forth above or its registered assigns, the Principal Amount specified above on the Maturity Date specified above (or upon earlier redemption), upon presentation hereof at the corporate trust office of UMB Bank, N.A., as Bond Trustee (together with its successors and assigns, the “Bond Trustee”), and to pay, from such sources as are described in the Indenture, interest on said principal sum to the registered owner of this Bond from the Dated Date set forth above until the Issuer’s obligation with respect to the payment of said Principal Amount shall be discharged, at the Interest Rate per annum specified above. Interest on this Bond shall be payable June 1, 2023 and on each June 1 and December 1 thereafter (each an “Interest Payment Date”). The Bonds are issuable in Authorized Denominations.

Interest shall be payable by mailing by first class mail on the Interest Payment Date a check or draft for such interest payable to the person entitled thereto (such person being the registered owner of record on the books of the Issuer applicable to such Interest Payment Date) at his or her address as it appears on the bond register of the Issuer as maintained by the Bond Trustee as of the fifteenth (15<sup>th</sup>) day of the month immediately preceding the Interest Payment Date, except that a registered owner of at least \$1,000,000 in principal amount of the Bonds shall be paid interest by wire transfer or other reasonable method in immediately available funds to an account in the United States or place within the United State designated by such Holder if such registered owner makes a written request to the Bond Trustee on or prior to the Interest Payment Date specifying such account information as the Bond Trustee may require, such wire transfer or other special payment to be at the expense of the Holder; provided, however, that while this Bond is held in the Book-Entry System (as defined in the Indenture), principal of and interest on this Bond shall be paid as provided in the Indenture. Payment shall be made in any coin or currency which is than legal tender of the United States of America. The amount of interest to be paid is to be computed on the basis of a 360-day year consisting of twelve 30-day months. Notwithstanding any provision to the contrary, at no time, whether as a result of an Event of Default or otherwise, shall this Bond bear interest at an interest rate higher than the Maximum Rate.

This Bond is one of the Bonds of the Issuer designated City of Fort Wayne, Indiana Economic Development Solid Waste Facility Revenue Bonds (Do Good Foods Fort Wayne LLC Project), Subordinate Series 2023 (Federally Taxable) (herein called the “Bonds”), authorized to be issued and so issued in fully registered form in the aggregate principal amount of \$25,000,000 under and pursuant to the Act (as defined in the Indenture), and a Trust Indenture, dated as of March 1, 2023 (the “Indenture”), by and between the Issuer and the Bond Trustee. Capitalized terms used herein and not defined herein shall have the meaning assigned to such terms in the Indenture.

Reference is hereby made to the Act, the Indenture and the Loan Agreement, and all supplements and amendments thereto, for a description of the rights thereunder of the registered Owner of the Bonds, of the payments and funds pledged and assigned as security for payment of the bonds and the nature and extent thereof, of the terms on which the Bonds are issued and the terms and conditions on which the bonds will be deemed to be paid at or prior to maturity or redemption upon provision for payment thereof in the manner set forth in the Indenture, of the rights, duties and immunities of the Bond Trustee and of the rights and obligations of the Issuer thereunder, to all of the provisions of which Indenture the registered Owner of this Bond, by acceptance hereof, assents and agrees.

A copy of the Indenture is on file at the trust office of the Bond Trustee in St. Louis, Missouri, and reference to the Indenture and any and all supplements thereto and modifications and amendments thereof and to the Act is made for a description of the pledges and covenants securing the Bonds, the nature, extent, and manner of enforcement of such pledges, the rights and remedies of the registered owners of the Bonds with respect thereto, and the terms and conditions upon which the Bonds have been issued and may be issued thereunder. To the extent and in the manner permitted by the terms of the Indenture, the provisions of the Indenture or any indenture amendatory thereof or supplemental thereto may be modified or amended by the Issuer, as provided therein, including in certain cases, without the consent of the holders of the Bonds. The



holder of this Bond shall have no right to enforce the provisions of the Indenture, to institute action to enforce the provisions of the Indenture or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds issued thereunder and then outstanding, together with accrued interest thereon, may become or may be declared due and payable before the maturity thereof.

The Bonds are subject to redemption in whole or in part prior to maturity at such times, under such circumstances, and at such redemption prices as are provided in the Indenture.

Neither the members of the Issuer nor any person executing this Bond shall be liable personally hereon or shall be subject to any personal liability or accountability by reason of its execution.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon shall have been signed by the Bond Trustee or its Agent.

It Is Hereby Certified, Recited, and Declared that all acts, conditions, and things required by the Constitution and statutes of the State and the Indenture to exist, to have happened, and to have been performed precedent to and in connection with the issuance of this Bond, exist, have happened, and have been performed in due time, form, and manner as required by law and that the issue of the Bonds, together with all other indebtedness of the Issuer, is within every debt and other limit prescribed by law.

[The remainder of this page is left blank intentionally.]

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name by the manual signature of the Mayor and countersigned by its Controller and attested by its Clerk.

DATED: \_\_\_\_\_, 2023

[SEAL]

CITY OF FORT WAYNE, INDIANA

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

Name: Tom Henry

Title: Mayor

ATTEST:

COUNTERSIGNED:

By:

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

\_\_\_\_\_

Name: Lana R. Keesling

Name: Garry Morr

Title: Clerk

Title: Controller

**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds issued under the provisions of and described in the within-mentioned Indenture.

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

UMB Bank, N.A., as Bond Trustee

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

Authorized Signer

**ASSIGNMENT**

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

(Please insert Social Security Number or other identifying number of assignee)

(Please print or Typewrite Name and Address of Assignee)

the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

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

Signature Guaranteed

NOTICE: Signature(s) must be

guaranteed by an eligible guaranty

institution.

\_\_\_\_\_

Signature

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

DIGEST SHEET

TITLE OF ORDINANCE: An ordinance supplementing prior ordinances authorizing the issuance of City of Fort Wayne Indiana Economic Development Solid Waste Facility Bonds for Do Good Foods Fort Wayne LLC.

DEPARTMENT REQUESTING ORDINANCE: **Community Development Division**

SYNOPSIS OF ORDINANCE: **Approving documents for the financing of all or a portion of the acquisition, construction and equipping of a new solid waste facility involving the intake of food waste that would otherwise be disposed of at solid waste landfills from approximately 450 supermarkets and the conversion thereof to chicken feed, to be located at 8645 Aviation Drive, Fort Wayne, Indiana 46809**

EFFECT OF PASSAGE: **Investment of up to \$190,000,000 and the creation of 100 new full-time permanent jobs with an annual payroll of \$6,032,000.**

EFFECT OF NON-PASSAGE: **Potential loss of investment and the creation of 100 new full-time permanent jobs with an annual payroll of \$6,032,000.**

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS): **No expenditures of public funds required.**

ASSIGNED TO COMMITTEE (CHAIR AND CO-CHAIR): **Jason Arp and Geoff Paddock**