

TRUST INDENTURE

between

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT

and

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION

**\$119,000,000 LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT
INDUSTRIAL BUILDING REVENUE BONDS
(BOYD REAL PROPERTY, LLC PROJECT), SERIES 2022**

Dated

as of

[June 1, 2022]

**STITES & HARBISON, PLLC
BOND COUNSEL**

TABLE OF CONTENTS

(This Index is not a part of the Indenture
but rather is for convenience of reference only)

	<u>Page</u>
Article 1	DEFINITIONS..... 3
SECTION 1.1	Definitions..... 3
SECTION 1.2	Interpretation..... 7
SECTION 1.3	Captions and Headings. 8
Article 2	AUTHORIZATION AND TERMS OF PROJECT BONDS, ADDITIONAL BONDS 8
SECTION 2.1	Authorized Amount of Bonds..... 8
SECTION 2.2	Issuance of Bonds. 8
SECTION 2.3	Maturity and Interest Rates..... 9
SECTION 2.4	Delivery of Bonds..... 9
SECTION 2.5	Issuance and Delivery of Additional Bonds 10
Article 3	TERMS OF BONDS GENERALLY 11
SECTION 3.1	Form of Bonds 11
SECTION 3.2	Terms 11
SECTION 3.3	Execution and Authentication of Bonds 11
SECTION 3.4	Source of Payment of Bonds..... 12
SECTION 3.5	Payment and Ownership of Bonds..... 12
SECTION 3.6	Transfer and Exchange of Bonds 13
SECTION 3.7	Mutilated, Lost, Wrongfully Taken or Destroyed Bonds 14
SECTION 3.8	Cancellation of Bonds..... 15
SECTION 3.9	Home Office Payments Agreement 15
Article 4	REDEMPTION OF BONDS 16
SECTION 4.1	Optional Redemption..... 16
SECTION 4.2	Partial Redemption..... 16
SECTION 4.3	Issuer’s Election to Redeem..... 16
SECTION 4.4	Notice of Redemption 16
SECTION 4.5	Payment of Redeemed Bonds 17
SECTION 4.6	Variation of Redemption Provisions..... 17

Article 5	PROVISIONS AS TO FUNDS, PAYMENTS, PROJECT AND AGREEMENT	18
SECTION 5.1	Creation of Project Fund	18
SECTION 5.2	Disbursement from and Records of Project Fund	18
SECTION 5.3	Completion of the Project	18
SECTION 5.4	Creation of Bond Fund	19
SECTION 5.5	Investment of Bond Fund and Project Fund	20
SECTION 5.6	Moneys to be Held in Trust	20
SECTION 5.7	Nonpresentment of Bonds	21
SECTION 5.8	Repayment to the Lessee from the Bond Fund	21
Article 6	THE TRUSTEE, REGISTRAR, PAYING AGENTS AND AUTHENTICATING AGENTS	21
SECTION 6.1	Trustee’s Acceptance and Responsibilities	21
SECTION 6.2	Certain Rights and Obligations of the Trustee	22
SECTION 6.3	Fees, Charges and Expenses of Trustee, Registrar, Paying Agent and Authenticating Agent	25
SECTION 6.4	Intervention by Trustee	26
SECTION 6.5	Successor Trustee	26
SECTION 6.6	Appointment of Co-Trustee	27
SECTION 6.7	Resignation by the Trustee	27
SECTION 6.8	Removal of the Trustee	27
SECTION 6.9	Appointment of Successor Trustee	28
SECTION 6.10	Adoption of Authentication	29
SECTION 6.11	Registrars	29
SECTION 6.12	Designation and Succession of Paying Agent	30
SECTION 6.13	Designation and Succession of Authenticating Agent	31
SECTION 6.14	Dealing in Bonds	32
SECTION 6.15	Representations, Agreement and Covenants of Trustee	32
Article 7	DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND HOLDERS	32
SECTION 7.1	Defaults; Events of Default	32
SECTION 7.2	Notice of Default	33
SECTION 7.3	Acceleration	33
SECTION 7.4	Other Remedies, Rights of Holders	33
SECTION 7.5	Right of Holders to Direct Proceedings	34

