
INDENTURE OF TRUST

by and between

AUSTIN HOUSING FINANCE CORPORATION

and

BOKF, NA,
as Trustee

Dated as of November 1, 2018

Relating to:

\$10,000,000

Austin Housing Finance Corporation
Multifamily Housing Revenue Bonds
(Elysium Apartments) Series 2018A

[\$_____]

Austin Housing Finance Corporation
Taxable Multifamily Housing Revenue Bonds
(Elysium Apartments) Series 2018B

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INDENTURE OF TRUST

This **INDENTURE OF TRUST** (as amended, modified or supplemented from time to time, this “**Indenture**”), dated as of October 1, 2018, made and entered into by and between **AUSTIN HOUSING FINANCE CORPORATION**, a public non-profit housing finance corporation, duly organized and validly existing under the laws of the State of Texas (together with its successors and assigns, the “**Issuer**”), and **BOKF, NA**, a national banking association, duly organized and validly existing under the laws of the United States of America, as trustee (together with any successor trustee hereunder and their respective successors and assigns, the “**Trustee**”),

WITNESSETH:

WHEREAS, the Issuer has determined to issue and sell its Multifamily Housing Revenue Bonds (Elysium Apartments) Series 2018A in the original aggregate principal amount of [\$10,000,000] (the “**Tax-Exempt Bonds**”) and its Taxable Multifamily Housing Revenue Bonds (Elysium Apartments) Series 2018B in the original aggregate principal amount of [\$_____] (the “**Taxable Bonds**” and, together with the Tax-Exempt Bonds, the “**Bonds**”), for the purpose of financing the cost of the acquisition, construction, installation and equipping of a residential rental development, consisting of a total of ninety (90) units and related personal property and equipment, and located in Austin, Travis County, Texas on property described on Exhibit B to the hereinafter defined Loan Agreement (the “**Project Facilities**”), all pursuant to this Indenture and the Loan Agreement, dated as of October 1, 2018 (as amended, modified or supplemented from time to time, the “**Loan Agreement**”), by and between the Issuer and Elysium Grand, LP, a limited partnership duly organized and existing under the laws of the State of Texas (together with its permitted successors and assigns, the “**Borrower**”); and

WHEREAS, the Issuer is authorized to enter into this Indenture and to do or cause to be done all the acts and things herein provided or required to be done to finance the Project Costs by the issuance of the Bonds, all as hereinafter provided; and

WHEREAS, all acts, conditions and things required to happen, exist, and be performed precedent to and in the issuance of the Bonds and the execution and delivery of this Indenture have happened, exist and have been performed in order to make the Bonds, when issued, delivered and authenticated, valid obligations of the Issuer in accordance with the terms thereof and hereof, and in order to make this Indenture a valid, binding and legal trust agreement for the security of the Bonds in accordance with its terms; and

WHEREAS, the Trustee has accepted the trusts created by this Indenture and has accepted its obligations hereunder, and in evidence thereof, this Indenture has been executed and delivered thereby.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE COVENANTS AND UNDERTAKINGS HEREIN EXPRESSED, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY AND RECEIPT OF WHICH ARE HEREBY ACKNOWLEDGED, AND INTENDING TO BE LEGALLY BOUND HEREBY, THE PARTIES HERETO AGREE AS FOLLOWS:

GRANTING CLAUSES

The Issuer, in consideration of the premises, the acceptance by the Trustee of the trusts hereby created, the purchase and acceptance of the Bonds by the Holders thereof, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the payment of the principal of, premium, if any, and interest on the Bonds according to their tenor and effect, and to secure the performance and observance by the Issuer of all the covenants, agreements and conditions herein and in the Bonds contained, does hereby transfer, pledge and assign, without recourse, to the Trustee and its successors and assigns in trust forever, and does hereby grant a security interest unto the Trustee and its successors in trust and its assigns, in and to all and singular the property described in paragraphs (a), (b), (c) and (d) below (said property being herein referred to as the “**Security**”), to wit:

(a) All moneys from time to time paid by the Borrower pursuant to the terms of the Loan Agreement, the Note and the Bond Documents and all right, title and interest of the Issuer (including, but not limited to, the right to enforce any of the terms thereof) under and pursuant to and subject to the provisions of the Loan Agreement, the Bond Documents and the Note (but in each instance excluding the Reserved Rights, as defined herein); and

(b) All other moneys and securities from time to time held by the Trustee under the terms of this Indenture, excluding the Rebate Fund and excluding amounts required to be rebated to the United States Treasury under Section 148(f) of the Internal Revenue Code of 1986, as amended, whether or not held in the Rebate Fund; and

(c) Any and all property, rights and interests (real, personal or mixed) of every kind and nature from time to time hereafter, by delivery or by writing of any kind, pledged, assigned or transferred as and for additional security hereunder to the Trustee which the Trustee is hereby authorized to receive at any time and to hold and apply the same subject to the terms of this Indenture; and

(d) All of the proceeds of the foregoing (except the amounts payable to or on behalf of the Issuer on account of its Reserved Rights), including without limitation investments thereof;

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

IN TRUST NEVERTHELESS, upon the terms and conditions herein set forth for the equal and proportionate benefit, security and protection of all present and future Holders of the Bonds Outstanding, 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 herein otherwise expressly provided;

PROVIDED, NEVERTHELESS, and these presents are upon the express condition, that if the Issuer or its successors or assigns shall well and truly pay or cause to be paid the principal of and premium, if any, on such Bonds with interest, according to the provisions set forth in the Bonds, or shall provide for the payment or redemption of such Bonds by depositing or causing to be deposited with the Trustee the entire amount of funds or securities requisite for payment or

redemption thereof when and as authorized by the provisions of Article V (it being understood that any payment with respect to the principal of or interest on Bonds made by the Borrower shall not be deemed payment or provision for the payment of the principal of or premium or interest on Bonds, except Bonds purchased and canceled by the Trustee, all such uncanceled Bonds to remain Outstanding and the principal of and premium and interest thereon payable to the Holders thereof), and shall also pay or cause to be paid all other sums payable hereunder by the Issuer, then these presents and the estate and rights hereby granted shall cease, terminate and become void, and thereupon the Trustee, on payment of its lawful charges and disbursements then unpaid, on demand of the Issuer and upon the payment by the Issuer of the cost and expenses thereof, shall duly execute, acknowledge and deliver to the Issuer such instruments of satisfaction or release as may be necessary or proper to discharge this Indenture of record, and if necessary shall grant, reassign and deliver to the Issuer all and singular the property, rights, privileges and interests by it hereby granted, conveyed and assigned, and all substitutes therefor, or any part thereof, not previously disposed of or released as herein provided; otherwise this Indenture shall be and remain in full force;

THIS INDENTURE FURTHER WITNESSETH, and it is hereby expressly declared, covenanted and agreed by and between the parties hereto, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and that all the Security is to be held and applied under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Issuer does hereby agree and covenant with the Trustee, for the benefit of the respective Holders from time to time of the Bonds as follows:

ARTICLE I. DEFINITIONS

Section 1.1 Defined Terms. In addition to terms defined elsewhere in this Indenture, the following words and terms as used in this Indenture and the preambles hereto shall have the following meanings unless the context or use clearly indicates another or different meaning or intent.

“Accountant” means Novogradac & Company LLP or such other accounting firm approved in writing by the Controlling Person.

“Accounts” means all funds and accounts established under this Indenture, including the Bond Fund, the Surplus Fund, the Operating Reserve Fund, the Rebate Fund, the Project Fund, the Tax and Insurance Escrow Fund, the Replacement Reserve Fund, the Expense Fund and the Redemption Fund, and the respective accounts and subaccounts established therein.

“Act” means Chapter 394 of the Texas Local Government Code, as amended.

“Advance” means any disbursement from the Project Fund established under this Indenture made or to be made by the Trustee pursuant to the terms of the Loan Agreement.

“Affiliate” means, with respect to any designated Person, each Person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another designated Person, pursuant to the organizational document(s) of an entity or by other express, written agreement.

“Annual Budget” means, for any Fiscal Year, the capital and operating budget adopted by the Borrower and approved by the Controlling Person, or deemed approved, pursuant to Section 6.24 of the Loan Agreement.

“Anti-Terrorism Regulations” shall have the meaning ascribed to such term in Section 6.23 of the Loan Agreement.

“Architect” means Miller Slayton Architect’s, Inc.

“Architect’s Agreement” means the contract dated _____, 20__, between the Borrower and the Architect, providing for the design of the Improvements and the supervision of the construction thereof, including ongoing monthly inspection of the Improvements, certificate of Requisitions and certification of Final Completion, among other things, as the same may be amended, modified or supplemented from time to time.

“Assignment of Capital Contributions” shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

“Assignment of Management Agreement and Consent” shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

“Assignment of Project Documents” shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

“Assignment of Rents” shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

“Assignment of VASH Contract” shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

“Authorized Denomination” means \$100,000, and any whole dollar amount in excess of \$100,000, but not in excess of the aggregate principal amount of Bonds then Outstanding.

“Authorized Person” means one or more individuals duly authorized to bind the Borrower in connection with the administration of the Project Facilities. The initial Authorized Persons of the Borrower is Ron Kowal.

“Bankruptcy Code” means Title 11 of the United States Code, as amended, and any successor statute or statutes having substantially the same function.

“Beneficial Owner” means the Person in whose name a Bond is recorded as beneficial owner of such Bond by the Securities Depository or a DTC Participant or an Indirect Participant on the records of such Securities Depository, DTC Participant or Indirect Participant, as the case may be, or such Person’s subrogee.

“Bond” or **“Bonds”** shall have the meaning given to such term in the recitals to this Indenture.

“Bond Counsel” means McCall, Parkhurst & Horton LLP, and any other attorney, or firm of attorneys, nationally recognized and experienced in legal work relating to the financing of facilities through the issuance of tax-exempt bonds, reasonably acceptable to the Issuer, the Majority Owner and the Controlling Person.

“Bond Coupon Rate” means (i) with respect to the Tax-Exempt Bonds, five and one tenth percent (5.10%) per annum, and (ii) with respect to the Taxable Bonds, ____ percent (___%) per annum.

“Bond Documents” means, collectively, the Bonds, this Indenture, the Loan Agreement, the Note, the Regulatory and Land Use Restriction Agreement, the Purchase Agreement, the Mortgage, the Ground Lease, the Environmental Indemnity, the Assignment of Capital Contributions, the Assignment of Management Agreement and Consent, the Assignment of Project Documents, the Assignment of Rents, the Replacement Reserve Agreement, the Guaranty of Completion, the Guaranty of Payment, the Guaranty of Recourse Obligations, the Developer Fee Pledge, the General Partner Pledge, the Assignment of VASH Contract, and all other agreements or instruments relating to, or executed in connection with the issuance and delivery of the Bonds, including all modifications, amendments or supplements thereto.

“Bond Fund” means the fund of that name created pursuant to Section 4.1(a) hereof.

“Bond Proceeds Account” means the account of that name within the Project Fund created pursuant to Section 4.1(a) hereof.

“Bondholder” or **“Holder”** or **“Owner”** or words of similar import, when used with reference to the Bonds, means the registered owner or owners of the Bonds or Beneficial Owner or Beneficial Owners of the Bonds, as applicable.

“Book-Entry System” means a book-entry system established and operated for the recordation of Beneficial Owners of the Bonds pursuant to Section 2.14 hereof.

“Borrower” shall have the meaning given to such term in the recitals to this Indenture.

“Business Day” means any day on which the offices of the Trustee are open for business and on which The New York Stock Exchange is not closed.

“Capital Expenditures” means the capital expenditures relating to any construction, renovation, rehabilitation, repair and replacement of the Improvements or made pursuant to the recommendations of the Engineering Consultant.

“Capitalized Interest Account” means the account of that name within the Project Fund created pursuant to Section 4.1(a) hereof.

“Change Order” means a change made to the Plans and Specifications relating to the Project Facilities, as evidenced by a written change order request made in accordance with the terms of the Construction Contract.

“Code” means the Internal Revenue Code of 1986, as amended, and in force and effect on the date hereof and the rulings and regulations (including temporary and proposed regulations) promulgated thereunder.

“Collateral” means all property of the Borrower in which the Trustee is granted a security interest to secure payment of the Bonds.

“Completion Date” means June __, 2020 (eighteen (18) months from the Issue Date), the date by which the construction of the Improvements must achieve Final Completion; provided, that, at the written request of the Borrower and with the prior written approval of the Controlling Person, the Completion Date may be extended for two periods of (6) months upon delivery of an extension fee equal to twenty-five (25) basis points multiplied by the original principal amount of the Bonds to the Controlling Person for each extension; and provided further that the Borrower shall have a period of not more than forty-five (45) days following the Completion Date to submit the forms of completion certificate and use of proceeds certificate and the necessary supporting documentation evidencing the achievement of Final Completion before an Event of Default shall occur as a result of the failure to achieve Final Completion.

“Comptroller” means the Comptroller of Public Accounts of the State.

“Computation Date” means each Installment Computation Date and the Final Computation Date.

“Condemnation Award” means the total condemnation proceeds actually paid by the condemnor as a result of the condemnation of all or any part of the property subject to the Mortgage less the actual costs incurred, including attorneys’ fees, in obtaining such award.

“Construction Budget” means the budget for implementation and completion of the acquisition, construction and equipping of the Project Facilities, initially as attached to the Loan Agreement, as the same may be amended, modified or supplemented in accordance with the Loan Agreement and the Intercreditor Agreement and with the prior written consent of the Controlling Person.

“Construction Contract” means that certain contract for the construction of the Project Facilities, dated _____, 20__, between the Borrower and Austin Affordable Housing Corporation, providing for the construction of the Improvements and certification of Requisitions, among other things, as the same may be amended, modified or supplemented from time to time.

“Contamination” means the uncontained release, discharge or disposal of any Hazardous Substances at, on, upon or beneath the Project Facilities, whether or not originating at the Project Facilities, or arising from the Project Facilities into or upon any land or water or air, or otherwise into the environment, which may require remediation under any applicable Legal Requirements.

“Continuing Disclosure Agreement” means the Continuing Disclosure Agreement dated as of November 1, 2018, between the Borrower and the Trustee, as dissemination agent, as the same may be amended, modified or supplemented from time to time.

“Control” (including, with the correlative meanings, the terms “controlling”, “controlled by” and “under common control with”) means, as used with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such other Person, or of the Person, whether through contract, stock ownership, partnership interests, membership, voting rights, governing boards, committees, divisions or other bodies with one or more common members, directors, trustees or other managers, or otherwise.

“Controlling Person” means any entity designated in writing by the Majority Owner, by written notice to the Trustee, to act as a Controlling Person hereunder, in accordance with Article IX hereof, together with such representative’s successors and assigns. If at any time a Controlling Person has not been designated by the Majority Owner, all references herein and in the other Bond Documents to the “Controlling Person” shall refer to the Majority Owner. The initial Controlling Person is Red Stone A7 LLC.

“Counsel” means an attorney, or firm of attorneys, admitted to practice law before the highest court of any state in the United States of America or the District of Columbia, including any Bond Counsel.

“Default” means an event or condition which is, or which after giving notice or lapse of time or both would be, an Event of Default.

“Default Interest” means interest payable at the Default Rate.

“Default Rate” means a rate per annum equal to ten percent (10%) per annum; provided that such rate shall in no event exceed the maximum rate allowed by law.

“Determination of Taxability” means a determination that the interest accrued or paid on any of the Tax-Exempt Bonds is included in gross income of the Holders or former Holders for federal income tax purposes, which determination shall be deemed to have been made upon the occurrence of the first to occur of the following:

(i) the day on which the Borrower, the Issuer, the Trustee or any Holder is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that the interest on the Tax-Exempt Bonds is included in the gross income of any Holder or former Holder thereof for federal income tax purposes;

(ii) the day on which the Borrower receives notice from the Trustee in writing that the Trustee has received (1) a notice in writing by any Holder or former Holder of the Tax-Exempt Bonds that the Internal Revenue Service has issued a statutory notice of deficiency or similar notice to such Holder or former Holder that asserts in effect that the interest on the Tax-Exempt Bonds received by such Holder or former Holder is included in the gross income of such Holder or former Holder for federal income tax purposes, or (2) a Favorable Opinion of Bond Counsel that concludes in effect that the interest on the Tax-Exempt Bonds is included in the gross income of any Holder or former Holder thereof for federal income tax purposes;

(iii) the day on which the Borrower, the Issuer, the Trustee or any Holder of any Tax-Exempt Bonds is advised in writing by the Commissioner or any District Director of

the Internal Revenue Service that there has been issued a public or private ruling of the Internal Revenue Service or a technical advice memorandum issued by the national office of the Internal Revenue Service that the interest on the Tax-Exempt Bonds is included in the gross income of any Holder or former Holder thereof for federal income tax purposes; or

(iv) the day on which the Borrower, the Issuer, the Trustee or any Holder of a Tax-Exempt Bond is advised in writing by Counsel that a final determination, from which no further right of appeal exists, has been made by a court of competent jurisdiction in the United States of America in a proceeding with respect to which the Borrower has been given written notice and an opportunity to participate and defend that the interest on the Tax-Exempt Bonds is included in the gross income of any Holder or former Holder thereof for federal income tax purposes;

provided, however, no Determination of Taxability shall occur if the interest on any of the Tax-Exempt Bonds is included in the gross income of any Holder or former Holder for federal income tax purposes solely because such Tax-Exempt Bond was held by a Person who is a Substantial User or a Related Person.

“Developer” means collectively Saigebrook Development, LLC, O-SDA Industries, LLC and General Partner, a _____ organized and existing under the laws of the State of ____, as developer and recipient of the developer fee in respect of the Project Facilities.

“Developer Fee Pledge” shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

“Development Agreement” means that certain Development Services Agreement dated as of _____, 20__, between the Borrower and the Developer, as the same may be amended, modified or supplemented from time to time.

“Development Budget” means the budget for the implementation and completion of the acquisition, construction and equipping of the Project Facilities, initially attached as Schedule 4 to the Loan Agreement, together with the Loan Agreement and with the prior written consent of the Controlling Person.

“DTC Participant” means a broker-dealer, bank or other financial institution for which the Securities Depository holds the Bonds as a securities depository.

“Effective Gross Revenues” of the Borrower means, for the period being tested, the annualized aggregate revenues during such period generated from all tenants and others occupying or having a right to occupy or use the Project Facilities normal and customary lease charges, voucher rents, contract rents or any portion thereof pursuant to leases, including (at the Controlling Person’s reasonable discretion, taking into account whether such income is recurring and is appropriate for a stabilized property), vending machine income, cable TV revenues, laundry service and parking income, as adjusted in the Controlling Person’s judgment for factors including but not limited to: (i) seasonal fluctuation in the rental rate in the market in which the Project Facilities are located; (ii) evidence of rent deterioration; (iii) concessions, reductions, inducements or forbearances (such as any cash reduction in monthly rent during the term of a lease, any free

rent before, during or after the term of a lease, any rent coupons, gift certificates and tangible goods or any other form of rent reduction or forbearance); (iv) economic vacancy at the higher of: (1) five percent (5.00%), or (2) actual economic vacancy based on the annualized vacancies of the Project Facilities; (v) 30-day or more delinquencies; (vi) low-income restrictions required by any applicable federal, state or local subsidy program, any restrictive covenant or regulatory agreement; and (vii) other applicable adjustments as reasonably determined by the Controlling Person.

“Engineer’s Agreement” means the agreement dated _____ 20__ between the Borrower and _____, the civil engineer for the Project Facilities, relating to the construction of the Improvements, as the same may be amended, modified or supplemented from time to time.

“Engineering Consultant” means _____ or any other engineer licensed to practice in the State and chosen by the Controlling Person.

“Environmental Audit” means the written Phase I environmental site assessment for the Project Facilities prepared by _____ and dated _____, 20__.

“Environmental Indemnity” shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

“Environmental Laws” means all Legal Requirements governing or relating to the protection of the environment, natural resources or human health concerning (i) activities at any of the Project Facilities, (ii) repairs or construction of any Improvements, (iii) handling of any materials at any of the Project Facilities, (iv) releases into or upon the air, soil, surface water or ground water from any of the Project Facilities, and (v) storage, distribution, use, treatment, transport or disposal of any waste at or connected with any activity at any of the Project Facilities, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 42 U.S.C. §§ 9601 et seq., as amended from time to time; the Hazardous Materials Transportation Act 49 U.S.C. §§ 5101 et seq., as amended from time to time; the Resource Conservation and Recovery Act 42 U.S.C. §§ 6901 et seq., as amended from time to time; the Federal Water Pollution Control Act 33 U.S.C. §§ 1251 et seq., as amended from time to time; and comparable State statutes.

“Environmentally Sensitive Area” means (i) a wetland or other “water of the United States” for purposes of Section 404 of the federal Clean Water Act or any similar area regulated under any State or local Legal Requirements, (ii) a floodplain or other flood hazard area as defined pursuant to any applicable state Legal Requirements, (iii) a portion of the coastal zone for purposes of the federal Coastal Zone Management Act, or (iv) any other area development of which is specifically restricted under applicable Legal Requirements by reason of its physical characteristics or prior use.

“EPA” shall have the meanings ascribed to such term in Section 6.14(e) of the Loan Agreement.

“Equity Account” means the account of that name within the Project Fund created pursuant to Section 4.1(a) hereof.

“ERISA” shall have the meaning ascribed to such term in Section 5.11 of the Loan Agreement.

“ERISA Affiliate” shall have the meaning ascribed to such term in Section 5.11 of the Loan Agreement.

“Event of Default” means, with respect to this Indenture, any of the events specified in Section 6.1 hereof, or with respect to the Loan Agreement, any of the events specified in Section 7.1 thereof.

“Executive” means any officer of the Issuer.

“Expense Fund” means the fund of that name created pursuant to Section 4.1(a) hereof.

“Expenses” means the aggregate annualized operating expenses (including replacement reserves) of the Project Facilities as reasonably determined by the Controlling Person. In determining Expenses, the Controlling Person will take into account: (i) for purposes of Stabilization, the actual amount of aggregate annualized Expenses for the three (3) month period prior to the determination of Stabilized NOI, provided that such actual expenses reflect normalized/stabilized operations and adjusted for seasonality, as reasonably determined by the Controlling Person, and (ii) the annual Expenses that the Controlling Person used in the original underwriting of the Project Facilities as set forth on Schedule 7 of the Loan Agreement after adjusting for actual taxes. Insurance and utilities. Any expense adjustment as reasonably determined by the Controlling Person may result in a line item which may be more or less than the actual annual expense for that line item for the period covered by the financial statements submitted by the Borrower to the Controlling Person. For the avoidance of doubt, should the Property not benefit from an ad valorem real estate tax abatement, real estate taxes for purposes of the definition of “Expenses” shall be determined on the basis of applicable ad valorem real estate taxes to be incurred with respect to the Project Facilities after Final Completion and not on the basis of historical ad valorem real estate taxes applicable to vacant land.

“Extraordinary Issuer Fees and Expenses” means the expenses and disbursements payable to the Issuer under this Indenture for Extraordinary Services and Extraordinary Expenses, including extraordinary fees, costs and expenses incurred by Bond Counsel and counsel to the Issuer which are to be paid by the Borrower pursuant to Section 2.2 of the Loan Agreement.

“Extraordinary Services” and **“Extraordinary Expenses”** mean all services rendered and all reasonable expenses properly incurred by the Issuer or the Trustee under this Indenture, other than services and expenses normally incurred by the Issuer or the Trustee under instruments similar to this Indenture. Extraordinary Services and Extraordinary Expenses shall specifically include but are not limited to services rendered or expenses incurred by the Issuer or the Trustee in connection with, or in contemplation of, an Event of Default.

“Favorable Opinion of Bond Counsel” means an opinion of Bond Counsel, addressed to the Issuer, the Trustee, the Majority Owner and the Controlling Person, to the effect that a proposed action, event or circumstance (i) is permitted under this Indenture, (ii) does not affect the exclusion from gross income of interest on the Tax-Exempt Bonds for federal income tax purposes, and (iii) does not affect the treatment of interest on the Tax-Exempt Bonds as not being an item of tax

preference for purposes of the federal alternative minimum tax, which opinion may be subject to customary assumptions and exclusions.

