

TRUST INDENTURE

Dated as of \_\_\_\_\_ 1, 2019

between

CREEKWALK MARKETPLACE BUSINESS IMPROVEMENT DISTRICT

and

UMB BANK, n.a.,

as Trustee

Limited Tax Supported and Special Revenue Subordinate Bonds

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EXHIBIT A FORM OF SUBORDINATE BOND  
EXHIBIT B ELECTION QUESTIONS  
EXHIBIT C PROJECT FUND REIMBURSEMENT REQUEST

TRUST INDENTURE dated as of \_\_\_\_\_ 1, 2019 (together with any amendments or supplements hereto, referred to herein as the “**Indenture**”), between CREEKWALK MARKETPLACE BUSINESS IMPROVEMENT DISTRICT (the “**Issuer**”), a quasi-municipal corporation and political subdivision of the State of Colorado operating within the City of Colorado Springs, Colorado and UMB BANK, n.a. as Trustee (as more particularly defined herein, the “**Trustee**”).

RECITALS:

WHEREAS, the Issuer is a quasi-municipal corporation and political subdivision of the State of Colorado (the “**State**”), duly and regularly created as a business improvement district under the constitution and laws of the State, in particular Title 31, Article 25, Part 12, Colorado Revised States, as amended (the “**Act**”), and pursuant to Ordinance No. 16-18 adopted by the City Council (the “**City Council**”) of the City of Colorado Springs, Colorado (the “**City**”) on February 25, 2016; and

WHEREAS, the Issuer was organized for the purpose of providing certain public improvements and services to and for the benefit of the properties within the Issuer, and is authorized by the Act and its Operating Plan (defined herein) to borrow money and to issue bonds to evidence such borrowing; and

WHEREAS, at a regular election of the qualified electors of the Issuer, duly called and held on May 3, 2016 (the “**Election**”), in accordance with law and pursuant to due notice, a majority of those qualified to vote and voting at the Election voted in favor of, *inter alia*, the issuance of indebtedness and the imposition of taxes for the payment thereof, for the purpose of providing certain public improvements and facilities, the questions relating thereto being as set forth in Exhibit B hereto; and

WHEREAS, the Board of Directors of the Issuer (the “**Board**”) has determined that it is necessary and in the best interests of the Issuer to issue its “Limited Tax Supported and Special Revenue Subordinate Bonds, Series 2019B” in the aggregate principal amount of \$\_\_\_\_\_ (the “**Series 2019B Subordinate Bonds**”) for the purpose of paying certain costs of Authorized Projects, such bonds to be payable solely from revenues on a basis subordinate to the Series 2019A Bonds (defined below), to the extent provided herein; and

WHEREAS, the Series 2019B Subordinate Bonds are to be in substantially the form set forth in Exhibit A (with such alterations and variations in the arrangement of paragraphs and the text to be contained on the face and reverse of each Series 2019B Subordinate Bond, as may be necessary to comply with industry standards of requirements for preparation of definitive Series 2019B Subordinate Bonds); and

WHEREAS, the execution and delivery of the Series 2019B Subordinate Bonds and this Indenture have been duly authorized by a resolution duly adopted by the Board and all things necessary to make the Series 2019B Subordinate Bonds, when executed by the Issuer and authenticated and delivered by the Trustee, valid and binding legal obligations of the Issuer and to make this Indenture a valid and binding agreement have been done; and

WHEREAS, the Board has also determined that it is necessary and in the best interests of the Issuer to issue its “**Limited Tax Supported and Special Revenue Senior Bonds, Series 2019A**” in the aggregate principal amount of \$\_\_\_\_\_ (the “**Series 2019A Bonds**”, and together with the Series 2019B Subordinate Bonds, the “**Series 2019 Bonds**”) pursuant to a Trust Indenture dated as of \_\_\_\_\_ 1, 2019 by and between the Issuer and the Trustee, as amended and supplemented (the “**Senior Bonds Indenture**”), for the purpose of paying costs of certain Authorized Projects not financed with the Series 2019B Subordinate Bonds; and

WHEREAS, the Colorado Springs Urban Renewal Authority (“**Authority**”) and SNA Development LLC (“**Developer**”) have entered into that certain Urban Renewal Agreement for Development of the South Nevada Area Urban Renewal Plan Area dated December 16, 2015 (“**Development Agreement**”), whereby the Authority allocated and pledged to the Developer, Property Tax TIF and Sales Tax TIF (as each term is defined in the Development Agreement) to assist in the redevelopment of the Area (as defined in the Development Agreement) which is part of the South Nevada Avenue Area Urban Renewal Plan and within the boundaries of the Issuer; and

WHEREAS, pursuant to a Cooperation Agreement (“**Cooperation Agreement**”) dated \_\_\_\_\_, 2019 by and between the Issuer and the Authority, and consented to by the Developer, the Authority agrees to segregate and pay to the Issuer, or the Trustee on its behalf, the proceeds of the Property Tax TIF and the Sales Tax TIF in order to assist in the payment of principal of, premium if any, and interest on the Series 2019 Bonds; and

WHEREAS, a Declaration of Covenants Imposing and Implementing the Creekwalk Marketplace Public Improvement Fee dated as of \_\_\_\_\_, 2018, was recorded on \_\_\_\_\_, 2018 at Reception Number \_\_\_\_\_ in the records of El Paso County, and a Declaration of Covenants Imposing and Implementing the Creekwalk Marketplace Public Improvement Fee dated as of \_\_\_\_\_, 2019, was recorded on \_\_\_\_\_, 2019 at Reception Number \_\_\_\_\_ in the records of El Paso County (collectively, the **PIF Covenant**”), upon property within the boundaries of the Issuer; and

WHEREAS, in order to provide additional security for the Series 2019B Subordinate Bonds, the Issuer desires to pledge the revenue generated pursuant to the PIF Covenant, which revenue shall be used in accordance with this Indenture.

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that, in consideration of the premises and the mutual covenants herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, for the benefit of the Bondholders and in order to secure (to the extent provided in this Indenture) the payment of principal or redemption price (as the case may be) and interest in respect of all Subordinate Bonds (as defined herein) issued and outstanding under this Indenture and all other amounts payable pursuant to the terms of the Bonds and/or this Indenture according to their tenor and effect, the Issuer does hereby sell, assign, transfer, set over and pledge unto, and grants a security interest in, UMB Bank, n.a., Trustee, its successors in trust and its assigns forever, all and singular the following described property, franchises and income (collectively, the “**Trust Estate**”):



Granting Clause First. All Funds and accounts created under this Indenture except the Rebate Fund; and all Funds and accounts created hereunder are to be used only for the purposes and in accordance with the instructions and provisions set forth in this Indenture.

Granting Clause Second. All right, title and interest of the Issuer in and to the Subordinate Pledged Revenues.

Granting Clause Third. To the extent not otherwise within the scope of Granting Clause First, and Second, and only to the extent related directly to the Subordinate Pledged Revenues, all accounts and accounts receivable, general intangibles, contract rights, documents, chattel paper and instruments (all as defined in Article 9 of the Colorado Uniform Commercial Code), licenses, accounting and bookkeeping records, together with proceeds of the foregoing.

Granting Clause Fourth. Any and all other interests in real and personal property of every name and nature granted to the Trustee from time to time hereafter by delivery or by writing of any kind specifically mortgaged, pledged or hypothecated as and for additional security hereunder by the Issuer in its sole discretion pursuant to an authorizing resolution of the Board or with its written consent in favor of the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

Granting Clause Fifth: All rights to enforce the Cooperation Agreement and the PIF Covenant on a basis subordinate to the Senior Bonds.

TO HAVE AND TO HOLD in trust, nevertheless, for the equal and ratable benefit and security of all present and future holders of all Subordinate Bonds issued under this Indenture, without preference, priority or distinction as to lien or otherwise, and there shall be such other distinctions as are expressly provided herein), of any one Subordinate Bond over any other Subordinate Bond upon the terms and subject to the conditions hereinafter set forth.

## **ARTICLE I DEFINITIONS AND REPRESENTATIONS OF THE ISSUER**

Section 1.01. Definitions. In this Indenture and any indenture supplemental hereto (except as otherwise expressly provided or unless the context otherwise requires) the singular includes the plural, the masculine includes the feminine, and the following terms shall have the meanings specified in the foregoing recitals:

Act	Issuer
Board	PIF Covenant
City	Senior Bonds Indenture
City Council	Series 2019A Bonds
Cooperation Agreement	Series 2019B Subordinate Bonds
Developer	Trust Estate
Election	

In addition, the following terms shall have the meanings specified in this Article, unless the context otherwise requires:

**“Accountant”** means an Independent certified public accountant or firm of such accountants duly licensed to practice and practicing as such under the laws of any state of the United States or of the District of Columbia.

**“Additional Senior Bonds”** means the Senior Bonds and any bonds, notes, or other evidences of indebtedness secured by ad valorem property taxes of the Issuer on a basis senior to the Subordinate Bonds.

**“Additional Subordinate Bonds”** means Subordinate Bonds issued from time to time hereafter pursuant to Sections 3.01 and 3.02 hereof and the terms of a Supplemental Indenture.

**“Authenticating Agent”** means any agent so designated in and appointed pursuant to Section 2.08.

**“Authorized Denominations”** means (A) with respect to the Series 2019B Subordinate Bonds, \$100,000 and any integral multiple of \$1,000 in excess thereof, and (B) with respect to any other Subordinate Bonds, the denomination or denominations defined as such in a Supplemental Indenture authorizing such other Subordinate Bonds.

**“Authorized Projects”** shall mean the improvements and facilities which are public improvements, as defined in the Issuer’s Operating Plan, the debt for which was approved at the Election, and which are to be financed with proceeds of the Subordinate Bonds.

**“Authorized Representative”** means the President or any Secretary of the Issuer or any other Person designated in writing signed by the President or any Secretary to act on behalf of the Issuer. The specimen signature of the Person or Persons designated as Authorized Representative of the Issuer shall be contained in or be attached to such designating instrument and such designation shall be furnished to the Trustee. The designation of an Authorized Representative shall remain effective until a new written instrument is filed with or actual notice is given to the other parties and the Trustee that such designation has been revoked.

**“Bankruptcy Code”** means Title 11 of the United States Code, as amended from time to time.

**“Beneficial Owner”** is defined in Section 2.05 when the Bonds are in the Book-Entry System and otherwise means the Bondholder.

**“Board”** means the Board of Directors of the Issuer.

**“Bond Counsel”** means an attorney at law or a firm of attorneys of nationally recognized standing in matters pertaining to the issuance of bonds or other obligations by states and their political subdivisions, duly admitted to the practice of law before the highest court of any state of the United States of America, and, except as otherwise provided in the Indenture, selected by the Issuer and acceptable to the Trustee.

“**Bond Register**” and “**Bond Registrar**” have the respective meanings specified in Section 2.03 hereof.

“**Bond Year**” means with respect to any Subordinate Bonds, including the Series 2019B Subordinate Bonds, the period commencing December 16 of each calendar year and ending on December 15 inclusive, of the next calendar year.

“**Bondholder**” or “**holder of Bonds**” or “**owner of Bonds**” means the registered owner of any Subordinate Bond.

“**Book-Entry System**” means the system maintained by the Securities Depository and described in Section 2.05 hereof.

“**Business Day**” means a day which is not (a) a Saturday, Sunday or legal holiday on which banking institutions in (i) the State, (ii) the State of New York or (iii) the state of the operational office of the Trustee (initially, Missouri) are authorized or required by law to close or (b) a day on which the New York Stock Exchange is closed.

“**Calculation Date**” means the first day of each Bond Year and the date of the final payment of the Tax-Exempt Bonds.

“**Closing Date**” means the date on which there is an exchange of a Series of Bonds for the proceeds representing the purchase price of a Series of Bonds.

“**Code**” means the Internal Revenue Code of 1986, or its successor provisions as amended at the time in question and the regulations promulgated thereunder.

“**Continuing Disclosure Agreement**” means the Continuing Disclosure Agreement dated \_\_\_\_\_, 2019, among the Issuer, the Developer and the Trustee, as the dissemination agent, as amended and supplemented from time to time.

“**Costs of Issuance Fund**” means the trust account by such name created pursuant to Section 4.02 of this Indenture.

“**County**” means the County of El Paso.

“**County Assessor**” means the assessor of the County of El Paso.

“**Developer**” has the meaning set forth in the recitals hereto.

“**DTC**” has the meaning set forth in Section 2.05 of this Indenture.

“**EMMA**” means the MSRB’S Electronic Municipal Market Access system.

“**Event of Default**” means any of the events described in Section 8.01 hereof.

“**Excess Investment Earnings**” means, with respect to an issue of Tax-Exempt Bonds, the amount described in Section 148(f)(2) of the Code.

**“Fiscal Year”** means each 12-month period beginning January 1 and ending December 31, or as otherwise designated by the Board’s resolution.

**“Funds”** means, collectively, the Costs of Issuance Fund, the Project Fund, the Subordinate Revenue Fund, the Rebate Fund, the Subordinate Bonds Fund, and the accounts, if any, established therein.

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

**“Indenture”** means this Trust Indenture, as amended or supplemented at the time in question.

**“Independent”** means, with respect to any Person, one who is not and does not have a partner, director, officer, member or substantial stockholder (each, a “controlling person”) who is a member of the Board, or an officer or employee of the Issuer, or the Developer. A Person who is or has a controlling person who is an officer or member of the Board (but not an employee of the Issuer ) may nevertheless be deemed Independent, if notice thereof is given to the holders of the Bonds.

**“Interest Payment Date”** means with respect to the Subordinate Bonds, including the Series 2019B Subordinate Bonds, each December 15, commencing December 15, 2019.

**“Issuance Costs”** means all costs incurred in the process of issuing the Series 2019B Subordinate Bonds and any other Series of Bonds hereunder, including but not limited to, the costs and fees of the Issuer, the Underwriter, and the Trustee and each of their counsel, Bond Counsel, title insurance fees, the recording fees, filing fees, appraisal, survey and accountants’ fees, printing costs relating to a disclosure document prepared in connection with offering and sale of a Series of Bonds, publication costs associated with the financing proceedings, costs of market studies and feasibility studies necessary to the issuance of a Series of Bonds and such other costs as may be designated in a Supplemental Indenture. The Issuance Costs shall not include Project Costs.

**“Junior Bonds”** means the Issuer’s bonds, or other indebtedness subordinate and junior to the Subordinate Bonds, including any notes, bonds, bond anticipation notes, commercial paper and other securities, contracts or obligations incurred through lease, installment purchase or other agreements or certificates of participation therein having a lien on all or a portion of the Subordinate Pledged Revenues subordinate and junior to the lien thereon of the Subordinate Bonds.

**“Letter of Representations”** means a letter of representation in customary form with respect to the Bonds executed by the Issuer and delivered to DTC and each substitute Securities Depository.

“**Majority Interest**” means the Bondholders of at least 51% in aggregate principal amount of all Subordinate Bonds then Outstanding.

“**MSRB**” means the Municipal Securities Rulemaking Board.

“**Opinion of Counsel**” means a written opinion of Independent legal counsel, who may be counsel to the Issuer or the Trustee.

“**Outstanding**” in connection with Subordinate Bonds (or a Series of Bonds) means, as of the time in question, all Subordinate Bonds (or all Subordinate Bonds of such Series) authenticated and delivered under the Indenture, except:

(a) Subordinate Bonds for the payment or redemption of which the necessary amount shall have been or shall concurrently be deposited with the Trustee or for which provision for the payment of which shall have been made in accordance with Article III hereof; provided that, if such Subordinate Bonds are being redeemed prior to maturity, the required notice of redemption shall have been given or provisions satisfactory to the Trustee shall have been made therefor;

(b) Subordinate Bonds in substitution for which other Subordinate Bonds have been authenticated and delivered pursuant to Article II hereof; and

(c) For purposes of any consent or other action to be taken by the owners of a majority or a specified percentage of Subordinate Bonds hereunder, Subordinate Bonds held by or for the account of the Issuer or any Person controlling, controlled by or under common control with the Issuer.

“**Participant**” means one of the entities which deposit securities, directly or indirectly, in the Book-Entry System and for which DTC holds the Subordinate Bonds.

“**Paying Agent**” or “**Co-Paying Agent**” means, in respect of a particular Series of Bonds, the Person or Persons authorized by the Issuer to pay the principal of (and premium, if any, on), and interest on, such Subordinate Bonds on behalf of the Issuer.

“**Permitted Investments**” means any of the following investments to the extent permitted under the laws of the State, as amended from time to time, for the investment of the Issuer’s money, as may be further limited by resolutions of the Board, certified copies of which may be delivered to the Trustee from time to time:

(a) Government Obligations; and

(b) any other investment that is a legal investment for Issuer funds under Colorado Revised Statutes § 24-75-601.1, *et seq.*

“**Permitted Junior Bonds**” means Junior Bonds which may be issued by the Issuer pursuant to Section 3.04 hereof.

“**Person**” or “**Persons**” means an individual, firm, partnership, company, association, joint stock company, trust, body politic or any other unincorporated organization or any trustee, receiver, assignee, or other similar representative thereof.

“**PIF**” means the public improvement fee in the amount of two and fifty one-hundredths percent (2.50%) of PIF Sales as set forth in the PIF Covenant.

“**PIF Collection Agreement**” means that certain Agreement for Collection of Public Improvement Fees by and among the Issuer, the Trustee, and \_\_\_\_\_ (“**PIF Collection Agent**”) dated as of \_\_\_\_\_, 2019, and any supplements, amendments, or successor agreements thereto.

“**PIF Receiving Party**” has the meaning assigned to such term in the PIF Covenant; initially, and for so long as the PIF Revenue is a component of Subordinate Pledged Revenues hereunder, the PIF Receiving Party is the Issuer.

“**PIF Revenue**” means the revenue derived from the imposition of the PIF, net of the costs of collection.

“**PIF Sales**” has the meaning set forth in the PIF Covenant.

“**Pledged Property Tax TIF Revenues**” means the Property Tax TIF revenue generated solely from the incremental increase in value of property within the boundaries of the Issuer.

“**Pledged Sales Tax TIF Revenues**” means the Sales Tax TIF revenue generated solely from the incremental increase in municipal sales taxes within the boundaries of the Issuer.

“**Pledged Tax Increment Revenues**” means collectively, the Pledged Property Tax TIF Revenues and the Pledged Sales Tx TIF Revenues.

“**Project Costs**” shall mean the costs listed in Section 5.07 hereof.

“**Project Fund**” means the trust account of that name created pursuant to Section 4.02 of this Indenture.

“**Project Fund Disbursement Request**” means a request of the Issuer for disbursements from the Project Fund pursuant to this Indenture and prepared in accordance with the form of the Project Fund Disbursement Request attached as Exhibit C hereto.

“**Rebate Fund**” means the trust account of that name created by Section 4.02 of this Indenture.

“**Refunding Bonds**” means any Series of Subordinate Bonds issued pursuant to Section 3.02 hereof to refund, pay, and discharge all or any portion of any other Series of Subordinate Bonds.

**“Regular Record Date”** means with respect to any Subordinate Bonds, including the Series 2019B Subordinate Bonds, the first day (whether or not a Business Day) of the calendar month in which an Interest Payment Date occurs.

**“Required Holders”** means Holders of at least 25% in aggregate principal amount of Subordinate Bonds issued under this Indenture and any Supplemental Indenture then Outstanding, if any.

**“Securities Depository”** means DTC or its nominee and the successors and assigns of such nominee, or any successor appointed under Section 2.05.

**“Senior Bond Mill Levy”** means the ad valorem mill levy required to be imposed in connection with any Senior Bonds by the Senior Bonds Indenture or any other documents pursuant to which Senior Bonds are issued and secured.

**“Senior Bonds”** means the Series 2019A Bonds and any additional bonds issued on parity with the lien of the Series 2019A Bonds pursuant to the Senior Bonds Indenture.

**“Series”** or **“Series of Bonds”** means the Subordinate Bonds designated in this Indenture or a separate Supplemental Indenture and any Subordinate Bonds authenticated and delivered in lieu of or in substitution for such Subordinate Bonds pursuant to this Indenture or any Supplemental Indenture.

**“Special Record Date”** means, in respect of a particular Series of Bonds, such date as may be fixed for the payment of defaulted interest in accordance with Section 2.09 of this Indenture.