SECTION 7.6	Application of Moneys	34
SECTION 7.7	Remedies Vested in Trustee.....	35
SECTION 7.8	Rights and Remedies of Holders.....	36
SECTION 7.9	Termination of Proceedings.....	36
Article 8	SUPPLEMENTAL INDENTURES	37
SECTION 8.1	Supplemental Indentures Generally	37
SECTION 8.2	Supplemental Indentures Not Requiring Consent of Holders.....	37
SECTION 8.3	Supplemental Indentures Requiring Consent of Holders.....	38
SECTION 8.4	Consent of Lessee	39
SECTION 8.5	Authorization to Trustee; Effect of Supplement.....	40
SECTION 8.6	Opinion of Counsel	40
SECTION 8.7	Modification by Unanimous Consent	40
SECTION 8.8	Amendments to Article 8	40
Article 9	RELEASE.....	41
SECTION 9.1	Release of Indenture	41
SECTION 9.2	Survival of Certain Provisions	41
Article 10	COVENANTS AND AGREEMENTS OF THE ISSUER.....	41
SECTION 10.1	Covenants and Agreement of the Issuer	42
SECTION 10.2	Observance and Performance of Covenants, Agreement, Authority and Actions.....	42
Article 11	AMENDMENTS TO AGREEMENT	43
SECTION 11.1	Amendments Not Requiring Consent of Holders	43
SECTION 11.2	Amendments Requiring Consent of Holders	43
Article 12	MEETINGS OF HOLDERS.....	44
SECTION 12.1	Purposes of Meetings	44
SECTION 12.2	Call of Meetings.....	44
SECTION 12.3	Voting	45
SECTION 12.4	Meetings.....	45
SECTION 12.5	Miscellaneous	45
Article 13	MISCELLANEOUS	46
SECTION 13.1	Limitation of Rights.....	46
SECTION 13.2	Severability	46
SECTION 13.3	Notices	46

SECTION 13.4	Suspension of Mail	47
SECTION 13.5	Payment Due on Saturdays, Sundays and Holidays	47
SECTION 13.6	Instruments of Holders.....	47
SECTION 13.7	Priority of this Indenture.....	47
SECTION 13.8	Extent of Covenants; No Personal Liability	48
SECTION 13.9	Binding Effect.....	48
SECTION 13.10	Counterparts	48
SECTION 13.11	Governing Law	48
SECTION 13.12	Force Majeure	48
SECTION 13.13	U.S.A. Patriot Act.....	49

TRUST INDENTURE

THIS TRUST INDENTURE dated as of [June 1, 2022], (the “Indenture”) is made by and between the LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (the “Issuer”), a consolidated local government and political subdivision of the Commonwealth of Kentucky, and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association, with its designated corporate trust office located in Louisville, Kentucky, (the “Trustee”), as trustee under the circumstances summarized in the following recitals (the capitalized terms not defined in the recitals and granting clauses being used therein are defined in Article 1 hereof);

WITNESSETH:

WHEREAS, pursuant to the provisions of Chapter 103 of the Kentucky Revised Statutes, as supplemented and amended (the “Act”), the Issuer is authorized and empowered to issue its revenue bonds and to enter into lease agreements for the purpose of facilitating the acquisition, construction, improving, equipping and financing of industrial buildings constituting a “project” within the meaning of the Act; and

WHEREAS, in furtherance of the purposes of the Act and in order to promote the prosperity, health, safety and welfare of the citizens of the State (capitalized terms used herein and not otherwise defined shall have the meaning given such terms in Section 1.1), the Issuer proposes to issue an aggregate principal amount not to exceed \$119,000,000 and denominated “Louisville/Jefferson County Metro Government Industrial Building Revenue Bonds (Boyd Real Property, LLC Project), Series 2022” to assist in the financing of the acquisition, construction, equipping and installation of four or more new buildings at 1400 Cecil Avenue in the City of Louisville, Kentucky; all for lease to the Lessee for light manufacturing or warehousing and distribution (the “Project”), which Project is projected to result in the creation of at least one thousand (1,000) jobs; and

WHEREAS, in connection with the issuance of the Bonds, Boyd Real Property, LLC, a Kentucky limited liability company (the “Lessee”), and the Issuer entered into a Lease Agreement, dated as of [June 1, 2022] (the “Agreement”), pursuant to which the Lessee promised to provide specified rents which will be sufficient to offset the principal of, and the interest on, the Bonds and certain administrative expenses in connection with the Bonds; and

WHEREAS, in order to further the purposes of the Act, the Issuer resolved on [June 9, 2022] to issue its bonds and to purchase the Project and to lease the Project to the Lessee for the purpose of financing the Project pursuant to the Act and as provided hereinafter; and