“Final Completion” means, with respect to the Project Facilities, that each of the following conditions has been satisfied:

(i) the Controlling Person shall have received a copy of the final Plans and Specifications containing all Change Orders and there shall have been no Material Change Orders other than Material Change Orders approved by the Controlling Person;

(ii) the Borrower shall have obtained the Governmental Actions, if any, required by the Legal Requirements and all Governmental Authorities associated with the Project Facilities, including use and occupancy permits (if any are required), and shall have furnished true copies of all such Governmental Actions to the Controlling Person; temporary certificates of occupancy, as opposed to final certificates of occupancy or their equivalent, shall be acceptable provided (A) that the Punchlist Items do not have a total cost to complete exceeding two percent (2%) of the contract price of the Work, nor an estimated time to complete, as reasonably determined by the Engineering Consultant, exceeding forty-five (45) days (except for items such as landscaping, the completion of which is subject to seasonal conditions); (B) such Punchlist Items do not substantially interfere with or prevent the use and occupancy of the Project Facilities; (C) such Punchlist Items do not include major appliances or materially affect the systems (including plumbing, electrical, HVAC, mechanical, roofing and sprinklers) serving the Project Facilities or major structural components of the Project Facilities; and (D) adequate reserves, in amounts equal to one hundred and ten percent (110%) of the cost of completion of such items as estimated by the Architect and approved by the Engineering Consultant (or one hundred and twenty-five percent (125%), with respect to the items described in subsection (A) as being subject to seasonal conditions) have been deposited into the Project Fund;

(iii) as to all such Governmental Actions, to our knowledge no appeal or other action or proceeding challenging any such Governmental Actions shall have been filed or, if filed and decided, there shall have been no appeal (or further appeal) taken and all other statutory appeal periods must have expired, and there shall be no claim, litigation or governmental proceeding pending against the Borrower, the Project Facilities challenging the validity or the issuance of any zoning, subdivision or other land use ordinance, variance, permit or approval, or any Governmental Action of the kind described in this subparagraph (iii); and in addition, as to all of such permits, approvals and certificates having statutory, regulatory or otherwise expressly specified and determinable appeal periods, such periods, if any, must have expired without an appeal having been taken (or any such appeal shall have been denied or shall have affirmed the granting of such Governmental Action);

(iv) the Controlling Person shall have received from the Architect for the Project Facilities, and the Engineering Consultant shall have approved, a certificate of the Architect in the form customary for projects of the scope of the Work, for the Project Facilities with respect to completion of the Work at the Project Facilities;

(v) all Work set forth in the Plans and Specifications for the Project Facilities shall have been substantially completed and incorporated into the Improvements at the Project Facilities;

(vi) except for Permitted Encumbrances and Impositions not then due and payable, the Project Facilities shall be free of any and all private or governmental charges, claims or Liens (filed or not) of any nature, excepting only the liens and security interests in favor of the Trustee and any other encumbrances approved by the Controlling Person in writing;

(vii) with respect to all Principal Subcontractors, either (i) the Borrower shall have obtained an unconditional waiver and release upon final payment of mechanics' and materialmen's liens if there are no Punchlist Items, or (ii) if there are Punchlist Items, the Borrower shall have obtained an unconditional waiver and release upon progress payment of mechanics' and materialmen's liens for all of the Improvements at the Project Facilities except for the Punchlist Items, and true copies thereof have been delivered to the Controlling Person;

(viii) the use of proceeds certificate in the form set forth in Schedule 9 of the Loan Agreement shall have been provided to the Trustee and the Controlling Person, accompanied by a final schedule of the use of proceeds of the Bonds, and shall be reasonably acceptable to the Controlling Person; and

(ix) the Trustee and the Controlling Person shall have received the completion certificate, in the form attached as Schedule 8 to the Loan Agreement, which shall have attached to it, among other items, an as-built ALTA/ACSM Urban Class Survey certified to the Trustee and the Controlling Person and an endorsement down dating the Title Policy insuring the Mortgage as a first lien, subject to Permitted Encumbrances.

Upon receipt of the Completion Certificate and acceptance thereof by the Controlling Person, the Trustee may presume that the Final Completion has occurred upon the Completion Date therein specified.

“Final Computation Date” means the date which the last Bond is discharged.

“Financing Statements” means any and all financing statements (including continuation statements) or other instruments filed or recorded to perfect the Security Interest created in this Indenture.

“Fiscal Year” means the annual accounting year of the Borrower, which currently begins on January 1 in each calendar year.

“Fitch” means Fitch Ratings, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Fitch” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Controlling Person, by written notice to the Issuer, the Borrower and the Trustee.

“Force Majeure” means any acts of God, strikes, walkouts or other labor disputes, riots, civil strife, war, acts of a public enemy, lightning, fires, explosions, storms or floods or shortages of labor or materials or other causes of a like nature beyond the control of the Borrower; provided, however, that the unavailability of sources of financing, the insufficiency of funds, the loss of a tenant or changes in market conditions shall not constitute Force Majeure.

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

“General Partner” means Elysium Grand GP, LLC, a limited liability company organized and existing under the laws of the State of Texas, in its capacity as the general partner of the Borrower, together with its successors and assigns in such capacity, as permitted by the Controlling Person and the restrictions described in the definition of “Permitted Transfer” herein.

“General Partner Pledge” shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

“Government Obligations” means (i) direct obligations of the United States of America for the full and timely payment of which the full faith and credit of the United States of America is pledged, and (ii) obligations issued by a Person controlled or supervised by and acting as an instrumentality of the United States of America, the full and timely payment of the principal of, premium, if any, and interest on which is fully guaranteed as a full faith and credit obligation of the United States of America (including any securities described in (i) or (ii) issued or held in book-entry form on the books of the Department of the Treasury of the United States of America), which obligations, in either case, are not subject to redemption prior to maturity at less than par at the option of anyone other than the holder thereof.

“Governmental Action” means all permits, authorizations, registrations, consents, certifications, approvals, waivers, exceptions, variances, claims, orders, judgments and decrees, licenses, exemptions, publications, filings, notices to and declarations of or with any Governmental Authority and shall include all permits and licenses required to construct, use, operate and maintain any of the Project Facilities.

“Governmental Authority” means any federal, state, or local governmental or quasi - governmental subdivision, authority, or other instrumentality thereof and any entity asserting or exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and having jurisdiction over the Borrower and/or the Project Facilities.

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

“Ground Lease” means that certain Ground Lease dated as of October 1, 2018, by and between the Borrower, as tenant, and the Housing Authority of the City of Austin, as landlord, as the same may be amended, modified or supplemented from time to time.

“Guarantor” means, collectively, jointly and severally, HLD Texas, LLC, a limited liability company organized and existing under the laws of the State of _____, Saigebrook

Development, LLC, a limited liability company organized and existing under the laws of the State of Florida, and O-SDA Elysium, LLC, a limited liability company organized and existing under the laws of the State of Texas, together with their respective heirs, executors, legal and personal representatives and permitted successors and assigns.

“Guaranty of Completion” shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

“Guaranty of Payment” shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

“Guaranty of Recourse Obligations” shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

“Hazardous Substances” means any petroleum or petroleum products and their by-products, flammable explosives, radioactive materials, toxic chemicals and substances, radon, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and polychlorinated biphenyls (PCB), asbestos-containing materials (ACMs), lead-containing or lead-based paint (LBP), radon, medical waste and other bio-hazardous materials and any chemicals, pollutants, materials or substances defined as or included in the definition of “hazardous substances” as defined pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act, “regulated substances” within the meaning of subtitle I of the federal Resource Conservation and Recovery Act and words of similar import under applicable Environmental Laws.

“HUD” means the United States Department of Housing and Urban Development.

“Impositions” means, with respect to the Project Facilities, all taxes including, without limitation, all real and personal property taxes, water charges and sewer rents, any special assessments, charges or claims and any other item which at any time may be or become a lien upon the Project Facilities.

“Improvements” means all buildings and other improvements included in the Project Facilities.

“Indebtedness” means, collectively, and includes all present and future indebtedness, liabilities and obligations of any kind or nature whatsoever of the Borrower to the Issuer, the Trustee, the Controlling Person or the Holders from time to time of the Bonds, now existing and hereafter arising, under or in connection with this Indenture, any of the other Bond Documents, including future advances, principal, interest, indemnities, other fees, late charges, enforcement costs and other costs and expenses whether direct or contingent, matured or unmatured and all other obligations of the Borrower to the Trustee, the Issuer, the Controlling Person or the Holders from time to time of the Bonds.

“Indemnified Parties” shall have the meaning given to such term in Section 2.5 of the Loan Agreement.

“Indenture” shall have the meaning given to such term in the first paragraph hereof.

“Indirect Participant” means a broker-dealer, bank or other financial institution for which the Securities Depository holds the Bonds as a securities depository through a DTC Participant.

“Initial Bond” means the initial Tax-Exempt Bond and the initial Taxable Bond, each registered by the Comptroller and subsequently canceled and replaced by definitive Bonds.

“Installment Computation Date” means the last day of each fifth (5th) Rebate Year, commencing 2023 and the date on which the final payment in full of all Outstanding Tax-Exempt Bonds is made.

“Insurance and Condemnation Proceeds Account” means the account within the Project Fund created pursuant to Section 4.1(a) hereof.

“Insurance Proceeds” means the total proceeds of insurance actually paid or payable by an insurance company in respect of the required insurance on the Project Facilities, less the actual costs incurred, including attorneys’ fees, in the collection of such proceeds.

“Interest Payment Date” means the first Business Day of each month that the Bonds are Outstanding, beginning October 1, 2018.

“Issue Date” or **“Dated Date”** means October __, 2018, the date on which the Bonds are issued and delivered to the purchaser or purchasers thereof.

“Issuer” means the Austin Housing Finance Corporation, public non-profit housing finance corporation, duly organized and existing under the laws of the State of Texas, including the Act, or any successor to its rights and obligations under the Loan Agreement and this Indenture.

“Issuer Administration Fee” means (a) for so long as the Bonds are Outstanding, the annual prorated amount, payable January 20 of each year beginning January 20, 2019, to the Issuer for its ordinary monitoring fees and expenses under the Indenture in an amount equal to not less than the greater of (i) .0003 times the amount of Bonds Outstanding on January 20, 2019, (ii) \$12 times the number of units in the Project, or (iii) \$1,200 per year, and (b) after the Bonds are no longer Outstanding, for so long as the Regulatory Agreement is in effect, \$1,200 per year. The Issuer Administration Fee shall be payable by the Borrower under the Loan Agreement. Such Obligation under the Loan Agreement shall remain so long as the Bonds are Outstanding.

“Issuer Fees and Expenses” means collectively, the Issuer Administration Fee and the Extraordinary Issuer Fees and Expenses.

“Lease” shall have the meaning assigned to such term in the Mortgage.

“Legal Requirements” means all statutes, codes, laws, ordinances, regulations, rules, policies, or other federal, state, local and municipal requirements of any Governmental Authority whether now or hereafter enacted or adopted, and all judgments, decrees, injunctions, writs, orders or like action of an arbitrator or a court or other Governmental Authority of competent jurisdiction (including those pertaining to the health, safety or the environment).

“Lien” means any lien, mortgage, security interest, tax lien, pledge, encumbrance, title exception, conditional sale or title retention arrangement, or any other interest in property designed to secure the repayment of indebtedness, whether arising by agreement or under any statute or law, or otherwise.

“Loan” means the loan of proceeds of the Bonds from the Issuer to the Borrower, as evidenced by the Note and pursuant to the terms of the Loan Agreement.

“Loan Agreement” shall have the meaning given to such term in the recitals to this Indenture.

“Local Time” means eastern time (daylight or standard, as applicable) in New York, New York.

“Low Income Tenants” shall have the meaning ascribed to such term in the Regulatory and Land Use Restriction Agreement.

“Majority Owner” means any one Person that is the Beneficial Owner of all of the Outstanding Bonds; provided, however, if no one Person is the Beneficial Owner of all of the Outstanding Bonds, “Majority Owner” means the Beneficial Owner or Owners of at least fifty-one percent (51%) in aggregate principal amount of all Outstanding Bonds.

“Management Agreement” shall have the meaning ascribed to such term in Section 6.19 of the Loan Agreement.

“Manager” means _____, a _____ organized and existing under the laws of the State of _____, together with any successor manager of the Project Facilities approved by the Controlling Person, and their respective permitted successors and assigns.

“Material Change Order” means, with respect to the Project Facilities, a Change Order which (i) would result in an increase or decrease of \$50,000 in the aggregate contract price of the Work to be performed on the Project Facilities; (ii) when aggregated with other Change Orders previously effected, would result in an increase or decrease in excess of \$250,000 in the aggregate contract price for the Work to be performed on the Project Facilities; (iii) would reduce the number of apartment units in the Project Facilities; (iv) would materially reduce the aggregate useable square footage of the apartment units or the parking areas in the Project Facilities; (v) would change the number of one, two and three bedroom apartments in the Project Facilities; (vi) would alter the scope of the recreational facilities or ancillary facilities of the Project Facilities; (vii) would alter the number of apartment units in the Project Facilities designated for occupancy by low and moderate income tenants; (viii) makes a substitution for any material or product that is of lesser quality, in the Controlling Person’s determination, than that specified in the Plans and Specifications relating to the Project Facilities; or (ix) would materially adversely impair the value of the Project Facilities once the Work is completed.

“Material Contract” means (i) the Ground Lease, the Subordinate Debt Documents, the VASH Contract and the Bond Documents, and (ii) each indenture, mortgage, agreement or other written instrument or contract to which the Borrower is a party or by which any of its assets are

bound (including, without limitation, any employment or executive compensation agreement, collective bargaining agreement, agreement relating to an Obligation, agreement for the acquisition, construction, repair or disposition of real or personal property, agreement for the purchasing or furnishing of services, operating lease, joint venture agreement, agreement relating to the acquisition or disposition of an Affiliate or agreement of merger or consolidation) which (1) evidences, secures or governs any outstanding obligation of the Borrower of \$100,000 or more per annum, or (2) if canceled, breached or not renewed by any party thereto, would have a material adverse effect on the business operations, assets, condition (financial or otherwise) or prospects of the Borrower.

“Maturity Date” means, (i) with respect to the Tax-Exempt Bonds, September 1, 2058 and (ii) with respect to the Taxable Bonds, _____, 1, 20__.

“Memo of Ground Lease” means that certain Memorandum of Ground Lease, dated October __, 2018, between the Borrower, as tenant, and the Housing Authority of the City of Austin, as landlord, evidencing the Ground Lease, and filed in the land records of Travis County, Texas, on or about the date hereof, as the same may be amended, modified or supplemented from time to time.

“Moisture Management Program” shall have the meaning given to such term in Section 6.14(e) of the Loan Agreement.

“Mold” shall have the meaning given to such term in Section 6.14(e) of the Loan Agreement.

“Monthly Tax and Insurance Amount” means, after Stabilization, an amount equal to the sum of (i) one-twelfth (1/12th) of the annual Impositions, plus (ii) one-twelfth (1/12th) of the annual insurance premiums for the insurance coverages for the Project Facilities required by Section 6.4 of the Loan Agreement, as any such amounts may be increased if the Controlling Person determines that funds in the Tax and Insurance Escrow Fund will be insufficient to pay Impositions and insurance premiums when due.

“Moody’s” means Moody’s Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Controlling Person, by written notice to the Issuer, the Borrower and the Trustee.

“Mortgage” shall have the meaning ascribed to such term in Section 3.1 of the Loan Agreement.

“Nonpurpose Investment” shall mean any investment property (as defined in Section 148(b) of the Code) that is acquired with the Gross Proceeds of the Tax-Exempt Bonds and which is not acquired to carry out the governmental purpose of the Tax-Exempt Bonds.

“Note” means, the Promissory Note, dated the Issue Date, from the Borrower to the Issuer and endorsed by the Issuer to the Trustee, in the form attached as Exhibit A to the Loan Agreement, as the same may be amended, modified or supplemented or further endorsed from time to time.

“Obligations” means any and all obligations of the Borrower for the payment of money including without limitation any and all (i) obligations for money borrowed, (ii) obligations evidenced by bonds, debentures, notes, guaranties or other similar instruments, (iii) construction contracts, installment sale agreements and other purchase money obligations in connection with the performance of work, sale of property or rendering of services, (iv) leases evidencing the acquisition of capital assets, (v) obligations under any applicable ground lease, (vi) reimbursement obligations in connection with letters of credit and other credit enhancement facilities, (vii) obligations for unfunded pension liabilities, (viii) guaranties of any such obligation of a third party, and (ix) any such obligations of third parties secured by assets of the Borrower; but excluding obligations incurred and payable in the ordinary course of business under contracts for supplies, services and pensions allocable to current Expenses during the current or future Fiscal Years in which the supplies are to be delivered, the services rendered or the person paid and paid within thirty (30) days of the date when such amounts are due.

“OFAC Violation” shall have the meanings ascribed to such term in Section 6.23 of the Loan Agreement.

“Operating Reserve Fund” means the fund of that name created pursuant to Section 4.1(a) hereof.

“Origination Fee” shall have the meaning given to such term in Section 2.2(a) of the Loan Agreement.

“Outstanding” means, when used with reference to the Bonds at any date as of which the amount of outstanding Bonds is to be determined, all Bonds that have been authenticated and delivered by the Trustee hereunder, except:

- (i) Bonds cancelled or delivered for cancellation at or prior to such date;
- (ii) Bonds deemed to be paid in accordance with Section 5.2 hereof;
- (iii) Bonds in lieu of which others have been authenticated under Sections 2.8 and 2.9 hereof; and
- (iv) For purposes of any consent, request, demand, authorization, direction, notice, waiver or other action to be taken by the Holders of a specified percentage of Outstanding Bonds hereunder, all Bonds held by or for the account of the Issuer, the Borrower or any Affiliate of the Borrower; provided, however, that for purposes of any such consent, request, demand, authorization, direction, notice, waiver or action the Trustee shall be obligated to consider as not being outstanding only Bonds known by the Trustee by actual written notice thereof to be so held; provided, further, that if all of the Bonds are at any time held by or for the account of the Borrower or any affiliate of the Borrower, then such Bonds shall be deemed to be Outstanding at such time for the purposes of this subparagraph (iv).

“Partnership Agreement” means the [Amended and Restated] Agreement of Limited Partnership of Elysium Grand, LP, dated October __, 2018, among the General Partner, the Special

Limited Partner, the Tax Credit Investor and _____, as withdrawing limited partner, as the same may be amended, modified or supplemented from time to time.

“**PBGC**” shall have the meaning ascribed to such term in Section 5.11 of the Loan Agreement.

“**Permitted Encumbrances**” means only:

- (i) the Ground Lease, as evidenced by the Memo of Ground Lease;
- (ii) the Regulatory and Land Use Restriction Agreement;
- (iii) §42 Extended Use Agreement
- (iv) the Mortgage;
- (v) the Assignment of Rents;
- (vi) liens created under Subordinate Debt Documents;
- (vii) for Impositions not yet due and payable or being contested in good faith and by appropriate proceedings promptly initiated and diligently conducted if such proceedings do not in the opinion of the Controlling Person involve the risk of the sale, forfeiture or loss of the property subject to such lien or interfere with the operation of the Project Facilities, and provided that the Borrower shall have established a reserve or made other appropriate provision, if any, as shall be required by the Controlling Person, and any foreclosure, distraint, sale or other similar proceedings shall have been effectively stayed;
- (viii) statutory liens of landlords and liens of carriers, warehouseman, mechanics and materialmen incurred in the ordinary course of business for sums not yet due or being contested by appropriate proceedings promptly initiated and diligently conducted if (1) such proceedings do not in the opinion of the Controlling Person involve the risk of the sale, forfeiture or loss of the property subject to such lien or interfere with the operation of the Project Facilities, and provided (2) such liens have been bonded or the Borrower shall have established a reserve or made other appropriate provision, if any, as shall be required by the Controlling Person; and
- (ix) the exceptions listed in the Title Policy and any other matters affecting title which are approved in writing by the Controlling Person.

“**Permitted Investments**” means any one or more of the following investments, if and to the extent the same are then legal investments under the applicable laws of the State for moneys proposed to be invested therein:

- (i) Bonds or other obligations of the United States;
- (ii) Bonds or other obligations, the payment of the principal and interest of which is unconditionally guaranteed by the United States;

(iii) Direct obligations issued by the United States or obligations guaranteed in full as to principal and interest by the United States or repurchase agreements with a qualified depository bank or securities dealers fully collateralized by such obligations, maturing on or before the date when such funds will be required for disbursement;

(iv) Obligations of state and local government and municipal bond issuers, which are rated investment-grade by either S&P or Moody's or other non-rated obligations of such issuers guaranteed or credit enhanced by a Person whose long-term debt or long-term deposits or other obligations are rated investment-grade by either S&P or Moody's;

(v) Prime commercial paper rated either "A-1" by S&P or "P-1" by Moody's and, if rated by both, not less than "A-1" by S&P and "P-1" by Moody's;

(vi) Bankers' acceptances drawn on and accepted by commercial banks;

(vii) Money market funds registered under the Investment Company Act of 1940, whose shares are registered under the Securities Act of 1933, and having a rating by S&P of AAAm-G; AAA-m; or AA-m and if rated by Moody's rated Aaa, Aa1 or Aa2.

(viii) Such other investments selected by the Borrower as may be authorized by applicable law and consented to by the Controlling Person, provided that the Trustee may require as a condition to the investment of funds under this clause (viii) there having first been delivered to the Trustee an opinion of counsel to the effect that investment is permitted under any applicable laws of the State.

The Trustee is not obligated to verify whether an investment is a legal investment under the applicable laws of the State.

"Permitted Transfer" means (i) a transfer by devise or descent or by operation of law upon the death of a direct or indirect owner in the Borrower, so long as such transfer does not result in a change of management or control of the affected entity, (ii) the transfer of a direct or indirect ownership interest in the General Partner for estate planning purposes, so long as such transfer does not result in a change of management or control of the General Partner, (iii) a transfer of limited partnership interests in Borrower to the Tax Credit Investor and/or the Special Limited Partner, (iv) a transfer of the limited partner interests of the Tax Credit Investor and/or the Special Limited Partner to an Affiliate of such Tax Credit Investor and/or the Special Limited Partner, (v) a transfer of the limited partner interests of the Tax Credit Investor and/or the Special Limited Partner in the Borrower to non-affiliates of such Tax Credit Investor and/or the Special Limited Partner with the prior written consent of the Controlling Person and the Controlling Person, (vi) a transfer of any shares or ownership interests in the Tax Credit Investor and/or the Special Limited Partner to an entity controlled by an affiliate of the Tax Credit Investor and/or the Special Member, (vii) transfers of any interests in the General Partner so long as the Guarantors, or one or more members of the Guarantors, controls the Borrower after such transfer occurs, (viii) the removal or replacement of the General Partner pursuant to the Partnership Agreement of the Borrower, (ix) after the payment in full of all capital contributions under the Borrower's Partnership Agreement, any other transfer, assignment, pledge, hypothecation or conveyance of limited partner interests in, or change in the limited partners of, the Borrower (and the owners of such limited partners) not

described above, in accordance with the terms of the Partnership Agreement of the Borrower; or (x) changes in officers of the sole member of the General Partner.

“Person” means any individual, for-profit or not-for-profit corporation, partnership, joint venture, association, limited liability company, limited liability partnership, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

“Plans and Specifications” means, with respect to the Project Facilities, the plans and specifications for the construction of Improvements prepared by the Architect for the Project Facilities and more particularly identified on Schedule 5 attached to the Loan Agreement and approved by the Controlling Person, as the same may be amended, modified or supplemented as permitted under the Loan Agreement, through Change Orders or otherwise.

“Principal Payment Date” means any date on which principal is payable in respect of the Bonds, including (i) the first (1st) Business Day of each January, April, July and October, commencing October __, 2021, (ii) any other redemption date for the Bonds, and (iii) the Maturity Date for the Bonds.