**“State”** means the State of Colorado.

**“Subordinate Bond”** or **“Subordinate Bonds”** or **“Bonds”** shall mean the Series 2019B Subordinate Bonds and any Additional Subordinate Bonds issued hereunder on parity with the lien of the Series 2019B Subordinate Bonds, having a lien on all or a portion of the revenues pledged to the Senior Bonds subordinate to the lien thereon of the Senior Bonds.

**“Subordinate Bonds Fund”** has the meaning set forth in Section 4.02 hereof.

**“Subordinate Pledged PIF Revenues”** means only that portion of the PIF Revenues after deduction of any amount thereof used, paid, pledged or otherwise applied to the payment of debt service on Senior Bonds in accordance with the Senior Bonds Indenture.

**“Subordinate Pledged Revenues”** means the moneys derived by the Issuer from the following sources, net of any cost of collection:

- (a) the Subordinate Required Mill Levy Revenues;
- (b) Subordinate Specific Ownership Taxes;

(c) Subordinate Pledged PIF Revenues and Subordinate Pledged Tax Increment Revenues; and

(d) any other legally available moneys which the Issuer determines, in its absolute discretion, to transfer to the Trustee for application as Subordinate Pledged Revenue.

**“Subordinate Pledged Tax Increment Revenues”** means only that portion of revenue from Pledged Tax Increment Revenues remaining after deduction of any amount thereof used, paid, pledged or otherwise applied to the payment of debt service on any Senior Bonds in accordance with the Senior Bonds Indenture.

**“Subordinate Revenue Fund”** means the trust account of that name created pursuant to Section 4.02 of this Indenture.

**“Subordinate Required Mill Levy”** means an ad valorem mill levy (a mill being equal to 1/10 of 1 cent) imposed by the Issuer upon all taxable property within its boundaries each year in an amount calculated as follows: [REVISE]

(a) subject to adjustment as provided in paragraph (b) below (i) \_\_\_\_\_ mills, less the amount of the Senior Bond Mill Levy, or (ii) such lesser mill levy which, when combined with other Subordinate Pledged Revenue legally available in the Subordinate Bonds Fund, will permit the Subordinate Bonds Fund to be fully funded for the next Bond Year and pay all of the principal and interest on the Subordinate Bonds in full.

(b) *provided, however,* that the levy amount of \_\_\_\_\_, (as provided in paragraph (a) above) shall be adjusted to take into account legislative or constitutionally imposed adjustments in assessed values or the method of their calculation after the Closing Date, such adjustments to be determined by the Board in good faith (such determination to be binding and final) so that, to the extent possible, the actual tax revenues generated by the mill levy, as adjusted, are neither diminished nor enhanced as a result of such changes; among other adjustments, a change in the ratio of actual valuation of assessable property shall be deemed to be a change in the method of calculating assessed valuation; and

(c) *provided, further, however,* notwithstanding anything herein to the contrary, in no event may the Subordinate Required Mill Levy be established at a mill levy amount which would cause the Issuer to derive tax revenue in any year in excess of the maximum tax increases permitted by its electoral authorization, and if the Subordinate Required Mill Levy as calculated pursuant to the foregoing would cause the amount of taxes collected in any year to exceed the maximum tax increase permitted by the Issuer’s electoral authorization, the Subordinate Required Mill Levy shall be reduced to the point that such maximum tax increase is not exceeded.

**“Subordinate Required Mill Levy Revenues”** means revenues generated from the imposition by the Issuer of the Subordinate Required Mill Levy, net of collection costs;



provided, however, that the Subordinate Required Mill Levy Revenue does not include Subordinate Specific Ownership Taxes.

**“Subordinate Specific Ownership Taxes”** means the portion of the specific ownership taxes on motor vehicles imposed by the State attributable to the Subordinate Required Mill Levy.

**“Supplemental Act”** means the Supplemental Public Securities Act constituting Title 11, Part 2, Article 57 of Colorado Revised Statutes, as amended.

**“Supplemental Indenture”** means any indenture supplementing or amending this Indenture that is executed and delivered pursuant to Article XI hereof.

**“Tax Certificate”** means any tax certificate executed by the Issuer on the date of the issuance of any Series of Tax-Exempt Bonds.

**“Tax-Exempt Bonds”** means the Series 2019B Subordinate Bonds and any other Subordinate Bonds the interest on which is excludable from gross income of the holder for purposes of federal income tax.

**“Term”** means the duration of this Indenture, which is from the execution and delivery hereof to the date the Issuer has satisfied all of its obligations under this Indenture, unless sooner terminated in accordance with the provisions hereof.

**“Trustee”** means UMB Bank, n.a., in its capacity as trustee hereunder, and its successor for the time being in the trust hereunder and any Co-Trustee appointed in accordance with Section 9.17 of this Indenture.

**“Underwriter”** means George K. Baum & Company, Inc., the original purchaser of the Series 2019B Subordinate Bonds.

The words “hereof,” “herein,” “hereto,” “hereby” and “hereunder” (except in the forms of a Series of Senior Bond and a Series of Subordinate Bond) refer to the entire Indenture.

Every “request,” “order,” “demand,” “application,” “appointment,” “notice,” “statement,” “certificate,” “consent” or similar action hereunder by the Issuer shall, unless the form thereof is specifically provided, be in writing signed by the Authorized Representative of the Issuer.

Section 1.02. Representations of the Issuer. The Issuer makes the following representations as the basis for its undertakings herein contained:

- (a) The Issuer is a quasi-municipal corporation and political subdivision of the State, duly organized and existing under the laws of the State, is authorized to issue the Subordinate Bonds and to enter into the transactions contemplated by this Indenture and the Cooperation Agreement and to carry out its obligations hereunder and thereunder and has duly authorized, executed and delivered this Indenture and the Cooperation Agreement.

(b) The Issuer will utilize the proceeds of the Subordinate Bonds to pay the Project Costs and to provide for Issuance Costs related thereto, all for the purpose of providing certain Authorized Projects.

(c) Neither the execution and delivery of the Series 2019B Subordinate Bonds, this Indenture, or the Cooperation Agreement, the consummation of the transactions contemplated hereby or thereby, nor the fulfillment of or compliance with the terms and conditions of the Series 2019B Subordinate Bonds or of this Indenture, conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Issuer is now a party or by which it is bound or constitute a default under any of the foregoing or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Issuer under the terms of any instrument or agreement.

(d) The Issuer further covenants that it has the right to grant and convey its interest in the Trust Estate, and that it will warrant and defend generally the title to such interest against all claims and demands.

(e) The Issuer shall not operate or permit to be operated the Authorized Projects which are financed with Tax-Exempt Bonds in a manner which would impair the exclusion of the interest on the Tax-Exempt Bonds or any original discount properly allocable to any owner thereof, from the gross income of the owners thereof for federal income tax purposes.

(f) Other than as disclosed in the Limited Offering Memorandum dated \_\_\_\_\_, 2019 relating to the Series 2019B Subordinate Bonds, there is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the best knowledge of the Issuer, threatened against or affecting the Issuer, or any of its properties or rights, which, if adversely determined, would affect the validity or enforceability of the Series 2019B Subordinate Bonds, this Indenture, the Cooperation Agreement, or the Issuer's performance of its obligations hereunder or thereunder, or would materially and adversely impair its right to carry on business substantially as now conducted or as now contemplated to be conducted, or would materially and adversely affect its financial condition, assets, properties or operations, and the Issuer is not in default with respect to any order or decree of any court or any order, regulation or decree of any federal, state, municipal or other governmental agency, which default would materially and adversely affect its operation or its properties or the completion of the construction and equipping of the Authorized Projects financed with Subordinate Bond proceeds. The Issuer is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party.

(g) The operation and design of the Authorized Projects financed with the Series 2019B Subordinate Bond proceeds in the manner presently contemplated will not conflict with any applicable zoning, water or air pollution or other ordinance, order, law

or regulation relating to zoning, building, safety or environmental quality, which conflict would materially and adversely affect their operation or the completion of their construction and equipping.

(h) The Issuer will obtain, or will cause to be obtained on or before the date required therefor, all necessary consents, certificates, approvals, permits and authorizations with respect to the construction of such Authorized Projects from applicable local, state, federal governmental agencies and private parties.

## **ARTICLE II THE BONDS**

Section 2.01. Amounts, Terms and Issuance of the Series 2019B Subordinate Bonds. The Series 2019B Subordinate Bonds shall, except as provided in Section 2.11 hereof, be limited to the aggregate principal amounts set forth below and shall contain substantially the terms recited in the form of the Subordinate Bonds set forth in Exhibit A. No Series 2019B Subordinate Bonds may be issued under this Indenture except in accordance with this Article II.

The Series 2019B Subordinate Bonds shall be designated “**Limited Tax Supported and Special Revenue Subordinate Bonds, Series 2019B.**” The aggregate principal amount of Series 2019B Subordinate Bonds shall be \$\_\_\_\_\_ except as provided in Section 2.12.

The Issuer may issue the Series 2019B Subordinate Bonds upon the execution of this Indenture, and the Trustee shall, at the Issuer’s request, authenticate the Series 2019B Subordinate Bonds and deliver them as specified in the request.

Section 2.02. Denominations, Interest Rates and Maturity of Series 2019B Subordinate Bonds. The Series 2019B Subordinate Bonds shall be issuable only in Authorized Denominations and shall be dated as of their delivery date; provided, however, in the event that a Series 2019B Subordinate Bond is partially redeemed hereunder and the remaining unredeemed portion is less than \$100,000, the unredeemed portion may nonetheless be issued in the largest possible denomination of less than \$100,000, in integral multiples of not less than \$1,000 each or any integral multiple thereof.

The Series 2019B Subordinate Bonds shall bear interest from the last Interest Payment Date to which interest has accrued and has been paid or duly provided for, or if no interest has been paid or duly provided for, from the dated date of the Series 2019B Subordinate Bonds until payment of the principal or redemption price thereof shall have been made or provided for in accordance with the provisions of this Indenture, whether upon maturity, redemption or otherwise.

The Series 2019B Subordinate Bonds shall mature on December 15, 20\_\_ and shall bear interest at the per annum interest rate of \_\_% to their maturity date, unless redeemed prior thereto pursuant to the provisions hereof. Interest is computed on the basis of a 360-day year of twelve 30 day months.

In the case of Additional Subordinate Bonds issued pursuant to Sections 3.01 or 3.02 hereof, the maturity and other terms thereof shall be determined by the Supplemental Indenture authorizing their issuance.

Section 2.03. Limited Revenue Bonds. The Subordinate Bonds shall constitute limited obligations of the Issuer payable solely from the Subordinate Pledged Revenues as provided herein. The Subordinate Bonds do not constitute a debt or financial obligation of the City or the County and shall never constitute nor give rise to any pecuniary liability of the City or the County or any political subdivision of the State (other than the Issuer to the extent set forth herein) or a charge against the general credit or taxing powers of the City or the County. The Subordinate Bonds are not secured by any lien or a mortgage on or security interest in any property of the Issuer other than the Subordinate Pledged Revenues to the extent provided herein.

Section 2.04. Bond Form Generally. Pursuant to recommendations promulgated by the Committee on Uniform Security Identification Procedures, “**CUSIP**” numbers may be printed on the Subordinate Bonds. The Subordinate Bonds may bear such notation, endorsement or legend satisfactory to the Trustee as may be required to conform to usage or law with respect thereto.

Section 2.05. Book-Entry System for Series 2019B Subordinate Bonds; Bond Registrar and Bond Register. The Series 2019B Subordinate Bonds shall be issued in fully registered form and shall be deposited in the Book-Entry System maintained by The Depository Trust Company, New York, New York (“**DTC**”) and registered in the name of Cede & Co., as nominee of DTC as Securities Depository for the Series 2019B Subordinate Bonds in accordance with the terms of the Letter of Representations; provided that such registration shall not alter the minimum denomination requirements of Section 2.02 hereof or the transfer restrictions of Section 2.06 hereof.

(a) The Series 2019B Subordinate Bonds shall be registered upon subsequent transfer or exchange as provided in this Indenture.

(b) With respect to the Series 2019B Subordinate Bonds, a single certificate for each maturity shall be issued and delivered to the Securities Depository or the Trustee, as its agent, for the Series 2019B Subordinate Bonds. The actual purchasers of the Series 2019B Subordinate Bonds (the “**Beneficial Owners**”) will not receive physical delivery of Series 2019 Subordinate Bond certificates except as provided herein. So long as there exists a Securities Depository as provided herein, all transfers of beneficial ownership interests in the Series 2019B Subordinate Bonds shall be made by book-entry only, and no person purchasing, selling or otherwise transferring beneficial ownership interests in the Series 2019B Subordinate Bonds will be permitted to receive, hold or deliver any Series 2019B Subordinate Bond certificate. The Issuer and the Trustee shall treat the Securities Depository or its nominee as the sole and exclusive Bondholder for all purposes, including payments of principal of, premium, if any, and interest on the Series 2019B Subordinate Bonds, notices and voting.

The Issuer and the Trustee covenant and agree, so long as DTC shall continue to serve as Securities Depository for the Series 2019B Subordinate Bonds, to meet the requirements of DTC with respect to required notices and other provisions of the Letter of Representations.

The Issuer and the Trustee may conclusively rely upon (i) a certificate of the Securities Depository as to the identity of the Participants in the Book-Entry System with respect to the Series 2019B Subordinate Bonds and (ii) a certificate of any such Participant as to the identity of, and the respective principal amount of Series 2019B Subordinate Bonds beneficially owned by the Beneficial Owners.

Whenever Series 2019B Subordinate Bonds remain Outstanding and the beneficial ownership thereof must be determined by the books of the Securities Depository, the requirements in this Indenture for holding, delivering, tendering or transferring Series 2019B Subordinate Bonds shall be deemed modified to require the appropriate person to meet the requirements of the Securities Depository with respect to such actions to produce the same effect. Any provision hereof permitting or requiring delivery of Series 2019B Subordinate Bonds shall, while the Series 2019B Subordinate Bonds are in the Book-Entry System, be satisfied by notation on the books of the Securities Depository in accordance with State law.

The Trustee and the Issuer may from time to time appoint a successor Securities Depository and enter into any agreement with such Securities Depository to establish procedures with respect to the Series 2019B Subordinate Bonds not inconsistent with the provisions of this Indenture. Any successor Securities Depository shall be a “clearing agency” registered under Section 17A of the Securities Exchange Act of 1934, as amended.

Neither the Issuer nor the Trustee shall have any responsibility or obligation to any Securities Depository, any Participant in the Book-Entry System or the Beneficial Owners with respect to (i) the accuracy of any records maintained by the Securities Depository or any Participant; (ii) the payment by the Securities Depository or by any Participant of any amount due to any Beneficial Owner in respect of the principal amount (including premium) or redemption, or interest on, any Series 2019B Subordinate Bonds; (iii) the delivery of any notice by the Securities Depository or any Participant; (iv) the selection of the Beneficial Owners to receive payment in the event of any partial redemption of the Series 2019 Bonds; or (v) any other action taken by the Securities Depository or any Participant in connection with the Series 2019B Subordinate Bonds.

(c) While the Series 2019B Subordinate Bonds are in the Book-Entry System maintained by DTC, the Series 2019B Subordinate Bond certificates shall be delivered to and registered in the name of the Beneficial Owners only under the following circumstances:

(i) The Securities Depository determines to discontinue providing its service with respect to the Series 2019B Subordinate Bonds and no successor

Securities Depository is appointed as described above. Such a determination may be made at any time by giving reasonable notice to the Issuer or the Trustee and discharging its responsibilities with respect thereto under applicable law.

(ii) Participants holding a majority of the Outstanding Series 2019B Subordinate Bonds may determine not to continue the Book-Entry System through any Securities Depository.

If at any time the Securities Depository ceases to hold the Bonds, all references herein to the Securities Depository shall be of no further force or effect.

(d) The Issuer shall designate one or more Persons to act as “**Bond Registrar**” for the Bonds provided that the Bond Registrar appointed for the Bonds shall be either the Trustee or a Person which would meet the requirements for qualification as a Trustee imposed by Section 9.14 hereof. The Issuer hereby appoints the Trustee, its Bond Registrar in respect of the Series 2019B Subordinate Bonds. Any Person other than the Trustee undertaking to act as Bond Registrar shall first execute a written agreement, in form satisfactory to the Trustee, to perform the duties of a Bond Registrar under this Indenture, which agreement shall be filed with the Trustee.

The Bond Registrar shall act as registrar and transfer agent for the Bonds. The Issuer shall cause to be kept at an office of the Bond Registrar a register (herein sometimes referred to as the “**Bond Register**”) in which, subject to such reasonable regulations as it, the Trustee or the Bond Registrar may prescribe, the Issuer shall provide for the registration of the Bonds and for the registration of transfers of the Bonds. The Issuer shall cause the Bond Registrar to designate, by a written notification to the Trustee, a specific office location (which may be changed from time to time, upon similar notification) at which the Bond Register is kept. The principal corporate trust office of the Trustee shall be deemed to be such office in respect of the Bonds for which the Trustee is acting as Bond Registrar.

The Bond Registrar shall at such time as reasonably requested by the Trustee, certify and furnish to the Trustee and any Paying Agent as the Trustee shall specify, the names, addresses, and holdings of Bondholders and any other relevant information reflected in the Bond Register, and the Trustee and any such Paying Agent shall for all purposes be fully entitled to rely upon the information so furnished to them and shall have no liability or responsibility in connection with the preparation thereof except to the extent that any such information was furnished or supplied to the Bond Registrar by any such entity.

Section 2.06. Registration, Transfer and Exchange of Bonds. As provided in Section 2.05 hereof, the Issuer shall cause a Bond Register to be kept at the designated office of the Bond Registrar. Upon surrender for transfer of a Bond of any Series at such office, the Issuer shall execute and the Trustee or its Authenticating Agent shall authenticate and deliver in the name of the transferee or transferees, one or more new fully registered Bonds of the same Series of Authorized Denominations for the aggregate principal amount which the registered owner is entitled to receive.

At the option of the holder, Bonds may be exchanged for other Bonds of the same Series, of any other Authorized Denomination, of a like aggregate principal amount, upon surrender of the Bonds to be exchanged at any such office or agency. Whenever any Bonds are so surrendered for exchange, the Issuer shall execute, and the Trustee shall authenticate and deliver, the Bonds which the Bondholder making the exchange is entitled to receive.

All Bonds presented for transfer or exchange, redemption or payment (if so required by the Issuer, the Bond Registrar or the Trustee), shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and with guaranty of signature satisfactory to the Bond Registrar, duly executed by the holder or by his attorney duly authorized in writing.

The Bond Registrar may require payment of a sum sufficient to cover any reasonable fees, taxes or other governmental charges that may be imposed in relation thereto.

Neither the Issuer nor the Bond Registrar on behalf of the Issuer shall be required (i) to register the transfer of or exchange any Bond during a period beginning at the opening of business 15 days before the day of mailing of a notice of redemption of Bonds selected for redemption and ending at the close of business on the day of such mailing, or (ii) to register the transfer of or exchange any Bond so selected for redemption in whole or in part.

New Bonds delivered upon any transfer or exchange shall be valid obligations of the Issuer, evidencing the same debt as the Bonds surrendered, shall be secured by this Indenture and shall be entitled to all of the security and benefits hereof to the same extent as the Bonds surrendered.