WHEREAS, pursuant to the Act, the Issuer is to sell the Bonds to Boyd Company, a Kentucky corporation (the “Purchaser”) pursuant to the terms of the Bond Purchase Agreement, dated as of [_____, 2022], among the Issuer, the Lessee and the Purchaser (hereinafter referred to as the “Purchase Agreement”); and

WHEREAS, by due corporate action and in reliance, in part, upon the opinion of bond counsel, the Issuer has authorized the issuance of the Bonds pursuant to the Act in order to assist in the financing of the acquisition, construction, equipping and installation of the Project by the

Lessee, with the Lessee agreeing to pay certain costs in connection with the issuance of the Bonds, and has authorized, adopted and approved the Agreement, which has been assigned and pledged to the Trustee as hereinafter provided and an executed copy thereof has been delivered to the Trustee; and

WHEREAS, the Issuer has duly authorized the execution and delivery of this Indenture and the issuance hereunder of the Bonds upon and subject to the terms and conditions hereinafter set forth; and

WHEREAS, in reliance, in part, upon the opinion of bond counsel, all acts and things have been done and performed which are necessary to make the Bonds, when executed and issued by the Issuer, authenticated by the Trustee and delivered, the valid and binding legal obligations of the Issuer in accordance with their terms and to make this Indenture a valid and binding agreement for the security of the Bonds authenticated and delivered under this Indenture.

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that to secure the Bond Service Charges according to their true intent and meaning, to secure the performance and observance of all of the covenants, agreements, obligations and conditions contained therein and herein, and to declare the terms and conditions upon and subject to which the Bonds are and are intended to be issued, held, secured and enforced, and in consideration of the premises and the acceptance by the Trustee of the trusts created herein and of the purchase and acceptance of the Bonds by the Holders, and for other good and valuable consideration, the receipt of which is acknowledged, the Issuer has executed and delivered this Indenture and (a) assigns hereby to the Trustee, and to its successors in trust, and its and their assigns, all right, title and interest of the Issuer in and to (i) the Revenues, including, without limitation, all Lease Payments and other amounts receivable by or on behalf of the Issuer under the Agreement in respect of payment on the Agreement, and (ii) the Agreement, except for the Unassigned Issuer's Rights.

TO HAVE AND TO HOLD unto the Trustee and its successors in that trust and its and their assigns forever;

BUT IN TRUST, NEVERTHELESS, and subject to the provisions hereof,

(a) except as provided otherwise herein, for the equal and proportionate benefit, security and protection of all present and future Holders of the Bonds issued or to be issued under and secured by this Indenture,

(b) for the enforcement of the provision of the principal of and interest on the Bonds, when due; according to the true intent and meaning thereof and of this Indenture, and

(c) to secure the performance and observance of and compliance with the covenants, agreements, obligations, terms and conditions of this Indenture, in each case, without preference, priority or distinction, as to lien or otherwise, of any one (1) Bond over any other by reason of designation, series, number, date of the Bonds or of authorization, issuance, sale, execution, authentication, delivery or maturity thereof, or otherwise, so that each Bond and all Bonds shall have the same right, lien, and privilege under this Indenture and shall be secured equally and ratably hereby, it being intended that the lien and security of this Indenture shall take effect from the date hereof, without regard to the date of the actual issue, sale or disposition of

the Bonds, as though upon that date all of the Bonds were actually issued, sold and delivered to purchasers for value; provided, however, that:

(i) if the principal of the Bonds and the interest due or to become due thereon shall be satisfied, at the times and in the manner to which reference is made in the Bonds, according to the true intent and meaning thereof, or the outstanding Bonds shall have been satisfied and discharged in accordance with Article 9 hereof, and

(ii) if all of the covenants, agreements, obligations, terms and conditions of the Issuer under this Indenture shall have been kept, performed and observed and there shall have been paid to the Trustee, the Registrar, the Paying Agents and the Authenticating Agents all sums of money due or to become due to them in accordance with the terms and provisions hereof, this Indenture and the rights assigned and pledged hereby (but not the rights absolutely assigned) shall cease, terminate and be void, except as provided in Section 9.2 hereof with respect to the survival of certain provisions hereof; otherwise, this Indenture shall be and remain in full force and effect.