“Principal Subcontract” means that certain subcontract relating to the construction of the Project Facilities dated _____, 20__, between Austin Affordable Housing Corporation and the Principal Subcontractor, as the same may be amended, modified or supplemented from time to time.

“Principal Subcontractor” means _____, a _____ organized and existing under the laws of the State of _____, together with its permitted successors and assigns.

“Project Costs” means the costs, fees, and expenses associated with the acquisition, construction, and equipping of the Project Facilities for use as affordable rental housing including but not limited to the cost of materials, appliances, equipment, and other items of tangible personal property, the fees and expenses of architects, contractors, engineers, attorneys, accountants, developers, surveyors, and the payment of certain costs and expenses incidental to the issuance of the Bonds.

“Project Facilities” means the approximately 7.1 acres of land and the residential rental development consisting of a total of ninety (90) units and related personal property and equipment, located in Austin, Travis County, Texas, and to be known as “Elysium Apartments,” the acquisition, construction and equipping of which are being financed in part by the proceeds of the Bonds.

“Project Fund” means the fund of that name created pursuant to Section 4.1(a) hereof.

“Proposed Budget” shall have the meaning given to such term in Section 6.24 of the Loan Agreement.

“Punchlist Items” means any items necessary at the time of the issuance of a temporary use and occupancy permit to complete fully the construction of the Project Facilities in accordance

with the Plans and Specifications for the Project Facilities, or required for the issuance of a final certificate of occupancy or its equivalent.

“Purchase Agreement” means the Bond Purchase Agreement, dated the Issue Date, by and among the Issuer, the Borrower and _____, as underwriter, relating to the initial sale of the Bonds.

“Qualified Project Costs” means the actual costs incurred to acquire, construct and equip the Project Facilities which (i) are or were incurred after _____, 2018, (ii) are (A) chargeable to the Project Facilities’ capital account or would be so chargeable either with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs, within the meaning of Treasury Regulation Section 1.103-8(a)(1), and if charged or chargeable to the Project Facilities’ capital account are or would have been deducted only through an allowance for depreciation, or (B) made for the acquisition of land, to the extent allowed in Section 147(c) of the Code, and (iii) are made exclusively with respect to a “qualified residential rental project” within the meaning of Section 142(d) of the Code.

“Qualified Project Period” shall have the meaning given to such term in the Regulatory and Land Use Restriction Agreement.

“Rebate Amount” shall have the meaning given to such term in Section 1.148-1(b) of the Regulations.

“Rebate Analyst” shall mean an independent accounting firm, law firm or financial advisory firm that is experienced in making rebate calculations and that is selected by the Borrower and is acceptable to the Issuer and the Controlling Person.

“Rebate Fund” means the fund of that name created pursuant to Section 4.1(a) hereof.

“Rebate Report” shall have the meaning given to such term in Section 6.10(d) of the Loan Agreement.

“Rebate Year” means each one-year period that ends on the anniversary of the Issue Date and on the Maturity Date or date of earlier payment in full of the Tax-Exempt Bonds.

“Record Date” means with respect to each Interest Payment Date, the Trustee’s close of business on the day before such Interest Payment Date occurs, regardless of whether such day is a Business Day.

“Redemption Fund” means the account of that name created pursuant to Section 4.1(a) hereof.

“Register” means the register of the record Holders of Bonds maintained by the Trustee.

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

“Regulatory Agreement Default” shall have the meaning given to such term in Section 7.9(b) of the Loan Agreement.

“Regulatory and Land Use Restriction Agreement” means the Regulatory and Land Use Restriction Agreement, dated as of November 1, 2018, among the Issuer, the Trustee and the Borrower, as the same may be amended, modified or supplemented from time to time.

“Related Person” with reference to any Substantial User, means a “related person” within the meaning of Section 147(a)(2) of the Code.

“Rents” shall have the meaning given to such term in the Mortgage.

“Repayments” means all payments of principal of and premium and interest on the Loan required to be paid by the Borrower to the Trustee, as the assignee of the Issuer, pursuant to the Loan Agreement.

“Replacement Reserve Agreement” shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

“Replacement Reserve Fund” means the fund of that name created pursuant to Section 4.1(a) hereof, into which funds will be deposited following Stabilization.

“Required Equity Funds” means \$[3,184,369], comprised of five (5) separate installments of equity contributions to be made to the Borrower by the Tax Credit Investor, subject to and in accordance with the terms of the Borrower’s Partnership Agreement.

“Requisition” means a requisition in the form attached as Exhibit E to the Loan Agreement, together with all invoices, bills of sale, schedules, applications for payments, certifications and other submissions required for the disbursement of funds from the Project Fund pursuant to the terms hereof and of the Loan Agreement.

“Reserved Rights” of the Issuer means (a) all of the Issuer’s right, title and interest in and to all reimbursement, costs, expenses and indemnification under any of the Bond Documents including pursuant to Sections 2.5, 9.5 and 9.12(d) of the Loan Agreement; (b) all rights of the Issuer to receive notices, reports and other statements, and to make any determination and grant any approval or consent to anything in any Bond Document requiring the determination, consent or approval of the Issuer; (c) all rights of the Issuer to access the Project Facilities and documents related thereto and to specifically enforce the representations, warranties, covenants and agreements of the Borrower set forth in the Regulatory and Land Use Restriction Agreement; (d) any and all rights, remedies, and limitations of liability of the Issuer set forth in this Indenture and any other Bond Document regarding: (1) the negotiability, registration, and transfer of the Bonds, (2) the loss or destruction of the Bonds, (3) the limited liability of the Issuer, including pursuant to Section 4.2 of the Loan Agreement, (4) no liability of the Issuer to third parties, including pursuant to Section 4.2 of the Loan Agreement, (5) disclaimers of warranty by the Issuer, including pursuant to Section 4.1 of the Loan Agreement or Section 3.8 herein, (6) all rights of the Issuer in connection with any amendment to or modification of any Bond Document, and (7) any of the Issuer’s rights to inspect and audit the books, records and permits of the Borrower and the Project Facilities.

“Retainage” means a holdback of ten percent (10%) of the hard costs of construction of the Improvements under each contract or subcontract until fifty percent (50%) completion and zero percent (0%) thereafter.

“Sale” means the direct or indirect sale, agreement to sell, assignment, transfer, conveyance, hypothecation, lien, mortgage, grant of a security interest in or a deed to secure debt or deed of trust with respect to, encumbrance, lease, sublease or other disposition of the Project Facilities, or any part thereof or interest therein whether voluntary, involuntary, by operation of law or otherwise, other than (i) the leasing of individual residential units to tenants, and (ii) the grant of easements for utilities and similar purposes in the ordinary course provided, such easements do not impair the use of the Project Facilities or diminish the value of the Project Facilities. “Sale” shall also include the direct or indirect sale, transfer, assignment, pledge, hypothecation or conveyance of legal or beneficial ownership of (a) equity ownership interests in the Borrower, (b) a controlling interest in the aggregate, at any time or times, of the equity ownership interests in the General Partner, or (c) the substitution of a new general partner in the Borrower without the Controlling Person’s written consent, which it may withhold in its sole discretion; provided, however, that “Sale” shall not include a Permitted Transfer.

“S&P” means Standard & Poor’s Ratings Services, a division of Standard & Poor’s Financial Services LLC, a limited liability company organized and existing under the laws of the State of New York, its successors and assigns and, if such company shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “S&P” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Controlling Person, by written notice to the Borrower, the Issuer and the Trustee.

“Secondary Market Transaction” shall have the meaning given to such term in Section 9.12(a) of the Loan Agreement.

“Securities Depository” means The Depository Trust Company and any substitute for or successor to such securities depository that shall maintain a Book-Entry System with respect to the Bonds.

“Securities Depository Nominee” means the Securities Depository or the nominee of such Securities Depository in whose name there shall be registered on the Register the Bonds to be delivered to such Securities Depository during the continuation with such Securities Depository of participation in its Book-Entry System.

“Securities” shall have the meaning given to such term in Section 10.12(a) of the Loan Agreement.

“Security” shall have the meaning given to such term in the Granting Clauses hereof.

“Security Interest” or **“Security Interests”** means the security interests created herein and shall have the meanings set forth in the UCC.

“Class B Special Limited Partner” means Elysium Grand SLP, LLC, a Texas limited liability company organized and existing under the laws of the State of Texas, in its capacity as

Class B special limited partner of the Borrower, together with its successors and assigns in such capacity.

“Stabilization” means the point at which (i) the Improvements have been ninety percent (90%) occupied by qualified tenants meeting the requirements of the Bond Documents in each of the prior three (3) consecutive months; (ii) the ratio of Stabilized NOI in the most recent three (3) consecutive months in the aggregate to maximum principal, interest, and Issuer Administration Fee and Expenses payable in any three (3) month period (other than the interest only period or the period in which the Maturity Date occurs) on the amount of Bonds Outstanding equals or exceeds 1.15 to 1.0; (iii) no Event of Default or event which, with the passage of time or the giving of notice or both, would constitute an Event of Default shall have occurred and be then continuing under the Bond Documents; (iv) the Project Facilities shall have achieved Final Completion; (v) the Borrower shall have deposited an amount no less than \$509,067, or such other amount as approved by the Controlling Person, in the Operating Reserve Fund; (vi) there shall have been deposited in the Tax and Insurance Escrow Fund the amount required by Section 8.2(a) of the Loan Agreement; and (vii) the Borrower shall have paid the Stabilization fee due and owing under Section 2.2(f) of the Loan Agreement; all as determined or approved by the Controlling Person.

“Stabilization Date” means [September __, 2021], the date that is thirty-six (36) months after the date of issuance of the Bonds; provided, that, at the written request of the Borrower and with the prior written approval of the Controlling Person, the Stabilization Date may be extended for six (6) months or such lesser period in as the Controlling Person may approve in its sole discretion, upon delivery of (i) such information and funds as may be reasonably requested by the Controlling Person or the Majority Owner, and (ii) an extension fee equal to twenty-five (25) basis points multiplied by the original principal amount of the Bonds to the Controlling Person; and provided further that the Borrower shall have a period of not more than forty-five (45) days following the Stabilization Date to submit the form of Stabilization certificate and the necessary supporting documentation evidencing the achievement of Stabilization before an Event of Default shall occur as a result of the failure to achieve Stabilization.

“Stabilized NOI” means, as determined or approved by the Controlling Person, for any period, (x) Effective Gross Revenues for such period, less (y) Expenses (other than mandatory debt service) for such period.

“State” means the State of Texas.

“Subordinate Debt” means that certain subordinate loan in the original principal amount of \$3,320,000 from the Austin Housing Finance Corporation to the Borrower.

“Subordinate Debt Documents” means the documents evidencing, securing or related to the Subordinate Debt, as the same may be amended, modified or supplemented from time to time, all in form and substance satisfaction to the Controlling Person.

“Subordination Agreement” means that certain Subordination Agreement dated November __, 2018, among, the Trustee, the Borrower and Austin Housing Finance Corporation, as lender of the Subordinate Debt, as the same may be amended, modified or supplemented from time to time.

“Substantial User” means, with respect to any “facilities” (as the term “facilities” is used in Section 144(a) of the Code), a “substantial user” of such “facilities” within the meaning of Section 147(a) of the Code.

“Surplus Bond Proceeds” means all moneys and any unliquidated investments remaining in the Tax-Exempt Bond Proceeds Subaccount of the Bond Proceeds Account of the Project Fund upon Final Completion and after payment in full of the Project Costs (except for proceeds of the Tax-Exempt Bonds being retained to pay for Project Costs not then due and payable for which the Trustee shall have retained amounts pursuant to the Loan Agreement).

“Surplus Fund” means the fund of that name created pursuant to Section 4.1(a) hereof.

“Tax and Insurance Escrow Fund” means the fund of that name created pursuant to Section 4.1(a) hereof.

“Tax Certificate” means the Federal Tax Certificate executed by the Issuer and Borrower and delivered on the Issue Date, as the same may be amended, modified or supplemented from time to time.

“Tax Credit Investor” means _____, a _____ organized and existing under the laws of the State of _____, in its capacity as limited partner of the Borrower, together with its successors and assigns in such capacity.

“Third Party Costs” means the ongoing fees of the Issuer, the Trustee, a Rebate Analyst or any other third party in connection with the Bonds.

“Title Company” means Stewart Title Guaranty Company.

“Title Policy” means the mortgagee’s title insurance policy relating to the Project Facilities issued by the Title Company to the Trustee, effective on the date of recording of the Mortgage, as the same may be subsequently down-dated or endorsed from time to time, with the approval of the Controlling Person.

“Title Report” means that certain commitment and underlying exception documents, number _____ by the Title Company, dated October __, 2018.

“Trustee” shall have the meaning given to such term in the first paragraph of this Indenture.

“Trustee Fees and Expenses” means the expenses and disbursements payable to the Trustee under this Indenture for Extraordinary Services and Extraordinary Expenses, including extraordinary fees, costs and expenses incurred by counsel to the Trustee which are to be paid by the Borrower pursuant to Section 2.2 of the Loan Agreement. The Trustee Fees and Expenses shall also include reasonable fees and expenses, including but not limited to: (i) \$8,000.00 payable on the Issue Date; (ii) an annual fee of \$5,000.00 due each November 1; and (iii) an annual continuing disclosure fee of \$500.00 due each November 1. The Trustee shall have the right to increase its fees as the cost of business dictates and as negotiated with the Issuer or Borrower. The obligation

to pay the Trustee Fees and Expenses shall survive the payment in full of the principal and interest of the outstanding securities or removal or resignation of the Trustee.

“**UCC**” means the Uniform Commercial Code of the State as now in effect or hereafter amended.

“**Underwriter Group**” shall have the meaning given to such term in Section 10.12 of the Loan Agreement.

“**VASH Contract**” means the Veterans Affairs Supportive Housing Contract dated _____, 2018, between the Borrower and HUDs, as the same may be amended, modified or supplemented from time to time.

“**Work**” means the items of construction of the Improvements required to be performed under the Plans and Specifications for the Improvements.

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

Section 1.2 Rules of Construction. Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Indenture:

(a) All terms defined in the Loan Agreement and not defined herein shall have the meaning given to such terms in the Loan Agreement.

(b) Words importing the singular number shall include the plural number and vice versa.

(c) The table of contents, captions, and headings herein are for convenience of reference only and shall not constitute a part of this Indenture nor shall they affect its meaning, construction or effect.

(d) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders, and words of the neuter gender shall be deemed and construed to include correlative words of the masculine and feminine genders.

(e) All references in this Indenture to particular Articles or Sections are references to Articles or Sections of this Indenture, unless otherwise indicated.

ARTICLE II. THE BONDS

Section 2.1 Authorized Amount of Bonds. No Bonds may be issued under the provisions of this Indenture except in accordance with this Article II. The total principal amount of Tax-Exempt Bonds that may be issued and Outstanding hereunder is expressly limited to \$10,000,000. The Tax-Exempt Bonds shall be designated “Austin Housing Finance Corporation Multifamily Housing Revenue Bonds (Elysium Apartments) Series 2018A.” The total principal amount of Taxable Bonds that may be issued and Outstanding hereunder is expressly limited to [\$____.] The Taxable Bonds shall be designated “Austin

Section 2.2 Issuance of Bonds.

(a) The Bonds shall bear interest from the Issue Date until paid or exchanged, as applicable, at the rate set forth in Section 2.3 hereof computed on the basis set forth in the form of the Bonds, and the Bonds shall mature, unless sooner paid, on the Maturity Date, on which date all unpaid principal of and interest on the Bonds shall be due and payable.

(b) The Bonds shall be issued as fully registered bonds without coupons in Authorized Denominations only. Except for the Initial Bonds which shall be numbered T-1 for the initial Tax-Exempt Bond and TT-1 for the Taxable Bond, the Bonds shall be numbered from R-1 upwards for the Tax-Exempt Bonds and RT-1 upwards for the Taxable Bonds, in each case bearing numbers not then contemporaneously outstanding (in order of issuance) according to the records of the Trustee.

(c) The Bonds shall be dated the Issue Date and initially issued as provided herein and in the written instructions from the Issuer, for the purpose of making the Loan by depositing the purchase price, or installments thereof, in the various Accounts established hereunder. Interest on the Bonds shall be computed from the most recent Interest Payment Date to which interest has been paid or duly provided for or if no interest has been paid or provided for, from the Issue Date. The Bonds shall mature on the Maturity Date, on which date all unpaid principal of, premium, if any, and interest on the applicable Bonds shall be due and payable. The Bonds are subject to mandatory sinking fund redemption as provided in Section 2.12(c) hereof.

(d) The principal of, premium, if any, and interest on the Bonds shall be payable in lawful currency of the United States. The principal of and premium, if any, on the Bonds shall be payable at the operations office of the Trustee upon presentation and surrender of the Bonds (or, in the case of Bonds that are administered in the Book-Entry System, will be paid by wire transfer of immediately available funds to the accounts specified by Securities Depository); provided, however, that Bonds need not be presented for payment upon redemption pursuant to Section 2.12(c) of this Indenture. Payments of interest on the Bonds will be mailed to the persons in whose names the Bonds are registered on the Register at the close of business on the Record Date next preceding each Interest Payment Date; provided that, any Holder of a Bond or Bonds in an aggregate principal amount of not less than \$250,000 may, by prior written instructions filed with the Trustee at least thirty (30) days prior to the record date (which instructions shall remain in effect until revoked by subsequent written instructions), instruct that interest payments be made by wire transfer to an account in the continental United States or other means acceptable to the Trustee.

Section 2.3 Interest Rate on Bonds. The Bonds shall bear interest at the Bond Coupon Rate from the Issue Date to the date of payment in full of the Bonds, calculated in the manner set forth in the form of the Bonds. Interest accrued on the Bonds shall be paid on each Interest Payment Date and on the Maturity Date and any date of redemption prior to the Maturity Date; provided however, that in the event that principal of or interest payable on the Bonds is not paid when due or upon the occurrence and during the continuance of any other Event of Default (provided that the Controlling Person shall have no obligation to accept a cure of any Event of Default) there shall be payable on the Bonds or on any amount not timely paid, interest at the Default Rate, as more fully set forth in Section 6.8 hereof.

Section 2.4 Execution; Limited Obligation.

(a) The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of the Executive of the Issuer. In case any officer whose manual or facsimile signature shall appear on the Bonds shall cease to be such officer before the delivery of such Bonds, such manual or facsimile signatures shall nevertheless be valid and sufficient for all purposes.

(b) The Bonds shall be limited obligations of the Issuer. The principal of the Bonds and the interest and premium, if any, thereon shall not be deemed to constitute or create an indebtedness, liability or obligation of the Issuer, the State or any political subdivision or agency thereof within the meaning of any State constitutional provision or statutory limitation or a pledge of the faith and credit or the taxing power of the State or any such political subdivision or agency. The principal of the Bonds and the premium, if any, and interest thereon are payable solely from and secured by the Security, all as described in and subject to limitations set forth in this Indenture, for the equal and ratable benefit of the Holders (except as otherwise herein provided), from time to time, of the Bonds.

Section 2.5 Certificate of Authentication. No Bonds shall be secured hereby or entitled to the benefit hereof or shall be or become valid or obligatory for any purpose unless there shall be endorsed thereon a certificate of registration of the Comptroller with respect to the Initial Bond and a certificate of authentication of the Trustee with respect to the definitive Bonds, substantially in the form as set forth in the form of Bond referred to in Section 2.6 hereof, executed by an authorized representative of the Comptroller or the Trustee, as applicable, and such certificate on any Bond issued by the Issuer shall be conclusive evidence and the only competent evidence that it has been duly registered, authenticated and delivered hereunder.

Section 2.6 Forms of Bonds.

(a) The Tax-Exempt Bonds, the Trustee's certificate of authentication and the form of assignment shall be in substantially the form set forth as Exhibit A-1 hereto, and the Taxable Bonds, the Trustee's certificate of authentication and the form of assignment shall be substantially in the form set forth as Exhibit A-2 hereto, in each case with such appropriate variations, omissions, substitutions and insertions as are permitted or required hereby or are required by law and may have such letters, numbers or other marks of identification and such legends and endorsements placed thereon as may be required to comply with any applicable laws or rules or regulations, or as may, consistent herewith, be determined by the officer of the Issuer executing such Bonds, as evidenced by such officer's execution of the Bonds.

(b) Bonds shall be in either typewritten or printed form, as the Borrower shall direct, on behalf of the Issuer, with written approval of the Trustee. Any expenses, including but not limited to expenses of printing, incurred in connection with the preparation of the form of the Bonds shall be paid by the Borrower.

Section 2.7 Delivery of Bonds.

(a) Upon the execution and delivery hereof and the delivery of the purchase price therefor, the Issuer shall execute the Bonds and deliver them to the Trustee.

(b) Prior to the authentication and delivery by the Trustee of the Bonds, there shall be filed with the Trustee:

- (i) Certified copies of all resolutions adopted and proceedings had by the Issuer authorizing execution of this Indenture, the Loan Agreement and the other Bond Documents to which the Issuer is a party, and the issuance of the Bonds; and
 - (ii) An original executed counterpart of each of the Bond Documents (and, with respect to the Note, endorsed without recourse by the Issuer to the Trustee); and
 - (iii) Copies of any Financing Statements required to be filed to perfect the security interests in the Security or under Section 3.2 of the Loan Agreement; and
 - (iv) A request and authorization (which may be part of a certificate of the Issuer) to the Trustee on behalf of the Issuer to deliver the Bonds to the purchaser identified upon payment to the Trustee for the account of the Issuer of a specified sum and payment of the costs of issuance of the Bonds; and
 - (v) An original executed counterpart of the Tax Certificate; and
 - (vi) An Opinion of Bond Counsel or counsel to the Issuer to the effect that this Indenture, the Loan Agreement, the Regulatory and Land Use Restriction Agreement, the endorsement to the Note, the Tax Certificate and the Purchase Agreement have been duly authorized, executed and delivered by the Issuer and are legal, valid and binding agreements of the Issuer; and
 - (vii) An approving Opinion of Bond Counsel that the Bonds have been duly authorized and validly issued, that this Indenture creates a valid lien on the Security, that interest on the Tax-Exempt Bonds will be excludable from gross income of the Holders thereof for federal income tax purposes and is not an item of tax purposes of the federal alternative minimum tax, that the Bonds are not required to be registered under the Securities Act of 1933, as amended, and that the Indenture need not be qualified under the Trust Indenture Act of 1939, as amended; and
 - (viii) An opinion of Counsel for the Borrower to the effect that the Continuing Disclosure Agreement and the Bond Documents to which it is a party have been duly authorized, executed and delivered by the Borrower and are legal, valid and binding agreements of the Borrower and such other opinions as are required by the Purchase Agreement or reasonably requested by the Controlling Person or the Majority Owner; and
 - (ix) A pro forma title insurance policy reasonably acceptable to the Controlling Person; and
 - (x) Reliance letters for, or address of the opinions to, the Controlling Person and Majority Owner of each of the opinions filed with the Trustee; and
 - (xi) Such other documents, opinions and certificates as may be required by the Issuer, the Trustee, Bond Counsel, the Majority Owner or the Controlling Person. The Trustee shall deem the requirements of this subsection (xi) satisfied upon delivery of the Opinions of Bond Counsel referenced in Sections 2.7(b)(vi) and 2.7(b)(vii) to the Trustee.
- (c) Upon receipt of the foregoing, the Trustee shall authenticate and deliver the Bonds through the Securities Depository in the manner described in Section 2.14(a) of this Indenture, as provided in the written request and authorization of the Issuer to the Trustee.

Section 2.8 Mutilated, Lost, Stolen or Destroyed Bonds. If any Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the Trustee may authenticate and deliver a new Bond of the same series, maturity, interest rate, principal amount and tenor, in lieu of and in substitution for the Bond mutilated, lost, stolen or destroyed; provided, that there shall be first furnished to the Trustee evidence satisfactory to it and the Issuer of the ownership of such Bond and of such loss, theft or destruction (or, in the case of a mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee), together with indemnity satisfactory to the Trustee and the Issuer and compliance with such other reasonable regulations as the Issuer and the Trustee may prescribe. If any such Bond shall have matured or a redemption date pertaining thereto shall have passed, instead of issuing a new Bond the Issuer may pay the same without surrender thereof. The Issuer and the Trustee may charge the Holder of such Bond with their reasonable fees and expenses in connection with this Section 2.8.