Notwithstanding any other provision of this Indenture, each Beneficial Owner of a Subordinate Bond, by its acceptance of such Subordinate Bond, and the Trustee, by its acceptance of appointment as such pursuant to this Indenture, acknowledges that the Subordinate Bonds are initially issuable only in Authorized Denominations, that the Subordinate Bonds are not being registered under the Securities Act of 1933, as amended, and are not being registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state, that as of the date of original issuance thereof, they will carry no rating from any rating service and that such Beneficial Owner will deemed to have agreed to be bound by the provisions of this Section. All Beneficial Owners of Subordinate Bonds and the Trustee also acknowledge that the Subordinate Bonds may be offered, sold, transferred, remarketed or otherwise disposed of only in Authorized Denominations and, except as otherwise consented to by the Issuer in writing, in transactions that do not constitute "primary offerings" or are otherwise exempt from Rule 15c-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended. IN ADDITION, EACH BENEFICIAL OWNER OF A SUBORDINATE BOND ACKNOWLEDGES THAT ANY SALE, TRANSFER, OR OTHER DISPOSITION OF SUBORDINATE BONDS DURING ANY PERIOD IN WHICH THE SUBORDINATE BONDS DO NOT HAVE ANY INVESTMENT GRADE RATING FROM A RATING AGENCY SHALL BE MADE SOLELY TO TRANSFEREES TO WHOM SUCH BENEFICIAL OWNER HAS GIVEN NOTICE OF THE RESTRICTIONS OF THIS SECTION 2.06 AND WHOM THE BENEFICIAL TRANSFEROR SHALL HAVE DETERMINED ARE

EITHER: (a) A “QUALIFIED INSTITUTIONAL BUYER,” AS DEFINED IN RULE 144A PROMULGATED BY THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933; OR (b) A TRUSTEE FOR ANY TRUST OR CUSTODIAN FOR ANY CUSTODIAL ARRANGEMENT IN WHICH, IN EACH CASE, EACH BENEFICIARY THEREOF IS A QUALIFIED INSTITUTIONAL BUYER.

Section 2.07. Execution. The Bonds shall be executed by the manual or facsimile signature of the President of the Issuer, and the corporate seal of the Issuer shall be affixed, imprinted, lithographed or reproduced thereon and shall be attested by the manual or facsimile signature of the Secretary of the Issuer.

Bonds executed as above provided may be issued and shall, upon request of the Issuer, be authenticated by the Trustee or the Authenticating Agent, notwithstanding that any officer signing such Bonds or whose facsimile signature appears thereon, having held such office at the time of execution thereof, shall have ceased to hold office at the time of issuance or authentication or shall not have held office at the date of the Bond.

Section 2.08. Authentication; Authenticating Agent. No Bond shall be valid for any purpose until the certificate of authentication shall have been duly executed as provided in this Indenture, and such authentication shall be conclusive proof that such Bond has been duly authenticated and delivered under this Indenture and that the holder thereof is entitled to the benefit of the trust hereby created.

If the Bond Registrar is other than the Trustee, the Trustee may appoint the Bond Registrar as an Authenticating Agent with the power to act on such Trustee’s behalf and subject to its direction in the authentication and delivery of Bonds in connection with transfers and exchanges under Section 2.06 hereof, and the authentication and delivery of Bonds by an Authenticating Agent pursuant to this Section shall, for all purposes of this Indenture, be deemed to be the authentication and delivery “by the Trustee.” The Trustee shall, however, itself authenticate all Bonds upon their initial issuance and any Bonds issued in substitution for other Bonds pursuant to Section 2.11 and Section 2.12 hereof. The Trustee shall be entitled to be reimbursed for payments made to any Authenticating Agent as reasonable compensation for its services.

Section 2.09. Payment of Principal and Interest; Interest Rights Preserved. To the extent principal of any Subordinate Bond is not paid when due in accordance with this Indenture, including, without limitation on the maturity date for such Subordinate Bond, such principal shall remain outstanding until paid. To the extent interest on any Subordinate Bond is not paid on an Interest Payment Date such interest shall compound annually on each December 15 at the rate then borne by such Subordinate Bond. Notwithstanding anything herein to the contrary, the Issuer shall not be obligated to pay more than the amount permitted by law and the electoral authorization (including the Election) in repayment of the Subordinate Bonds, including all payments of principal, premium, if any, and interest.

The principal, redemption price or interest of any Bond shall be payable when due, upon surrender of such Subordinate Bond, in any coin or currency of the United States of America



which, at the time of payment, is legal tender for the payment of public and private debts, at the Principal Office of any Paying Agent. Interest on any Bond on each Interest Payment Date in respect thereof shall be payable by check mailed to the address of the person entitled thereto as such address shall appear in the Bond Register, or, at the request of an Owner of \$1,000,000 or more in principal amount of Subordinate Bonds, by wire transfer to an account designated in writing by such Owner.

Interest on any Subordinate Bond which is payable, and is punctually paid or duly provided for, on an Interest Payment Date shall be paid to the person in whose name that Bond is registered at the close of business on the Regular Record Date for such interest.

Any interest on any Subordinate Bond which is payable, but is not punctually paid or provided for, on any Interest Payment Date (herein called “**Unpaid Interest**”) shall forthwith cease to be payable to the Owner of such Bond on the relevant Regular Record Date or Interest Payment Date by virtue of having been such owner, and such Unpaid Interest shall be paid to the person in whose name the Subordinate Bond is registered at the close of business on a Special Record Date to be fixed by the Trustee, such date to be no more than 15 nor fewer than 10 days prior to the date of proposed payment. The Trustee shall cause notice of the proposed payment of such Unpaid Interest and the Special Record Date therefor to be mailed, first class postage prepaid, to the Bond Registrar and the Paying Agent and to each Bondholder at his address as it appears in the Bond Register, not fewer than 10 days prior to such Special Record Date.

Subject to the foregoing provisions of this Section 2.09, each Subordinate Bond delivered under this Indenture upon registration of transfer of or exchange for or in lieu of any other Subordinate Bonds shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Bonds.

Section 2.10. Persons Deemed Owners. The Issuer, the Trustee, any Paying Agent, the Bond Registrar and any Authenticating Agent may deem and treat the person in whose name any Bonds are registered as the absolute Owner thereof (whether or not such Bonds shall be overdue and notwithstanding any notation of ownership or other writing thereon) for the purpose of receiving payment of or on account of the principal of (and premium, if any, on), redemption price of and (subject to Section 2.09) interest on, such Bonds, and for all other purposes, and neither the Issuer, the Trustee, any Paying Agent, the Bond Registrar nor the Authenticating Agent shall be affected by any notice to the contrary. All such payments so made to any such registered owner, or upon his order, shall be valid and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for moneys payable upon any such Bonds.

Section 2.11. Mutilated, Destroyed, Lost or Stolen Bonds.

(a) If any Bonds shall become mutilated, lost, stolen or destroyed, the affected Bondholder shall be entitled to the issuance of a substitute Bonds only as follows:

- (i) in the case of a lost, stolen or destroyed Bond, the Bondholder shall (A) provide notice of the loss, theft or destruction to the Issuer and the Trustee within a reasonable time after the Bondholder receives notice of the loss, theft or destruction, (B) request the issuance of a substitute Bond and (C) provide

evidence, satisfactory to the Issuer and the Trustee, of the ownership and the loss, theft or destruction of the affected Bond;

(ii) in the case of a mutilated Bond, the Bondholder shall surrender the Bond to the Trustee for cancellation; and

(iii) in all cases, the Bondholder shall provide to the Issuer and the Trustee indemnity against any and all claims arising out of or otherwise related to the issuance of substitute Bonds pursuant to this Section 2.11 in a form satisfactory to the Trustee.

Upon compliance with the foregoing, a new Bond of like tenor, Series and denomination, executed by the Issuer, shall be authenticated by the Trustee and delivered to the Bondholder, all at the expense of the Bondholder to whom the substitute Bond is delivered. Notwithstanding the foregoing, the Trustee shall not be required to authenticate and deliver any substitute Bond for a Bond which has been called for redemption or which has matured or is about to mature and, in any such case, the principal or redemption price and interest then due or becoming due shall be paid by the Trustee or a Paying Agent in accordance with the terms of the mutilated, lost, stolen or destroyed Bond without substitution therefor.

(b) Every substituted Bond issued pursuant to this Section 2.11 shall constitute an additional contractual obligation of the Issuer and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Bonds duly issued hereunder unless the Bond alleged to have been destroyed, lost or stolen shall be at any time enforceable by a bona fide purchaser for value without notice. In the event the Bond alleged to have been destroyed, lost or stolen shall be enforceable by anyone, the Issuer may recover the substitute Bond from the Bondholder to whom it was issued or from anyone taking under the Bondholder except a bona fide purchaser for value without notice.

(c) All Bonds shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, destroyed, lost or stolen Bonds, and shall preclude any and all other rights or remedies, notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or investment or other securities without their surrender.

Section 2.12. Temporary Bonds. Pending preparation of definitive Bonds, or by agreement with the purchasers of all Bonds, the Issuer may issue, and, upon its request, the Trustee shall authenticate, in lieu of definitive Bonds one or more temporary printed or typewritten Bonds of substantially the tenor recited above in any denomination authorized under Section 2.02. Upon request of the Issuer, the Trustee shall authenticate definitive Bonds in exchange for and upon surrender of an equal principal amount of temporary Bonds. Until so exchanged, temporary Bonds shall have the same rights, remedies and security hereunder as definitive Bonds.

Section 2.13. Cancellation of Surrendered Bonds. Bonds surrendered for payment, redemption, transfer or exchange and Bonds surrendered to the Trustee by the Issuer for cancellation shall be canceled by the Trustee which shall notify the Bond Registrar of such cancellation, and destroyed by the Trustee in accordance with the customary practices of the Trustee and applicable retention laws.

Section 2.14. Supplemental Act Provisions. The Board of Directors of the Issuer has elected to apply all provisions of the Supplemental Act to the Series 2019B Subordinate Bonds and any other Subordinate Bonds; provided, however, that such election shall not operate to modify or limit the rights conferred on the Issuer or the members of the Board by any other provisions of State law. Pursuant to Section 11-57-210 of the Supplemental Act, each Subordinate Bond shall recite that it is issued under the authority of the resolution of the Issuer's Board of Directors and the Supplemental Act and that it is the intention of the Issuer that such recital shall be conclusive evidence of the validity and the regularity of the issuance of the Subordinate Bonds after their delivery for value. Pursuant to Section 11-57-208 of the Supplemental Act, the Subordinate Pledged Revenues pledged under this Indenture for the payment of the Subordinate Bonds, as received by or otherwise credited to the Issuer, shall immediately be subject to the lien of such pledge without any physical delivery, filing or further act. The lien of such pledge and the obligation to perform the contractual provisions made in the resolution and this Indenture shall have priority over any or all other obligations and liabilities of the Issuer with regard to the Subordinate Pledged Revenues, to the extent provided herein. Pursuant to Section 208 of the Supplemental Act, the pledges and liens created by this Indenture are subject to any prior pledges and liens, and the Issuer hereby covenants and represents that it has not heretofore created any prior pledge or lien on the Subordinate Pledged Revenues. The lien of such pledge shall be valid, binding and enforceable as against all persons having claims of any kind of tort, contract or otherwise against the Issuer irrespective of whether such persons have notice of such lien.

### **ARTICLE III ADDITIONAL SUBORDINATE BONDS AND SENIOR BONDS**

Section 3.01. Issuance of Additional Subordinate Bonds. The Issuer and the Trustee may from time to time, upon the conditions stated in this Section 3.01, agree upon and approve the issuance and delivery of additional series of Subordinate Bonds, secured by this Indenture from the revenues and property pledged and appropriated hereunder on a parity basis, but bearing such date or dates and interest rate or rates and with such redemption dates and premiums as may be agreed upon, only with the prior written consent of all of the Bondholders of the then Outstanding Series 2019B Subordinate Bonds and other Subordinate Bonds, and upon satisfaction of all of the following conditions:

(a) Compliance with Indenture. The Issuer is in substantial compliance with all of the covenants of this Indenture and the Senior Bonds Indenture and no Event of Default hereunder or event of default under the Senior Bonds Indenture shall have occurred and is continuing.

(b) Supplemental Indenture. On the date of the issuance of the proposed series of Subordinate Bonds, the Trustee shall be in receipt of the originally executed counterparts of a Supplemental Indenture, designating the new Series to be created and prescribing expressly or by reference to the Subordinate Bonds of such Series:

- (i) the principal amount of such Series;
- (ii) the terms of such Series;
- (iii) the maturity dates thereof, which shall be a December 15;
- (iv) the rate or rates of interest and the date from which, and the date or dates on which, interest is payable, which dates shall be the same as the Interest Payment Dates for the Series 2019B Subordinate Bonds;
- (v) provisions as to redemption;
- (vi) any additional security to be provided for such Subordinate Bonds;
- (vii) any other provisions necessary to describe and define such Series within the provisions and limitations of this Indenture; and
- (viii) any other provisions and agreements in respect thereof provided, or not prohibited, by the Indenture.

(c) Opinion of Bond Counsel. On the date of the issuance of the proposed new Series of Subordinate Bonds, the Trustee shall be in receipt of an opinion or opinions of Bond Counsel acceptable to the Trustee to the effect that:

- (i) all instruments furnished to the Trustee conform to the requirements of this Indenture and constitute sufficient authority hereunder for the Trustee to authenticate and deliver the new Series of Subordinate Bonds then proposed to be issued;
- (ii) the new Series of Subordinate Bonds then proposed to be issued, when issued, will be secured by the lien of this Indenture, as supplemented by the Supplemental Indenture, to the extent provided herein and therein; and
- (iii) any exclusion from gross income for federal income tax purposes of the interest on the Outstanding Tax-Exempt Bonds will not be impaired by the issuance of the Additional Subordinate Bonds then proposed to be issued.

Section 3.02. Issuance of Refunding Bonds. Notwithstanding any other provision contained herein, Refunding Bonds may be issued in such principal amount as may be necessary to refund a Series of the Outstanding Subordinate Bonds, provided that such Refunding Bonds do not increase the Issuer's debt service (there shall be excluded from such debt service to become due with respect to the proposed Refunding Bonds on their final maturity date the

proceeds thereof deposited, or other moneys on deposit, in any reserve fund which is anticipated to be available for payment of such Refunding Bonds at their final maturity) in any year during which any Senior Bonds, the Refunding Bonds and any other Bonds are Outstanding, if prior thereto or simultaneously therewith there are filed with the Trustee:

(a) Documents Under Section 3.01. The documents required under subsections (b) and (c) of Section 3.01, except that all references in such Section to the additional Series of “**Subordinate Bonds**” shall be deemed to refer to the “**Refunding Bonds**”.

(b) Redemption Instructions. If any Subordinate Bonds to be refunded are to be called for prior redemption at the option of the Issuer, a certificate of the Authorized Representative that irrevocable instructions to give due and timely notice of such redemption have been given; and

(c) Moneys and Federal Securities for Redemption. A certificate of the Authorized Representative that either (i) moneys in an amount sufficient to effect payment of the debt service of the Subordinate Bonds to be refunded, as the same became due, are held (or are required to be deposited) in an escrow account or with the Trustee in trust for such purpose, or (ii) Government Obligations as are permitted by Section 12.02 hereof are held (or are required to be deposited) in an escrow account or with the Trustee in such principal amounts, of such maturities, bearing such interest, if any, and otherwise having such terms and qualifications as are set forth in Section 12.02 hereof, to provide, together with any moneys so held (or required to be deposited), for the payment of the debt service of the Subordinate Bonds to be refunded, as the same become due, which federal securities and moneys are held (or are required to be deposited) in trust in accordance with Section 12.02, hereof.

Section 3.03. Issuance of Senior Bonds. [ Except for the Series 2019A Bonds (which are hereby permitted), the Issuer may issue Additional Senior Bonds only if the Owners of 100% in aggregate principal amount of the Subordinate Bonds then outstanding consent to the issuance of such Additional Senior Bonds; provided , however, that] the issuance of Additional Senior Bonds which refund outstanding Senior Bonds (and the proceeds of which may also refund Subordinate Bonds) shall not require the consent of any Owners of Subordinate Bonds so long as:

(a) The maturity date of the refunding Senior Bonds is no later than the maturity date of the Senior Bonds being refunded.

(b) Annual debt service on such refunding Senior Bonds is no greater than the annual debt service (there shall be excluded from such debt service to become due on such proposed refunding Senior Bonds on their final maturity date, the proceeds thereof, or other moneys on deposit, in any reserve fund which is anticipated to be available for payment of such refunding Senior Bonds at their final maturity) on the refunded Series of Senior Bonds in any year in which the proposed Additional Senior Bonds or any Subordinate Bonds would remain Outstanding.

(c) No additional reserve funds, surplus funds, sinking funds, or other similar funds or accounts are created for the additional security of such refunding obligations if such funds or accounts are funded or replenished from any Revenues (as defined in the Senior Bonds Indenture); provided that (i) the refunding obligations may be secured by the Senior Reserve Fund in the same fashion as the Series 2019A Bonds, as provided in the Senior Bonds Indenture so long as the “Senior Reserve Fund Requirement” (as defined in the Senior Bonds Indenture) is not increased; (ii) the refunding obligations may be secured by the Surplus Fund in the same fashion as the Series 2019A Bonds, as provided in the Senior Bonds Indenture so long as the “Maximum Surplus Fund Amount” (as defined in the Senior Bonds Indenture) is not increased; and (iii) nothing herein shall be construed as prohibiting the creation of any such additional reserve funds, surplus funds, sinking funds, or other similar funds or accounts which are funded and replenished solely from sources of revenue other than any Revenues (as defined in the Senior Bonds Indenture).

(d) Such refunding obligations are payable on the same day or days of the calendar year as the Senior Bonds being refunded, and are not subject to acceleration.

(e) The ad valorem mill levy pledged to the payment of the refunding obligations shall be no higher than and subject to the same deductions and adjustments as the ad valorem mill levy pledged to the payment of the Senior Bonds being refunded.

(f) The remedies for defaults under such refunding obligations are substantially the same as the remedies applicable to the Senior Bonds being refunded.

(g) Refunding Bonds issued to refund Senior Bonds may also include amounts to refund a portion of the Subordinate Bonds so long as the foregoing tests are met with respect to the Senior Bonds being refunded.

#### Section 3.04. Permitted Junior Bonds.

(a) General. One or more issues of Permitted Junior Bonds may be issued upon the terms and conditions provided in this Section.

(b) Requirements. The terms of the Permitted Junior Bonds shall be as provided in the document pursuant to which they are issued; provided that:

(i) the Junior Bonds are expressly payable solely from the Revenues (as defined in the Senior Bonds Indenture) on a basis subordinate to the Senior Bonds and from the Subordinate Pledged Revenues on a basis subordinate to the Subordinate Bonds;

(ii) the Permitted Junior Bonds shall not give the owners thereof or any other person any rights to impair, affect, or consent to issuance, amendment, or refinancing of the Senior Bonds or the Subordinate Bonds, which issuance, amendment, or refinancing may be such terms and conditions as may be determined by the Board in its absolute discretion;

(iii) no Permitted Junior Bonds may be issued if any payment of principal of or interest on the Senior Bonds or the Subordinate Bonds is due and unpaid, or an Event of Default shall have occurred and be continuing; and

(iv) the Permitted Junior Bonds shall be payable as to both principal and interest on an annual basis, on a date which is after the final principal or interest payment date due in that calendar year on all Senior Bonds and after payment in full of all Series 2019B Subordinate Bonds.

(c) Certificate. A written certificate from the President or Vice President or Treasurer of the Issuer that the conditions for issuance of the Permitted Junior Bonds set forth herein are met shall conclusively determine the right of the Issuer to authorize, issue, sell, and deliver Permitted Junior Bonds in accordance herewith.

Section 3.05. Other Debt Prohibited. The Issuer shall not issue or incur bonds, notes, or other obligations payable in whole or in part from, or constituting a lien upon, the Subordinate Pledged Revenues, other than Additional Subordinate Bonds and Refunding Bonds issued in accordance with Sections 3.01 and 3.02 of this Indenture, and Junior Bonds issued in accordance with Section 3.04 of this Indenture.

#### **ARTICLE IV PLEDGE OF TRUST ESTATE; REVENUES AND FUNDS**

Section 4.01. Pledge of Trust Estate. Subject only to the rights of the Issuer to apply amounts under the provisions of this Article IV, a pledge of the Trust Estate to the extent provided herein is hereby made, and the same is pledged to secure the payment of the principal of, premium, if any, and interest on the Bonds. The pledge hereby made shall be valid and binding from and after the time of the delivery of the first Bond authenticated and delivered under this Indenture.

Section 4.02. Establishment of Funds.

(a) The Costs of Issuance Fund, the Project Fund, the Rebate Fund, the Subordinate Revenue Fund, and the Subordinate Bond Fund are hereby created and established and shall be held in accordance with this Indenture by the Trustee.

(b) Separate accounts within the Subordinate Bond Fund shall be established by the Trustee for such purposes as it deems appropriate.