It is declared that all Bonds issued hereunder and secured hereby are to be issued, authenticated and delivered, and that all Revenues assigned hereby are to be dealt with and disposed of under, upon and subject to, the terms, conditions, stipulations, covenants, agreements, obligations, trusts, uses and purposes covenanted, and the Issuer agrees and covenants with the Trustee and with each and all Holders, as follows:

ARTICLE 1

DEFINITIONS

SECTION 1.1 **Definitions.** In addition to the words and terms defined elsewhere in this Indenture or by reference to the Agreement, the following terms shall have the meanings set forth below unless the context or use clearly indicates another meaning or intent:

“Act” shall mean Chapter 103 of the Kentucky Revised Statutes, as in force on the date of execution of this Indenture.

“Additional Bonds” means bonds which may be issued under Section 2.5 of this Indenture.

“Agreement” means the Lease Agreement, dated as of the same date as this Indenture, between the Issuer and the Lessee, as amended or supplemented from time to time.

“Authenticating Agent” means the Trustee and the Registrar for the Bonds and any bank, trust company or other Person designated as an Authenticating Agent for the Bonds by or in accordance with Section 6.13 of this Indenture, each of which shall be a transfer agent registered in accordance with Section 17A(c) of the Securities Exchange Act of 1934, as amended.

“Authorized Lessee Representative” means the person designated at the time pursuant to the Agreement to act on behalf of the Lessee.

“Authorized Issuer Representative” means each person at the time designated to act on behalf of the Issuer by the most recent written certificate furnished to the Lessee and the Trustee containing the specimen signature of such person and signed on behalf of the Issuer by the Mayor of the City of Louisville.

“Bond Fund” means the Bond Fund created in Section 5.4 hereof.

“Bond Legislation” means (a) when used with reference to the Bonds, the ordinance providing for their issuance and approving the Agreement, this Indenture and related matters; (b) when used with reference to an issue of Additional Bonds, the ordinance providing for the issuance of the Bonds, to the extent applicable, and the legislation providing for the issuance of the Additional Bonds and approving any amendment or supplement to the Agreement, any Supplemental Indenture and related matters; and (c) when used with reference to Bonds when Additional Bonds are outstanding, the ordinance providing for the issuance of the Bonds and the legislation providing for the issuance of the then outstanding and the then to be issued Additional Bonds; in each case as amended or supplemented from time to time.

“Bond Service Charges” means, for any period, the principal of and interest on the Bonds for that period whether due at maturity or upon acceleration or redemption.

“Bonds” means an aggregate principal amount not to exceed \$119,000,000 and denominated Louisville/Jefferson County Metro Government Industrial Building Revenue Bonds (Boyd Real Property, LLC Project), Series 2022 authorized in the Bond Legislation and Section 2.2 hereof.

“Business Day” means any day of the year, other than Saturday or Sunday, on which banking institutions located in the city or cities in which the corporate trust office of the Trustee is located are not required or authorized by law to remain closed or on which the New York Stock Exchange is not closed.

“Default Rate” means a rate of interest [two percent (2%)] in excess of the interest rate on the Bonds.

“Eligible Investments” means

- (a) Government Obligations, as defined herein;
- (b) obligations issued or guaranteed by any state or political subdivision thereof and rated at the time of purchase in the highest category if rated as short term obligations or not lower than the second highest category if rated as long term obligations, without distinction as to number or symbol assigned within a category, by Moody’s or by S&P, each of New York, New York;
- (c) commercial or finance paper which is rated at the time of purchase in its highest rating category by either Moody’s or S&P;
- (d) deposit accounts, certificates of deposit or bearer deposit notes (in each case insured by the Federal Deposit Insurance Corporation) in one (1) or more banks, trust

companies or savings and loan associations (including without limitation, the Trustee or any bank affiliated with the Trustee) organized under the laws of the United States of America or any state thereof, each bank or trust company having a reported capital and surplus of at least \$20,000,000 in dollars of the United States of America and each savings and loan association having a reported unimpaired capital and surplus, or retained income, as the case may be, of at least \$20,000,000 in dollars of the United States of America;

(e) repurchase agreements as permitted by Kentucky law and subject to the receipt of an opinion of bond counsel to the effect that such investments in repurchase agreements are permitted under Kentucky law; and

(f) shares of investment companies registered under the Investment Company Act of 1940 which invest in government obligations, including those for which the Trustee or an affiliate performs services for a fee, whether as a custodian, transfer agent, investment advisor or otherwise.

Ratings of Eligible Investments shall be determined at the time of purchase of such Eligible Investments and without regard to ratings subcategories. The Trustee shall have no responsibility to monitor the ratings of Eligible Investments after the initial purchase of such permitted investments, including reinvestment therein.