Section 2.9 Exchangeability and Transfer of Bonds; Persons Treated as Owners.

(a) The Register and all other records relating to the registration of the Bonds and for the registration of transfer of the Bonds as provided herein shall be kept by the Trustee.

(b) Any Holder of a Bond, in person or by his/her duly authorized attorney, may transfer title to his/her Bond on the Register upon surrender thereof at the operations office of the Trustee, by providing the Trustee with a written instrument of transfer (in substantially the form of assignment attached to the Bond) executed by the Holder or such Holder's attorney, duly authorized in writing and thereupon, the Issuer shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds in the same aggregate principal amount, series and tenor as the Bond surrendered (or for which transfer of registration has been effected) and of any Authorized Denomination or Authorized Denominations.

(c) Bonds may be exchanged upon surrender thereof at the operations office of the Trustee with a written instrument of transfer satisfactory to the Trustee executed by the Holder or such Holder's attorney duly authorized in writing, for an equal aggregate principal amount of Bonds of the same series and tenor as the Bonds being exchanged and of any Authorized Denomination or Authorized Denominations. The Issuer shall execute and the Trustee shall authenticate and deliver Bonds that the Holder making the exchange is entitled to receive, bearing numbers not contemporaneously then outstanding.

(d) Such registrations of transfer or exchanges of Bonds shall be without charge to the Holders of such Bonds, but any taxes or other governmental charges required to be paid with respect to the same shall be paid by the Holder of the Bond requesting such registration of transfer or exchange as a condition precedent to the exercise of such privilege. Any service charge made by the Trustee for any such registration of transfer or exchange and all reasonable expenses of the Issuer shall be paid by the Borrower.

(e) The person in whose name any Bond 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 and premium, if any and interest on the Bonds shall be made only to or upon the order of the registered owner thereof or his/her duly authorized attorney, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

(f) All Bonds issued upon any registration of transfer or exchange of Bonds shall be legal, valid and binding limited obligations of the Issuer, evidencing the same debt, and entitled to

the same security and benefits under this Indenture, as the Bonds surrendered upon such registration of transfer or exchange.

(g) Notwithstanding the foregoing, for so long as the Bonds are held under the Book-Entry System, transfers of beneficial ownership will be effected pursuant to rules and procedures established by the Securities Depository, as more fully described in Section 2.14 hereof.

Section 2.10 Non-Presentation of Bonds. In the event any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity or at the date fixed for redemption thereof or otherwise, if funds sufficient to pay the principal of, premium, if any, and interest on such Bond shall have been made available to the Trustee for the benefit of the Holder or Holders thereof, payment of such Bond or portion thereof as the case may be, shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee, subject to any applicable escheat laws, to hold such fund or funds uninvested in the Bond Fund, without liability to the Holder of such Bond for interest thereon, for the benefit of the Holder of such Bond, who shall thereafter be restricted exclusively to such fund or funds, for any claim of whatever nature on his/her part on, or with respect to, said Bond, or portion thereof.

Section 2.11 Ratably Secured. Except as herein otherwise provided, all Bonds issued hereunder are and are to be equally and ratably secured by this Indenture without preference, priority or distinction on account of the actual time or times of the authentication, delivery or maturity of the Bonds so that subject as aforesaid, all Bonds at any time Outstanding shall have the same right, lien and preference under and by virtue of this Indenture and shall all be equally and ratably secured hereby with like effect as if they had all been executed, authenticated and delivered simultaneously on the date hereof, whether the same, or any of them, shall actually be disposed of at such date, or whether they, or any of them, shall be disposed of at some future date.

Section 2.12 Redemption of Bonds.

(a) **Optional Redemption of Bonds.**

(i) The Tax-Exempt Bonds are subject to optional redemption in whole, but not in part, at the direction of the Borrower upon not less than forty-five (45) days written notice to the Trustee and the Controlling Person (which notice shall be unconditional and irrevocable), on any Interest Payment Date occurring (1) on or after January 1, 2029, at a redemption price equal to one hundred and one percent (101%) of the principal amount thereof, plus the amount of any termination or breakage fees or prepayment penalties owed under any financing facilities or hedging arrangements in respect of the Bonds, plus accrued interest thereon to, but not including, the redemption date, and (2) from and often on or after January 1, 2033, at a redemption price equal to one hundred percent (100%) of the principal amount thereof, plus accrued interest thereon to, but not including, the redemption date. The Controlling Person, upon request, shall provide the Borrower, with 2 copies to the Trustee, with the amount of any termination or breakage fees or prepayment penalties owed under any financing facilities or hedging arrangements in respect of the Bonds for purposes of determining the redemption price of the Tax-Exempt Bonds under Section 2.12 (a)(i)(1).

(ii) The Taxable Bonds are subject to optional redemption [in whole or in part] [in whole but not in part], at the direction of the Borrower upon not less than forty-five (45) days written notice to the Trustee and the Controlling Person (which notice shall be unconditional and irrevocable), on any Interest Payment Date [occurring on or after ____ 1,

20__] at a redemption price equal to one hundred percent (100%) of the principal amount thereof, plus accrued interest thereon to, but not including, the redemption date.

(b) Mandatory Redemption of Bonds.

(i) The Tax-Exempt Bonds are subject to mandatory redemption in part from, and to the extent of, amounts on deposit in the Surplus Fund (subject to Section 4.4 hereof) on the first Interest Payment Date for which notice of redemption can be given in accordance with this Indenture, following the deposit of Surplus Bond Proceeds in the Surplus Fund at a redemption price equal to one hundred percent (100%) of the principal amount of the Tax-Exempt Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date.

(ii) The Bonds are subject to mandatory redemption in whole or in part on the first Interest Payment Date for which notice of redemption can be given in accordance with this Indenture after and to the extent that Insurance Proceeds or a Condemnation Award in connection with the Project Facilities are deposited in the Project Fund and are not to be used to repair or restore the Project Facilities at a redemption price equal to one hundred percent (100%) of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date. Such Insurance Proceeds and Condemnation Awards shall be applied [first to redeem the Tax-Exempt] [equally and ratably to redeem the Bonds of each series].

(iii) On or after the forty-fifth (45th) day following the Stabilization Date and upon at least five (5) Business Days' written notice thereof from the Controlling Person to the Trustee, the Borrower and the Majority Owner, the Taxable Bonds are subject to mandatory redemption in part on the Interest Payment Date and in the amount as specified by the Controlling Person necessary to cause the Project Facilities to meet the requirements of clause (ii) of the definition of "Stabilization," if the Project Facilities have not achieved Stabilization by the Stabilization Date, at a redemption price equal to one hundred percent (100%) of the principal amount of the Taxable Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date.

(iv) The Bonds are subject to extraordinary mandatory redemption in whole or in part, at the direction of the Controlling Person to the Trustee and the Borrower, at a redemption price equal to one hundred percent (100%) of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date, on the first Interest Payment Date for which notice of redemption can be given in accordance with this Indenture following receipt by the Trustee of the written direction of the Controlling Person, which direction shall specify which series of Bonds are to be redeemed and in what amounts, within one hundred eighty (180) days of the occurrence of any of the following events:

(1) the Project Facilities shall have been damaged or destroyed to such an extent that in the judgment of the Controlling Person (A) it cannot reasonably be restored within a period of twelve (12) consecutive months to the condition thereof immediately preceding such damage or destruction, (B) the Borrower is thereby prevented from carrying on its normal operations at the Project Facilities for a period of twelve (12) consecutive months, or (C) it would not be economically feasible for the Borrower to replace, repair, rebuild or restore the same;

(2) title in and to, or the temporary use of, all or substantially all of the Project Facilities shall have been taken under the exercise of the power of eminent domain by any Governmental Authority or any Person acting under Governmental Authority (including such a taking as, in the judgment of the Controlling Person, results in the Borrower being prevented thereby from carrying on its normal operations at the Project Facilities for a period of twelve (12) consecutive months);

(3) as a result of any changes in the Constitution of the State, or the Constitution of the United States of America or by legislative or administrative action (whether state or federal) or by final decree, judgment, decision or order of any court or administrative body (whether state or federal), any material provision of the Loan Agreement or the other Bond Documents shall have become void or unenforceable or impossible of performance in accordance with the intent and purpose of the parties as expressed therein in each case as determined by the Controlling Person;

(4) unreasonable burdens or excessive liabilities shall have been imposed on the Borrower with respect to the operations of the Project Facilities, including, without limitation federal, state or other ad valorem, property, income or other taxes not being imposed on the date of this Indenture that, in the judgment of the Controlling Person, render the continued operation of the Project Facilities uneconomical;

(5) changes which the Borrower cannot reasonably control or overcome in the economic availability of materials, supplies, labor, equipment and other properties and things necessary for the efficient operation of the Project Facilities for the purposes contemplated by the Loan Agreement shall have occurred or technological changes that the Borrower cannot reasonably overcome shall have occurred that, in the judgment of the Controlling Person, render the continued operation of the Project Facilities uneconomical;

(6) legal curtailment of the Borrower's use and occupancy of all or substantially all of the Project Facilities for any reason other than that set forth in (2) above, which curtailment shall, in the judgment of the Controlling Person, prevent the Borrower from carrying on its normal operations at the Project Facilities for a period of twelve (12) consecutive months; or

(7) the Loan Agreement is terminated prior to its expiration for any reason, including the occurrence of an Event of Default under the Loan Agreement.

(v) The Tax-Exempt Bonds are subject to mandatory redemption in whole at a redemption price equal to one hundred percent (100%) of the principal amount of the Tax-Exempt Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date, on the first Interest Payment Date for which notice of redemption can be given in accordance with this Indenture within forty-five (45) days after the occurrence of a Determination of Taxability; provided, however, if mandatory redemption on account of a Determination of Taxability of less than all the Tax-Exempt Bonds would result, in the opinion of Bond Counsel, in the interest on the Tax-Exempt Bonds Outstanding following such mandatory redemption being excludable from the gross income of the Holders of such Tax-Exempt Bonds Outstanding, then the Tax-Exempt Bonds are subject to mandatory

redemption upon the occurrence of a Determination of Taxability in the amount specified in such opinion, provided that such redemption must be in an Authorized Denomination.

(vi) The Bonds are subject to mandatory redemption in whole on any Interest Payment Date specified by the Controlling Person on or after January 1, 2034, if the Controlling Person directs redemption by providing notice to the Borrower, the Trustee and the Issuer at least one hundred eighty (180) days prior to the Interest Payment Date specified in such notice on which the Bonds are to be redeemed, at a redemption price equal to one hundred percent (100%) of the principal amount thereof plus interest accrued thereon to, but not including, the redemption date. The direction of the Controlling Person to redeem the Bonds shall be irrevocable and shall be binding on the Holders of all of the Bonds and on any transferee(s) of such Holders.

(c) Mandatory Sinking Fund Redemption. The Bonds are subject to mandatory sinking fund redemption in part on each Principal Payment Date, from amounts paid by the Borrower to the Trustee for deposit into the Redemption Fund pursuant to Sections 2.3(d) and 8.3 of the Loan Agreement (in the amounts and from the series set forth on Schedule 3 of the Loan Agreement), at a redemption price equal to one hundred percent (100%) of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date.

(d) Selection of Bonds to be Redeemed. The determination of which series of the Bonds is to be redeemed shall be made as set forth above in Sections 2.12(a), (b) and (c). Within each series, if less than all of the Outstanding Bonds shall be of each series called for redemption, the Trustee or, if the Bonds are held in the Book-Entry System, the Securities Depository, shall select or arrange for the selection of Bonds to be redeemed, pursuant to its rules and procedures, in Authorized Denominations, as necessary to effect a pro rata pass-through distribution of principal; provided that, any Bond or portion thereof remaining Outstanding shall be in an Authorized Denomination. If the Bonds are held in the Book-Entry System, the Securities Depository shall, acting pursuant to its rules and procedures, reflect in said system the partial redemption and the Trustee shall either (i) exchange the Bond or Bonds of the same series held by the Securities Depository for a new Bond or Bonds in the appropriate principal amount, if such Bond is presented to the Trustee by the Securities Depository, or (ii) obtain from the Securities Depository pursuant to the applicable procedures of DTC and the operations office of the Trustee a written confirmation of the reduction in the principal amount of the Bonds of the series being redeemed held by such Securities Depository.

(e) Partial Redemption of Bonds; Reamortization. In case part but not all of a Bond shall be selected for redemption, upon presentation and surrender at the operations office of the Trustee of such Bond by the Holder thereof or his attorney duly authorized in writing (with due endorsement for transfer or accompanied by written instrument of transfer, guaranteed and otherwise in form satisfactory to the Trustee), the Issuer shall execute and the Trustee shall authenticate and deliver to or upon the order of such Holder, without charge therefor, for the unredeemed portion of the principal amount of the Bond so surrendered, a Bond or Bonds, at the option of such Holder, of any Authorized Denomination of the same series and of like tenor, or if less than the minimum Authorized Denomination, an amount necessary to equal the unredeemed portion of the principal amount of such Bond; provided, however, such surrender of Bonds shall not be required for payment of the redemption price pursuant to Section 2.12(c) hereof. For all purposes of this Indenture (including exchange and transfer), the Bond so issued in less than a minimum Authorized Denomination shall be deemed to have been issued in an Authorized Denomination. Bonds so presented and surrendered shall be canceled in accordance with this Indenture. In the event of a partial redemption of Bonds other than pursuant to Section 2.12(c),

and subject to a Favorable Opinion of Bond Counsel, the mandatory sinking fund schedule set forth on Schedule 3 of the Loan Agreement shall be adjusted to provide for level debt service in respect of the Bonds remaining Outstanding after such partial redemption, on the basis of a forty (40) year amortization schedule, commencing on the date which is thirty-six (36) months after the Issue Date. The Controlling Person shall provide the Trustee and the Borrower with a new Schedule 3 reflecting such adjustment promptly following any such partial redemption.

(f) **Redemption Price.** Other than as described in and Section 2.12 (a)(i)(2) and Section 6.8 hereof, any redemption of Bonds shall be at a redemption price equal to one hundred percent (100%) of the principal amount of Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date, without premium, penalty or charge.

(g) **Right of Borrower to Purchase Bonds In Lieu of Redemption.** Subject to delivery of a Favorable Opinion of Bond Counsel, provided that such opinion shall not be required if the Tax-Exempt Bonds are held by a Substantial User or Related Person to a Substantial User, the Borrower shall have the option, by written notice to the Trustee and the Controlling Person given not less than five (5) Business Days (forty-five (45) days in case of a redemption pursuant to Section 2.12(b)(vi) hereof), in advance of any redemption date, to cause the purchase of the Bonds in lieu of redemption on the redemption date. The purchase price of the Bonds so purchased in lieu of redemption shall be paid with funds provided by the Borrower, shall be equal to the redemption price thereof (including and applicable premium) and shall be payable on the redemption date. Bonds so purchased in lieu of redemption shall be registered to or upon the direction of the Borrower.

Section 2.13 Notice of Redemption. Notice of redemption shall be placed in the mail by the Trustee by first-class mail, postage prepaid, at least thirty (30) days before the redemption date to each Holder of the Bonds to be redeemed in whole or in part at his/her last address appearing on the Register, with a copy to the Controlling Person, but no defect in or failure to give such notice of redemption shall affect the validity of the redemption; provided, however, that no notice of redemption shall be required for mandatory sinking fund redemption pursuant to Section 2.12(c) hereof. All Bonds properly called for redemption and for which funds to pay the redemption price have been deposited with the Trustee will cease to bear interest on the date fixed for redemption, and, thereafter, the Holders of such Bonds called for redemption shall have no rights in respect thereof except to receive payment of the redemption price from the Trustee and a new Bond of the same series and of like tenor for any portion not redeemed. Notwithstanding the foregoing, with respect to any Bonds held under the Book Entry System, notices of redemption shall be provided in accordance with the rules and procedures established by the Securities Depository, as more fully described in Section 2.14 hereof.

Section 2.14 Book-Entry System.

(a) On the Issue Date, a single Tax-Exempt Bond in the original aggregate principal amount of the Tax-Exempt Bonds and a single Taxable Bond in the original aggregate principal amount of the Taxable Bonds, each registered in the name of the Securities Depository Nominee will be issued and deposited with the Securities Depository and held in its custody. The Book-Entry System will be maintained by the Securities Depository and the DTC Participants and Indirect Participants and will evidence beneficial ownership of the Bonds in Authorized Denominations, with registration of transfers of ownership effected on the records of the Securities Depository, the DTC Participants and the Indirect Participants pursuant to rules and procedures established by the Securities Depository, the DTC Participants and the Indirect Participants. The principal of and premium, if any, and interest on each Bond shall be payable to the Securities Depository Nominee or any other person appearing on the Register as the registered Holder of such Bond or his/her

registered assigns or legal representative at the operations office of the Trustee. So long as the Book-Entry System is in effect, the Securities Depository will be recognized as the Holder of the Bonds for all purposes. Transfer of principal, premium, if any, and interest payments or notices to DTC Participants and Indirect Participants will be the responsibility of the Securities Depository, and transfer of principal, premium, if any, and interest payments or notices to Beneficial Owners will be the responsibility of the DTC Participants and the Indirect Participants. No other party will be responsible or liable for such transfers of payments or notices or for maintaining, supervising or reviewing such records maintained by the Securities Depository, the DTC Participants or the Indirect Participants. While the Securities Depository Nominee or the Securities Depository, as the case may be, is the registered owner of the Bonds, notwithstanding any other provisions set forth herein, payments of principal of and interest on the Bonds shall be made to the Securities Depository Nominee or the Securities Depository, as the case may be, by wire transfer in immediately available funds to the account of said Holder as may be specified in the Register maintained by the Trustee or by such other method of payment as the Trustee may determine to be necessary or advisable with the concurrence of the Securities Depository.

(b) If (i) the Securities Depository determines not to continue to administer a Book-Entry System for the Bonds, or (ii) the Borrower, on behalf of the Issuer, with the written consent of the Trustee and the Controlling Person, elects to remove the Securities Depository, then the Borrower, on behalf of the Issuer, with the written consent of the Trustee and the Controlling Person may appoint a new Securities Depository and shall do so if the Controlling Person so directs.

(c) If (i) the Securities Depository determines not to continue to administer a Book-Entry System for the Bonds or has been removed and the Borrower fails to appoint a new Securities Depository, (ii) the Controlling Person or the Borrower, with the written consent of the Trustee and the Controlling Person (in the case of the Borrower's election), determines that continuation of a Book-Entry System of evidence and transfer of ownership of the Bonds would adversely affect the interests of the Beneficial Owners of the Bonds, or (iii) pursuant to the consent and written direction of the Holders of one hundred percent (100%) of the principal amount of the Bonds Outstanding, the Book-Entry System will be discontinued, in which case the Trustee will deliver replacement Bonds in the form of fully registered certificates in Authorized Denominations in exchange for the Outstanding Bonds as required by the Trustee and the Beneficial Owners of the Bonds.

ARTICLE III. SECURITY

Section 3.1 Security. The Bonds and the premium, if any, and interest thereon shall be limited obligations of the Issuer as provided in Section 10.9 hereof, and shall be secured by and payable from the Security pledged and assigned to the Trustee by the Issuer pursuant to the Granting Clauses hereof.

Section 3.2 Payment of Bonds and Performance of Covenants. The Issuer shall promptly pay, but only out of the Security, the principal of, premium, if any, and interest on the Bonds at the place, on the dates and in the manner provided in the Bonds. The Issuer shall promptly perform and observe all covenants, undertakings and obligations set forth herein, in the Bonds or in the other Bond Documents to which the Issuer is a party on its part to be performed or observed. The Issuer shall fully cooperate with the Trustee in the enforcement by the Trustee of any such rights granted to the Issuer under the Loan Agreement and the other Bond Documents to which the Issuer is a party.

Section 3.3 Authority. The Issuer represents and warrants that (i) it is duly authorized under the laws of the State to issue the Bonds, and to execute, deliver and perform the terms of the Loan

Agreement and this Indenture; (ii) all action on its part for the issuance of the Bonds and execution and delivery of the Bond Documents to which it is a party has been duly taken; (iii) the Bonds, upon issuance and authentication, and the Bond Documents to which it is a party upon delivery, assuming that they are the respective legal, valid, binding and enforceable obligations of the other parties thereto, shall be valid and enforceable obligations of the Issuer in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles; (iv) it has not heretofore conveyed, assigned, pledged, granted a security interest in or otherwise disposed of the Security; (v) it has not received any payments under the Loan Agreement; (vi) without making any independent investigation, it has no knowledge of any right of set-off, defense or counterclaim to payment or performance of the terms or conditions of the Loan Agreement; (vii) the execution, delivery and performance of the Bond Documents to which it is a party and issuance of the Bonds are not in contravention of law or any agreement, instrument, indenture or other undertaking to which it is a party or by which it is bound; and (viii) all authorizations, approvals, or other actions by any Governmental Authority which would constitute a condition precedent to the performance by the Issuer of the obligations under the Bond Documents to which the Issuer is a party have been obtained or will be obtained on or before the Issue Date.

Section 3.4 No Litigation. The Issuer represents and warrants that there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending, or, to the best knowledge of the Issuer, threatened against or affecting the Issuer wherein an unfavorable decision, ruling or finding would adversely affect (i) the transactions contemplated by, or the validity or enforceability of, the Bonds, this Indenture or the other Bond Documents to which the Issuer is a party, or (ii) the exclusion from gross income of interest on the Tax-Exempt Bonds for purpose of federal income taxation.

Section 3.5 Further Assurances. The Issuer covenants that it will cooperate to the extent necessary with the Borrower and the Trustee in their defenses of the Security against the claims and demands of all Persons and, upon payment or provision for payment of the fees and expenses to be incurred by the Issuer in connection therewith, 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 Trustee may reasonably require for the better pledging of the Security. Except for any amendment, modification, supplement, waiver or consent related to the Reserved Rights, the Issuer shall not cause or permit to exist any amendment, modification, supplement, waiver or consent with respect to the Loan Agreement without the prior written consent of the Trustee, which consent shall be governed by Article VIII hereof.

Section 3.6 No Other Encumbrances; No Dissolution. The Issuer covenants that, (i) except as otherwise provided herein and in the Loan Agreement, it will not sell, convey, mortgage, encumber or otherwise dispose of any portion of the Security, and (ii) to the fullest extent permitted by applicable law, for so long as the Bonds are Outstanding, it will not dissolve, terminate or permit itself to be dissolved or terminated without a successor to its obligations hereunder and under the Bonds having assumed its obligations hereunder and under the Bonds.

Section 3.7 No Personal Liability. No recourse shall be had for the enforcement of any obligation, promise or agreement of the Issuer contained herein or in the Bonds or the other Bond Documents to which the Issuer is a party or for any claim based hereon or thereon or otherwise in respect hereof or thereof against any director, member, officer, agent, attorney or employee, as such, in his/her individual capacity, past, present or future, of the Issuer or of any successor entity, either directly or through the Issuer or any successor entity whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise. No personal liability whatsoever shall attach to, or be incurred by, any director, member, officer, agent, attorney or employee as such, past, present

or future, of the Issuer or of any successor entity, either directly or through the Issuer or any successor entity, under or by reason of any of the obligations, promises or agreements entered into in the Bonds or between the Issuer and the Trustee, whether herein contained or to be implied herefrom as being supplemental hereto; and all personal liability of that character against every such trustee, member, officer, agent, attorney and employee is, by the execution of this Indenture and as a condition of, and as part of the consideration for, the execution of this Indenture, expressly waived and released.