(c) The Trustee may establish such other funds, accounts and subaccounts as it determines necessary to segregate proceeds of, payments for, and expenses related to a Series of Bonds. Each Fund, account and subaccount shall be maintained by the Trustee as a separate and distinct trust fund or account to be held, managed, invested, disbursed and administered as provided in this Indenture. All moneys deposited in the Funds, accounts and subaccounts shall be used solely for the purposes set forth in this Indenture. The Trustee shall keep and maintain adequate records pertaining to each Fund, account and subaccount, and all disbursements therefrom.

Section 4.03. Moneys Held in Trust as Security. All moneys from time to time received by the Trustee and held in any Fund created hereunder shall be held in trust by the Trustee as security for the benefit of Bondholders from time to time of the Bonds and the Trustee (to the extent provided herein), as their respective interests shall appear. Pursuant to the Supplemental Act, an irrevocable first lien and security interest in such funds is hereby fixed, established and granted for such purposes and for the benefit of such Persons; provided that no such lien and security interest shall be created in the Rebate Fund.

Section 4.04. Disposition of Proceeds of Series 2019B Subordinate Bonds.

(a) The Issuer shall deposit with the Trustee all of the net proceeds from the sale of the Series 2019B Subordinate Bonds and the Trustee shall out of such proceeds under this Indenture:

(i) Deposit to the Costs of Issuance Fund \$\_\_\_\_\_, to be transferred and disbursed by the Trustee for payment of Issuance Costs as directed by an Authorized Representative.

(ii) Deposit to the Project Fund \$\_\_\_\_\_, to be disbursed by the Trustee as provided in Section 4.07 hereof.

(b) The disposition of the proceeds of any other Series of Subordinate Bonds issued pursuant to Article III hereof shall be as provided in the Supplemental Indenture establishing such Series.

Section 4.05. Subordinate Revenue Fund.

(a) While the Senior Bonds are outstanding under the Senior Bonds Indenture, the Trustee shall deposit all Subordinate Pledged Revenues available pursuant to Section 4.05(b) “seventh” of the Senior Bonds Indenture into the Subordinate Revenue Fund. If no Senior Bonds are outstanding under the Senior Bonds Indenture, the Issuer shall deposit or cause to be deposited all Subordinate Pledged Revenues with the Trustee and the Trustee shall deposit all such moneys in the Subordinate Revenue Fund. The Issuer shall also deposit or cause to be deposited with the Trustee all moneys described in subsection (d) of the definition of Subordinate Pledged Revenues and the Trustee shall deposit all such moneys in the Subordinate Revenue Fund.

(b) At least ten days prior to each December 15, the Trustee shall make transfers from the Subordinate Revenue Fund to the following Funds and accounts in the amounts and in the order of priority set forth below:

first, on each Calculation Date, to the Rebate Fund, in an amount equal to any deposits required to be made therein pursuant to Section 4.12 hereof;

second, to the Trustee to pay its fees and expenses as the same become due and payable;



third, to the Subordinate Bond Fund, an amount equal to interest which has accrued on the Outstanding Series 2019B Subordinate Bonds and any other Outstanding Subordinate Bonds in the current Bond Year;

fourth, to the Subordinate Bond Fund, an amount equal to the amount of principal and premium, if any, due and payable on the Series 2019B Subordinate Bonds and any other Subordinate Bonds on the next succeeding December 15, and all remaining Subordinate Pledged Revenues then on deposit in the Subordinate Revenue Fund to the extent the same may be applied to the special mandatory redemption pursuant to Section 7.01(c)(ii) hereof on the next succeeding December 15; and

fifth, while any Junior Bonds are Outstanding, after all deposits in the required amounts have been made for the current Bond Year under “first” through “fourth” above, amounts in the Subordinate Revenue Fund for such Bond Year shall be transferred on December 16, of each Bond Year to any other fund or account established for the payment of the principal of, premium if any, and interest on such Junior Bonds, in the amounts required by the resolution or other agreements or enactment authorizing the issuance of such Junior Bonds.

#### Section 4.06. Use of Moneys in the Subordinate Bond Fund.

(a) Moneys deposited from time to time in the Subordinate Bond Fund shall be applied by the Trustee to pay principal of and interest on all Subordinate Bonds Outstanding when due at maturity or upon prior redemption hereunder. The Trustee may create subaccounts in the Subordinate Bond Fund for the payment of principal and interest.

(b) Moneys deposited in the Subordinate Bond Fund from sources other than investment earnings on any account created therein shall be spent within a 13-month period beginning on the date of deposit, and any amount received from the investment of money held in or transferred to any Fund created or permitted herein shall be spent within one year beginning on the date of receipt. For purposes of this provision, money deposited in any account or subaccount of the Subordinate Bond Fund shall be deemed spent on a first-in, first-out basis.

(c) When Subordinate Bonds are redeemed or purchased, the amount, if any, in the Subordinate Bond Fund representing interest thereon shall be applied to the payment of accrued interest in connection with such redemption or purchase. Whenever the amount in the Subordinate Bond Fund is sufficient to redeem all of the Outstanding Subordinate Bonds of the applicable Series and to pay interest accrued to the redemption date, the Issuer will cause the Trustee to redeem all such Subordinate Bonds on the applicable redemption date specified by the Issuer. Any amounts remaining in the Subordinate Bond Fund after payment in full of the principal or redemption price, premium, if any, and interest on the Subordinate Bonds (or provision for payment

thereof) and the fees, charges and expenses of the Issuer, the Trustee and any paying agents, shall be paid to the Subordinate Revenue Fund.

Section 4.07. Payments from Project Fund.

(a) The Trustee shall make payment from the Project Fund in the amount requested on or before the third Business Day immediately following receipt of a Project Fund Disbursement Request (“**Request**”) in the form attached hereto as Exhibit C to the extent that there are funds available therein. Unless otherwise approved by the Authority, the Issuer shall not request payment for costs of any Authorized Projects in excess of the amounts set forth on Exhibit B to the Development Agreement. A copy of each Request shall be provided by the Issuer to the Authority promptly following submission to the Trustee. In paying any Request under this Section, unless the Trustee has actual knowledge to the contrary, the Trustee may conclusively rely as to the completeness and accuracy of all statements in such Request if such Request is signed by the Authorized Representative and the Issuer’s Accountant, and the Trustee shall not be required to make any independent investigation in connection therewith. The execution of any Request by an Authorized Representative and the Issuer’s Accountant shall constitute, unto the Trustee, an irrevocable determination that all conditions precedent to the payments requested have been completed.

(b) If there are any moneys remaining in either account of the Project Fund on the third anniversary of the Closing Date for the Series 2019B Subordinate Bonds, or upon the payment of all Project Costs payable from the Project Fund, to be evidenced by a certificate of the Authorized Representative delivered to the Trustee, any moneys remaining in the Project Fund shall be applied by the Trustee, without any direction of the Issuer, to the redemption of Series 2019B Subordinate Bonds, pursuant to the special mandatory redemption provisions described in Section 7.01(c)(i) hereof. Unless there shall be delivered to the Trustee a Favorable Opinion of Bond Counsel and a direction of the Authorized Representative respecting investments, any amounts held in the Project Fund after the third anniversary of the Closing Date of the Series 2019B Subordinate Bonds shall not be invested at a yield in excess of the yield on Series 2019B Subordinate Bonds. Any amounts representing investment earnings on the amounts in the Project Fund between the date when a notice of redemption is given pursuant to Section 7.04 hereof and the date fixed for redemption in such notice, to the extent such amounts are not used for such redemption, shall be applied by the Trustee to pay maturing principal or interest on the Series 2019B Subordinate Bonds.

(c) Upon the occurrence and continuance of an Event of Default, the Trustee will cease disbursing moneys from the Project Fund but instead shall apply such moneys in the manner provided by Article VIII hereof.

(d) For seven years from the third anniversary of the Closing Date of a Series of Subordinate Bonds, the Trustee shall retain in its possession all orders, requisitions, Project Fund Disbursement Requests, as well as any and all supporting materials received by it pursuant to this Section with respect to such Series of Subordinate Bonds, subject to

the inspection of the Issuer, the Bondholders and their representatives at all reasonable times.

(e) A Supplemental Indenture authorizing the issuance of a Series of Bonds shall set forth provisions applicable to the accounts of the Project Fund funded with proceeds of such Bonds.

Section 4.08. [Reserved].

Section 4.09. [Reserved].

Section 4.10. [Reserved].

Section 4.11. [Reserved]

Section 4.12. Rebate Fund. This Section 4.12 shall apply separately to each issue of Tax-Exempt Bonds. Within 60 days after each Calculation Date and not later than 60 days after the redemption of the last Tax-Exempt Bond, the Issuer shall compute the Excess Investment Earnings for the year just completed and shall direct the Trustee to, subject to Section 4.05 hereof, transfer from the Revenue Fund to the Rebate Fund an amount equal to the amount so computed. If the amount so computed is a negative number, said amount may be withdrawn from the Rebate Fund and deposited in the Revenue Fund. All amounts in the Rebate Fund, including income earned from the investment of such amounts, shall be held by the Trustee free and clear of the liens described in this Indenture. The Trustee shall pay over to the United States of America, not later than 60 days after the fifth anniversary of the date of issuance of the Tax-Exempt Bonds and at least every five years thereafter until the final redemption of the last Bond, an amount equal to 90% of the net aggregate amount transferred to or earned in the Rebate Fund during such period and not theretofore paid to the United States of America and, not later than 60 days after the redemption of the last Tax-Exempt Bond, 100% of the aggregate amount in the Rebate Fund. Notwithstanding the provisions of this Section 4.12, the Trustee shall at all times maintain and administer the Rebate Fund in conformity with all applicable federal statutes and regulations as the same may be amended from time to time.

Section 4.13. Costs of Issuance Fund. The Trustee shall make payments from the applicable account of the Costs of Issuance Fund to pay the Issuance Costs incurred by the Issuer in connection with the issuance of related Series of Bonds (which shall not include Project Costs). Any funds remaining in a subaccount of the Costs of Issuance Fund six months after the date of issue of the related Series of Bonds shall be transferred by the Trustee at the direction of the Authorized Representative to (i) the Revenue Fund or (ii) the Project Fund. The Trustee shall make payment from the Cost of Issuance Fund in the amount requested on or before the third Business Day immediately following receipt of a written request signed by an Authorized Representative of the Issuer to the extent that there are funds available therein. In paying any such request under this Section, unless the Trustee has actual knowledge to the contrary, the Trustee may conclusively rely as to the completeness and accuracy of all statements in such request if such Request is signed by the Authorized Representative, and the Trustee shall not be required to make any independent investigation in connection therewith. The execution of any such request

by an Authorized Representative shall constitute, unto the Trustee, an irrevocable determination that all conditions precedent to the payments requested have been completed.

Section 4.14. Final Balances. Upon the deposit with the Trustee of moneys sufficient to pay all principal of, premium, if any, and interest on the Bonds, and upon satisfaction of all claims against the Issuer hereunder, including the payment of all fees, charges and expenses of the Trustee and any Paying Agent, which are properly due and payable hereunder, and after compliance with the provisions of Section 4.12 regarding moneys in the Rebate Fund, or upon the making of adequate provisions of the payment of such amounts, as permitted hereby, all moneys remaining in all Funds and accounts, shall be remitted to the Issuer; provided that the Trustee shall not be liable for any interest on any such Funds and accounts held uninvested in accordance with the terms hereof.

## **ARTICLE V COVENANTS AND AGREEMENTS OF THE ISSUER**

Section 5.01. Performance of Covenants. The Issuer covenants that it will timely and faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture in any and every Bond and in all proceedings of the Issuer pertaining thereto. The Issuer covenants, represents, warrants and agrees that it is duly authorized under the laws of the State, to issue the Bonds and to execute this Indenture, and to pledge the Trust Estate in the manner and to the extent herein set forth, that all actions on its part required for the issuance of the Bonds and the execution and delivery of this Indenture, have been duly and effectively taken or will be duly taken as provided herein, and that this Indenture is a valid and enforceable instrument of the Issuer and that the Bonds in the hands of the owners thereof are and will be valid and enforceable obligations of the Issuer according to the terms thereof.

Section 5.02. Existence; Compliance with Laws. The Issuer shall maintain its existence, shall use its best efforts to maintain and renew all its rights, powers, privileges and franchises; and shall comply with all valid and applicable laws, acts, rules, regulations, permits, orders, requirements and directions of any legislative, executive, administrative or judicial body.

Section 5.03. Payment of Principal, Interest and Premium; Other Required Payments.

(a) The Issuer will promptly pay or cause to be paid the principal of, premium, if any, and interest on all Bonds issued hereunder according to the terms hereof. The Issuer hereby covenants to provide for the payment of principal of and interest on the Bonds by making the payments of principal and interest set forth in Section 4.06, hereof in the manner described therein. Such payments shall be reduced to the extent that moneys are already on deposit in the applicable account of the Senior Bonds Fund.

(b) The Issuer shall appoint one or more Paying Agents for such purpose, each such agent to be a national banking association, a bank and trust company or a trust company. The Issuer hereby appoints the Trustee to act as sole Paying Agent, and designates the principal operations center of the Trustee as the place of payment, such

appointment and designation to remain in effect until notice of change is filed with the Trustee.

(c) The Issuer also agrees to pay the following amounts to the following persons:

(i) to the Trustee, all reasonable fees of the Trustee for services rendered under this Indenture and all reasonable fees and charges of paying agents, registrars, Bond Counsel, attorneys, managers, accountants, engineers and others incurred on request of the Trustee in the performance of services under this Indenture for which the Trustee and such other persons are entitled to payment or reimbursement; provided that the Issuer may, without creating a default hereunder, contest in good faith the reasonableness of any such services, fees or expenses;

(ii) to the appropriate party the fees and expenses of any rebate analyst selected by the Issuer;

(iii) to the Trustee all amounts to be deposited to the Rebate Fund, as and when the same become due as determined pursuant to the Indenture, to the extent there are no other amounts available to make such deposits, and to cause the Trustee to apply such funds in compliance with the terms of the Indenture;

(iv) to the appropriate party the fees and expenses of a dissemination agent in connection with services provided pursuant to the Continuing Disclosure Agreement; and

(v) to any Bondholder, reimbursement of any fees and expenses incurred in connection with the enforcement of its rights hereunder.

(d) In the event the Issuer should fail to make any of the payments required by this Section, the item or installment shall continue as an obligation of the Issuer until the amount shall have been fully paid, and the Issuer agrees to pay the same. Nothing in the Bonds or in this Indenture shall be considered or construed as pledging any funds or assets of the Issuer other than those pledged hereby or creating any liability of the Issuer's directors, members, employees or other agents.

(e) The Issuer shall not take any actions or omit to take an action which would have a materially adverse effect on the Bonds or the ability of the Issuer to repay the Bonds.

(f) The Issuer hereby covenants and agrees to impose the Subordinate Required Mill Levy as provided for in this Indenture and to remit, or cause to be remitted, to the Trustee, all Subordinate Required Mill Levy Revenues, all Subordinate Pledged PIF Revenues and all Subordinate Pledged Tax Increment Revenues.

Section 5.04. Conditions Precedent. Upon the date of issuance of any of the Bonds, the Issuer hereby covenants that all conditions, acts and things required by the laws of the State or by this Indenture to exist, to have happened or to have been performed precedent to or in the issuance of the Bonds shall exist, have happened and have been performed.

Section 5.05. Maintenance and Management of Authorized Projects. So long as the Bonds are Outstanding, the Issuer will keep the Authorized Projects financed with proceeds of Subordinate Bonds (to the extent owned or controlled by the Issuer) and all parts thereof in good repair and good operating condition, making all repairs thereto and renewals and replacements thereof necessary for this purpose, so that such Authorized Projects will remain suitable and efficient for use as a facility of the character described in and contemplated by this Indenture, or, such other uses as are not inconsistent with this Indenture.

Section 5.06. Construction, Equipping and Operation of the Authorized Projects. The Issuer shall:

(a) cause the Authorized Projects financed with proceeds of the Bonds to be acquired and constructed substantially in accordance with all applicable building code and zoning requirements, and provide all other improvements, access roads, utilities, and other items required for facilities fully operable for the purposes specified herein, all with due diligence;

(b) cause to be acquired and properly installed in such Authorized Projects such items of machinery and equipment and other items of personal property as may be necessary and desirable in the Issuer's reasonable judgment for operation of such Authorized Projects;

(c) cause insurance relating to such Authorized Projects which are owned or controlled by the Issuer to be procured and maintained in accordance with Section 5.10 hereof;

(d) cause to be paid when due or provide for the payment of all fees, costs and expenses incurred in connection with the acquisition, construction, and equipping of the Authorized Projects financed with proceeds of Subordinate Bonds; and

(e) ask, demand, sue for, levy, recover and receive all those sums of money, debts and other demands whatsoever which may be due, owing and payable under the terms of any agreement in connection with the acquisition, construction, furnishing, equipping, and operation of such Authorized Projects, and enforce the provisions of any obligation, bond or other performance security with respect thereto.

Section 5.07. Payment of Project Costs by the Issuer. The Issuer agrees that it will use moneys in the Project Fund to pay for costs of Authorized Projects, including, without limitation, all expenses which under generally accepted accounting principles constitute necessary capital expenditures for the completion of such Authorized Projects, but not including any working capital or expendable supplies or necessary equipment (collectively, the "**Project Costs**"). The

Project Costs shall be payable or reimbursable from proceeds of Subordinate Bonds to the extent and in the manner provided in Section 4.07 hereof.

Section 5.08. Taxes and Other Governmental Charges and Utility Charges. To the extent taxes and special assessments are lawfully levied upon or with respect to the Authorized Projects, or to the extent other charges are lawfully made by any governmental body for public improvements that may be or become secured by a lien on such Authorized Projects, the Issuer agrees to make, or cause to be made, promptly all payments due with respect to such taxes, special assessment or charges so long as the Bonds are Outstanding. In addition, the Issuer will make, or cause to be made, all payments and utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of such Authorized Projects owned or controlled by it. With respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, with or without interest, the Issuer shall be obligated to pay only such installments and interest as are required to be paid so long as the Subordinate Bonds are outstanding. The Issuer may in good faith contest any such taxes, assessments and other charges and, in the event of such contest, may permit the items so contested to remain unpaid during the period of the contest and any appeal therefrom, provided that the Issuer shall first furnish to the Trustee, an Opinion of Counsel, addressed to the Trustee, that nonpayment of any such items will not materially endanger the lien of the Indenture as to any part of such Authorized Projects and will not subject such Authorized Projects or any part thereof to loss or forfeiture.

Section 5.09. Perfection of Lien. Pursuant to the Supplemental Act, the Subordinate Pledged Revenues pledged hereunder for the payment of the Subordinate Bonds and now or hereafter received by the Issuer shall immediately be subject to the lien of each such pledge without any physical delivery, filing, or further act. The lien of each such pledge and the obligation to perform the contractual provisions made hereby shall have priority over any or all other obligations and liabilities of the Issuer with regard to the Subordinate Pledged Revenues, to the extent provided herein. Pursuant to Section 208 of the Supplemental Act, the pledges and liens created by this Indenture are subject to any prior pledges or liens and the Issuer hereby covenants and represents that it has not heretofore created any prior pledge or lien on the Subordinate Pledged Revenues. The lien of each such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the Issuer irrespective of whether such persons have notice thereof. From time to time, as reasonably requested by the Trustee, the Issuer shall furnish to the Trustee an Opinion of Counsel setting forth what, if any, actions by the Issuer or Trustee should be taken to preserve such security.

The Issuer shall execute or cause to be executed any and all instruments and take such further action under Section 5.15 hereof and as otherwise may be required by law or as shall reasonably be requested by the Trustee for such protection of the interests of the Trustee and the Bondholders, and shall furnish satisfactory evidence to the Trustee of filing and refiling of such instruments and of every additional instrument which shall be necessary to preserve the lien of this Indenture upon the Trust Estate or any part thereof until the principal of and premium, if any, and interest on the Subordinate Bonds issued hereunder shall have been paid. The Trustee shall execute or join in the execution of any such further or additional instrument and file or join

in the filing thereof at such time or times and in such place or places as it may be advised by an Opinion of Counsel will preserve the lien of this Indenture upon the trust estate or any part thereof until the aforesaid principal shall have been paid.