“Event of Default” means an Event of Default as described in Article 7 hereunder.

“Extraordinary Services” and “Extraordinary Expenses” mean all services rendered and all reasonable expenses properly incurred by the Trustee under this Indenture, other than Ordinary Services and Ordinary Expenses.

“Facilities” means the Project.

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

“Holder” or “Holder of a Bond” means the Person in whose name a Bond is registered on the Register.

“Indenture” means this Trust Indenture, dated as of [June 1, 2022], between the Issuer and the Trustee, as authorized by the Bond Legislation.

“Interest Payment Date” means, the date set forth as such in the Form of Bond attached hereto as Exhibit A, and as to Additional Bonds, each date designated as an Interest Payment Date in the form of bond for which provision is made in the Supplemental Indenture or Bond Legislation.

“Interest Rate” means that rate of interest as set forth in the Bond form.

“Issuer” means the Louisville/Jefferson County Metro Government, a consolidated local government and political subdivision of the Commonwealth of Kentucky.

“Lease Payments” means the amounts required to be paid by the Lessee pursuant to the provisions of the Agreement.

“Legislative Authority” means the Metro Council of the Issuer.

“Lessee” means Boyd Real Property, LLC, a Kentucky limited liability company, and any of its successors and assigns.

“Maturity Date” means [June 1, 2052].

“Ordinary Services” and “Ordinary Expenses” mean those services normally rendered, and those expenses normally incurred, by a trustee under instruments similar to this Indenture.

“Outstanding Bonds,” “Bonds outstanding” or “outstanding” as applied to Bonds means, as of the applicable date, all Bonds which have been authenticated and delivered, or which are being delivered by the Trustee under this Indenture, except:

- (a) Bonds cancelled upon surrender, exchange or transfer, or cancelled because of payment or redemption, on or prior to that date;
- (b) Bonds, or the portion thereof, which have been satisfied and discharged or caused to have been satisfied and discharged pursuant to the provisions of this Indenture; and
- (c) Bonds in lieu of which others have been authenticated under Section 3.7 of this Indenture.

“Paying Agent” means any bank or trust company designated as a Paying Agent by or in accordance with Section 6.12 of this Indenture.

“Person” or words importing persons means firms, associations, partnerships (including without limitation, general and limited partnerships), joint ventures, limited liability companies, societies, estates, trusts, corporations, public or governmental bodies, other legal entities and natural persons.

“Predecessor Bond” of any particular Bond means every previous Bond evidencing all or a portion of the same debt as that evidenced by the particular Bond. For the purposes of this definition, any Bond authenticated and delivered under Section 3.7 of this Indenture in lieu of a lost, stolen or destroyed Bond shall, except as otherwise provided in Section 3.7, be deemed to evidence the same debt as the lost, stolen or destroyed Bond.

“Project” means the Project Facilities, as defined in the Agreement, constituting a “project” as defined in the Act.

“Project Fund” means the Project Fund created in Section 5.1 hereof.

“Purchase Agreement” means, as to the Bonds, the Bond Purchase Agreement, dated as of [_____, 2022], by and among the Lessee, the Issuer and the Purchaser authorized by

the Bond Legislation, and as to any Additional Bonds, the bond purchase agreement provided for in the Bond Legislation providing for the issuance of the Additional Bonds.

“Purchaser” means Boyd Company, a Kentucky corporation.

“Register” means the books kept and maintained by the Registrar for the registration and transfer of Bonds pursuant to Section 3.6 hereof.

“Registrar” means U.S. Bank Trust Company, National Association, a national banking association, as to the Bonds, until a successor Registrar shall have become such pursuant to applicable provisions of this Indenture and as to any Additional Bonds, the bank, trust company or other Person designated as such by or pursuant to the Bond Legislation or Supplemental Indenture; each Registrar shall be a transfer agent registered in accordance with Section 17A(c) of the Securities Exchange Act of 1934.

“Regular Record Date” means, with respect to any Bond, the fifteenth (15th) day of the preceding calendar month during which there is an Interest Payment Date.

“Revenues” means (a) the Lease Payments, (b) all other moneys received or to be received by the Issuer or the Trustee in respect of the Lease Payments, including without limitation, all moneys and investments in the Bond Fund, (c) any moneys and investments in the Project Fund, and (d) all income and profit from the investment of the foregoing.

“Special Record Date” means, with respect to any Bond, the date established by the Trustee in connection with the payment of overdue interest on that Bond pursuant to Section 3.5 hereof.