Section 3.8 Disclaimer Of Warranty. THE ISSUER MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO (I) THE PROJECT FACILITIES OR ANY PORTION THEREOF, INCLUDING, WITHOUT LIMITATION, THE HABITABILITY THEREOF, THE MERCHANTABILITY OR FITNESS THEREOF FOR ANY PARTICULAR PURPOSES; THE DESIGN OR CONDITION THEREOF; THE WORKMANSHIP, QUALITY OR CAPACITY THEREOF; THE COMPLIANCE THEREOF WITH ANY LEGAL REQUIREMENTS; (II) THE FINANCIAL POSITION OR BUSINESS CONDITION OF THE BORROWER OR ANY STATEMENTS, MATERIALS, REPRESENTATIONS OR CERTIFICATIONS FURNISHED BY THE BORROWER IN CONNECTION WITH THE SALE OF THE BONDS OR AS TO THE CORRECTNESS, COMPLETENESS OR ACCURACY THEREOF; OR (III) THE PLANS AND SPECIFICATIONS TO CONSTRUCT THE PROJECT FACILITIES OR THE ADEQUACY OR SUFFICIENCY OF THE FINANCING.

ARTICLE IV. FUNDS

Section 4.1 Establishment of Accounts; Applications of Proceeds of the Bonds and Other Amounts.

- (a) The following Accounts are hereby created and established as special trust funds:
 - (i) the Project Fund, consisting of:
 - (A) the Bond Proceeds Account and, within such account, a Taxable Bonds Proceeds Subaccount and a Tax-Exempt Bond Proceeds Subaccount;
 - (B) the Costs of Issuance Account;
 - (C) the Equity Account;
 - (D) the Subordinate Debt Proceeds Account
 - (E) the Capitalized Interest Account and, within such account, a Taxable Bonds Capitalized Interest Subaccount and a Tax-Exempt Bonds Capitalized Interest Subaccount; and
 - (F) the Insurance and Condemnation Proceeds Account;
 - (ii) the Replacement Reserve Fund;
 - (iii) the Tax and Insurance Escrow Fund;
 - (iv) the Rebate Fund;

- (v) the Bond Fund, consisting of:
 - (A) the Tax-Exempt Bond Account; and
 - (B) the Taxable Bond Account;
- (vi) the Surplus Fund;
- (vii) the Redemption Fund, consisting of:
 - (A) the Tax-Exempt Bond Account; and
 - (B) the Taxable Bond Account;
- (viii) the Operating Reserve Fund; and
- (ix) the Expense Fund.

(b) All the Accounts created by subsection (a) of this Section 4.1 shall be held by the Trustee in trust for application only in accordance with the provisions of this Indenture.

(c) On the Issue Date, the proceeds of the sale of the Tax-Exempt Bonds [(\$10,000,000)], the proceeds of the sale of the Taxable Bonds [\$___] and the initial installment of Required Equity Funds (\$_____) shall be deposited as follows:

(i) \$_____, representing a portion of the proceeds of the sale of the Tax-Exempt Bonds, shall be deposited in the Tax-Exempt Bond Proceeds Subaccount of the Bond Proceeds Account of the Project Fund;

(ii) \$_____, representing a portion of the proceeds of the Taxable Bonds shall be deposited in the Taxable Bond Proceeds Subaccount of the Bond Proceeds Account of the Project Fund;

(iii) \$_____, representing a portion of the proceeds of the [Taxable] [Tax-Exempt] Bonds shall be deposited in the Tax-Exempt Bonds Capitalized Interest Subaccount of the Capitalized Interest Account of the Project Fund;

(iv) \$_____, representing a portion of the proceeds of the [Taxable] [Tax-Exempt] Bonds shall be deposited in the Taxable Bonds Capitalized Interest Subaccount of the Capitalized Interest Account of the Project Fund;

(v) \$_____, representing a portion of the initial installment of Required Equity Funds, shall be deposited in the Costs of Issuance Account of the Project Fund to pay costs of issuance of the Bonds, including the amount due the Issuer on the Issue Date;

(vi) \$_____, representing the balance of the initial installment of Required Equity Funds shall be deposited in the Equity Account of the Project Fund; and

(vii) \$_____, representing [a portion of] the proceeds of the Subordinate Debt shall be deposited in the Subordinate Debt Proceeds Account of the Project Fund.

Section 4.2 Bond Fund.

(a) Pursuant to Section 4.1 (a)(v) hereof, there is separately created and established with the Trustee the Bond Fund and, within such Bond Fund, a Taxable Bond Account and a Tax-Exempt Bond Account. There shall be deposited in the applicable accounts within the Bond Fund (i) all Repayments specified in the Loan Agreement to be deposited in the Bond Fund, including all proceeds resulting from the enforcement of the Security or its realization as collateral, and (ii) all other moneys received by the Trustee under the Loan Agreement for deposit by it in the Bond Fund.

(b) Moneys in the Bond Fund shall be held in trust for the Holders and, except as otherwise expressly provided herein, shall be used solely for the payment of the interest on the Bonds, for the payment of principal of the Bonds upon maturity, whether stated or accelerated, or upon mandatory or optional redemption prior to the Maturity Date, and for the payment of any premium set forth in Section 2.3(b) or Section 2.3 (c) of the Loan Agreement.

(c) Upon payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, upon payment in full of the fees and expenses of the Issues and the Trustee, and upon payment of any amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Bond Fund shall be paid to the Borrower.

Section 4.3 Project Fund.

(a) The Trustee shall deposit the proceeds of the sale of the Bonds, the initial installment of the Required Equity Funds and the initial draw of the proceeds of the Subordinate Bonds into the specified accounts and subaccounts of the Project Fund set forth in Section 4.1(c) hereof. The Trustee will receive and deposit into the Equity Account amounts received as future installments of Required Equity Funds from the Tax Credit Investor, in accordance with the provisions of the Borrower's Partnership Agreement, in the Loan Agreement and in the Assignment of Capital Contributions. The Trustee will receive and deposit into the Subordinate Debt Proceeds Account amounts received as future draws of the proceeds of the Subordinate Debt.

(b) The Trustee is hereby authorized and directed to use moneys in the Project Fund for payment or reimbursement of Project Costs (or, in the case of moneys on deposit in the Tax-Exempt Bond Proceeds Subaccount of the Bond Proceeds Account of the Project Fund, for payment or reimbursement of Qualified Project Costs) to the Borrower upon the receipt of a fully executed Requisition approved in writing by the Controlling Person, in accordance with the provisions of the Loan Agreement; provided, however, after Final Completion of the Project Facilities, but in no event later than the Stabilization Date, all Surplus Bond Proceeds remaining in the Tax-Exempt Bond Proceeds Subaccount of the Bond Proceeds Account of the Project Fund shall be transferred to the Surplus Fund. All remaining amounts in the Taxable Bond Proceeds Subaccount of the Bond Proceeds Account, in Equity Account and the Subordinate Debt Proceeds Account of the Project Fund upon Stabilization shall be paid to the Borrower upon receipt of the prior written approval of the Controlling Person, which approval shall not be unreasonably withheld or delayed.

(c) The Trustee shall be and is hereby authorized to transfer funds from the applicable subaccounts of the Capitalized Interest Account to the Bond Fund to pay interest on the Bonds accruing up to and including the Completion Date without submission of any Requisition. With respect to any such transfer, the Trustee shall first transfer amounts from proceeds of the sale of the Tax-Exempt Bonds and secondly from moneys representing Taxable Bonds or Required Equity Funds. The Trustee shall transfer any Surplus Bond Proceeds remaining in the Capitalized Interest

Account after Final Completion of the Project Facilities, but in no event later than the Stabilization Date, to the Surplus Fund.

(d) Amounts in the Costs of Issuance Account shall be disbursed by the Trustee on the Issue Date and thereafter only to pay costs of issuance of the Bonds pursuant to a closing memorandum signed by the Borrower and the Controlling Person identifying the amount to be paid and the payee. Amounts remaining in the Costs of Issuance Account (including investment proceeds) after the payment of all costs of issuance, and in any event not later than thirty (30) days following the Issue Date, shall be transferred to the Equity Account of the Project Fund.

(e) Moneys representing a Condemnation Award or Insurance Proceeds shall be deposited into the Insurance and Condemnation Proceeds Account of the Project Fund, and notice of such deposit thereof shall be given by the Trustee to the Controlling Person and the Majority Owner. To the extent there has been a determination pursuant to the Bond Documents to restore the Project Facilities, such Condemnation Award or Insurance Proceeds shall be expended for such purposes in accordance with the provisions of the Bond Documents. In the event there is a determination pursuant to the Bond Documents not to restore the Project Facilities, such Condemnation Award or Insurance Proceeds shall be either (i) transferred to the Bond Fund and applied to the redemption first of the Tax-Exempt Bonds and then of the Taxable Bonds, in accordance with Section 2.12(b) hereof, or (ii) released to the Borrower if the Borrower obtains a Favorable Opinion of Bond Counsel with respect to such release, all in accordance with direction of the Controlling Person to the Trustee and subject to the provisions of the Bond Documents.

(f) Upon the occurrence and continuation of an Event of Default hereunder, all money and investments in the Project Fund may be disbursed at the written direction of the Controlling Person to pay any costs and expenses of the Project Facilities, to pay costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under the Bond Documents, in whatever amounts and whatever order the Controlling Person may determine.

Section 4.4 Surplus Fund. The Surplus Fund shall receive all Surplus Bond Proceeds transferred thereto in accordance with the provisions of this Indenture. The deposit of Surplus Bond Proceeds in the Surplus Fund shall be, and shall be deemed to be, a joint written direction by the Borrower and the Controlling Person to the Trustee to redeem the greatest principal amount of the Tax-Exempt Bonds possible to be redeemed from such deposit pursuant to Section 2.12(b)(i) hereof on the earliest redemption date on which the Tax-Exempt Bonds may be redeemed, and on such redemption date (or, if such day is not a Business Day, the immediately preceding Business Day) an amount equal to the principal amount of Tax-Exempt Bonds to be redeemed plus interest accrued thereon to the redemption date shall be transferred from the Surplus Fund to the Redemption Fund and used for such redemption. After such transfer, if and to the extent that there are moneys remaining in the Surplus Fund, such moneys in the Surplus Fund shall be transferred to the Tax-Exempt Bond Account of the Bond Fund and shall be used for payment of interest on or principal of the Tax-Exempt Bonds.

Section 4.5 Redemption Fund.

(a) There shall be deposited in the applicable account of the Redemption Fund (i) all payments specified in Section 8.3 of the Loan Agreement to be deposited in the accounts in the Redemption Fund, and (ii) all other moneys received by the Trustee under the Loan Agreement or this Indenture for deposit by it in the Redemption Fund. Moneys in the Redemption Fund shall be held in trust for the Holders and, except as otherwise expressly provided herein, shall be used solely for the redemption of Bonds of the applicable series pursuant to Section 2.12 hereof. On each Principal Payment Date or redemption date and as otherwise required hereunder or at the written

direction of the Controlling Person, the Trustee shall transfer such amounts from the Redemption Fund to the Bond Fund and call and redeem Bonds as provided in Section 2.12 hereof. Upon payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, upon payment in full of the fees and expenses of the Issuer and the Trustee and the payment of any amounts owing to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Redemption Fund shall be paid to the Borrower.

(b) Upon the occurrence and continuation of an Event of Default hereunder, all money and investments in the Redemption Fund may be disbursed at the written direction of the Controlling Person to pay any costs and expenses of the Project Facilities, to pay costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under any of the Bond Documents, in whatever amounts and in whatever order the Controlling Person may determine.

Section 4.6 Tax and Insurance Escrow Fund. There shall be deposited in the Tax and Insurance Escrow Fund all moneys received for such purpose by the Trustee from the Borrower pursuant to Section 8.2 of the Loan Agreement. Moneys in the Tax and Insurance Escrow Fund shall be applied to payment of Impositions and insurance premiums at the written direction of the Controlling Person; provided, however, that upon the occurrence and continuation of an Event of Default hereunder, all money and investments held in the Tax and Insurance Escrow Fund may be disbursed at the written direction of the Controlling Person to pay costs and expenses of the Project Facilities, to pay costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under any of the Bond Documents, in whatever amounts and in whatever order the Controlling Person may determine. Upon the payment in full of the Bonds; or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, upon payment in full of the fees and expenses of the Issuer and the Trustee and upon payment of amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Tax and Insurance Escrow Fund shall be paid to the Borrower.

Section 4.7 Rebate Fund.

(a) The Trustee shall maintain the Rebate Fund, for the benefit of all persons who are or have at any time been Holders of the Tax-Exempt Bonds, at all times prior to the final payment to the United States of America of the amounts described in Section 4.7(c), which fund shall not be part of the trust estate established hereunder. The money deposited to the Rebate Fund, together with all investments thereof and investment income therefrom, shall be held in trust separately and apart from the other funds held under the Indenture and applied solely as provided in this Section 4.7, unless a Favorable Opinion Bond Counsel is provided with respect to the failure to make such application.

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

(c) Within thirty (30) days after each Computation Date, the Trustee, on behalf of the Issuer, shall withdraw from the Rebate Fund and pay to the United States of America the

appropriate portion of the Rebate Amount (determined by the Rebate Analyst on behalf of the Borrower) in the installments, to the place and in the manner required by section 148(f) of the Code, the Regulations, and rulings thereunder as instructed by the Borrower or its legal counsel and as provided in subsection (3) below. Within five (5) days after receipt from the Borrower or the Rebate Analyst of written notification of any amount due to the United States of America pursuant to Section 1.148-3(h) of the Regulations accompanied by relevant IRS forms including IRS Form 8038-T, the Trustee shall withdraw from the Rebate Fund an amount which when added to all prior payments to the United States of America equals the correct appropriate portion of the Rebate Amount, plus any penalties and interest and pay such correction amount to the United States of America.

(d) All payments to the United States of America pursuant to this Section 4.7 shall be made by the Trustee for the account and in the name of the Issuer and shall be paid by draft posted by certified United States Mail (return receipt requested), addressed to the appropriate Internal Revenue Service Center (and, if appropriate, accompanied by the relevant Internal Revenue Service Form, such as Form 8038-T or such other statements, explanations or forms required pursuant to the Regulations or other Internal Revenue Service promulgations).

(e) The Trustee shall preserve all statements, forms, and explanations received from the Borrower or the Issuer pursuant to this Section 4.7 and all records of transactions in the Rebate Fund until six (6) years after the discharge of the Tax-Exempt Bonds.

(f) The Trustee may conclusively rely on the information provided, instructions of and forms prepared by the Borrower or the Rebate Analyst with regard to any actions to be taken by it, including payments to be made, pursuant to this Section 4.7 and shall have no liability for any consequences of any failure of the Borrower to supply accurate or sufficient instructions or to compute correctly any payment due pursuant to this Section 4.7. The Trustee shall have no responsibility or duty to perform any rebate calculation or to expend its own funds to make any rebate payments.

(g) If at any time during the term of this Indenture the Borrower or the Issuer desires to take any action which would otherwise be prohibited by the terms of this Section 4.7, such Person shall be permitted to take such action if there shall be provided, at the expense of the Borrower, a Favorable Opinion of Bond Counsel with respect to such action, and such action shall be in compliance with the laws of the State.

(h) Notwithstanding any provision of the Bond Documents and unless otherwise specifically agreed to in a separate written agreement, the Trustee shall not be liable or responsible for any method of calculation, or any calculation or determination which may be required in connection with or for the purpose of complying with Section 148 of the Code or any successor statute or any regulation, ruling, or other judicial or administrative interpretation thereof, including, without limitation, the calculation of amounts required to be paid the United States of America or the determination of the maximum amount which may be invested in Nonpurpose Investments having a higher yield than the yield on the Tax-Exempt Bonds, in connection with any such investments. The method of calculation, calculation and determination required by Section 148 of the Code shall be accomplished by a Rebate Analyst engaged by the Borrower. The Trustee shall not be liable or responsible for the negligence or misconduct of the Rebate Analyst. The Trustee shall not be liable or responsible for monitoring the compliance by the Borrower or the Issuer of any of the requirements of Section 148 of the Code or any applicable regulation, ruling, or other judicial or administrative interpretation thereof (except for the administrative functions described in this Section 4.7 and elsewhere in this Indenture), it being acknowledged and agreed that the sole

obligation of the Trustee in this regard shall be (i) to invest the moneys received by the Trustee pursuant to the written instructions of the Borrower in the specific investments identified by the Borrower, with the consent of the Controlling Person, or, in the absence of such direction or consent to make investments as otherwise provided herein and to disburse said moneys in accordance with the terms of this Indenture, and (ii) to follow instructions contained in this Section 4.7. The Trustee shall not be liable for the Tax-Exempt Bonds becoming “arbitrage bonds” within the meaning of the Code, as a result of investments it makes in compliance with the instructions it receives or pursuant to or in compliance with the terms of this Indenture.

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

Section 4.8 Replacement Reserve Fund. There shall be deposited in the Replacement Reserve Fund all moneys received for such purpose by the Trustee from the Borrower pursuant to the Replacement Reserve Agreement. Moneys in the Replacement Reserve Fund shall be disbursed by the Trustee upon receipt of a written request therefor executed by the Borrower and approved in writing by the Controlling Person, in accordance with the terms of the Replacement Reserve Agreement; provided that, upon the occurrence and continuation of an Event of Default hereunder, all moneys and investments in the Replacement Reserve Fund (other than moneys held to pay costs required to be paid but not yet payable) may be disbursed at the written direction of the Controlling Person to pay any costs and expenses of the Project Facilities, to pay costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under the Bond Documents, in whatever amounts and whatever order the Controlling Person may determine. Upon the payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, upon payment in full of the fees and expenses of the Issuer and the Trustee, and upon payment of amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Replacement Reserve Fund shall be paid to the Borrower.

Section 4.9 Operating Reserve Fund.

(a) There shall be deposited in the Operating Reserve Fund all moneys received for such purpose pursuant to Section 8.4 of the Loan Agreement. Funds shall be disbursed from the Operating Reserve Fund, at the request of the Borrower, but only with the prior written consent of the Controlling Person and the Tax Credit Investor, (i) to fund any operating deficits or expenses of the Borrower or for any other operating or capital needs of the Project Facilities, and (ii) to be transferred to the Replacement Reserve Fund in the event of a shortage in the Replacement Reserve Fund, as described in Section 12 of the Replacement Reserve Agreement. Upon receipt by the Trustee from the Borrower of a written request together with the written approval of the Controlling Person and the Tax Credit Investor, which approval shall not be unreasonably withheld or delayed, the Trustee shall disburse funds from the Operating Reserve Fund in accordance with such written request.

(b) Upon the occurrence and continuation of an Event of Default, all moneys and investments in the Operating Reserve Fund may be disbursed at the written direction of the Controlling Person to pay any costs and expenses of the Project Facilities, to pay any costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under the Bond Documents, in whatever amounts and whatever order the Controlling Person may determine. Interest earnings on amounts held in the Operating Reserve Fund shall be released not more frequently than annually to the Borrower upon its written request and with the prior written consent of the Controlling Person. Upon payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, upon payment in full of the fees

and expenses of the Issuer and upon payment of amounts payable to the United States of America pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Operating Reserve Fund shall be paid to the Borrower.

(c) Following Stabilization and the initial funding of the Operating Reserve Fund with cash, and provided that no Default or Event of Default shall have occurred and be then continuing, the Borrower may withdraw the funds on deposit in the Operating Reserve Fund if the Borrower delivers to the Trustee a letter credit (the “**Operating Reserve Letter of Credit**”) in a stated amount of not less than \$509,057, or such other amount as may be approved by the Controlling Person, which names the Trustee as sole beneficiary, has a term of not less than twelve (12) months, is issued by a bank rated “A” or better by S&P, and is otherwise acceptable to the Controlling Person and the Majority Owner in their sole discretion. The Trustee shall draw upon the Operating Reserve Letter of Credit: (i) at the direction of the Controlling Person, following the occurrence of a Default or Event of Default, (ii) at the direction of the Controlling Person, following a credit rating downgrade of the bank providing the Operating Reserve Letter of Credit below “A” or a withdrawal or suspension of such rating, or (iii) at the direction of the Controlling Person, if the Operating Reserve Letter of Credit is expiring without being extended or renewed upon terms acceptable to the Controlling Person, (iv) at the direction of the Controlling Person, if the Controlling Person in its sole discretion determines that the debt service coverage ratio is below 1.05:1.0 or that funds are otherwise needed for the Project Facilities, or (v) at the direction of the Borrower or the Tax Credit Investor. The Trustee shall deposit the proceeds of any draw upon the Operating Reserve Letter of Credit into the Operating Reserve Fund to be used for the purposes set forth in Section 8.4(a) of the Loan Agreement and Section 4.9(a) hereof.

Section 4.10 Expense Fund. The Trustee shall deposit to the Expense Fund the payments received from the Borrower pursuant to Section 2.2 of the Loan Agreement and shall apply those amounts to the payment of the amounts required by this Section 4.10. The Trustee shall apply moneys on deposit in the Expense Fund solely for the following purposes, on the dates specified below, in the following order of priority:

- (a) to pay the Issuer Administration Fee when due;
- (b) to pay the Issuer Fees and Expenses not previously paid;
- (c) to pay the Trustee Fees and Expenses not previously paid; and
- (d) to transfer money to the Rebate Fund to the extent necessary to pay the Rebate Amount (if any) on or before the Computation Date to pay the Rebate Amount pursuant to Section 4.7 hereof.

To the extent moneys in the Expense Fund are not sufficient to pay the foregoing fees and expenses, such deficiency shall be paid by the Borrower pursuant to Section 2.2 of the Loan Agreement immediately upon written demand. Following the repayment of the Bonds in full, to the extent that there are not adequate funds available in the Expense Fund to make full payment of the Issuer Administration Fee when due and the Issuer Fees and Expenses not previously paid, then such fees or any amount remaining unpaid shall be paid to the Expense Fund as a disbursement from the Project Fund prior to the disbursement from the Project Fund for any other costs or expenses.

Section 4.11 Records.

(a) The Trustee shall cause to be kept and maintained records pertaining to all funds and accounts maintained by the Trustee hereunder and all disbursements therefrom and shall periodically deliver to the Borrower statements of activity and statements indicating the investments made with moneys in all such funds during the applicable period. Upon written request, the Trustee shall provide the Borrower or the Controlling Person, within a reasonable period of time, with a report stating the principal amount of Bonds outstanding and a list of the registered owners of the Bonds as of the date specified by the Borrower or the Controlling Person in its request at the expense of the Borrower.

(b) The Trustee shall provide the Borrower and the Controlling Person with a written report, on a monthly basis through the calendar month in which the last obligation of the Bonds is retired, identifying the Permitted Investments in which the moneys held as part of the Accounts were invested during the preceding period and the dates of such investments, together with such other information as the Trustee ordinarily provides to Persons such as the Borrower and the Controlling Person in its regular monthly investment reports and at the expense of the Borrower.

Section 4.12 Investment of Funds. Subject to the provisions of Sections 4.7 and 10.12 hereof, moneys held as part of all Accounts shall be invested and reinvested in Permitted Investments as instructed in writing by the Borrower with the prior written consent of the Controlling Person; provided, however, that any moneys held by the Trustee to pay the principal of, premium, if any, or interest that has become payable with respect to the Bonds shall not be invested. The Trustee may conclusively rely on written instructions received from the Borrower, including written instructions received by electronic means. All Permitted Investments shall be held by or under the control of the Trustee and shall be deemed at all times to be a part of the fund and account which was used to purchase the same. The Trustee may act as principal or agent in the making or disposing of any investment and may utilize its investment department or that of its affiliates and charge its standard investment handling fees. All interest accruing thereon and any profit realized from Permitted Investments shall be credited to the respective fund or account and any loss resulting from Permitted Investments shall be similarly charged. The Trustee is authorized to cause to be sold and reduced to cash a sufficient amount of Permitted Investments whenever the cash balance in any fund or account hereunder is or will be insufficient to make a requested or required disbursement. The Trustee shall not be responsible for any depreciation in the value of any Permitted Investment or for any loss resulting from such sale, so long as the Trustee performs its obligations hereunder in accordance with the terms of this Indenture. The Trustee shall have no discretion for investing funds or advising any parties on investing funds. The Trustee may invest funds in its own proprietary money market funds or deposit products. Absent specific written instructions from the Borrower approved by the Controlling Person to invest cash balances in Permitted Investments hereunder, the Trustee shall invest such cash balances in the Federated Treasury Obligations Fund (TOSXX), or, if such fund is not available, in Permitted Investments constituting obligations of the U.S. Treasury or its agencies having a term to maturity of not more than thirty (30) days or any money market fund or similar investment fund that purchases and holds exclusively obligations of the United States of America or its agencies that have a term to maturity of not more than thirty (30) days.