Section 5.10. Insurance.

(a) Prior to completion of the Authorized Projects financed with Subordinate Bond proceeds, the Issuer shall cause all contractors which have construction contracts for work to be performed in excess of \$50,000 to procure and maintain, continuously in effect with respect to such Authorized Projects policies of insurance against such risks and in such amounts as are customary for a prudent construction contractor with respect to construction of properties comparable to those comprising such Authorized Projects.

(b) The Issuer shall procure and maintain continuously in effect during the term of this Indenture with respect to completed Authorized Projects that it owns, operates and maintains policies of insurance against such risks and in such amounts as are customary for a prudent owner of properties comparable to those comprising such Authorized Projects. Without limiting the generality of the foregoing provision, the Issuer shall, at all times, maintain the following insurance with respect to completed Authorized Projects which it owns, operates and maintains:

- (i) insurance covering the following risks of loss:
  - (a) fire;
  - (b) extended coverage perils;
  - (c) vandalism and malicious mischief;
  - (d) boiler explosion (but only if steam boilers are present); and
  - (e) all other risks normally covered by such insurance,

all in an amount equivalent to the full insurable value of such Authorized Projects property. “**Full insurable value**” shall include the actual replacement cost of the Buildings (excluding foundations) and contents therein, including architectural, engineering, legal and administrative fees, without deduction for depreciation, and shall be determined at least annually by the Issuer. The policies required by this clause shall be either subject to a no co-insurance clause or shall contain an agreed amount clause and may include a deductibility provision not exceeding \$10,000.

(ii) Commercial general liability insurance against liability for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the condition of such Authorized Projects or any part thereof, in amounts not less than \$1,000,000 per occurrence and \$2,000,000 aggregate; provided that the requirements of this paragraph (ii) with respect to the amount of



insurance may be satisfied by an excess coverage policy. The Issuer shall not, by this provision or any other provision herein, be deemed to have altered or waived any of its immunities under the Colorado Governmental Immunities Act.

(iii) To the extent required by law, compensation insurance or qualified self-insurance against liability for compensation under the Worker's Compensation Act now or hereafter enacted in the State to cover all persons employed by the Issuer and to cover liability for compensation under any such act.

(c) All insurance required in this Section 5.10 shall be taken out and maintained with sound and reputable insurance companies authorized to do business in the State and selected by the Issuer. In lieu of separate policies, the Issuer may maintain blanket policies having the coverage required herein.

Section 5.11. No Liens. As of the date of issuance of the Series 2019 Bonds, there are no liens or encumbrances of any nature whatsoever on or against the Revenues other than with respect to the Series 2019 Bonds.

Section 5.12. No Liability of Issuer's Officers, Etc. Notwithstanding anything to the contrary set forth herein, or any other agreement or instrument relating to the Subordinate Bonds, neither the Issuer's officers, directors, employees or agents, nor their heirs, successors or assigns, shall have any liability, personal or otherwise, for payment or performance of the covenants or obligations set forth in this Indenture or in any other agreement or instrument securing the indebtedness and obligations created hereunder.

Section 5.13. Budget; Financial Statements; Notices; Determinations.

(a) There shall be prepared and adopted annually and at such other times as may be provided by law a budget for the Issuer, which budget shall be available to the Trustee and the holders of the Bonds.

(b) The Issuer shall keep proper and current books of records and account in which complete and accurate entries will be made of the receipt and use of the Subordinate Pledged Revenues and all components thereof, the amounts paid out as principal and interest on the Bonds and all other payments due in connection with the Subordinate Bonds, the use of Subordinate Bond proceeds, the costs and expenditures of the Issuer, including administrative and management expenses, and such other calculations, allocations and payments as may be reasonably requested by the Trustee hereunder, all in accordance with Generally Accepted Accounting Principles (GAAP) consistently applied.

(c) The Issuer, while any Subordinate Bonds are Outstanding and unpaid, will cause an annual audit of its revenues (including Subordinate Pledged Revenues hereunder) and expenditures to be made by an Accountant. The Issuer agrees to deliver the audit in accordance with the Continuing Disclosure Agreement. Such audited financial statements shall include a balance sheet as of the end of such Fiscal Year and a

statement of revenues, expenditures and changes in fund balances for such Fiscal Year, which shall be prepared on a GAAP basis.

(d) The Issuer shall, to the extent required by applicable laws and regulations of the State, file or cause to be filed its annual audit with the Office of the State Auditor, its annual budget with the Colorado Division of Local Government, Department of Local Affairs, its annual budget and annual audit with the Securities Commissioner of the State as provided in Section 11-59-104(6)(a) of the Colorado Revised Statutes, and such other reports as required by applicable State law.

(e) Any owner of any of the Subordinate Bonds, or any duly authorized agent or agents of such owner, shall have the right at all reasonable times to inspect all public records, accounts and data relating to the Subordinate Pledged Revenues and the Authorized Projects financed with Subordinate Bond proceeds and all properties appertaining thereto.

(f) The Issuer shall file with the Trustee such additional information as the Trustee may reasonably request concerning the Issuer and the Subordinate Pledged Revenues.

Section 5.14. Tax Covenants. The Issuer covenants with the owners of the Tax-Exempt Bonds that, notwithstanding any other provision of this Indenture or any other instrument, it will make no investment or other use of the proceeds of the Tax-Exempt Bonds which would cause such Bonds to be arbitrage bonds under Section 148 of the Code, and the regulations thereunder, and it further covenants that it will comply with the requirements of such Section and regulations. The foregoing covenants shall extend throughout the term of the Tax-Exempt Bonds, to all funds created under this Indenture and all moneys on deposit to the credit of any such Fund, and to any other amounts which are Tax-Exempt Bond proceeds for purposes of Section 148 of the Code, and the regulations thereunder.

The Issuer will determine the amount of the required arbitrage rebate, if any, payable to the United States government under Section 148(f) of the Code and will make or cause to be made any required payments beginning not later than 30 days after the end of the fifth Bond Year of the Tax-Exempt Bonds, regardless of whether there are any remaining proceeds or other funds attributable to the Tax-Exempt Bonds that are available for the purpose. The Issuer will not permit the amount of gross proceeds invested in any Bond Year at a yield materially higher than the Tax-Exempt Bond yield to exceed the limits of Section 148 of the Code.

The Issuer shall not use or direct the use of the proceeds of the Tax-Exempt Bonds in any way, or take or omit to take any other action, which would cause the interest on any Bonds to become subject to federal income tax under the Code, and shall use projects financed with proceeds of the Tax-Exempt Bonds exclusively for general public use, so that such Bonds will not be classified as “private activity bonds” and the interest thereon will not be included in gross income under the Code.

Section 5.15. Further Assurances. Except to the extent otherwise provided in this Indenture, the Issuer shall not enter into any contract or take any action by which the rights of the

Trustee or the Bondholders may be impaired and shall, from time to time, execute and deliver such further instruments requested by the Trustee under Section 5.09 hereof or otherwise and take such further action as may be required to carry out the purposes of this Indenture. The Issuer shall cause a true and correct copy of the executed Cooperation Agreement to be delivered to the Trustee and shall cause the Authority to pay the Subordinate Pledged Tax Increment Revenues directly into an account or accounts of the Trustee at a financial institution designated by the Trustee from time to time, which account or accounts shall be part of the Revenue Fund (except as otherwise permitted herein).

Section 5.16. Surety Bonds. Each official of the Issuer or other person having custody of any Subordinate Pledged Revenues or amounts available to pay any Project Costs financed with proceeds of the Bonds, or responsible for their handling, shall be bonded at all times in accordance with applicable law, which bond shall be conditioned upon the proper application of said moneys; provided that the requirement of this Section shall be deemed satisfied by a blanket employee dishonesty insurance policy.

Section 5.17. Subordinate Required Mill Levy. The Issuer shall determine the Subordinate Required Mill Levy for each calendar year in accordance with the procedures set forth herein.

Section 5.18. Cooperation Agreement. The Issuer agrees that, without the prior written consent of a Majority Interest, it will not consent to any amendment of or modification to the Cooperation Agreement that would in any manner adversely impact the pledge of Subordinate Pledged Tax Increment Revenues for, or the payment of debt service with respect to the Subordinate Bonds.

## **ARTICLE VI SECURITY FOR AND INVESTMENT OR DEPOSIT OF FUNDS**

Section 6.01. Deposits and Security Therefor. All moneys received by the Trustee under this Indenture shall, except as hereinafter provided, be deposited as trust funds with the Trustee, until or unless invested or deposited as provided in Section 6.02. All deposits with the Trustee (whether original deposits under this Section or deposits or re-deposits under Section 6.02) shall be invested in Permitted Investments.

Section 6.02. Investment or Deposit of Funds. The Trustee shall, at the request and written direction of the Issuer so long as there is no Event of Default under Section 8.01 hereof, invest moneys held in any Fund or account established under this Indenture exclusively in Permitted Investments provided that all investments shall mature, or be subject to redemption, and all deposits in time accounts shall be subject to withdrawal, not later than the date when the amounts will foreseeably be needed for purposes of this Indenture. Any Permitted Investments shall be held by or under the control of the Trustee or pursuant to arrangements satisfactory to the Trustee. The Trustee is authorized to cause to be sold and reduced to cash a sufficient amount of Permitted Investments whenever the cash balance is or will be insufficient to make a requested or required disbursement. The Trustee shall not be accountable for any depreciation in the value of any Permitted Investment or for any loss resulting from such sale. All Permitted

Investments shall be made by the Trustee, at the written direction of the Issuer, subject to the limitations contained herein. If no written direction is provided to the Trustee by the Issuer the Trustee will invest such moneys in any money market fund which qualifies as a Permitted Investment. The written direction of the Issuer shall constitute a certification to the Trustee that such investments constitute Permitted Investments hereunder. Unless otherwise confirmed or directed in writing, an account statement delivered periodically by the Trustee to the Issuer shall confirm that the investment transactions identified therein accurately reflect the investment directions of the Issuer, unless the Issuer notifies the Trustee in writing to the contrary within thirty (30) days of the date of such statement. The Trustee is specifically authorized to purchase or invest in shares of any investment company that (i) is registered under the Investment Company Act of 1940, as amended (including both corporations and Massachusetts business trusts, and including companies for which the Trustee may provide advisory, administrative, custodial, or other services for compensation), (ii) invests substantially all of its assets in short-term high-quality money-market instruments, limited to obligations issued or guaranteed by the United States, and (iii) maintains a constant asset value per share. Additionally, the Trustee may implement its automated cash investment system, to assure that cash on hand is invested and to charge reasonable cash management fees, which may be deducted from income earned on investments. Investments authorized under this Section may be made by the Trustee through its own investment department that of its affiliates or subsidiaries and may charge its ordinary and customary fees for such trades, including cash sweep account fees.

Interest and income received upon investment of moneys in the Rebate Fund shall be deposited into the Revenue Fund. The interest and income received upon such investments of any other Fund or account and any profit or loss resulting from the sale of any investment shall be added or charged to such Fund or account.

Amounts on deposit in the Project Fund after the third anniversary of the issue date of a Series of Bonds may not be invested at a yield higher than the yield of Bonds from which such amounts were derived, unless an opinion of Bond Counsel described above is delivered to the Trustee.

Any investment acquired with proceeds of the Tax-Exempt Bonds, including investment in a guaranteed investment contract, shall be acquired at fair market value within the meaning of Treas. Reg. § 1.148 5(d)(6).

## **ARTICLE VII REDEMPTION OF BONDS**

### **Section 7.01. Series 2019B Subordinate Bonds Subject to Redemption.**

(a) General. The Series 2019B Subordinate Bonds are subject to redemption prior to maturity as provided herein and in the form of the Subordinate Bonds attached hereto. Payment of the redemption price of any Series 2019B Subordinate Bond shall be made on the redemption date only upon the surrender to any Paying Agent of any Series 2019B Subordinate Bond so redeemed. Other Series of Bonds shall be subject to

redemption prior to maturity as provided in the Supplemental Indenture authorizing such Bonds.

(b) Optional Redemption. The Series 2019B Subordinate Bonds are subject to redemption prior to maturity at the option of the Issuer on any date, on and after December 15, 20\_\_, in whole or in part, upon payment of the following redemption prices (stated as a percentage of the principal amount of the Series 2019B Subordinate Bonds to be redeemed), plus interest accrued to the redemption date:

<u>Optional Redemption Date</u>	<u>Redemption Prices</u>
December 15, 20__ through December 14, 20__	102%
December 15, 20__ through December 14, 20__	101%
December 15, 20__ and thereafter	100%

(c) Special Mandatory Redemption

(i) Upon the occurrence of an event described in Section 4.07(c) hereof, the Series 2019B Subordinate Bonds shall be subject to mandatory redemption in part in the maximum principal amount that may be redeemed from amounts required to be applied to such redemption from the Project Fund, as applicable, in accordance with Section 4.07(c), for a redemption price equal to the principal amount of the Series 2019B Subordinate Bonds so redeemed plus accrued interest thereon to the redemption date. Such redemption shall occur on the next Interest Payment Date that is at least 30 days from the date of the occurrence of the applicable event described in Section 4.07(c). Notice of such special mandatory redemption shall be provided by the Trustee pursuant to Section 7.04 hereof.

(ii) On each December 15, the Series 2019B Subordinate Bonds shall be subject to mandatory redemption in part in the maximum amount that is able to be redeemed (in integral multiples of \$1,000) from moneys on deposit in the Subordinate Bond Fund on such date at a redemption price equal to the principal amount of the Series 2019B Subordinate Bonds so redeemed plus all accrued and unpaid interest thereon to the redemption date, and with no redemption premium. Notice of such special mandatory redemption shall be provided by the Trustee pursuant to Section 7.04; provided, however, that because on the date of such redemption notice from the Trustee the amount of moneys required for such redemption will not be on deposit in the Subordinate Bond Fund, the notice given by the Trustee may state the principal amount expected to be redeemed on such date, and accordingly, the actual principal amount of Series 2019B Subordinate Bonds redeemed may vary from the amount set forth in such redemption notice. The mandatory redemption provided for in this subsection (ii) shall be made by the Trustee without further instructions or direction from the Issuer and notwithstanding any instructions from the Issuer to the contrary.

Section 7.02. Issuer Direction of Optional Redemption. Notice of any optional redemption from the Issuer to the Trustee shall specify the principal amount of Subordinate Bonds to be redeemed and the redemption date. The Issuer will give the notice to the Trustee at least 15 days (or such lesser number of days as may be acceptable to the Trustee) prior to the day on which the Trustee is required to give notice of such optional redemption to the Bondholders.

Section 7.03. Selection of Bonds to be Called for Redemption. Except as otherwise provided herein or in the Subordinate Bonds, if it is provided that the Trustee shall call Subordinate Bonds by “lot” or if less than all of any Series of Subordinate Bonds are to be redeemed, the particular Subordinate Bonds to be called for redemption shall be selected at the direction of the Issuer. The Trustee shall treat any Subordinate Bond of a denomination greater than the minimum Authorized Denomination as representing that number of separate Subordinate Bonds each of that minimum Authorized Denomination (and, if any Subordinate Bond is not in a denomination that is an integral multiple of the minimum Authorized Denomination, one separate Subordinate Bond of the remaining principal amount of the Subordinate Bond) as can be obtained by dividing the actual principal amount of such Subordinate Bond by that minimum Authorized Denomination. In case a Subordinate Bond is of a denomination larger than the Authorized Denomination, a portion of such Subordinate Bond may be redeemed provided that the remaining portion of the Subordinate Bond shall be in an Authorized Denomination.

Section 7.04. Notice of Redemption.

(a) Unless otherwise provided in a Supplemental Indenture authorizing the issuance of a Series of Bonds, the notice of the call for redemption of Bonds shall identify (i) the complete official name of the issue, (ii) the Bonds or portions thereof to be redeemed by designation, letters, CUSIP numbers, numbers or other distinguishing marks, interest rate, maturity date and principal amount, (iii) the redemption price to be paid, (iv) the date fixed for redemption, (v) the place or places, by name and address, where the amounts due upon redemption are payable and (vi) the name and telephone number of the person to whom inquiries regarding the redemption may be directed; provided, however, that the failure to identify a CUSIP number for said Bonds in the redemption notice, or the inclusion of an incorrect CUSIP number, shall not affect the validity of such redemption notice. The notice may also include a statement that the redemption is conditioned upon receipt of all moneys necessary for the redemption by the Trustee prior to the date fixed for redemption. The notice shall be given by the Trustee on behalf of the Issuer by mailing a copy of the redemption notice by first class mail, postage prepaid, at least 30 days but no more than 60 days prior to the date fixed for redemption, to the owner of each Bond subject to redemption in whole or in part at the owner’s address shown on the Bond Register on the 15th day preceding that mailing. Failure to receive notice pursuant to this Section, or any defect in that notice, as to any Bond, shall not affect the validity of the proceedings for the redemption of any other Bond for which proper notice has been given. Notices of redemption shall also be mailed to the Paying Agent.

(b) The Trustee shall take the following additional actions with respect to such redemption notice, but no defect in the following actions or any failure to take the same shall defeat the effectiveness of the foregoing redemption notice:

(i) At least 30 days prior to the date fixed for redemption, such redemption notice shall be given by (i) registered or certified mail, postage prepaid, (ii) legible facsimile transmission, (iii) electronic means or (iv) overnight delivery service, to the Securities Depository and to the MSRB for posting on EMMA.

(ii) In undertaking the requirements of this subsection (b), the Trustee does so as a courtesy to the institutions listed herein and the Trustee shall not incur any liability as a result of the failure to provide such notice to any such institution or as a result of any defect therein.

(c) If at the time of mailing of notice of any optional redemption the Issuer shall not have deposited with the Trustee moneys sufficient to redeem all the Bonds called for redemption, if the Issuer shall so direct, such notice may state that it is conditional in that it is subject to the deposit of sufficient moneys with the Trustee not later than the scheduled redemption date, and such notice shall be of no effect unless such moneys are so deposited.

Section 7.05. Subordinate Bonds Redeemed in Part. Any Subordinate Bond which is to be redeemed only in part shall be surrendered at a place stated for the surrender of Subordinate Bonds called for redemption in the notice provided for in Section 7.04 (with due endorsement by, or a written instrument of transfer in form satisfactory to the Trustee duly executed by, the owner thereof or his attorney duly authorized in writing) and the Issuer shall execute and the Trustee shall authenticate and deliver to the Owner of such Bond without service charge, a new Bond or Bonds, of the same Series, of any Authorized Denomination as requested by such Owner in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Bond so surrendered.

Section 7.06. Payment of Redemption Price. If (a) an unconditional notice of redemption has been duly given or duly waived by the holders of all Bonds called for redemption or (b) a conditional notice of redemption has been so given or waived and the redemption moneys have been duly deposited with the Trustee, then in either such case the Bonds called for redemption shall be payable on the redemption date at the applicable redemption price. Payment of the redemption price together with accrued interest (if required by the provisions hereof) shall be made by the Trustee, out of Subordinate Pledged Revenues or other funds deposited for the purpose, to the holders of the Bonds called for redemption upon surrender of such Bonds (if required by the provisions hereof or the redemption notice).

Section 7.07. Bond Redemption Fund for Refunding Bonds. Whenever the Issuer issues Refunding Bonds hereunder, the Issuer may, by Supplemental Indenture authorizing such Refunding Bonds, direct the Trustee to establish a separate bond redemption fund and to deposit therein the proceeds of the Refunding Bonds. The Supplemental Indenture shall specify the

investment and application of amounts so deposited including, without limitation, the transfer thereof to any other fiscal agent or trustee of the Issuer and the time and conditions for such transfer.

## **ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES**

### Section 8.01. Events of Default Defined.

(a) The occurrence of any one or more of the following events or the existence of any one or more of the following conditions shall constitute an “**Event of Default**” under this Indenture (whatever the reason for such event or condition and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree, rule, regulation, or order of any court or any administrative or governmental body), and there shall be no default or Event of Default hereunder except as provided in this Section:

(i) The Issuer fails to impose the Subordinate Required Mill Levy as provided in this Indenture; or

(ii) The Issuer fails to collect and apply the Subordinate Pledged Revenues in accordance with this Indenture for a period of 45 days after the date on which written notice of such failure, requiring the same to be remedied, shall have been given to the Issuer by the Trustee, or to the Issuer and the Trustee by the Required Holders; or

(iii) If the Issuer shall fail to observe or perform any covenant or agreement on its part under this Indenture other than those covenants and agreements listed under subsection (a)(i) above, for a period of 60 days after the date on which written notice of such failure, requiring the same to be remedied, shall have been given to the Issuer by the Trustee, or to the Issuer and the Trustee by the Required Holders, provided, however, that if the breach of covenant or agreement is one which cannot be completely remedied within the 60 days after written notice has been given, it shall not be an Event of Default with respect to such Series as long as the Issuer has taken active steps within the 60 days after written notice has been given to remedy the failure and is diligently pursuing such remedy; or

(iv) If the Issuer shall institute proceedings to be adjudicated as bankrupt or insolvent, or shall consent to the institution of bankruptcy or insolvency proceedings against it, or shall file a petition or answer or consent seeking reorganization or relief under the Bankruptcy Code or any other similar applicable federal or state law, or shall consent to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee or sequestrator (or other similar official) of the Issuer or of any substantial part of its property, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due; or



(v) The Issuer has failed to comply with any obligation under the Cooperation Agreement.

(b) It is acknowledged that due to the limited nature of the Subordinate Pledged Revenues, the failure to pay the principal of or interest on the Subordinate Bonds on an Interest Payment Date shall not, in and of itself, constitute an Event of Default hereunder, if the Issuer is otherwise in compliance with all provisions hereof.

Section 8.02. No Acceleration. Except as may be provided in a Supplemental Indenture applicable to all Series of Bonds Outstanding hereunder, there shall be no rights of acceleration with respect to the Bonds.

Section 8.03. Other Remedies. Following the occurrence of an Event of Default, the Trustee may enforce each and every right granted to the Issuer or the Trustee hereunder. In exercising such rights and the rights given the Trustee under this Article VIII, the Trustee shall take such action as, in the judgment of the Trustee applying the standards described in Section 9.06 hereof, would best serve the interests of the Bondholders.

Section 8.04. Legal Proceedings by Trustee. If any Event of Default has occurred and is continuing, the Trustee in its discretion may, and upon the written request of the Majority Interest and receipt of indemnity to its satisfaction, shall, in its own name:

(a) By mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Bondholders, including the right to require the Issuer to enforce any rights under any Issuer Agreement and to require the Issuer to carry out any other provisions of this Indenture for the benefit of the Bondholders; and

(b) By action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Bondholders.

Section 8.05. Discontinuance of Proceedings by Trustee. If any proceeding commenced by the Trustee on account of any default is discontinued or is determined adversely to the Trustee, then the Issuer, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder as though no such proceedings had been commenced.

Section 8.06. Bondholders May Direct Proceedings. The Majority Interest shall have the right, after furnishing indemnity satisfactory to the Trustee, to direct the method and place of conducting all remedial proceedings by the Trustee hereunder, provided that such direction shall not be in conflict with any rule of law or with this Indenture or unduly prejudice the rights of minority Bondholders and provided further that the Trustee may decline to follow such directions if the Trustee, upon advice of counsel, determines that the taking of the action specified in such directions would involve it in personal liability against which indemnity would not be satisfactory.

Section 8.07. [Reserved]

Section 8.08. Limitations on Actions by Bondholders. No Bondholder shall have any right to pursue any remedy hereunder unless:

- (a) the Trustee shall have been given written notice of an Event of Default;
- (b) the Majority Interest shall have requested the Trustee, in writing, to exercise the powers hereinabove granted or to pursue such remedy in its or their name or names;
- (c) the Trustee shall have been offered indemnity satisfactory to it against costs, expenses and liabilities; and
- (d) the Trustee shall have failed to comply with such request within a reasonable time.

Such notification, request, and offer of indemnity are declared in every case at the option of the Trustee to be conditions precedent to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder, it being understood and intended that no one or more Bondholders shall have any right in any manner whatsoever to affect, disturb, or prejudice the lien of this Indenture by his, her, its, or their action, or to enforce any right hereunder except in the manner herein provided and that all proceedings at law or in equity shall be instituted, had, and maintained in the manner herein provided and for the equal benefit of the Bondholders then Outstanding.

Except in the case of the Issuer's failure to deposit Subordinate Pledged Revenues in accordance with Section 4.05(a) hereof, no owner of any Subordinate Bond shall have any right to institute any judicial or other action or remedial proceeding (including, without limitation, bankruptcy or insolvency proceedings) against the Issuer or any of the Issuer's other rights, interests, assets or properties, to collect any moneys due, or to enforce payment on its Subordinate Bond so long as any Senior Bonds remain Outstanding without the written consent of a at least 51% in aggregate principal amount of the Outstanding Senior Bonds. Any action commenced by an owner of any Subordinate Bond shall terminate upon annulment of the default in respect of the Senior Bonds. Notwithstanding the foregoing provisions of this Section 8.08 or any other provision of this Indenture, but subject to the limitations described in the preceding paragraph with respect to owners of any Subordinate Bond, the obligation of the Issuer shall be absolute and unconditional to pay hereunder, but solely from the Subordinate Pledged Revenues and other funds pledged under this Indenture, the principal or redemption price of, and interest on, the Bonds to the respective holders thereof on the respective due dates thereof, and nothing herein shall affect or impair the right of action, which is absolute and unconditional, of such holders to enforce such payment.

Section 8.09. Trustee May Enforce Rights Without Possession of Subordinate Bonds. All rights under the Indenture and the Subordinate Bonds may be enforced by the Trustee without the possession of any Subordinate Bonds or the production thereof at the trial or other proceedings relative thereto, and any proceeding instituted by the Trustee shall be brought in its name for the ratable benefit of the holders of the Subordinate Bonds.

Section 8.10. Delays and Omissions Not to Impair Rights; Waivers of Events of Default. No delays or omissions of the Trustee or the Majority Interest to exercise any right or power accruing upon any Event of Default shall exhaust or impair such right or power or be construed to be a waiver of such Event of Default, or acquiescence therein; and every power and remedy given by this Article VIII may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other then existing Event of Default or shall impair any rights or remedies consequent thereon.

Subject to Section 9.04, the Trustee may waive any Event of Default hereunder and its consequences, and shall do so upon the written request of the Majority Interest. In case of any such waiver, or in case the Trustee or the Majority Interest shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee or the Majority Interest, then and in every such case the Issuer, Trustee and the Bondholders shall be restored to their former positions and rights hereunder with respect to the Trust Estate, and all rights, remedies and powers of the Trustee and the Bondholders shall continue as if no such proceedings had been taken.

Section 8.11. Application of Moneys in Event of Default. During the continuance of an Event of Default, all moneys held and received by the Trustee under this Indenture pursuant to any right given or action taken under the provisions of this Article and any other moneys held as part of the Trust Estate shall, after payment of the costs and expenses of the proceedings which result in the collection of such moneys and of the fees, expenses and advances incurred or made by the Trustee, including attorneys' fees, costs and expenses with respect thereto, be applied according to the accrued debt service deposits or payments with respect to each Series of Bonds as follows:

(a) Unless the principal of all such Outstanding Subordinate Bonds shall have become due and payable:

First: To the payment of all installments of interest then due on any Subordinate Bond with interest on such overdue interest at a rate of interest borne thereby, and, if the amount available shall not be sufficient to pay in full any particular installment together with such interest, then to the ratable payment of the amount due on such installment; and

Second: To the payment of the unpaid principal of any Subordinate Bond and, if the amount available shall not be sufficient to pay in full Subordinate Bonds due on any particular date, then to the ratable payment of the amounts due on such date.

(b) If the principal of all Outstanding Subordinate Bonds shall have become due and payable, all such moneys held hereunder shall be applied to the payment of the principal, premium, if any, and interest then due and unpaid upon any Subordinate Bond with interest on such overdue amounts at the rate of interest borne thereby, without

preference or priority as between principal, premium, if any, or interest on such Subordinate Bond, ratably, according to the amounts due respectively for principal, premium, if any, and interest to the Persons entitled thereto.

Any payment or distribution of assets of the Issuer of any kind or character, whether in cash, instruments, securities or other property, by set-off or otherwise, to which any owner of a Subordinate Bond would be entitled but for the provisions hereof, shall be paid by the Issuer or by any receiver, trustee in bankruptcy, liquidating trustee, agency or other person making such payment or distribution, directly to the Trustee for payment to the owners of the Senior Bonds, to the extent necessary to pay all amounts then due and payable on such Senior Bonds in full, in cash, before any payment or distribution is made in respect of the Subordinate Bonds. In the event that any payment or distribution of assets of the Issuer of any kind or character, whether in cash, instruments, securities or other property, shall be received by any owner of Subordinate Obligations in respect of any Subordinate Bonds, as applicable, from any source, directly or indirectly, such payment or distribution shall be held in trust for the benefit of, and shall be immediately paid over and delivered to, the Trustee for payment to the owners of the Senior Bonds, to the extent necessary to pay all amounts then due and payable to such owners of the Senior Bonds.

Whenever moneys are to be applied by the Trustee pursuant to the provisions of this Section, such moneys shall be applied by it at such times, and from time to time, as the Trustee shall determine in accordance with this Indenture, having due regard for the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such moneys, it shall fix a Special Record Date in accordance with Section 2.09 (which shall be an Interest Payment Date unless the Trustee shall deem another date more suitable) upon which such application is to be made and upon such Special Record Date interest on the principal amounts to be paid on such Special Record Date shall cease to accrue if so paid. The Trustee shall give such notice as it may deem appropriate in accordance with this Indenture of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the Holder of any Bond until such Subordinate Bond shall be presented to the Trustee for appropriate endorsement of any partial payment or for cancellation if fully paid.

Whenever all installments of interest then due on the Subordinate Bonds and all unpaid principal amounts of any Subordinate Bonds that shall have become due have been paid under the provisions of this Section and all expenses and charges of the Trustee have been paid, the Trustee shall resume making the transfers from the Revenue Fund in the amounts and according to the priority set forth in Article V hereof. If all Subordinate Bonds and the interest thereon have been paid in full, together with all expenses and charges of the Trustee, any balance remaining shall be paid as otherwise required by Article V hereof, and if not so required, to the Issuer or as a court of competent jurisdiction may direct.

Section 8.12. Trustee's Right to Receiver. Upon an Event of Default, the Trustee shall be entitled as of right to the appointment of a receiver ex parte upon prior written notice to the Issuer; and the Trustee, the Bondholders and any receiver so appointed shall have such rights and

powers and be subject to such limitations and restrictions as may be contained in or permitted by State law.

Section 8.13. Bankruptcy Proceedings. The Trustee is hereby authorized and directed, on behalf of the owners of the Subordinate Bonds, to file a proof or proofs of claim in any bankruptcy, receivership or other insolvency proceeding involving the Issuer. With respect to any matter in any such proceeding which requires the vote of any claimant, the Trustee is hereby authorized and directed to vote on behalf and in the name of the owners of all Subordinate Bonds outstanding hereunder in the manner designated by the Majority Interest. In order to enable the Trustee to enforce the rights hereunder of the Subordinate Bonds in any such action or proceeding, the Trustee is irrevocably authorized and empowered to make and present for and on behalf of the owners of any Subordinate Bonds such proofs of claims against the Issuer on account of the Subordinate Bonds or other motions or pleadings as the Trustee may deem expedient or proper and to vote and take such other actions, in the name of any Bondholder or otherwise, as the Trustee may deem necessary or advisable. The owners of any Subordinate Bonds further agree not to object to, interfere with or oppose any efforts by the Trustee to obtain relief from the automatic stay under Section 362 of the Bankruptcy Code or any of the Trustee's other bankruptcy-related actions.

## **ARTICLE IX THE TRUSTEE**

Section 9.01. Acceptance of Trust. The Trustee accepts and agrees to execute the trusts hereby created, but only upon the additional express terms set forth in this Article, to all of which the parties hereto and the Bondholders are bound, and no implied covenants or obligations shall be read into this Indenture against the Trustee. The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture.

Section 9.02. No Responsibility for Recitals, Etc. The recitals, statements and representations in the Indenture or in the Subordinate Bonds, save only the Trustee's Certificate upon the Subordinate Bonds, have been made by the Issuer and not by the Trustee; and the Trustee shall be under no responsibility for the correctness thereof.

The Trustee shall not be responsible for the validity or adequacy of this Indenture or the Bonds or for the validity, priority, recording or rerecording, filing or re filing of any financing statements, amendments thereto or continuation statements, or for insuring the Authorized Projects financed with Subordinate Bond proceeds or collecting any insurance moneys, or for the Issuer's use or application of the proceeds from the Subordinate Bonds or any money paid over by the Trustee to the Issuer or upon the Issuer's direction in accordance with the provisions hereof, or for the use or application of any money received by any Paying Agent other than the Trustee, or for the validity of the execution by the Issuer of this Indenture or of any supplements thereto or instruments of further assurance, or for the sufficiency of the security for the Subordinate Bonds issued hereunder or intended to be secured hereby, or for the value or title of such Authorized Projects or as to the maintenance of the security hereof; provided that in the event the Trustee enters into possession of a part or all of such Authorized Projects pursuant to

any provision of this Indenture, it shall use due diligence in preserving such property. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of moneys made by it accordance with Article VI.

Section 9.03. Trustee May Act Through Agents; Answerable Only for Willful Misconduct or Negligence. The Trustee may exercise any powers hereunder and perform any duties required of it through attorneys, agents, officers or employees, and shall be entitled to advice of Counsel concerning all questions hereunder. The Trustee shall not be answerable for the exercise of any discretion or power under this Indenture nor for anything whatever in connection with the trust hereunder, except only its own willful misconduct or negligence, and shall not be responsible for any misconduct or negligence on the part of any agent, attorney or employees appointed or chosen by it with due care. The Trustee may act upon the opinion or advice of Counsel selected by it in the exercise of reasonable care, and may in all cases pay such reasonable compensation to any such Counsel in connection therewith. The Trustee shall not be responsible for any loss or damage resulting from any action or nonaction based on its good faith reliance upon such opinion or advice. The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty.

Section 9.04. Compensation and Indemnity. The Issuer shall pay the Trustee reasonable compensation for its ordinary services hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) and also all advances, agent counsel fees, and other reasonable ordinary expenses and disbursements. In the event that it should become necessary for the Trustee to perform extraordinary services, the Trustee shall be entitled to reasonable additional compensation therefor and to reimbursement for reasonable and necessary extraordinary expenses in connection therewith; provided that if such extraordinary services or extraordinary expenses are occasioned by the negligence or willful misconduct of the Trustee it shall not be entitled to compensation or reimbursement therefor. The Trustee shall be entitled to payment and reimbursement for the reasonable fees, costs and charges of the Trustee as Paying Agent for the Subordinate Bonds. To the extent permitted by law, the Issuer agrees to indemnify the Trustee against any claims arising out of the exercise and performance of its powers and duties hereunder in good faith and without negligence; provided that this agreement shall not act as a waiver of immunity of the Issuer under the Colorado Governmental Immunity Act. Following an Event of Default, the Trustee shall have a first charge on all funds held by it for its fees and expenses.

The Trustee shall not be required to advance its own funds, in performance of its duties hereunder, before taking any action under this Indenture, the Trustee may require that satisfactory indemnity be furnished to it for the reimbursement of all costs and expenses (including, without limitation, attorney's fees and expenses) to which it may be put and to protect it against all liability which it may incur in or by reason of such action, except liability which is adjudicated to have resulted from its negligence or willful misconduct by reason of any action so taken.

Section 9.05. Notice of Default; Right to Investigate. The Trustee shall, within thirty days after obtaining actual knowledge thereof, give written notice by first-class mail to owners of Subordinate Bonds or by electronic means to the Securities Depository of all defaults known to

the Trustee and send a copy of such notice to the Issuer, unless such defaults have been remedied (the term “defaults” for purposes of this Section is defined to include the events specified in Section 8.01 hereof, not including any notice or periods of grace provided for therein). For purposes of the preceding sentence and elsewhere herein, “actual knowledge” of the Trustee means actual knowledge of any officer within the Corporate Trust Department (or any successor group) of the Trustee, including any vice president, assistant vice president, assistant secretary or any other officer or assistant officer of the Trustee customarily performing functions similar to those performed by the person who at the time shall be the officer, respectively, who is responsible for the administration of this Indenture. The Trustee may, however, at any time require of the Issuer full information as to the performance of any covenant hereunder; and, if information satisfactory to it is not forthcoming, the Trustee may make or cause to be made an investigation into the affairs of the Issuer related to this Indenture and the properties covered hereby.

Section 9.06. Obligation to Act on Defaults. If any Event of Default shall have occurred and be continuing, the Trustee may, and shall do so if requested in writing by the Majority Interest and furnished indemnity satisfactory to the Trustee, exercise one or more of the rights and remedies vested in it by this Indenture; provided, that if in the opinion of the Trustee such action may tend to involve expense or liability, it shall not be obligated to take such action unless it is furnished with indemnity reasonably satisfactory to it. If an Event of Default has occurred and is continuing, the Trustee shall use the same degree of care in their exercise as a prudent person would exercise or use in the circumstances in the conduct of his or her own affairs in exercising any rights or remedies or performing any of its duties hereunder.

Section 9.07. Provision of Monthly Fund Statements and Revenue Accounting.

(a) The Trustee shall provide to the Issuer written monthly fund statements by the 15th day of each month depicting the balances as of the end of the preceding month in each Fund and account established under this Indenture.

(b) A copy of any report received by the Trustee from the Issuer shall be provided by the Trustee to any Bondholder who notifies the Trustee in writing that they desire to receive such notices.

Section 9.08. Reliance on Requisition, Counsel, Etc. The Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any requisition, resolution, notice, telegram, request, consent, waiver, certificate, statement, affidavit, voucher, bond, or other paper or document which it in good faith believes to be genuine and to have been passed or signed by the proper persons or to have been prepared and furnished pursuant to any of the provisions of the Indenture; and the Trustee shall be under no duty to make any investigation as to any statement contained in any such instrument, but may accept and rely upon the same as conclusive evidence of the accuracy of such statement.

The Trustee will be entitled to conclusively rely upon advice or opinions of Counsel and will not be responsible for any loss or damage resulting from reliance in good faith thereon, except for its own negligence or willful misconduct.

As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, or whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee shall be entitled to conclusively rely upon a certificate signed by an Authorized Representative and the Issuer's Accountant as sufficient evidence of the facts therein contained, and prior to the occurrence of default of which the Trustee has been notified as provided in Section 9.05, the Trustee may also accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable but shall in no case be bound to secure the same.

The Trustee shall have the right, but shall not be required, to demand, with respect to the execution of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required, as a condition of such action by the Trustee deemed desirable for the purpose of establishing the right to the withdrawal of any cash, the release of any property, or the taking of any other action by the Trustee.

At any and all reasonable times the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right, but shall not be required, to inspect any and all books, papers and records of the Issuer pertaining to the Authorized Projects financed with Subordinate Bond proceeds and the Subordinate Bonds, and to take such memoranda from and in regard thereto as may be desired.

The Trustee shall not be required to give any bond or surety in respect to the execution of its trusts and powers hereunder or otherwise with respect to the premises.

Section 9.09. Trustee May Own Subordinate Bonds. The Trustee may buy, sell, own and hold any of the Subordinate Bonds. The Trustee may engage in or be interested in any financial or other transaction with the Issuer; provided that if the Trustee determines that any such relation is in conflict with its duties under this Indenture, it shall eliminate the conflict or resign as Trustee.

Section 9.10. Construction of Ambiguous Provisions. The Trustee may construe any ambiguous or inconsistent provisions of this Indenture, and any such construction by the Trustee shall be binding upon the Bondholders. In construing any such provision, the Trustee will be entitled to rely upon opinions of Counsel and will not be responsible for any loss or damage resulting from reliance in good faith thereon except for its own negligence or willful misconduct.

Section 9.11. Resignation of Trustee. The Trustee may resign and be discharged of the trusts created by this Indenture by written resignation filed with the Issuer not less than 60 days before the date when it is to take effect, provided notice of such resignation is mailed by registered or certified mail to all Bondholders not less than three weeks prior to the date when the resignation is scheduled to take effect. Such resignation shall take effect only upon the appointment of a successor trustee.