Section 4.13 Guaranties. Any amounts realized by the Trustee under the Guaranty of Completion, the Guaranty of Payment, the Guaranty of Recourse Obligations and the Environmental Indemnity shall be deposited, used or applied and invested by the Trustee as directed in writing by the Controlling Person.

ARTICLE V. DISCHARGE OF LIEN

Section 5.1 Discharge of Lien and Security Interest. Upon payment in full of all of the Bonds and all amounts payable hereunder, under the Loan Agreement and the other Bond Documents, these presents and the Security Interests shall cease, determine and be discharged, and thereupon the Trustee shall, upon receipt by the Trustee of an opinion of counsel stating that all conditions precedent to the satisfaction and discharge of this Indenture have been complied with, (a) cancel and discharge this Indenture and the Security Interests; (b) execute and deliver to the Issuer and the Borrower, at the Borrower's expense, such instruments in writing as shall be required to cancel and discharge this Indenture and the Security Interests and reconvey to the Issuer and the Borrower the Security, and assign and deliver to the Issuer and the Borrower so much of the Security as may be in its possession or subject to its control, except for moneys and Government Obligations held in the Bond Fund for the purpose of paying Bonds; and (c) mark the Note as cancelled and satisfy the Mortgage; provided, however, that the cancellation and discharge of this Indenture pursuant to Section 5.3 hereof shall not terminate the powers and rights granted to the Trustee with respect to the payment, registration of transfer and exchange of the Bonds; and provided, further, that the rights of the Issuer and the Trustee to indemnity, non-liability and payment of all reasonable fees and expenses shall survive the cancellation and discharge of this Indenture pursuant to this Section 5.1 or Section 5.3 hereof.

Section 5.2 Provision for Payment of Bonds. Bonds shall be deemed to have been paid within the meaning of Section 5.1 hereof if:

(a) there shall have been irrevocably deposited in the Bond Fund sufficient money or Government Obligations of such maturities and interest payment dates and bearing such interest as will, in the opinion of a nationally recognized firm of certified public accountants, without further investment or reinvestment of either the principal amount thereof or the interest earnings thereon (said earnings also to be held in trust), be sufficient for the payment at their respective maturities or redemption dates prior to maturity of the principal of the Bonds, the premium, if any, and interest to accrue thereon through such maturity or redemption dates, as the case may be;

(b) there shall have been paid or provision duly made for the payment of all fees and expenses of the Issuer and the Trustee, due or to become due; and

(c) if any Bonds are to be redeemed on any date prior to their maturity, the Trustee shall have received in form satisfactory to it irrevocable instructions from the Borrower or the Controlling Person, as the case may be, in accordance with Section 2.12 hereof to cause a redemption of the Bonds, to redeem such Bonds on such date and either evidence satisfactory to the Trustee that all redemption notices required by this Indenture have been given or irrevocable power authorizing the Trustee to give such redemption notices has been granted to the Trustee.

Limitations set forth elsewhere herein regarding the investment of moneys held by the Trustee in the Bond Fund shall not be construed to prevent the depositing and holding in the Bond Fund of the Government Obligations described in this Section 5.2 for the purpose of defeasing the lien of this Indenture as to Bonds which have not yet become due and payable. Notwithstanding any other provision of this Indenture to the contrary, all funds deposited with the Trustee as provided in this Section 5.2 may be invested and reinvested, at the direction of the Borrower, in Government Obligations (or in a money market fund that invests solely in Government Obligations and is rated no lower than the second highest category by one of Fitch, Moody's or S&P and, if more than one of such rating agencies then rates such money market fund, is rated no less than the second highest

rating category by each of such rating agencies then rating such money market fund) maturing in the amounts and times as hereinbefore set forth, and all income from all Government Obligations (or money market fund) in the hands of the Trustee pursuant to this Section 5.2 which is not required for the payment of the Bonds and interest and redemption premium, if any, thereon with respect to which such moneys shall have been so deposited shall be deposited in the Bond Fund as and when realized and collected for use and application as are other moneys deposited in the Bond Fund.

Section 5.3 Discharge of Indenture. Notwithstanding the fact that the lien of this Indenture upon the Security may have been discharged and cancelled in accordance with Section 5.1 hereof, this Indenture and the rights granted and duties imposed hereby, to the extent not inconsistent with the fact that the lien upon the Security may have been discharged and cancelled, shall nevertheless continue and subsist after payment in full of the Bonds or the deemed payment in full of the Bonds in accordance with Section 5.2 hereof until the Trustee shall have returned to the Borrower, all funds held by the Trustee which the Borrower is entitled to receive pursuant to this Indenture after all Bonds have been paid at maturity or redeemed. Upon payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, payment in full of the fees and expenses of the Issuer and the Trustee and upon payment of any amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, all remaining amounts held by the Trustee shall be paid to the Borrower.

ARTICLE VI. DEFAULT PROVISIONS AND REMEDIES

Section 6.1 Events of Default. Any one of the following shall constitute an Event of Default hereunder:

- (a) Failure to pay interest on any Bond when and as the same shall have become due;
- (b) Failure to pay the principal of or any premium on any Bond when and as the same shall become due, whether at the stated maturity or redemption date thereof or by acceleration;
- (c) Failure to observe or perform any other of the covenants, agreements or conditions on the part of the Issuer included in this Indenture or in the Bonds and the continuance thereof for a period of thirty (30) days after written notice to the Issuer and the Borrower and the Tax Credit Investor have been given by the Trustee or by the Controlling Person (with a copy to the Trustee); provided that any cure of any default made or tendered by the Tax Credit Investor shall be deemed to be a cure by Borrower, and be accepted or rejected on the same basis as if made or tendered by Borrower.
- (d) The occurrence of an Event of Default under the Loan Agreement or the failure by the Borrower to perform or comply with any of the other terms or conditions contained in any other Bond Documents, the Ground Lease, the VASH Contract or the Subordinate Debt Documents and continuation of such failure for beyond the expiration of any notice, grace or cure period provided in the Loan Agreement, the Bond Documents, the Ground Lease, the VASH Contract or the Subordinate Debt Documents (as applicable).

Notwithstanding anything herein to the contrary, the Trustee is not deemed to have knowledge of any Event of Default unless specifically notified in writing by at least 51% of the Holders. In the absence of any such written notice, the Trustee may conclusively assume that no such default or Event of Default exists.

Section 6.2 Acceleration.

(a) Upon the occurrence of an Event of Default, at the written direction of the Controlling Person, the Trustee immediately shall, by notice in writing sent to the Issuer, the Borrower, the Majority Owner and the Controlling Person, declare the principal of all Bonds then Outstanding (if not then due and payable) and the interest accrued thereon to be due and payable immediately, and, upon said declaration, such principal and interest shall become and be immediately due and payable. Upon any declaration of acceleration hereunder, the Trustee shall immediately exercise such rights as it may have under the Loan Agreement and the Note to declare all Repayments to be immediately due and payable. In such event, there shall be due and payable on the Bonds an amount equal to the total principal amount of all such Bonds, plus all interest accrued thereon (including Default Interest, if any) and which will accrue thereon to the date of payment and all unpaid interest on the Bonds on the date of payment, and the acceleration premium described in Section 6.8 (if applicable).

(b) Immediately following any such declaration of acceleration, the Trustee shall cause to be mailed notice of such declaration by first-class mail, postage prepaid (or, in the case of Bonds administered in the Book-Entry System, cause to be sent pursuant to the applicable procedure of the Securities Depository), to each Holder of a Bond at his/her last address appearing on the Register. Any defect in or failure to give such notice of such declaration shall not affect the validity of such declaration.

Section 6.3 Other Remedies; Rights of Holders.

(a) Upon the happening and continuance of an Event of Default hereunder, the Trustee may, with the prior written consent of the Controlling Person, and shall upon the direction of the Controlling Person, with or without taking action under Section 6.2 hereof, pursue any available remedy to enforce the performance of or compliance with any Bond Documents.

(b) No remedy by the terms of this Indenture conferred upon or reserved to the Trustee, the Controlling Person, the Majority Owner or the Holders is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee, the Controlling Person, the Majority Owner or the Holders hereunder or now or hereafter existing.

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

(d) No waiver of any Default or Event of Default hereunder, whether by the Trustee or by the Holders, shall extend to or shall affect any subsequent Default or Event of Default or shall impair any rights or remedies consequent thereon.

(e) The Trustee, as the assignee of substantially all right, title and interest of the Issuer in and to the Loan Agreement and the Note, shall be empowered to enforce each and every right granted to the Issuer under the Loan Agreement and the Note other than Reserved Rights.

Section 6.4 Right of Controlling Person to Direct Proceedings.

(a) Anything in this Indenture to the contrary notwithstanding, the Controlling Person shall have the right at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions of law and this Indenture.

(b) No Holder shall have the right to institute any proceeding for the enforcement of this Indenture unless such Holder has given the Trustee, the Special Limited Partner and the Borrower written notice of an Event of Default, the Controlling Person shall have requested the Trustee in writing to institute such proceeding, the Trustee shall have been afforded a reasonable opportunity to exercise its powers or to institute such proceeding, there shall have been offered to the Trustee indemnity satisfactory to it against the cost, expense and liability to be incurred in connection with such request and the Trustee shall have thereafter failed or refused to exercise such powers or to institute such proceeding within sixty (60) days after receipt of notice with no inconsistent direction given during such sixty (60) days by the Holders of a majority in aggregate principal amount of the Bonds then Outstanding. Nothing in this Indenture shall affect or impair any right of enforcement conferred on any Holder by the Act to enforce (i) the payment of the principal of, acceleration premium, if any, and interest on Bonds at and after the maturity thereof, or (ii) the obligation of the Issuer to pay the principal of, acceleration premium, if any, and interest on Bonds to such Holder at the time, place, from the sources and in the manner as provided in this Indenture.

Section 6.5 Discontinuance of Default Proceedings. In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer and the Trustee shall be restored to their former positions and rights hereunder and all rights, remedies and powers of the Issuer and the Trustee shall continue as if no such proceedings had been taken subject to the limits of any adverse determination.

Section 6.6 Waiver. The Trustee with the consent of the Controlling Person, may, and upon the written direction of the Controlling Person, shall waive any Default or Event of Default hereunder and its consequences and rescind any declaration of acceleration of maturity of principal; provided, however, that there shall be no such waiver or rescission unless all principal of, acceleration premium, if any, and interest on the Bonds in arrears, together with interest thereon (to the extent permitted by law) at the applicable rate of interest borne by the Bonds and all fees and expenses of the Trustee and the Issuer shall have been paid or provided for.

Section 6.7 Application of Moneys. All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article VI shall be deposited in the Bond Fund and, after payment (out of moneys derived from a source other than moneys held for the redemption of Bonds) of (i) the cost and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Trustee, including reasonable attorneys' fees, and all other outstanding fees and expenses of the Trustee, and (ii) any sums due to the Issuer under the Loan Agreement

(other than Repayments), such moneys shall be applied pari passu between the series and in the order set forth below:

(a) Unless the principal of all Bonds shall have become or been declared due and payable, all such moneys shall be applied:

First: To the payment of all installments of interest then due on the Bonds in order of priority first to installments past due for the greatest period and, if the amount available shall not be sufficient to pay in full any particular installment, then to the ratable payment of the amounts due on such installment;

Second: To the payment of the unpaid principal of and premium, if any, of the Bonds which shall have become due (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), with interest on such Bonds from the respective dates upon which they became due (at the rate borne by the Bonds, to the extent permitted by law) and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such acceleration premium, then to the ratable payment of the amounts due on such date; and

Third: To the payment of the amounts required to reimburse the Issuer and the Owners of the Bonds for any legal or other out-of-pocket costs incurred by them in connection with exercising their remedies hereunder.

Fourth: The balance shall be paid to the Borrower (subject to any required deposits to the Rebate Fund).

(b) If the principal of all the Bonds shall have become or been declared due and payable, all such moneys shall be applied pari passu between the series to the payment of the principal, acceleration premium, if any, and interest then due and unpaid upon the Bonds, without preference or priority as between principal, premium, interest, installments of interest or Bonds, ratably according to the amounts due respectively for principal, premium and interest to the persons entitled thereto.

(c) If the principal on all Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded under this Article VI then, subject to subsection (b) of this Section 6.7 in the event that the principal of all the Bonds shall again become or be declared due and payable, the moneys shall be applied in accordance with subsection (a) of this Section 6.7.

(d) Notwithstanding anything contained herein to the contrary, the Controlling Person may, with express written consent of the Majority Owner, by written notice to the Trustee direct the application of funds other than in the manner set forth in Section 6.7(a) above, including, without limitation, the application of funds between the principal or acceleration premium or interest on the Bonds.

(e) Whenever moneys are to be applied pursuant to this Section 6.7, the Trustee shall fix the date which shall be not more than seven (7) calendar days after receipt of such moneys, upon which such application is to be made and upon such date interest on the principal amount of Bonds to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date.

Section 6.8 Default Interest and Acceleration Premium. In the event that principal of or premium, if any, or interest payable on the Bonds is not paid when due or upon the occurrence and during the continuance of any other Event of Default (provided that the Controlling Person shall have no obligation to accept a cure of any Event of Default), there shall be payable on the Bonds and on any amount not timely paid, interest at the Default Rate, to the extent permitted by law. This interest shall accrue at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full. In the event there shall have occurred an acceleration of the Bonds or the Borrower's obligations under the Loan Agreement following an Event of Default on or before January 1, 2033, any tender of payment of any amount necessary to pay the Bonds in full shall include the acceleration premium set forth in Section 2.3(c) of the Loan Agreement.

ARTICLE VII. THE TRUSTEE

Section 7.1 Appointment of Trustee. The Trustee is hereby appointed and does hereby agree to act in such capacity, and to perform the duties of the Trustee under this Indenture, but only upon and subject to the following express terms and conditions (and no implied covenants or other obligations shall be read into this Indenture against the Trustee):

(a) The Trustee may execute any of its trusts or powers hereunder and perform any of its duties by or through attorneys, agents, or receivers, and shall not be responsible for any misconduct or negligence of such attorneys, agents or receivers appointed with due care, and may in all cases pay reasonable compensation to all such attorneys, agents, and receivers. The Trustee may act upon the opinion or advice of Counsel and shall not be responsible for any loss or damage resulting from any action or non-action taken in good faith in reliance upon such opinion or advice.

(b) Except as provided in Section 7.8 hereof, the Trustee shall not be responsible for any recital herein or in the Bonds, or for the recording, re-recording, filing or re-filing of this Indenture, of any financing statements or continuation statements, or for insuring the Security or the Project Facilities or collecting any insurance moneys, or for the validity of this Indenture or of any supplements hereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, or for the value of or title to the Project Facilities or otherwise as to the maintenance of the Security. The Trustee shall not be liable to the Borrower, any Holder, any Beneficial Owner or any other Person for any loss suffered in connection with any investment of funds made by it in good faith as instructed by the Borrower in accordance with the provisions of this Indenture and with the prior written consent of the Controlling Person. The Trustee shall have no duty or responsibility to examine or review and shall have no liability for the contents of any documents submitted to or delivered to any Holder in the nature of a preliminary or final placement memorandum, official statement, offering circular or similar disclosure document.

(c) The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder after such Bonds shall have been delivered in accordance with instructions of the Issuer or for the use by the Borrower of the proceeds of the Bonds advanced to the Borrower as provided in the Loan Agreement. The Trustee may become the owner of Bonds secured hereby with the same rights as any other Holder.

(d) The Trustee shall be protected in acting upon opinions of Counsel and upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons. Any notices, directions, consents, approvals or requests provided to the Trustee pursuant to the

terms of this Indenture or any of the Bond Documents shall not be effective until provided in writing. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the Holder of any Bond shall be conclusive and binding upon all future Holders of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(e) The permissive right of the Trustee to do things enumerated in this Indenture or the Loan Agreement shall not be construed as duties. The Trustee shall only be responsible for the performance of the duties expressly set forth herein and shall not be answerable for anything other than its gross negligence, bad faith or willful misconduct in the performance of those express duties.

(f) The Trustee shall not be personally liable for any debts contracted or for damages to persons or to personal property injured or damaged, or for salaries or non-fulfillment of contracts, relating to the Project Facilities.

(g) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trust and powers or otherwise in respect of this Indenture.

(h) The Trustee shall have no obligation to exercise any of the rights and powers vested in this Indenture at the request or direction of the Controlling Person or the Holders pursuant to this Indenture or other Bond Documents, unless Trustee is provided with security or indemnification satisfactory to it for the reimbursement of all expenses to which it may be put by reason of any action so taken. The Trustee shall not be entitled to indemnification as a precondition to giving notices of default or taking other actions at the direction of the Majority Owner or the Controlling Person which do not require the Trustee to expend its own funds or for which funds have been advanced by the Majority Owner or the Controlling Person to the Trustee in advance of its taking such action.

(i) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the written direction of the Controlling Person, the Majority Owner, or Holders relating to the time, method and place of conduction of any proceeding for any remedy available to the Trustee, or for exercising any trust or power conferred upon the Trustee, under this Indenture or other Bond Documents.

(j) All moneys received by the Trustee, until used or applied or invested as herein provided, shall be held as special trust funds for the purposes specified in this Indenture and for the benefit and security of the Holders of the Bonds as herein provided. Such moneys need not be segregated from other funds except to the extent required by law or herein provided, and the Trustee shall not otherwise be under any liability for interest on any moneys received hereunder except such as may be agreed upon.

(k) The Trustee shall not be bound to ascertain or inquire as to the performance of the obligations of the Borrower or the Issuer under the Loan Agreement or this Indenture, and shall not be deemed to have, or be required to take, notice of default under this Indenture (other than under Section 6.1(a) or (b), or Section 6.1(c) or (d) if written notice thereof has been received by the Trustee) or the occurrence of a Determination of Taxability, except (i) in the event the Borrower fails to pay any Repayment when due, (ii) in the event of an insufficient amount in the Bond Fund (or any account therein) to make a principal or interest payment on the Bonds, (iii) in the event of written notification of a Determination of Taxability by the Holder of any Tax-Exempt Bonds, (iv) of written notification of such default by the Controlling Person, the Majority Owner or two or more Holders with combined holdings of not less than twenty-five percent (25%) of the principal

amount of Outstanding Bonds, or (v) in the event of receipt of an opinion of Bond Counsel concluding that a Determination of Taxability has occurred, and in the absence of such notice the Trustee may conclusively presume there is no Determination of Taxability and no default except as aforesaid. The Trustee may nevertheless require the Issuer and the Borrower to furnish information regarding performance of their obligations under the Loan Agreement and this Indenture, but is not obligated to do so.

(l) The Trustee shall, prior to any Event of Default and after the curing of all Events of Default which may have occurred, perform such duties and only such duties of the Trustee as are specifically set forth in this Indenture. The Trustee shall, during the existence of any Event of Default which has not been cured, exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of his/her own affairs.

(m) In addition to the Trustee's other duties hereunder, the Trustee shall authenticate and cancel Bonds as provided herein, keep such books and records relating to such duties as shall be consistent with prudent industry practice and make such books and records available for inspection by the Issuer and the Borrower at all reasonable times. All Bonds shall be made available for authentication, exchange and registration of transfer at the principal operations office of the Trustee.

(n) The Trustee shall have no duty to inspect or oversee the construction or completion of the Improvements or to verify the truthfulness or accuracy of the certifications made by the Borrower in any Requisition.

(o) Without limiting the duties of the Trustee expressly set forth herein, the Trustee shall have no obligation or responsibility whatsoever in connection with (i) any federal or state tax-exempt status of the Bonds or the interest thereon; (ii) the consequences of the investment or non-investment of any funds or accounts relating to the Tax-Exempt Bonds under Section 148 of the Code, or (iii) the calculation of any amount required to be rebated to the United States under Section 148 of the Code.

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

(q) Whenever in the administration of this Indenture the Trustee deems it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee may, in the absence of bad faith on its part and except as otherwise expressly set forth herein, rely upon a written certificate of the Controlling Person or the Majority Owner.

(r) In the absence of a direction from the Controlling Person or the Majority Owner, if the Trustee receives inconsistent or conflicting requests and indemnity from two or more groups of Holders of the Bonds, each representing less than a majority in aggregate principal amount of the Bonds Outstanding, pursuant to the provisions of this Indenture, the directions given by the group of Holders which holds the largest percentage of the principal amount of the Bonds shall be controlling and the Trustee shall follow such directions.

(s) The Trustee's immunities and protections from liability and its rights to indemnification in connection with the performance of its duties under this Indenture shall likewise extend to the Trustee's officers, directors, agents, attorneys and employees. Such immunities and

protections and rights to indemnification, together with the Trustee's rights to compensation, shall survive the Trustee's resignation or removal, the discharge of this Indenture and the final payment of the Bonds.

(t) The Trustee, in its commercial banking or in any other capacity, may in good faith buy, sell, own, hold or deal in any of the Bonds and may join in any action that any Holder may be entitled to take with like effect as if it were not the Trustee. The Trustee, in its commercial banking or in any other capacity, may also engage in or be interested in any financial or other transaction with the Borrower and may act as depository, trustee or agent for any committee of Holders secured hereby or other obligations of the Borrower, as freely as if it were not the Trustee hereunder. The provisions of this paragraph shall extend to the affiliates of the Trustee.

(u) The Trustee shall have no responsibility or obligation to DTC Participants, to Indirect Participants, or to the Persons for whom they act as nominees with respect to the Bonds, or to any Beneficial Owner of Bonds in respect of the accuracy of any records maintained by the Securities Depository, the Securities Depository Nominee or any DTC Participant or Indirect Participant, the payment by the Securities Depository, the Securities Depository Nominee or any DTC Participant or Indirect 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 under this Indenture, the selection by the Securities Depository, the Securities Depository Nominee or any DTC Participant or Indirect Participant of any Person to receive payment in the event of a partial redemption of the Bonds, or any consent given or other action taken by the Securities Depository or the Securities Depository Nominee as Holder.

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

Section 7.2 Compensation and Indemnification of Trustee; Trustee's Prior Claim.

(a) The Loan Agreement provides that the Borrower will pay the reasonable fees and expenses of the Trustee under this Indenture and all other amounts which may be payable to the Trustee under this Section 7.2, such fees and expenses to be paid when due and payable by the Borrower directly to the Trustee for their own account.

(b) The Borrower shall (i) pay the Trustee from time to time, and the Trustee shall be entitled to, reasonable compensation (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust), (ii) pay or reimburse the Trustee upon request for all reasonable expenses, disbursements and advances incurred or made, in accordance with any of the provisions of this Indenture and the Loan Agreement (including the reasonable compensation and the reasonable expenses and disbursements of its Counsel and of all agents and other persons not regularly in its employ), except to the extent that any such expense, disbursement or advance is found by a court of competent jurisdiction to be the result of its own gross negligence, willful misconduct or bad faith, and (iii) indemnify the Trustee for, and to hold it harmless against, any loss, liability or expense incurred by it, arising out of or in connection with the acceptance or administration of this Indenture or the trusts hereunder or the performance of its duties hereunder or under the Loan Agreement, including the reasonable costs and expenses of defending itself against or investigating any claim of liability in the premises, except to the extent that any such loss, liability or expense was due to its own gross negligence, willful misconduct or bad faith. "Trustee," for purposes of this Section 7.2 shall include any predecessor Trustee, but the gross negligence, willful misconduct or bad faith of any Trustee, shall not affect the indemnification of

any other Person. The obligations of the Borrower under this Section 7.2 shall survive the termination of this Indenture. The indemnification provided in this Section shall apply to indemnification obligations arising from the Trustee's own negligence.