Section 9.12. Removal of Trustee. Any Trustee hereunder may be removed at any time for any reason by an instrument appointing a successor to the Trustee so removed, executed by a Majority Interest or the Issuer (so long as there is no Event of Default hereunder) and filed with the Trustee and the Issuer (if executed by a Majority Interest).

Section 9.13. Appointment of Successor Trustee. If the Trustee or any successor trustee resigns or is removed (other than pursuant to Section 9.12 hereof) or dissolved, or if its property or business is taken under the control of any state or federal court or administrative body, a vacancy shall forthwith exist in the office of the Trustee, and the Issuer (so long as there is no Event of Default hereunder) shall appoint a successor and shall mail notice of such appointment by registered or certified mail to all Bondholders. If the Issuer fails to make such appointment within 30 days after the date notice of resignation is filed, if there is an Event of Default hereunder, or if the Trustee is removed pursuant to Section 9.12 hereof, the Majority Interest may appoint a successor Trustee. In the event that the Issuer or the Majority Interest fail to appoint a successor Trustee within 30 days after notice of resignation has been given by the Trustee, the Trustee shall have the right to petition a court of competent jurisdiction to appoint a successor Trustee.

Section 9.14. Qualification of Successor Trustee. A successor trustee shall be a national bank with trust powers or a bank and trust company or a trust company organized under the laws of one of the States of the United States, in each case having capital and surplus of at least \$50,000,000, if there be one able and willing to accept the trust on reasonable and customary terms.

Section 9.15. Instruments of Succession. Any successor trustee shall execute, acknowledge and deliver to the Issuer an instrument accepting such appointment hereunder; and thereupon such successor trustee, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor in the trust hereunder, with like effect as if originally named Trustee herein and thereupon the duties and obligations of the predecessor shall cease and terminate. Upon the payment of the fees and expenses owed to the predecessor, the Trustee ceasing to act hereunder shall pay over to the successor trustee all moneys held by it hereunder; and, upon request of the successor trustee, the Trustee ceasing to act and the Issuer shall execute and deliver an instrument transferring to the successor trustee all the estates, properties, rights, powers and trusts hereunder of the Trustee ceasing to act. The Issuer shall be provided with a copy of each instrument mentioned herein.

Section 9.16. Merger of Trustee. Any corporation into which the Trustee or its corporate trust department hereunder may be merged or with which it may be consolidated, or any corporation resulting from any merger, sale or consolidation of its corporate trust department to which any Trustee hereunder shall be a party, shall be the successor trustee under this Indenture, without the execution or filing of any paper or any further act on the part of the parties hereto, anything herein to the contrary notwithstanding, provided that any such successor trustee shall have a capital and surplus of at least \$50,000,000.

Section 9.17. Appointment of Co-Trustee. It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the laws of the State of Colorado) denying or restricting the right of banking corporations or associations to transact business as Trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture, and in particular in case of the enforcement of any such document in default, or in case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties, in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an additional individual or institution as a separate or Co-Trustee. The following provisions of this Section are adopted to these ends.

The Trustee may appoint an additional individual or institution as a separate or Co-Trustee, in which event such and every remedy, power, right, claim, demand, cause of action, indemnity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in such separate or Co-Trustee but only to the extent necessary to enable such separate or Co-Trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or Co-Trustee shall run to and be enforceable by either of them.

Should any deed, conveyance or instrument in writing from the Issuer be required by the separate or Co-Trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties and obligations, any and all such deeds, conveyances and instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. In case any separate or Co-Trustee, or a successor to either, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate or Co-Trustee, so far as permitted by law, shall vest in and be exercisable by the Trustee until the appointment of a new Trustee or successor to such separate or Co-Trustee.

Section 9.18. Intervention by Trustee. In any judicial proceeding to which the Issuer is a party and which in the opinion of the Trustee and its Counsel has a substantial bearing on the interests of owners of the Subordinate Bonds, the Trustee may intervene on behalf of Bondholders and shall do so if requested in writing by the owners of at least 25% in principal amount of Subordinate Bonds then Outstanding. The rights and obligations of the Trustee under this Section are subject to the approval of a court of competent jurisdiction.

## **ARTICLE X**

### **ACTS OF BONDHOLDERS; EVIDENCE OF OWNERSHIP OF BONDS**

Section 10.01. Acts of Bondholders; Evidence of Ownership. Any action to be taken by Bondholders may be evidenced by one or more concurrent written instruments of similar tenor signed or executed by such Bondholders in person or by agent appointed in writing. The fact and date of the execution by any Person of any such instrument may be proved by acknowledgment before a notary public or other officer empowered to take acknowledgments of deeds or by an

affidavit of a witness to such execution. Where such execution is by an officer of a corporation or a member of a partnership, on behalf of such corporation or partnership, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the person executing the same, may also be proved in any other manner which the Trustee deems sufficient. The ownership of Subordinate Bonds shall be proved by the Bond Register. Any action by the owner of any Subordinate Bond shall bind all future owners of the same Subordinate Bond in respect of anything done or suffered by the Issuer or the Trustee in pursuance thereof.

Section 10.02. Certain Additional Provisions With Respect to Bondholder Remedies, Receipt of Notice and Other Matters. In the event that a Subordinate Bond is registered to a nominee or the Securities Depository holding such Subordinate Bond on behalf of a Beneficial Owner, for purposes of consents to amendments, receipt of reports and notices and other actions hereunder, and the direction of election of remedies and proceedings (including, without limitation, acceleration and waiver of acceleration), the Beneficial Owner of such Subordinate Bond upon provision of reasonable evidence of its status as beneficial owner shall be deemed to be the holder hereunder and shall have the right to give or receive the aforementioned consents, directions, reports and notices hereunder.

## **ARTICLE XI AMENDMENTS AND SUPPLEMENTS**

Section 11.01. Amendments and Supplements Without Bondholders' Consent. This Indenture may be amended or supplemented at any time and from time to time, without the consent of the Bondholders, by a Supplemental Indenture between the Issuer and the Trustee, for one or more of the following purposes:

- (a) to add additional covenants of the Issuer or to surrender any right or power herein conferred upon the Issuer;
- (b) to cure any ambiguity or formal defect or omission herein;
- (c) to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising hereunder that shall not materially adversely affect the interests of the Holders;
- (d) for any purpose not inconsistent with the terms of this Indenture or to cure any ambiguity or to correct or supplement any provision contained herein or in any Supplemental Indenture which may be defective or inconsistent with any other provision contained herein or in any Supplemental Indenture, or to make such other provisions in regard to matters or questions arising under this Indenture which shall not be inconsistent with the provisions of this Indenture and which, in each case, shall not adversely affect the interests of the holders of the Bonds, including the appointment and duties of a Co-Paying Agent, Bond Registrar or Authenticating Agent;

(e) to modify, eliminate or add to the provisions of this Indenture to such extent as shall be necessary to effect the qualification of this Indenture under the Trust Indenture Act of 1939 or under any similar federal statute hereafter enacted, and to add to this Indenture such other provisions as may be expressly permitted by the Trust Indenture Act of 1939, as from time to time amended;

(f) to provide details in connection with the issuance of any Series of Bonds under Article III hereof;

(g) to modify, eliminate or add to the provisions of this Indenture to such extent as shall be necessary to obtain an investment grade rating on the Subordinate Bonds;

(h) to grant to or confer or impose upon the Trustee for the benefit of the owners of the Subordinate Bonds any additional rights, remedies, powers, authority, security, liabilities or duties which may lawfully be granted, conferred or imposed and which are not contrary to or inconsistent with this Indenture as theretofore in effect, including to provide for a debt service reserve fund;

(i) to permit the appointment of a Co-Trustee under this Indenture;

(j) to authorize different Authorized Denominations of the Subordinate Bonds and to make correlative amendments and modifications to this Indenture regarding exchangeability of Bonds of different Authorized Denominations, redemptions of portions of Subordinate Bonds of particular Authorized Denominations and similar amendments and modifications of a technical nature;

(k) to modify, alter, supplement or amend this Indenture to comply with changes in the Code affecting the status of interest on the Bonds as excluded from gross income for federal income tax purposes or the obligations of the Issuer in respect of Section 148 of the Code;

(l) to remove the Trustee in accordance with the Section 9.12 hereof;

(m) to accommodate the technical, operational and structural features of Subordinate Bonds which are issued or are proposed to be issued to finance or refinance Authorized Projects which have been authorized or are proposed to be authorized, including, but not limited to, changes needed to accommodate bond anticipation notes, commercial paper, and other discounted or compound interest Bonds or other forms of indebtedness which the Issuer from time to time deems appropriate to incur;

(n) to provide for the issuance of a Series of Bonds so long as such issuance complies with the terms of this Indenture;

(o) to make any amendments appropriate or necessary to provide for any insurance policy, irrevocable transferable letter of credit, guaranty, surety bond, line of credit, revolving credit agreement or other agreement or security device delivered to the

Trustee and providing for (i) payment of the principal, interest and redemption premium on the Subordinate Bonds or a portion thereof; (ii) payment of the purchase price of the Bonds; or (iii) both clauses (i) and (ii), provided however, that if such agreement or security device is for a specific Series of Bonds, the use of such agreement or security device does not materially adversely affect the interests of the Bondholders of any other Subordinate Bonds;

(p) to confirm to the Trustee amounts pledged hereunder as Subordinate Pledged Revenues, including amounts payable to the Issuer as a result of modifications in the Service Plan; or

(q) to modify, alter, amend or supplement this Indenture in any other respect which is not materially adverse to the Bondholders.

Before the Issuer and the Trustee shall enter into any Supplemental Indenture pursuant to this Section 11.01, there shall have been delivered to the Trustee an opinion of Bond Counsel stating that such Supplemental Indenture is authorized or permitted by law and is authorized under this Indenture, that such Supplemental Indenture will, upon the execution and delivery thereof, be valid and binding upon the Issuer in accordance with its terms and will not adversely affect the exclusion from gross income of the interest on the Tax-Exempt Bonds for federal income tax purposes.

Section 11.02. Amendments With Bondholders' Consent. Other than amendments permitted under Section 11.01 hereof, this Indenture may be amended from time to time, by a supplemental indenture approved by a Majority Interest, including the modification of (a) the principal, premium, if any, or interest payable upon the Subordinate Bonds or (b) the dates of maturity or redemption provisions of the Subordinate Bonds; provided that no amendment shall be made which adversely affects one or more but less than all the Subordinate Bonds without the consent of the owners of at least 51% of all Outstanding Subordinate Bonds so affected. An amendment to this Indenture shall not adversely impact any Senior Bonds. No amendment of this Section 11.02 may be effected without the consent of Bondholders of all Outstanding Subordinate Bonds.

Before the Issuer and the Trustee shall enter into any Supplemental Indenture pursuant to this Section 11.02, there shall have been delivered to the Trustee an opinion of Bond Counsel stating that such Supplemental Indenture is authorized or permitted by law and is authorized under this Indenture, that such Supplemental Indenture will, upon the execution and delivery thereof, be valid and binding upon the Issuer in accordance with its terms and will not adversely affect the exclusion from gross income of the interest on the Tax-Exempt Bonds for federal income tax purposes.

Section 11.03. Amendment of Other Agreements. The Cooperation Agreement, the PIF Covenant and the PIF Collection Agreement may be supplemented and amended as deemed necessary or desirable by the Issuer, except that no amendment of the Cooperation Agreement, the PIF Covenant or the PIF Collection Agreement shall be made which would materially adversely affect the interests of the Owners, as determined by the Issuer, without (a) an opinion

of counsel to the Issuer and acceptable to the Trustee to the effect that such amendment would not result in a failure of the Cooperation Agreement, the PIF Covenant or the PIF Collection Agreement as so amended, to comply with the requirements of this Indenture or adversely affect the security for the Subordinate Bonds; and (b) the written consent of the owners of at least a Majority Interest. The Issuer shall provide written notice of any such amendment to the Trustee.

Section 11.04. Trustee Authorized to Join in Amendments and Supplements; Reliance on Counsel. The Trustee is authorized to join with the Issuer in the execution and delivery of any supplemental indenture or amendment permitted by this Article XI and in so doing shall be fully protected by an Opinion of Counsel that such supplemental indenture or amendment is so permitted and has been duly authorized by the Issuer and that all things necessary to make it a valid and binding agreement have been done. Additionally, the Trustee shall be fully protected by an Opinion of Counsel that any supplemental indenture or amendment does not adversely affect the interests of the Bondholders or the Series 2019 Bondholders.

## **ARTICLE XII DEFEASANCE**

Section 12.01. General. When the principal or redemption price of, and premium, if any, and interest on, all Subordinate Bonds issued hereunder, and all other amounts due under this Indenture have been paid, or provision has been made for payment of the same, together with all other sums payable hereunder by the Issuer, the Trustee's right, title and interest in this Indenture and the moneys payable hereunder shall thereupon cease and the Trustee, on demand of the Issuer, shall release this Indenture and shall execute such documents to evidence such release as may be reasonably required by the Issuer and shall turn over to the Issuer or its assigns all balances then held by it hereunder not required for the payment of the Subordinate Bonds and such other sums. If such payment or provision therefor has been made with respect to all the Subordinate Bonds of any one Series, the interest of the Trustee shall cease in respect of such Series, and the Trustee shall take similar action for the release of this Indenture.

Section 12.02. Defeasance Requirements. Without limiting the generality of the foregoing, provision for the payment of a Series of Bonds shall be deemed to have been made (a) upon the delivery to the Trustee of (i) cash in an amount sufficient to make all payments specified above, or (ii) Government Obligations of the United States of America, maturing on or before the date or dates when the payments specified above shall become due, the principal amount of which and the interest thereon, when due, is or will be, in the aggregate, sufficient without reinvestment to make all such payments, or (iii) any combination of cash and such obligations; (b) any Series of Bonds to be redeemed prior to maturity shall have been duly called for redemption or irrevocable instructions to call such Subordinate Bonds for redemption shall have been given to the Trustee, which instructions shall include an irrevocable waiver of any rights of the Issuer under the Bonds and the Indenture to redeem the Subordinate Bonds at a date prior to that specified in such instructions; (c) an Opinion of Bond Counsel acceptable to the Trustee that any exclusion from gross income for federal income tax purposes of the interest on any Outstanding Tax-Exempt Bonds will not be impaired by the defeasance. The Trustee shall also receive a report from an Accountant verifying to the Trustee's satisfaction that the cash and Government Obligations delivered will be sufficient to provide for the payment of the

Subordinate Bonds as aforesaid. Neither the obligations nor moneys deposited with the Trustee pursuant to this Section shall be withdrawn or used for any purpose other than, and shall be segregated and held in trust for, the payment of the principal or redemption price of, and premium, if any, and interest, on the Series of Bonds so defeased. In the event that such moneys or obligations are to be applied to the payment of principal or redemption price of any Series of Bonds more than 30 days following the deposit thereof with the Trustee, the Trustee shall send by registered mail to each owner of such Bonds, a notice stating that such moneys or obligations have been deposited and identifying the Bonds for the payment of which such moneys or obligations are being held.

### **ARTICLE XIII MISCELLANEOUS PROVISIONS**

Section 13.01. No Personal Recourse. No recourse shall be had for any claim based on the Indenture or the Subordinate Bonds, including but not limited to the payment of the principal or redemption price of, or premium, if any, or interest on, the Subordinate Bonds, against any member, officer, director, agent, or employee, past, present or future, of the Issuer or of any successor body, as such, either directly or through the Issuer or any such successor body, under any constitutional provision, statute or rule of law or by the enforcement of any assessment or penalty or by any legal or equitable proceeding or otherwise.

Section 13.02. Deposit of Funds for Payment of Subordinate Bonds. If there are on deposit with the Trustee funds (including proceeds of Government Obligations as provided in Section 12.02 hereof sufficient to pay the principal or redemption price of any Subordinate Bonds becoming due, either at maturity or by call for redemption or otherwise, together with the premium, if any, and all interest accruing thereon to the due date, all interest on such Subordinate Bonds shall cease to accrue on the due date and all liability of the Issuer with respect to such Subordinate Bonds shall likewise cease, except as hereinafter provided. Thereafter the owners of such Subordinate Bonds shall be restricted exclusively to the funds so deposited for any claim of whatsoever nature with respect to such Bonds and the Trustee shall hold such funds in trust for such owners.

Moneys (including proceeds of Government Obligations as provided in Section 12.02 hereof so deposited with the Trustee which remain unclaimed four years after the date payment thereof becomes due shall, if the Issuer is not at the time, to the knowledge of the Trustee, in default with respect to any covenant in the Indenture or the Subordinate Bonds, be paid to the Issuer, unless there is a dispute as to the payment thereof, upon receipt by the Trustee of indemnity satisfactory to it, and the owners of the Subordinate Bonds for which the deposit was made shall thereafter be limited to a claim against the Issuer; provided, however, that the Trustee, before making payment to the Issuer, may send notice by registered mail to each owner of Subordinate Bonds who hasn't claimed such moneys at such owner's last known address, stating that the moneys remaining unclaimed will be returned to the Issuer after a specified date.

Section 13.03. Illegal, etc. Provisions Disregarded. In case any provision in this Indenture or the Bonds shall for any reason be held invalid, illegal or unenforceable in any respect, this Indenture shall be construed as if such provision had never been contained herein.

Section 13.04. Notices. Any notice to or demand upon any of the following entities shall be deemed to have been sufficiently given or served for all purposes by being sent by registered United States mail to the address for such entity set forth below or by sending by facsimile (receipt confirmed by telephone) to the facsimile number for such entity set forth below, or such other address or facsimile number as may be filed in writing by the Issuer with the Trustee:

Issuer: Creekwalk Marketplace Business Improvement District  
c/o Spencer Fane L.L.P.  
Attn: Russ Dykstra  
1700 Lincoln Street, Suite 200  
Denver, CO 80203  
Phone: (303) 839-3845  
Email: rdykstra@spencerfane.com

With a copy to: Spencer Fane LLP  
Attention: Russ Dykstra  
1700 Lincoln Street, Suite 2000  
Denver, CO 80203  
Phone: (303) 839-3845  
Email: rdykstra@spencerfane.com

Trustee: UMB Bank, n.a.  
Corporate Trust and Escrow Services  
Attention: Leigh Lutz  
1670 Broadway  
Denver, CO 80202  
Phone: (303) 839-2220  
Email: leigh.lutz@umb.com

Section 13.05. No Rights Conferred on Others. Nothing herein contained shall confer any right upon any person other than the parties hereto, the owners of the Bonds and the Issuer.

Section 13.06. Successors and Assigns. All the covenants, promises and agreements in this Indenture contained by or on behalf of the Issuer, or by or on behalf of the Trustee, shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

Section 13.07. Headings for Convenience Only. The descriptive headings in this Indenture are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

Section 13.08. Counterparts. This Indenture may be executed in any number of counterparts, each of which when so executed and delivered shall be an original; but such counterparts shall together constitute but one and the same instrument.

Section 13.09. Payments Due On Saturdays, Sundays and Holidays. In any case where the date of maturity of interest on or principal of the Bonds or the date fixed for redemption of



any Bonds shall not be a Business Day, then payment of interest, premium, if any, or principal or redemption price need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest on such payment shall accrue for the period after such date.

Section 13.10. Applicable Law. This Indenture shall be governed by and construed in accordance with the laws of the State of Colorado.

Section 13.11. Election under Supplemental Act. By execution of this Indenture, the Issuer hereby elects to have all provisions of the Supplemental Act apply to the issuance of the Bonds; provided, however, that such election shall not operate to modify or limit the rights conferred on the Issuer or the members of the Board by any other provisions of Colorado law.

Section 13.12. Electronic Storage. The parties hereto agree that the transaction described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[Signature page follows]

IN WITNESS WHEREOF, intending to be legally bound, CREEKWALK MARKETPLACE BUSINESS IMPROVEMENT DISTRICT, has caused this Trust Indenture to be executed by an authorized officer of the Issuer and its corporate seal to be hereunto affixed and attested by a different authorized officer, and UMB BANK, n.a., as Trustee, has caused this Trust Indenture to be executed by one of its duly authorized officers, all as of the day and year first above written.

CREEKWALK MARKETPLACE BUSINESS  
IMPROVEMENT DISTRICT

(SEAL)

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

President

ATTEST:

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

Secretary

UMB BANK, n.a., as Trustee

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

Leigh Lutz, Senior Vice President

EXHIBIT A

FORM OF SUBORDINATE BOND

**THIS SUBORDINATE BOND IS A HIGH RISK INVESTMENT. THIS SUBORDINATE BOND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND HAS NOT BEEN REGISTERED OR OTHERWISE QUALIFIED FOR SALE UNDER THE “BLUE SKY” LAWS AND REGULATIONS OF ANY STATE AND WILL AS OF THE DATE OF ISSUE CARRY NO RATING FROM ANY RATING SERVICE.**

THIS SUBORDINATE BOND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF EXCEPT IN MINIMUM DENOMINATIONS OF \$100,000 AND ANY INTEGRAL MULTIPLE OF \$1,000 IN EXCESS THEREOF.

BY ACCEPTANCE OF THIS INSTRUMENT, THE OWNER OF THIS SUBORDINATE BOND AGREES AND CONSENTS TO ALL OF THE LIMITATIONS AND PAYMENT PRIORITIES AND AVAILABILITY OF REVENUES IN RESPECT OF THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THIS SUBORDINATE BOND CONTAINED HEREIN, IN THE INDENTURE, AND IN THE RESOLUTION OF THE ISSUER AUTHORIZING THE ISSUANCE OF THIS BOND.

No. RB-\_\_ \$ \_\_\_\_\_

UNITED STATES OF AMERICA

CITY OF COLORADO SPRINGS

STATE OF COLORADO

CREEKWALK MARKETPLACE BUSINESS IMPROVEMENT DISTRICT

LIMITED TAX SUPPORTED AND SPECIAL REVENUE SUBORDINATE BONDS, SERIES

\_\_\_\_\_

<u>Per Annum</u> <u>Interest Rate</u>	<u>Maturity Date</u>	<u>Original Date</u>	<u>CUSIP</u>
_____ %	_____, 20__	_____ __, 20__	_____

Registered Owner:

Principal Sum: \_\_\_\_\_ DOLLARS

CREEKWALK MARKETPLACE BUSINESS IMPROVEMENT DISTRICT (the “**Issuer**”), a quasi-municipal corporation and political subdivision of the State of Colorado, for value received, hereby promises to pay (but only out of the sources hereinafter mentioned) to the Registered Owner (specified above), or registered assigns, the Principal Sum (specified above) on the Maturity Date (specified above) unless this Subordinate Bond shall have been duly called

for previous redemption in whole or in part and payment of the redemption price shall have been duly made or provided for, upon surrender hereof, and to pay, solely from the sources hereinafter mentioned, to the person in whose name this Subordinate Bond is registered at the close of business on the regular record date for such interest, which shall be the first day of each calendar month in which an interest payment is due (the “**Regular Record Date**”), by check mailed to such person at his address as it appears on the registration books of the Issuer maintained by the Trustee, interest on said Principal Sum at the per annum Interest Rate (specified above); provided that at the written request of any owner of at least \$1,000,000 aggregate principal amount of Subordinate Bonds, interest hereon shall be payable by wire transfer to an account designated in writing by such Owner. Interest in respect of this Subordinate Bond shall accrue from the interest payment date next preceding the date of authentication to which interest shall have been paid, (i) unless such date of authentication is an interest payment date to which interest shall have been paid, in which case, from such authentication date, or (ii) unless authenticated after a Record Date and prior to an interest payment date with respect to such Record Date, in which case from such interest payment date, or (iii) unless this Subordinate Bond is authenticated prior to the first interest payment date in which case interest in respect of this Subordinate Bond shall accrue from its Original Date shown above. Payments of interest and principal hereunder shall be payable annually on December 15 in each year, commencing December 15, 20\_\_, at the per annum Interest Rate (specified above), until payment of the Principal Sum and any overdue installment of interest, subject to the payment priorities and availability of Subordinate Pledged Revenues as set forth in the Indenture described herein. To the extent interest on this Subordinate Bond is not paid when due, such interest shall compound annually on each December 15 at the Interest Rate then borne by this Subordinate Bond.

Any interest on this Subordinate Bond which is not punctually paid on any Interest Payment Date shall forthwith cease to be payable to the registered owner of such Subordinate Bond on such Regular Record Date or Interest Payment Date, and shall be paid to the person in whose name this Subordinate Bond is registered at the close of business on a special record date for the payment of such defaulted interest to be fixed by the Trustee, such date to be no more than 15 nor fewer than 10 days prior to the date of proposed payment, notice of which being given by first class postage prepaid mail to registered Bondholders, the Bond Registrar, and the Paying Agent, not fewer than 10 days prior to such special record date, all as more fully provided in the Indenture; *provided that, the foregoing is subject to the limitation that so long as any of the Senior Bonds are outstanding or unpaid, a failure to make a payment of principal of or interest on this Subordinate Bond shall not entitle the Trustee to pursue certain remedies under the Indenture and no such special record date shall be established, but this Subordinate Bond shall continue to bear interest at the rate specified therefor (subject to the limitations set forth in the Indenture). In addition, no payments will be made under the Indenture to owners of Subordinate Bonds until all payments then due with respect to the Senior Bonds, and additional required deposits to funds and accounts described in the Indenture, have been made.*

Interest is computed on the basis of a 360-day year of twelve 30 day months. The principal and any premium due in connection with the redemption of this Subordinate Bond shall be payable at the principal operations center of UMB Bank, n.a. in Kansas City, Missouri (or such other location as the Trustee may specify) or its successor as Trustee under the Indenture mentioned below (the “Trustee”). Principal, premium, if any, and interest on this Subordinate Bond shall be

paid when due, upon surrender of such Subordinate Bond, in any coin or currency of the United States of America which, at the time of payment, is legal tender for the payment of public and private debts at the principal office of the Paying Agent.

This Subordinate Bond is one of a duly authorized issue of Bonds of the Issuer designated as the “Limited Tax Supported and Special Revenue Subordinate Bonds, Series 2019B” (the “Subordinate Bonds” or the “Bonds”) payable from certain “Subordinate Pledged Revenues” described in, issued under and secured by and, subject to the payment priorities and availability of Subordinate Pledged Revenues described in a Trust Indenture dated as of \_\_\_\_\_1, 2019 (the “Indenture”) between the Issuer and the Trustee.

The terms of this Subordinate Bond include those terms specified in the Indenture. Subordinate Bondholders are referred to the Indenture for a statement of those terms and the respective priorities of payment set forth therein. *Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Indenture.*

Reference is hereby made to the Indenture and to all amendments thereof and supplements thereto for a description of the provisions, among others, with respect to the nature and extent of the security, the default provisions, the rights, duties and obligations of the Trustee and the Issuer or the rights of the Bondholders of the Subordinate Bonds and the terms upon which the Subordinate Bonds are issued and secured.

**THIS SUBORDINATE BOND IS SUBORDINATE IN ALL RESPECTS TO CERTAIN SENIOR BONDS ISSUED AND TO BE ISSUED BY THE ISSUER UNDER THE INDENTURE AND SHALL NOT BE A GENERAL OBLIGATION OF THE ISSUER BUT SHALL BE A SPECIAL, LIMITED OBLIGATION PAYABLE SOLELY FROM THE REVENUES AS PROVIDED, AND SUBJECT TO THE PAYMENT PRIORITIES AND AVAILABILITY OF REVENUES AS SET FORTH, IN THE INDENTURE, AND NEITHER THIS SUBORDINATE BOND, THE INTEREST THEREON, NOR COSTS INCIDENT THERETO SHALL CONSTITUTE A DEBT OR FINANCIAL OBLIGATION OF THE CITY OF COLORADO SPRINGS, COLORADO, OR THE STATE OF COLORADO NOR GIVE RISE TO ANY PECUNIARY LIABILITY OF THE CITY OF COLORADO SPRINGS, OR THE STATE, OR ANY POLITICAL SUBDIVISION OF THE STATE (OTHER THAN THE ISSUER) OR A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS (IF ANY) THEREOF. THIS BOND IS NOT SECURED BY ANY LIEN OR MORTGAGE ON OR SECURITY INTEREST IN ANY PROJECT OF THE ISSUER OTHER THAN THE REVENUES TO THE EXTENT PROVIDED IN THE INDENTURE.**

*If an Event of Default as defined in the Indenture occurs, the owner of this Subordinate Bond shall have no right to enforce the provisions of the Indenture, or institute action to enforce the covenants thereof or rights or remedies thereunder except as provided in the Indenture. No owner of any Subordinate Bond shall have any right to institute any judicial or other action or remedial proceeding (including, without limitation, bankruptcy or insolvency proceedings) against the Issuer or any of the Issuer’s other rights, interests, assets or properties, to collect any moneys due, to enforce payment on its Subordinate Bond so long as any Senior Bonds remain Outstanding without*

*the written consent of a Majority Interest. Any action commenced by an owner of any Subordinate Bond shall terminate upon annulment of the Event of Default in respect of the Senior Bonds. In the event of any conflict between this Subordinate Bond and the Indenture, the terms of the Indenture shall govern.*

*There is no acceleration of the payment of the Subordinate Bond upon occurrence of an Event of Default under the Indenture.*

This Series 2019B Subordinate Bond is subject to optional and mandatory redemption as provided in the Indenture

Any Bond which is to be redeemed only in part shall be surrendered at a place stated for the surrender of Bonds called for redemption in the notice described above (with due endorsement by, or a written instrument of transfer in form satisfactory to the Trustee duly executed by, the owner thereof or his attorney duly authorized in writing) and the Issuer shall execute and the Trustee shall authenticate and deliver to the owner of such Bond without service charge, a new Bond or Bonds, of the same Series, of any Authorized Denomination as requested by such owner in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Bond so surrendered.

Any moneys deposited with and held by the Trustee for the benefit of claimants, if any, for four years after the date on which payment therefor became due, which remain unclaimed, if the Issuer is not at the time, to the knowledge of the Trustee, in default with respect to any covenant in the Indenture or herein, shall be paid to the Issuer, unless there is a dispute as to the payment thereof, upon receipt by the Trustee of indemnity satisfactory to it, and the owners of the Bonds for which the deposit was made shall thereafter be limited to a claim against the Issuer; provided, however, that the Trustee, before making payment to the Issuer, may send notice by registered mail to each owner of Bonds who hasn't claimed such moneys at such owner's last known address, stating that the moneys remaining unclaimed will be returned to the Issuer after a specified date.

In any case where the date of maturity of interest on or principal of the Subordinate Bonds or the date fixed for redemption of any Subordinate Bonds shall be a Saturday or Sunday or a legal holiday or a day on which banking institutions in the (i) State of Colorado, (ii) State of New York or (iii) the state of the operational office of the Trustee (initially, Missouri) are authorized or required by law to close, or a day on which the New York Stock Exchange is closed, then payment of interest, premium, if any, or principal or redemption price need not be made on such date but may be made on the next succeeding business day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest on such payment shall accrue for the period after such date.

If the Issuer deposits or causes to be deposited with the Trustee funds sufficient to pay the principal or redemption price of any Subordinate Bonds becoming due, either at maturity or by call for redemption, or otherwise, together with the premium, if any, all interest accruing thereon to the due date, all interest on such Bonds shall cease to accrue on the due date and all liability of the Issuer with respect to such Bonds shall likewise cease, except as hereinafter provided. Thereafter the owners of such Bonds shall be restricted exclusively to the funds so deposited for any claim of

whatsoever nature with respect to such Bonds and the Trustee shall hold such funds in trust for such owners.

This Subordinate Bond is transferable by the registered owner hereof or his duly authorized attorney at the principal operations center of the Trustee, upon surrender of this Subordinate Bond, accompanied by a duly executed instrument of transfer in form and with guaranty of signature satisfactory to the Trustee, subject to such reasonable regulations as the Issuer or the Trustee may prescribe and upon payment of a reasonable service charge and any taxes or other governmental charges incident to such transfer. Upon any such transfer a new registered Bond of the same maturity and in the same aggregate principal amount will be issued to the transferee. The person in whose name this Subordinate Bond is registered shall be deemed the owner hereof for all purposes, and the Issuer and the Trustee shall not be affected by any notice to the contrary.

Notwithstanding any other provision of the Indenture, each Beneficial Owner of a Bond, by its acceptance of such Bond, and the Trustee, by its acceptance of appointment as such pursuant to the Indenture, acknowledges that the Bonds are initially issuable only in Authorized Denominations, that the Bonds are not being registered under the Securities Act of 1933, as amended, and are not being registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state, that as of the date of original issuance thereof, they will carry no rating from any rating service and that such Beneficial Owner will be deemed to have agreed to be bound by the provisions of this Section. All Beneficial Owners of a Bond and the Trustee also acknowledge that the Bonds may be offered, sold, transferred, remarketed or otherwise disposed of only in Authorized Denominations and, except as otherwise consented to by the Issuer in writing, in transactions that do not constitute "primary offerings" or are otherwise exempt from Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended. IN ADDITION, EACH BENEFICIAL OWNER OF A BOND ACKNOWLEDGES THAT ANY SALE, TRANSFER, OR OTHER DISPOSITION OF BONDS DURING ANY PERIOD IN WHICH THE BONDS DO NOT HAVE ANY INVESTMENT GRADE RATING FROM A RATING AGENCY SHALL BE MADE SOLELY TO TRANSFEREES TO WHOM SUCH BENEFICIAL OWNER HAS GIVEN NOTICE OF THE RESTRICTIONS OF THIS BOND AND THE INDENTURE AND WHOM THE BENEFICIAL TRANSFEROR SHALL HAVE DETERMINED ARE EITHER: (a) A "QUALIFIED INSTITUTIONAL BUYER," AS DEFINED IN RULE 144A PROMULGATED BY THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933; OR (b) A TRUSTEE FOR ANY TRUST OR CUSTODIAN FOR ANY CUSTODIAL ARRANGEMENT IN WHICH, IN EACH CASE, EACH BENEFICIARY THEREOF IS A QUALIFIED INSTITUTIONAL BUYER.

*There is no acceleration of the payment of the Bonds upon occurrence of an Event of Default under the Indenture.*

**The 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 under the Indenture, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture and**



**except that any registered owner may institute action to enforce the payment of the principal of, premium, if any, or interest on his or her Bond**

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

Executed counterparts of the Indenture are on file at the principal corporate trust office of the Trustee. The Bondholder of this Subordinate Bond, by acceptance hereof, consents to all of the terms and provisions of the Indenture.

**No recourse shall be had for the payment of the principal or redemption price of, or premium, if any, or interest on, this Subordinate Bond, or for any claim based hereon or on the Indenture, against any member, officer, director, agent or employee, past, present or future, of the Issuer or of any successor body, as such, either directly or through the Issuer or any such successor body, under any constitutional provision, statute or rule of law, or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise.**

This Subordinate Bond is issued pursuant to the Supplemental Public Securities Act. Pursuant to Section 11-57-210 of the Supplemental Public Securities Act, this recital shall be conclusive evidence of the validity and the regularity of the issuance of this Subordinate Bond after its delivery for value.

It is hereby certified that all acts, conditions and things required to happen, exist and be performed under the laws of the State, and under the Indenture precedent to and in the issuance of this Subordinate Bond have happened, exist and have been performed as so required, and that the issuance, authentication and delivery of this Subordinate Bond has been duly authorized by the Issuer.

Unless the Certificate of Authentication hereon has been executed by the Trustee by manual signature of one of its authorized signers, this Subordinate Bond shall not be entitled to any benefit under the Indenture, or be valid or obligatory for any purpose.

[Signature page follows]

IN WITNESS WHEREOF, the Issuer has caused this Subordinate Bond to be executed in its name by the manual or facsimile signature of an Authorized Representative and its corporate seal or a facsimile thereof to be affixed, imprinted, lithographed or reproduced hereon and attested to by the manual or facsimile signature of an Authorized Representative.

CREEKWALK MARKETPLACE BUSINESS  
IMPROVEMENT DISTRICT

[SEAL]

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

Authorized Representative

Attest: \_\_\_\_\_

Authorized Representative

**[FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION]**

Date of Authentication: \_\_\_\_\_, 20\_\_

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

UMB BANK, n.a., as Trustee

By: \_\_\_\_\_  
Authorized Representative

**ABBREVIATIONS**

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

TEN COM - as tenants in common

TEN ENT - as tenants by the entireties

JT TEN - as joint tenants with right of survivorship and not as tenants in common

UNIFORM GIFT MIN ACT \_\_\_\_\_  
(Cust.)

Custodian for \_\_\_\_\_  
(Minor)

Under Uniform Gifts to Minors Act of \_\_\_\_\_  
(State)

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

[FORM OF ASSIGNMENT]

FOR VALUE RECEIVED, \_\_\_\_\_, the undersigned sells, assigns and transfers unto:

(Social Security or Other Identifying Number of Assignee)

(Please Print or Typewrite Name and Address of Assignee)

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney for registration thereof, with full power of substitution in the premises.

DATED: \_\_\_\_\_

Signature Guaranteed:

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

Signature Guaranteed:

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by an “eligible guarantor institution” that is a member of or a participant in a “signature guarantee program” (e.g., the Securities Transfer Agents Medallion Program, the Stock Exchange Medallion Program or the New York Stock Exchange, Inc. Medallion Signature Program).

EXHIBIT B  
ELECTION QUESTIONS

EXHIBIT C

CREEKWALK MARKETPLACE BUSINESS IMPROVEMENT DISTRICT  
PROJECT FUND DISBURSEMENT REQUEST

We, the undersigned duly qualified and acting Authorized Representative of Creekwalk Marketplace Business Improvement District (the “**Issuer**”), and the Issuer’s Accountant (as defined in the Indenture) hereby request, on behalf of the Issuer, pursuant to Section 4.07 of the Trust Indenture dated as of \_\_\_\_\_ 1, 2019, (the “**Indenture**”) between the Issuer and UMB BANK, n.a., as Trustee (the “**Trustee**”), pursuant to which the Issuer’s Limited Tax Supported and Special Revenue Subordinate Bonds, Series 2019B (the “**Bonds**”) were issued, that a disbursement or transfer from the Project Fund be made under the Indenture in the amount and for the payment of the Project Costs described herein. All capitalized terms not otherwise defined herein shall be defined as in the Indenture.

Amount of Requested Disbursement/Transfer: \$ \_\_\_\_\_

The name(s) and address(es) of the payee(s) is/are as follows\*:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\* All other disbursement requests shall indicate the Issuer as payee and provide the name and address of the Person paid or to be paid by the Issuer, indicating the Project Costs to which the disbursement relates and/or the work performed or to be performed in the space provided below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Project Costs and related Infrastructure Categories to which the disbursement, transfer or reimbursement relates and/or the work performed by the payee(s) are as follows:

Requested disbursement date: \_\_\_\_\_

In connection with this request, I hereby certify as follows:

Each item of Project Costs for which disbursement, transfer or reimbursement is requested herein is, was or will be necessary in connection with the Authorized Projects, and none of such items

have formed or will form the basis for any previous disbursement from the Project Fund. The items of Project Costs for which disbursements/transfers are or will be requested are qualified items of Project Costs under the Indenture and relate or will relate to public improvements permitted to be funded with Bond proceeds pursuant to the Tax Certificate delivered by the Issuer in connection with the issuance of the Bonds, the election of the Issuer held on May 3, 2016(the "Election"), and the Issuer's Operating Plan.

The Total Requested Disbursement Amount herein, together with all amounts disbursed under the Indenture, does not exceed the amount of Bond proceeds permitted to finance the Authorized Projects, as provided in the Election and the Operating Plan of the Issuer.

Nothing has come to the attention of each of the Issuer and the Issuer's Accountant that would cause it to conclude that the representations and warranties contained in Section 1.02 of the Indenture and the documents delivered to the Trustee and Bond Counsel in accordance with the Indenture (including the Tax Certificate delivered by the Issuer in connection with the issuance of the Bonds) are not true and correct as of the date hereof.

No event has occurred and is continuing which constitutes an Event of Default (as defined in the Indenture) or would constitute an Event of Default but for the requirement that notice be given or time elapse or both.

Date: \_\_\_\_\_

\_\_\_\_\_  
Authorized Representative of the Issuer

\_\_\_\_\_  
Issuer's Accountant