Section 7.3 Intervention in Litigation. In any judicial proceedings to which the Issuer is a party, the Trustee may intervene on behalf of Holders, and shall intervene if requested in writing by the Controlling Person, the Majority Owner, or the Holders of at least twenty-five percent (25%) in aggregate principal amount of Bonds then Outstanding.

Section 7.4 Resignation; Successor Trustees.

(a) The Trustee and any successor Trustee may resign only upon giving sixty (60) days prior written notice to the Issuer, the Borrower, the Controlling Person and each Holder of Bonds then Outstanding as shown on the Register. Such resignation shall take effect only upon the appointment of a successor Trustee by the Issuer with the consent of the Controlling Person and the acceptance of such appointment by the successor Trustee. If no successor is appointed within sixty (60) days after the notice of resignation, the Controlling Person may appoint a Trustee or the resigning Trustee may appoint a successor or petition any court of competent jurisdiction to appoint a successor. Upon appointment of a successor Trustee, the resigning Trustee shall assign all of its right, title and interest in this Indenture and the Security to the successor Trustee. The successor Trustee shall be a bank or trust company with trust powers organized under the laws of the United States of America or any state of the United States, or the District of Columbia, having a combined capital stock, surplus and undivided profits aggregating at least \$50,000,000. Any successor Trustee shall accept in writing its duties and responsibilities hereunder and such writing shall be filed with the Issuer, the Controlling Person and the Borrower.

(b) Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, reorganization or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or any material part of the corporate trust business of the Trustee that includes this Indenture, shall be the successor of the Trustee hereunder without the execution or filing of any paper of any further act on the part of any Person, anything herein to the contrary notwithstanding, provided that such successor Trustee shall be eligible to serve as Trustee under the provisions of this Indenture. If the Trustee is not the successor corporation in any such merger or consolidation, the Trustee shall give notice of such event to the Issuer and the Borrower and shall take such action as may be required to effect a transfer of the trust included in this Indenture to such successor corporation.

Section 7.5 Removal of Trustee. The Trustee may be removed at any time by thirty (30) days advance notice, by an instrument or concurrent instruments in writing delivered to the Trustee, the Issuer the Controlling Person and the Borrower and signed by the Holders of a majority in aggregate principal amount of Bonds then Outstanding. During such time that no Event of Default has occurred and is continuing under this Indenture, the Trustee may also be removed with thirty (30) days advance notice by an instrument or concurrent instruments in writing delivered to the Trustee and the Issuer and signed by the Controlling Person, with notice to the Borrower. Such removal shall take effect only upon the appointment of a successor Trustee by the Issuer with the consent of the Controlling Person and the acceptance of such appointment by the successor Trustee. Upon such removal, the Trustee shall assign to the successor Trustee

all of its right, title and interest in this Indenture and the Security in the same manner as provided in Section 7.4 hereof.

Section 7.6 Instruments of Holders.

(a) Any instrument required by this Indenture to be executed by Holders may be in any number of writings of similar tenor and may be executed by Holders in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds given in any of the following forms shall be sufficient for any of the purposes of this Indenture:

(i) A certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him/her the execution thereof; and

(ii) A certificate executed by any trust company or bank stating that at the date thereof the party named therein did exhibit to an officer of such trust company or bank, as the property of such party, the Bonds therein mentioned.

(b) The Trustee may rely on such an instrument of Holders unless and until the Trustee receives notice in the form specified in clauses (a) (i) or (ii) above that the original such instrument is no longer reliable. In the absence of direction from the Controlling Person, if the Trustee shall receive conflicting directions from two or more groups of Holders, each with combined holdings of not less than twenty-five percent (25%) of the principal amount of Outstanding Bonds, the directions given by the group of Holders which holds the largest percentage of the principal amount of the Bonds shall be controlling and the Trustee shall follow such directions.

Section 7.7 Power to Appoint Co-Trustees.

(a) At any time or times, for the purpose of meeting any requirements of any jurisdiction in which any part of the Project Facilities may at the time be located, the Issuer and the Trustee shall have power to appoint and, upon the request of the Trustee or of the Holders of a majority of the aggregate principal amount of the Bonds then Outstanding, the Issuer shall for such purpose join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint, one or more persons approved by the Trustee and the Borrower either to act as co-trustee or co-trustees, jointly with the Trustee of all or any part of the Project Facilities, or to act as separate trustee or separate co-trustees of all or any part of the Project Facilities, and to vest in such person or persons, in such capacity, such title to the Project Facilities or any part thereof, and such rights, powers, duties, trusts or obligations as the Issuer and the Trustee may consider necessary or desirable, subject to the remaining provisions of this Section 7.7.

(b) Any co-trustee or separate trustee shall be a bank or trust company with trust powers organized under the laws of the United States of America or any state of the United States or the District of Columbia, having a combined capital stock, surplus and undivided profits aggregating at least \$50,000,000.

(c) The Trustee and co-trustee, if any, may by written instrument between them designate and assign either the Trustee or the co-trustee or both of them to perform all or any part of the responsibilities and duties of the Trustee under this Indenture.

(d) If the Issuer shall not have joined in such appointment within thirty (30) days after the receipt by it of a written request to do so, or in case an Event of Default shall have occurred and be continuing, the Trustee and the Borrower shall have the power to make such appointment.

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

(f) Every co-trustee or separate trustee appointed pursuant to this Section 7.7, to the extent permitted by law or any applicable contract, shall be subject to the following terms, namely:

(i) This Indenture shall become effective at the time the Bonds shall be authenticated and delivered, and thereupon such co-trustee or separate trustee shall have all rights, powers, trusts, duties and obligations by this Indenture conferred upon the Trustee in respect of the custody, control or management of moneys, papers, securities and other personal property.

(ii) All rights, powers, trusts, duties and obligations conferred or imposed upon the trustees shall be conferred or imposed upon and exercised or performed by the Trustee, or by the Trustee and such co-trustee or co-trustees, or separate trustee or separate trustees, as shall be provided in the instrument appointing such co-trustee or co-trustees or separate trustee or separate trustees, except to the extent that, under the law of any jurisdiction in which any particular act or acts are to be performed, the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co-trustee or co-trustees or separate trustee or separate trustees.

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

(iv) Any co-trustee or separate trustee, to the extent permitted by law, may delegate to the Trustee the exercise of any right, power, trust, duty or obligation, discretionary or otherwise.

(v) The Trustee at any time, by an instrument in writing, with the concurrence of the Issuer, may accept the resignation of any co-trustee or separate trustee appointed under this Section, and, in case an Event of Default shall have occurred and be continuing, the Trustee shall have power to accept the resignation of, or remove, any such co-trustee or separate trustee without the concurrence of the Issuer. Upon the request of the Trustee, the Issuer shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-trustee or separate trustee so resigned or removed may be appointed in the manner provided in this Section 7.7.

(vi) No co-trustee or separate trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder.

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

(g) Upon the acceptance in writing of such appointment by any such co-trustee or separate trustee, it or he shall be vested with the Security Interest in the Security and with such rights, powers, duties, trusts or obligations, as shall be specified in the instrument of appointment jointly with the Trustee (except insofar as applicable law makes it necessary for any such co-trustee or separate trustee to act alone) subject to all the terms of this Indenture. Every such acceptance shall be filed with the Trustee.

(h) In case any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, the Security Interest in the Security and all rights, powers, trusts, duties and obligations of said co-trustee or separate trustee shall, so far as permitted by law, vest in and be exercised by the Trustee unless and until a successor co-trustee or separate trustee shall be appointed in the same manner as provided for with respect to the appointment of a successor Trustee pursuant to Section 7.4 hereof.

Section 7.8 Filing of Financing Statements. Pursuant to Section 3.2 of the Loan Agreement, the Borrower has agreed to file or record or cause to be filed or recorded all Financing Statements that are required in order fully to protect and preserve the security interests and the priority thereof and the rights and powers of the Trustee in connection therewith. The Trustee shall file all continuation statements for the purpose of continuing without lapse the effectiveness of those Financing Statements which shall have been filed at or prior to the issuance of the Bonds in connection with the security for the Bonds pursuant to the authority of the UCC and for which the Trustee had received the original, filed Financing Statement. The Borrower will pay all costs of preparation and filing of the Financing Statements and all financing and continuation statements required under Section 3.2 of the Loan Agreement.

ARTICLE VIII. AMENDMENTS, SUPPLEMENTAL INDENTURES

Section 8.1 Supplemental Indentures.

(a) The Issuer and the Trustee, with the prior written consent of the Controlling Person, but without the consent of or notice to any Holders, may enter into an indenture or indentures supplemental to this Indenture that do not materially adversely affect the interest of the Holders for one or more of the following purposes:

(i) to grant to or confer upon the Trustee for the benefit of the Holders, any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Holders or the Trustee;

(ii) to grant or pledge to the Trustee for the benefit of Holders, any additional security other than that granted or pledged under this Indenture;

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

(iv) to appoint a successor Trustee or co-trustees in the manner provided in Article VII hereof;

(v) to modify, amend or supplement this Indenture to permit a transfer of Bonds from one Securities Depository to another or the discontinuance of the Book-Entry System and issuance of replacement Bonds to the Beneficial Owners;

(vi) to cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indenture that may be defective or inconsistent with any provision contained herein or in any supplemental indenture, or to make such other provisions in regard to matters or questions arising under this Indenture which shall not (in the judgment of the Controlling Person) materially adversely affect the interest of the Holders; or

(vii) to make any change herein necessary, in the opinion of Bond Counsel, to maintain the exclusion of the interest on any Tax-Exempt Bonds from gross income of the Holders thereof for federal income tax purposes.

(b) If all conditions precedent under this Indenture have been met, and there shall have been delivered to the Trustee a Favorable Opinion of Bond Counsel to the effect that such supplemental indenture is authorized or permitted by this Indenture and complies with its terms, subject to the provisions of Section 8.2(b) hereof, the Trustee shall join the Issuer in the execution of any such supplemental indenture.

(c) Upon written request, the Trustee shall file copies of all such supplemental indentures with the Borrower. The Trustee shall upon written request cause notice of any supplemental indenture described above to be given by first-class mail, postage prepaid (or in the case of Bonds administered in the Book-Entry System, given pursuant to the applicable procedure of the Securities Depository), to the Holders of the Outstanding Bonds then shown on the Register.

Section 8.2 Amendments to Indenture; Consent of Majority Owner, Holders and Borrower.

(a) Exclusive of supplemental indentures covered by Section 8.1 hereof and subject to the terms and provisions contained in this Section 8.2, and not otherwise, anything contained in this Indenture to the contrary notwithstanding, no indenture or indentures supplemental hereto for the purpose of modifying, altering, amending, adding to or rescinding, in any particular manner, any of the terms or provisions contained in this Indenture or in any supplemental indenture shall be effective without delivery of a Favorable Opinion of Bond Counsel, the written consent of the Controlling Person and execution and delivery by the Trustee (acting upon the direction of the Controlling Person) and the Issuer; provided, however, that nothing contained in this Section 8.2 shall permit, or be construed as permitting, without the prior written consent of all of the affected Holders Outstanding Bonds of either or both series, (i) an extension of the maturity of the principal of, or the optional, extraordinary or mandatory redemption date of, or interest on, any Bond, (ii) a reduction in the principal amount of or the rate of interest on, any Bond, (iii) except as otherwise expressly provided herein, a preference or priority of any Bond or Bonds over any other Bond or Bonds, (iv) the creation of a lien on the Security prior to the lien of this Indenture, or (v) a reduction in the aggregate principal amount of the Bonds required for any consent to any supplemental indenture. The giving of notice to and consent of the Holders to any such proposed supplemental indenture shall be obtained in accordance with Section 8.5 hereof.

(b) The Trustee may but will not be required to join the Issuer in the execution of any such supplemental indenture or other document described under this Article VIII if it affects its own rights, duties or immunities under this Indenture. If the Trustee determines to enter into a

supplemental indenture that increases its obligations hereunder, the Trustee shall be reasonably compensated for such additional obligations on the Trustee not initially contemplated and the indemnification rights of the Trustee cover any changes in the Trustee's rights and immunities under this Indenture or otherwise. Any additional compensation or the expansion of any indemnity obligation shall be the sole responsibility of the Borrower.

(c) Anything herein to the contrary notwithstanding, a supplemental indenture, amendment or other document described under this Article VIII that affects any rights or obligations of the Borrower shall not become effective unless and until the Borrower shall have consented to the execution of such supplemental indenture, amendment or other document.

Section 8.3 Amendments to Loan Agreement or Note not Requiring Consent of Holders.

(a) The Issuer shall not cause or permit to exist any amendment, modification, supplement, waiver or consent with respect to the Loan Agreement or the Note without the prior written consent of the Trustee, the Borrower and the Controlling Person. The Issuer may, with the consent of the Controlling Person, but without the consent of or notice to any other Holders, enter into or permit (and the Trustee shall consent to) any amendment of the Loan Agreement or the Note acceptable to the Borrower as may be required (i) for the purpose of curing any ambiguity or formal defect or omission that shall not adversely affect the interest of the Holders, (ii) to grant or pledge to the Issuer or Trustee, for the benefit of the Holders any additional security, (iii) to make any change therein necessary, in the opinion of Bond Counsel, to maintain the exclusion of interest on any Outstanding Bonds from gross income of the Holders thereof for federal income tax purposes, or (iv) in connection with any other change therein which, in the judgment of the Controlling Person, is not materially prejudicial to the interests of the Holders of the Bonds; provided, however, that without the written consent of the Trustee, the Trustee shall not be required to join in the execution of any such amendment that affects the rights, duties, obligations or immunities of the Trustee or that imposes additional obligations on the Trustee.

(b) The Issuer and the Borrower shall file copies of any such amendments to the Loan Agreement or the Note with the Trustee and the Controlling Person.

Section 8.4 Amendments to Loan Agreement or Note Requiring Consent of Holders.

Except as provided in Section 8.3 hereof, the Issuer shall not enter into, and the Trustee shall not consent to, any other modification or amendment of the Loan Agreement or the Note, nor shall any such modification or amendment become effective, without delivery of a Favorable Opinion of Bond Counsel and the prior written consent of the Controlling Person. No such amendment may, without the consent of the Holders of all the Outstanding Bonds, reduce the amounts or delay the times of payment of Repayments under the Loan Agreement or the Note. The Issuer and the Borrower shall file copies of all such amendments to the Loan Agreement or the Note with the Trustee, the Controlling Person and the Majority Owner. The giving of notice and consent of the Holders to any proposed amendment shall be obtained in accordance with Section 8.5 hereof.

Section 8.5 Notice to and Consent of Holders. If consent of the Majority Owner or any other Holder is required under the terms of this Indenture for the amendment of this Indenture, the Loan Agreement, the Note or for any other similar purpose, the Trustee upon written instruction shall cause notice of the proposed execution of the amendment or supplemental indenture to be given by first-class mail, postage prepaid (or pursuant to the applicable procedures of the Securities Depository, if applicable), to the Majority Owner or any other applicable Holder then shown on the Register, with a copy to the Controlling Person. Such notice shall briefly set forth the nature of the proposed amendment, supplemental indenture or other action and shall state that copies of any such amendment, supplemental indenture or other document

are on file at the principal office of the Trustee for inspection by all Holders. If, within forty five (45) days or such longer period as shall be prescribed by the Trustee following the Trustee's sending of such notice, the Majority Owner or Holders of all, as the case may be, of the principal amount of the Bonds Outstanding by instruments filed with the Trustee shall have consented to the amendment, supplemental indenture or other proposed action, then the Trustee may execute such amendment, supplemental indenture or other document or take such proposed action. If no such consent is obtained or if no response is given, the consent of the Majority Owner or other Holders, as applicable, shall be presumed not to have been given.

ARTICLE IX. CONTROLLING PERSON; SERVICING

Section 9.1 Controlling Person. The Majority Owner may engage a Person, collaterally assign some or all of its rights hereunder to a Person, or otherwise provide for a Person, at the Majority Owner's sole cost and expense, to act on behalf of the Majority Owner under the Bond Documents as the "Controlling Person". The Majority Owner may at any time and from time to time terminate or remove and replace any such Controlling Person. The Majority Owner shall give written notice to the Trustee and the Issuer of its appointment, termination, removal or replacement of any Controlling Person, and the Issuer and the Trustee may conclusively rely on any such notice until any subsequent notice is given. Initially, the Majority Owner has engaged Red Stone A7 LLC to act as the "Controlling Person" hereunder and Red Stone A7 LLC has accepted such engagement. The Majority Owner is under no obligation to appoint a Controlling Person; if at any time a Controlling Person has not been designated by the Majority Owner, all references to the "Controlling Person" herein and in the other Bond Documents shall refer to the Majority Owner. Any opinion required herein, in the Loan Agreement or in any other Bond Document that is addressed to the Controlling Person shall also be addressed to the Majority Owner and may be relied upon by the Majority Owner. The Majority Owner will have no liability to the Issuer, or any other Person for any act or omission of the Controlling Person unless the Controlling Person is the Majority Owner or such act or omission was expressly approved by the Majority Owner in each particular case but not, in any event, with respect to any liabilities, damages, costs or expenses against which any Person is indemnified under Section 2.5 of the Loan Agreement.

Section 9.2 Servicing.

(a) The Majority Owner has appointed the Controlling Person to be the servicer of the Loan and the Controlling Person has accepted such appointment. Satisfactory arrangements have previously been made for the payment of servicing fees and expenses in connection with the Controlling Person's servicing obligations hereunder, and the Borrower, the Majority Owner and the Trustee have no obligation for such payments. Without limiting the foregoing, the Controlling Person shall have no right or claim to any transfer or assumption fees, late charges, acceleration premium or Default Interest payable under this Indenture or Bond Documents; provided, however that, to the extent permitted under the Bond Documents, the Controlling Person shall be entitled to collect from the Borrower its normal and customary incidental fees and charges for any requested review, approval or other action, including, without limitation, in connection with any proposed transfer, loan assumption, easement, subordinate financing, release of collateral, condemnation proceeding, non-disturbance agreement or other similar action, unless such review, approval or other action is performed solely by the Majority Owner.

(b) The Controlling Person shall be responsible for the performance of the following servicing duties:

(i) The Controlling Person shall perform the duties expressly given to the Controlling Person under the Bond Documents and this Indenture.

(ii) The Controlling Person shall prepare monthly bills to the Borrower in accordance with the Bond Documents for payments to the Trustee of principal and interest under the Loan and for deposits into the Tax and Insurance Escrow Fund and the Replacement Reserve Fund. On the third to last Business Day of each calendar month, the Controlling Person shall notify the Borrower of the amount payable by the Borrower to the Trustee on the Note on the next Business Day and will provide a copy thereof to the Trustee. Such notification may be delivered by electronic mail or by facsimile. The Controlling Person shall diligently attempt to collect all of the following, at the times they are due and payable under this Indenture and Bond Documents:

- (1) The principal and interest due and payable on the Note;
- (2) The Trustee's fee and Issuer Fees and Expenses, as applicable;
- (3) Any monthly Replacement Reserve Fund deposit;
- (4) Any Monthly Tax and Insurance Amounts;
- (5) Any other escrow or reserve deposits required by this Indenture or Bond Documents;
- (6) Any assumption or transfer fee required by this Indenture or Bond Documents; and
- (7) Any acceleration premium.

(c) All payments received under this Indenture or Bond Documents shall be applied in the following order unless otherwise instructed by the Majority Owner or expressly set forth in this Indenture or Bond Documents:

- (i) To the principal and interest due and payable on the Note;
- (ii) To the Issuer Fees and Expenses and Trustee Fees and Expenses, as applicable;
- (iii) To the acceleration premium, if applicable;
- (iv) To required deposits to the Replacement Reserve Fund;
- (v) To required deposits in the Tax and Insurance Escrow Fund;
- (vi) To other escrow or reserve deposits required by this Indenture or the other Bond Documents;
- (vii) To Default Interest and any late fees; and
- (viii) To other amounts due under the Bond Documents.

Any payment received by the Controlling Person from or on behalf of the Borrower under this Indenture or the Bond Documents shall be remitted by the Controlling Person to the

Trustee no later than the second (2nd) Business Day after receipt by the Controlling Person, or sooner if so required under this Indenture or Bond Documents.

(d) The Controlling Person shall make any remittance to the Trustee by wire transfer in accordance with the instructions received from the Trustee or to any other party entitled to such remittances pursuant this Indenture or the Bond Documents in accordance with the instructions received from the Majority Owner.

(e) The Controlling Person shall review the Tax and Insurance Escrow Fund and the Replacement Reserve Fund on an annual basis and adjust required monthly escrow payments in accordance with terms of Bond Documents. The Controlling Person shall notify the Majority Owner and the Trustee of such adjustment.

(f) The Controlling Person shall prepare monthly reports for the Majority Owner and the Trustee outlining the status of the Loan, including disbursements from the Replacement Reserve Fund, the Tax and Insurance Escrow Fund, the Operating Reserve Fund or any other Account under this Indenture, loan history schedules, outstanding loan balances and escrow balances and consents, approvals or waivers given by the Controlling Person, which reports shall be furnished to the Majority Owner no later than the fifteenth (15th) day of each calendar month (or the next Business Day thereafter if such fifteenth (15th) day is not a Business Day).

(g) The Controlling Person shall provide immediate written notice to the Majority Owner of any Event of Default of which it receives notice or has actual knowledge, or any event which, with the giving of notice or the passage of time, or both, would constitute any Event of Default of which it receives notice or has actual knowledge.

(h) The Controlling Person shall refer to the Trustee all Borrower requests for a quote of a payoff amount for the Loan, shall request in writing a copy of any such quote from the Trustee, and shall notify the Majority Owner of the Borrower's request. The Controlling Person shall prepare payoff letters and delinquency and default notices when necessary, as required by the Bond Documents or this Indenture or otherwise as directed by the Majority Owner.

(i) The Controlling Person shall use its best efforts to obtain financial statements and other reports from the Borrower at the times and to the extent required under the Bond Documents and deliver the same to the Majority Owner and the Trustee.

(j) The Controlling Person shall obtain, and shall provide to the Majority Owner a copy of the Borrower's certificates of compliance with the Regulatory and Land Use Restriction Agreement or other evidence of such compliance submitted by the Borrower to the Issuer or the Issuer's designee within thirty (30) days after the later of (i) the date it is required to be submitted to the Issuer or the Issuer's designee, or (ii) the date it is actually so submitted.

(k) The Controlling Person may perform additional duties with respect to the Loan during construction of the Project Facilities or during the period following an Event of Default at the request of the Majority Owner.

ARTICLE X. MISCELLANEOUS

Section 10.1 Right of Trustee to Pay Taxes and Other Charges. If any tax, assessment or governmental or other charge upon any part of such Project Facilities is not paid as required, the Trustee

may (but shall not be obligated to), subject to any indemnity required pursuant to Section 7.1(h) hereof, pay such tax, assessment or governmental or other charge, without prejudice, however, to any rights of the Trustee hereunder arising in consequence of such failure; and any amount at any time so paid under this Section, with interest thereon from the date of payment until paid at the greater of the rate of interest borne by the Bonds or the per annum rate of interest announced from time to time by the bank serving as Trustee as its “prime rate” shall become so much additional indebtedness secured by this Indenture, shall be given a preference in payment over the Bonds, and shall be paid out of the Security.

Section 10.2 Limitation of Rights. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any Person other than the parties hereto, the Holders, the Controlling Person and the Borrower, any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions herein contained; this Indenture and all of the covenants, conditions and provisions herein being intended to be and being for the sole and exclusive benefit of the parties hereto, the Holders, the Controlling Person and the Borrower as herein provided.

Section 10.3 Severability. If any provision of this Indenture is held to be in conflict with any applicable statute or rule of law or is otherwise held to be unenforceable for any reason whatsoever, such circumstances shall not have the effect of rendering the other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections of this Indenture, shall not affect the remaining portions of this Indenture or any part thereof.

Section 10.4 Notices. Except as otherwise provided herein, all notices, approvals, consents, requests, and other communications hereunder shall be in writing and shall be deemed to have been given when the writing is delivered if given or delivered by hand, overnight delivery service, electronic mail, or facsimile transmitter (with confirmed receipt) to the address or facsimile number set forth below and shall be deemed to have been given on the date deposited in the mail, if mailed, by first-class, registered or certified mail, postage prepaid, addressed as set forth below. Where required herein, notice shall be given by telephone, and promptly confirmed in writing, and shall be deemed given when given by telephone to the telephone numbers set forth below. The Issuer, the Borrower, the Trustee, the Majority Owner, the Controlling Person and the Tax Credit Investor may, by written notice given hereunder, designate any different addresses, phone numbers, electronic mail addresses, and facsimile numbers to which subsequent notices, certificates, approvals, consents, requests or other communications shall be sent.

To the Issuer:

Austin Housing Finance Corporation
1000 East 11th Street, 2nd Floor
Austin, Texas 78702
Attention: Neighborhood Development
Program Manager

With a copy to:

McCall, Parkhurst & Horton LLP
717 North Harwood, Suite 900
Dallas, Texas 75201
Attention: Mark Malveaux

To the Borrower:

Elysium Grand, LP
c/o Austin Housing Finance Corporation
1124 S IH 35

	Austin, Texas 78704
and:	LDG Development, LLC 1305 E. 6 th Street Austin, Texas 78702 Attention: Justin Hartz
and:	Coats Rose, P.C. 9 Greenway Plaza, Suite 1100 Houston, Texas 77046-0307 Attention: Barry Palmer
and:	Adams Law Group 6004 Brownsboro Park Boulevard, Suite A Louisville, Kentucky 40207 Attention: Robert W. Adams III, Esq.
and:	Shackelford, Bowen, McKinley & Norton, LLP 9201 N. Central Expressway, 4 th Floor Dallas, Texas 75231 Attention: John C. Shackelford
and:	The Tax Credit Investor
To the Trustee:	BOKF, NA, as trustee 777 Main Street Suite 3500 Fort Worth, Texas 76102 Attention: Corporate Trust Department
To the Majority Owner:	At the address provided in writing by the Majority Owner to the Trustee
To the Controlling Person:	Red Stone A7 LLC 666 Old Country Road, Suite 603 Garden City, New York 11530 Attention: Kiki Mastorakis
With a copy to:	Greenberg Traurig, LLP 2700 Two Commerce Square 2001 Market Street Philadelphia, Pennsylvania 19103 Attention: Dianne Coady Fisher

If to Tax Credit Investor:

[_____]
c/o Boston Capital Partners, Inc.
One Boston Place, 21st Floor
Boston, MA 02108
Attn: Asset Management – Elysium Grand

With a copy to:

Holland & Knight LLP
10 St. James Avenue
Boston, MA 02116
Attn: Doug Clapp, Esq.

**If to the Class B Special
Limited Partner:**

Four horizontal lines for address.

With a copy to:

Four horizontal lines for address.

Section 10.5 Payments Due on Non-Business Days. In any case where the date of maturity of, interest on or premium, if any, or principal of the Bonds or the date fixed for redemption of any Bonds shall not be a Business Day, then payment of such interest, premium or principal need not be made on such date but 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, in the case of such payment, no interest shall accrue for the period from and after such date.

Section 10.6 Binding Effect. This instrument shall inure to the benefit of and shall be binding upon the Issuer and the Trustee and their respective successors and assigns, subject, however, to the limitations contained in this Indenture.

Section 10.7 Captions. The captions or headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Indenture.

Section 10.8 Governing Law. This Indenture shall be governed by and interpreted in accordance with the laws of the State, without regard to conflict of laws principles.

Section 10.9 Limited Liability of Issuer. Notwithstanding anything to the contrary, any liability for payment of money and any other liability or obligation which the Issuer may incur under the Bonds, this Indenture, the Loan Agreement, the Purchase Agreement or any other Bond document shall not

constitute a general obligation of the Issuer but shall constitute limited obligations of the Issuer payable solely from and enforced only against the Security.

Section 10.10 Execution in Counterparts; Electronic Signatures. This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. To the fullest extent permitted by applicable law and except for the certificate of authentication on the Bonds (which must be manually signed by an authorized representative of the Trustee) and instruments of transfer of the Bonds, facsimile or electronically transmitted signatures shall constitute original signatures for all purposes under this Indenture.

Section 10.11 Issuer Tax Covenants.

(a) The Issuer shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction, or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds) in a manner which, if made or omitted, respectively, would cause the interest on the Tax-Exempt Bonds to become includable in the gross income, as defined in section 61 of the Code, of the owners thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until there shall have been provided a Favorable Opinion of Bond Counsel with respect to such failure to comply, the Issuer shall comply with each of the specific covenants in this Section 10.11.

(b) With respect to the authority to invest funds granted in this Indenture, the Issuer and the Trustee hereby covenant with the Holders of the Tax-Exempt Bonds that, subject to the Borrower's direction of the investment of funds with the consent of the Controlling Person, they will make no use of the proceeds of the Tax-Exempt Bonds, or any other funds which may be deemed to be proceeds of the Bonds pursuant to Section 148 of the Code, which would cause the Tax-Exempt Bonds to be "arbitrage bonds" within the meaning thereof.

[The remainder of this page is left blank intentionally.]

IN WITNESS WHEREOF, the Issuer has caused this Indenture to be executed in its name and on its behalf by its authorized official and the Trustee has caused this Indenture to be executed in its name and on its behalf by its duly authorized representative, all as of the day and year first above written.

**AUSTIN HOUSING FINANCE
CORPORATION**

By: _____
Name:
Title:

BOKF, NA, as trustee

By: _____
Name:
Title:

**EXHIBIT A-1
FORM OF TAX-EXEMPT BOND**

**AUSTIN HOUSING FINANCE CORPORATION
MULTIFAMILY HOUSING REVENUE BONDS
(ELYSIUM APARTMENTS)
SERIES 2018A**

No. R-____

DATED DATE	MATURITY DATE	BOND COUPON RATE	CUSIP NO.
October __, 2018	October 1, 2058	5.10%	

REGISTERED OWNER: CEDE & CO.
PRINCIPAL AMOUNT: [TEN MILLION DOLLARS (\$10,000,000)]

The Austin Housing Finance Corporation, a Texas public non-profit corporation (the “Issuer”), for value received, hereby promises to pay (but only out of the revenues and other assets pledged under the Indenture (hereinafter defined)) to the Registered Owner specified above or registered assigns (subject to any right of prior redemption), (A) on each Principal Payment Date and the Maturity Date specified above, the applicable portion of the Principal Amount specified above, as reflected in Schedule 1 attached hereto (B) if applicable, any premium due in respect of these Bonds, and (C) interest on the Bonds, at the per annum Bond Coupon Rate specified above, payable on the first Business Day of each month, commencing October 1, 2018 to the person whose name appears on the registration books on day before such day (whether or not a Business Day) (a “Record Date”) and to pay any other amounts as specified in the Indenture (hereinafter defined).

Payments in respect of the Bonds administered in the Book-Entry System (including principal, premium and interest) will be made by wire transfer of immediately available funds to the accounts specified by the Securities Depository.

BOKF, NA, as trustee (the “Trustee”), will make all payments in respect of a certificated Bond (including principal, premium and interest) by mailing a check to the registered address of each Holder thereof; provided, however, that payments on a certificated Bond will be made by wire transfer to an account maintained by the payee with a bank in the continental United States if such Holder elects, at its expense, payment by wire transfer by giving written notice to the Trustee to such effect designating such account no later than thirty (30) days immediately preceding the relevant Record Date for payment (and otherwise complies with the reasonable requirements of the Trustee).

Interest on this Bond shall be computed on the basis of a 360-day year, comprised of twelve thirty (30) day months. Interest on this Bond shall be payable in such coin or currency of the United States as at time of payment is legal tender for payment of private and public debts, at the designated payment office of the Trustee or its successor.

This Bond is one of an issue of duly authorized Austin Housing Finance Corporation Multifamily Housing Revenue Bonds (Elysium Apartments) Series 2018A issued in the aggregate principal amount of [\$10,000,000] (the “Bonds”), pursuant to the provisions of Chapter 394, Texas Local Government Code, as amended (the “Act”), and that certain Indenture of Trust dated as of October 1, 2018 (as amended, modified or supplemented from time to time, the “Indenture”) between the Issuer and the Trustee.

The proceeds from the Bonds, are to be used for the purpose of making a mortgage loan pursuant to a Loan Agreement, dated as of October 1, 2018(as amended, modified or supplemented from time to time, the “Loan Agreement”), between the Issuer and the Borrower, to finance the acquisition, construction and equipping of a residential rental development located in Austin, Travis County, Texas, and to be known as “Elysium Apartments” (the “Project Facilities”). The Borrower’s payment obligations under the Loan Agreement will be evidenced by the Note and secured by the Mortgage.

Reference is hereby made to the Indenture and to all amendments and supplements thereto for a description of the property pledged and assigned to the Trustee and of the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the Issuer and the Trustee, the terms on which the Bonds are issued and secured, the manner in which interest is computed on this Bond, mandatory and optional redemption rights, acceleration, the rights of the Bondholders and the provisions for defeasance of such rights.

This Bond is subject to optional and mandatory redemption in whole or in part, on the dates, under the terms and conditions and at the redemption prices set forth in the Indenture, all of the provisions of which are, by this reference, incorporated into this Bond. Notice of redemption shall be given in the manner set forth in the Indenture.

THIS BOND IS ISSUED UNDER CHAPTER 394, TEXAS LOCAL GOVERNMENT CODE, AS AMENDED. THIS BOND AND THE PREMIUM, IF ANY, AND INTEREST HEREON ARE LIMITED OBLIGATIONS OF THE ISSUER PAYABLE EXCLUSIVELY FROM THE SECURITY. THIS BOND IS NOT A DEBT OR OTHER OBLIGATION, EITHER GENERAL OR SPECIAL, OF THE ISSUER (EXCEPT TO THE EXTENT OF THE SECURITY), ANY OFFICER, DIRECTOR OR MEMBER OF THE ISSUER, CITY OF AUSTIN, TEXAS OR THE STATE OF TEXAS, OR OF ANY POLITICAL SUBDIVISION THEREOF, WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL PROVISION OR STATUTORY LIMITATION AND SHALL NEVER CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE ISSUER, ANY OFFICER, DIRECTOR OR MEMBER OF THE ISSUER, CITY OF AUSTIN, TEXAS OR THE STATE OF TEXAS. THIS BOND DOES NOT CONSTITUTE, WITHIN THE MEANING OF ANY STATUTORY OR CONSTITUTIONAL PROVISION, AN INDEBTEDNESS, AN OBLIGATION OR A LOAN OF CREDIT OF THE STATE, THE CITY OF AUSTIN, TEXAS, TRAVIS COUNTY, TEXAS, OR ANY OTHER MUNICIPALITY, COUNTY OR OTHER MUNICIPAL OR POLITICAL CORPORATION OR SUBDIVISION OF THE STATE. THE ISSUER HAS NO TAXING POWER. THE STATE OF TEXAS IS NOT OBLIGATED TO PAY THE PRINCIPAL OF OR ANY PREMIUM OR INTEREST ON THIS BOND AND THE FULL FAITH AND CREDIT AND THE TAXING POWER OF THE STATE OF TEXAS ARE NOT PLEDGED, GIVEN, OR LOANED TO THE PAYMENT OF THIS BOND.

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

The registered owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default thereunder, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

By its purchase of this Bond, the registered owner hereof agrees to the appointment of the Controlling Person as provided in the Indenture and authorizes the Controlling Person to exercise such rights and remedies afforded to the Controlling Person on behalf of the Bondholder as provided in the Bond Documents.

Modifications or alterations of the Indenture or of any indenture supplemental thereto may be made only to the extent and in the circumstances permitted by the Indenture.

This Bond may be exchanged, and its transfer may be effected, only by the registered owner hereof in person or by his attorney duly authorized in writing at the designated corporate trust office of the Trustee, but only in the manner and subject to the limitations provided in the Indenture. Upon exchange or registration of such transfer a new registered bond or bonds of the same series, maturity and interest rate and of Authorized Denomination or Authorized Denominations for the same aggregate principal amount will be issued in exchange therefor.

The Issuer and the Trustee may deem and treat the person in whose name this Bond shall be registered on the bond register, as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and premium, if any, and interest due hereon and for all other purposes and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

All acts, conditions and things required by the laws of the Issuer to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law.

Neither the trustees, officers, agents, employees or representatives of the Issuer nor any person executing the Bonds shall be personally liable hereon or be subject to any personal liability by reason of the issuance hereof, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all such liability being expressly

released and waived as a condition of and in consideration for the execution of the Indenture and the issuance of the Bonds.

This Bond shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose unless either (i) the Trustee shall have executed the Certificate of Authentication appearing hereon, or (2) the Comptroller's Registration Certificate hereon has been executed by an authorized representative of the Comptroller of Public Accounts of the State of Texas

IT IS HEREBY CERTIFIED, RECITED AND REPRESENTED that the issuance of this Bond is duly authorized by law; that all acts, conditions and things required to exist and to be done precedent to and in the issuance of this Bond to render the same lawful and valid have been properly done and performed and have happened in regular and due time, form and manner as required by law; and that all acts, conditions and things necessary to be done or performed by the Issuer or to have happened precedent to or in the execution and delivery of the Indenture have been done and performed and have happened in regular and due form as required by law.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name by the manual or facsimile signature of its President or Vice President and attested by the manual or facsimile signature of its Secretary or Assistant Secretary all as of the Dated Date hereof.

AUSTIN HOUSING FINANCE
CORPORATION

By: _____
Name:
Title:

Attest:

Name:
Title:

SCHEDULE 1

[FORM OF CERTIFICATE OF AUTHENTICATION – Include only on definitive Bonds]

CERTIFICATE OF AUTHENTICATION

This is to certify that this Bond is one of the Bonds referred to in the within mentioned Indenture.

Date of Authentication: _____.

BOKF, NA, as trustee

By: _____
Authorized Signatory

[FORM OF COMPTROLLER'S REGISTRATION CERTIFICATE – Include only on Initial Bond]

COMPTROLLER'S REGISTRATION CERTIFICATE

Office of the Comptroller § Register No. _____
of Public Accounts of §
the State of Texas §

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

Witness my signature and seal this _____.

Comptroller of Public Accounts of the
State of Texas

(Comptroller's Seal)

ASSIGNMENT FOR TRANSFER

FOR VALUE RECEIVED, the undersigned, hereby sells, assigns and transfers unto _____ (Tax Identification or Social Security No. _____) 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 or substitution in the premises.

Date:

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by a signature guarantor institution that is a participant in a nationally recognized signature guarantor program.

Signature

NOTICE: The signature to this assignment must correspond with the name of the registered owner of the within bond as it appears on the face hereof in every particular, without alteration or enlargement or any change whatever, and the Social Security number or federal employer identification must be supplied.

**EXHIBIT A-2
FORM OF TAXABLE BOND**

**AUSTIN HOUSING FINANCE CORPORATION
MULTIFAMILY HOUSING REVENUE BONDS
(ELYSIUM APARTMENTS)
SERIES 2018B**

No. R-____

DATED DATE	MATURITY DATE	BOND COUPON RATE	CUSIP NO.
September __, 2018	September 1, 20__	____%	

REGISTERED OWNER: CEDE & CO.
PRINCIPAL AMOUNT: [_____] (\$_____)]

The Austin Housing Finance Corporation, a Texas public non-profit corporation (the “Issuer”), for value received, hereby promises to pay (but only out of the revenues and other assets pledged under the Indenture (hereinafter defined)) to the Registered Owner specified above or registered assigns (subject to any right of prior redemption), (A) on each Principal Payment Date and the Maturity Date specified above, the applicable portion of the Principal Amount specified above, as reflected in Schedule 1 attached hereto (B) if applicable, any premium due in respect of these Bonds, and (C) interest on the Bonds, at the per annum Bond Coupon Rate specified above, payable on the first Business Day of each month, commencing October 1, 2018 to the person whose name appears on the registration books on day before such day (whether or not a Business Day) (a “Record Date”) and to pay any other amounts as specified in the Indenture (hereinafter defined).

Payments in respect of the Bonds administered in the Book-Entry System (including principal, premium and interest) will be made by wire transfer of immediately available funds to the accounts specified by the Securities Depository.

BOKF, NA, as trustee (the “Trustee”), will make all payments in respect of a certificated Bond (including principal, premium and interest) by mailing a check to the registered address of each Holder thereof; provided, however, that payments on a certificated Bond will be made by wire transfer to an account maintained by the payee with a bank in the continental United States if such Holder elects, at its expense, payment by wire transfer by giving written notice to the Trustee to such effect designating such account no later than thirty (30) days immediately preceding the relevant Record Date for payment (and otherwise complies with the reasonable requirements of the Trustee).

Interest on this Bond shall be computed on the basis of a 360-day year, comprised of twelve thirty (30) day months. Interest on this Bond shall be payable in such coin or currency of the United States as at time of payment is legal tender for payment of private and public debts, at the designated payment office of the Trustee or its successor.

This Bond is one of an issue of duly authorized Austin Housing Finance Corporation Multifamily Housing Revenue Bonds (Elysium Apartments) Series 2018A issued in the aggregate principal amount of [\$10,000,000] (the “Bonds”), pursuant to the provisions of Chapter 394, Texas Local Government Code, as amended (the “Act”), and that certain Indenture of Trust dated as of October 1, 2018 (as amended, modified or supplemented from time to time, the “Indenture”) between the Issuer and the Trustee.

The proceeds from the Bonds, are to be used for the purpose of making a mortgage loan pursuant to a Loan Agreement, dated as of October 1, 2018(as amended, modified or supplemented from time to time, the “Loan Agreement”), between the Issuer and the Borrower, to finance the acquisition, construction and equipping of a residential rental development located in Austin, Travis County, Texas, and to be known as “Elysium Apartments” (the “Project Facilities”). The Borrower’s payment obligations under the Loan Agreement will be evidenced by the Note and secured by the Mortgage.

Reference is hereby made to the Indenture and to all amendments and supplements thereto for a description of the property pledged and assigned to the Trustee and of the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the Issuer and the Trustee, the terms on which the Bonds are issued and secured, the manner in which interest is computed on this Bond, mandatory and optional redemption rights, acceleration, the rights of the Bondholders and the provisions for defeasance of such rights.

This Bond is subject to optional and mandatory redemption in whole or in part, on the dates, under the terms and conditions and at the redemption prices set forth in the Indenture, all of the provisions of which are, by this reference, incorporated into this Bond. Notice of redemption shall be given in the manner set forth in the Indenture.

THIS BOND IS ISSUED UNDER CHAPTER 394, TEXAS LOCAL GOVERNMENT CODE, AS AMENDED. THIS BOND AND THE PREMIUM, IF ANY, AND INTEREST HEREON ARE LIMITED OBLIGATIONS OF THE ISSUER PAYABLE EXCLUSIVELY FROM THE SECURITY. THIS BOND IS NOT A DEBT OR OTHER OBLIGATION, EITHER GENERAL OR SPECIAL, OF THE ISSUER (EXCEPT TO THE EXTENT OF THE SECURITY), ANY OFFICER, DIRECTOR OR MEMBER OF THE ISSUER, CITY OF AUSTIN, TEXAS OR THE STATE OF TEXAS, OR OF ANY POLITICAL SUBDIVISION THEREOF, WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL PROVISION OR STATUTORY LIMITATION AND SHALL NEVER CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE ISSUER, ANY OFFICER, DIRECTOR OR MEMBER OF THE ISSUER, CITY OF AUSTIN, TEXAS OR THE STATE OF TEXAS. THIS BOND DOES NOT CONSTITUTE, WITHIN THE MEANING OF ANY STATUTORY OR CONSTITUTIONAL PROVISION, AN INDEBTEDNESS, AN OBLIGATION OR A LOAN OF CREDIT OF THE STATE, THE CITY OF AUSTIN, TEXAS, TRAVIS COUNTY, TEXAS, OR ANY OTHER MUNICIPALITY, COUNTY OR OTHER MUNICIPAL OR POLITICAL CORPORATION OR SUBDIVISION OF THE STATE. THE ISSUER HAS NO TAXING POWER. THE STATE OF TEXAS IS NOT OBLIGATED TO PAY THE PRINCIPAL OF OR ANY PREMIUM OR INTEREST ON THIS BOND AND THE FULL FAITH AND CREDIT AND THE TAXING POWER OF THE STATE OF TEXAS ARE NOT PLEDGED, GIVEN, OR LOANED TO THE PAYMENT OF THIS BOND.

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

The registered owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default thereunder, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

By its purchase of this Bond, the registered owner hereof agrees to the appointment of the Controlling Person as provided in the Indenture and authorizes the Controlling Person to exercise such rights and remedies afforded to the Controlling Person on behalf of the Bondholder as provided in the Bond Documents.

Modifications or alterations of the Indenture or of any indenture supplemental thereto may be made only to the extent and in the circumstances permitted by the Indenture.

This Bond may be exchanged, and its transfer may be effected, only by the registered owner hereof in person or by his attorney duly authorized in writing at the designated corporate trust office of the Trustee, but only in the manner and subject to the limitations provided in the Indenture. Upon exchange or registration of such transfer a new registered bond or bonds of the same series, maturity and interest rate and of Authorized Denomination or Authorized Denominations for the same aggregate principal amount will be issued in exchange therefor.

The Issuer and the Trustee may deem and treat the person in whose name this Bond shall be registered on the bond register, as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and premium, if any, and interest due hereon and for all other purposes and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

All acts, conditions and things required by the laws of the Issuer to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law.

Neither the trustees, officers, agents, employees or representatives of the Issuer nor any person executing the Bonds shall be personally liable hereon or be subject to any personal liability by reason of the issuance hereof, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all such liability being expressly

released and waived as a condition of and in consideration for the execution of the Indenture and the issuance of the Bonds.

This Bond shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose unless either (i) the Trustee shall have executed the Certificate of Authentication appearing hereon, or (2) the Comptroller's Registration Certificate hereon has been executed by an authorized representative of the Comptroller of Public Accounts of the State of Texas

IT IS HEREBY CERTIFIED, RECITED AND REPRESENTED that the issuance of this Bond is duly authorized by law; that all acts, conditions and things required to exist and to be done precedent to and in the issuance of this Bond to render the same lawful and valid have been properly done and performed and have happened in regular and due time, form and manner as required by law; and that all acts, conditions and things necessary to be done or performed by the Issuer or to have happened precedent to or in the execution and delivery of the Indenture have been done and performed and have happened in regular and due form as required by law.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name by the manual or facsimile signature of its President or Vice President and attested by the manual or facsimile signature of its Secretary or Assistant Secretary all as of the Dated Date hereof.

AUSTIN HOUSING FINANCE
CORPORATION

By: _____
Name:
Title:

Attest:

Name:
Title:

SCHEDULE 1

[FORM OF CERTIFICATE OF AUTHENTICATION – Include only on definitive Bonds]

CERTIFICATE OF AUTHENTICATION

This is to certify that this Bond is one of the Bonds referred to in the within mentioned Indenture.

Date of Authentication: _____.

BOKF, NA, as trustee

By: _____
Authorized Signatory

[FORM OF COMPTROLLER'S REGISTRATION CERTIFICATE – Include only on Initial Bond]

COMPTROLLER'S REGISTRATION CERTIFICATE

Office of the Comptroller § Register No. _____
of Public Accounts of §
the State of Texas §

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

Witness my signature and seal this _____.

Comptroller of Public Accounts of the
State of Texas

(Comptroller's Seal)

ASSIGNMENT FOR TRANSFER

FOR VALUE RECEIVED, the undersigned, hereby sells, assigns and transfers unto _____ (Tax Identification or Social Security No. _____) 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 or substitution in the premises.

Date:

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by a signature guarantor institution that is a participant in a nationally recognized signature guarantor program.

Signature

NOTICE: The signature to this assignment must correspond with the name of the registered owner of the within bond as it appears on the face hereof in every particular, without alteration or enlargement or any change whatever, and the Social Security number or federal employer identification must be supplied.