“State” means the Commonwealth of Kentucky.

“Supplemental Indenture” means any indenture supplemental to this Indenture entered into between the Issuer and the Trustee in accordance with Article 8 hereof.

“Trustee” means U.S. Bank Trust Company, National Association, a national banking association, with its designated corporate trust office located in Louisville, Kentucky (provided, however, that with respect to payments on the Bonds and any exchange, transfer, or other surrender of the Bonds, the Trustee’s designated corporate trust office shall mean the corporate trust operations office of the Trustee in St. Paul, Minnesota or such other office or location designated by the Trustee by written notice), until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter, “Trustee” shall mean the successor Trustee.

“Unassigned Issuer’s Rights” means Unassigned Issuer’s Rights as defined in the Agreement.

SECTION 1.2 Interpretation. Any reference herein to the Issuer, to the Legislative Authority or to any member or official of either includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State or the Act, or to a section, provision or chapter of the Kentucky Revised Statutes, or to any statute of the United States of America, includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this paragraph, if it constitutes in any way an impairment of the rights or obligations of the Issuer, the Holders, the Trustee, the Registrar or the Lessee under this Indenture, the Bond Legislation, the Bonds, the Agreement, the Purchase Agreement or any other instrument or document entered into in connection with any of the foregoing, including without limitation, any alteration of the obligation to pay Bond Service Charges in the amount and manner, at the times, and from the sources provided in the Bond Legislation and this Indenture, except as permitted herein.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa. The terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder,” “hereinafter” and similar terms refer to this Indenture; and the term “hereafter” means after, and the term “heretofore” means before, the date of this Indenture. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

SECTION 1.3 **Captions and Headings.** The captions and headings in this Indenture are solely for ease of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

ARTICLE 2

AUTHORIZATION AND TERMS OF PROJECT BONDS, ADDITIONAL BONDS

SECTION 2.1 **Authorized Amount of Bonds.** No Bonds may be issued under the provisions of this Indenture except in accordance with this Article. The total authorized principal amount of Bonds which shall be issued under the provisions of this Indenture is not to exceed \$119,000,000. The Issuer may issue, sell and deliver Additional Bonds for the purposes, upon satisfaction of the conditions and in the manner provided herein.

SECTION 2.2 **Issuance of Bonds.**

(a) Authorization. The Issuer shall, issue, sell and deliver the Bonds in an aggregate principal amount not to exceed \$119,000,000 for the Project purposes. The Bonds shall be designated “Louisville/Jefferson County Metro Government Industrial Building Revenue Bonds (Boyd Real Property, LLC Project), Series 2022.” The Bonds shall provide for draws from time to time (however the aggregate of all draws may never exceed \$119,000,000) to be noted on Exhibit A to the Bond as to date, amount, aggregate amount drawn, amounts redeemed and amounts outstanding, with the Purchaser initialing each such draw or redemption noted on such Exhibit A. The Trustee shall be fully protected in relying on such notations and upon request shall be provided with a certification as to the outstanding principal amount of Bonds.

(b) Form and Denomination. The Bonds shall be issuable only in fully registered form, substantially as set forth in Exhibit A to this Indenture; shall be numbered in such manner as customary in order to distinguish each Bond from any other Bond; shall be in the minimum denomination of \$100,000 and increments of \$5,000 thereafter upon original issuance, shall be dated the date of initial delivery and thereafter shall be dated as of the date of their authentication; and shall bear interest from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from the date of initial delivery.

SECTION 2.3 Maturity and Interest Rates. The Bonds as authorized by the Bond Legislation shall bear interest at the Interest Rate as set forth in the form of Bond. Interest shall be calculated on the actual days basis of a 365/366-day year. Subject to early redemption, the principal of and unpaid but accrued interest on the Bonds shall be due on the Maturity Date.

SECTION 2.4 Delivery of Bonds. Upon the execution and delivery of this Indenture, and satisfaction of the conditions established by the Issuer in the Purchase Agreement for delivery of the Bonds, the Issuer shall execute such Bonds and deliver them to the Trustee. Thereupon, the Trustee shall authenticate the Bonds and deliver them to, or on the order of, the Purchaser thereof, as directed by the Issuer in accordance with this Section 2.4.

Before the Trustee delivers any Bonds, the Trustee shall have received the following:

(i) A request and authorization to the Trustee on behalf of the Issuer, signed by an Authorized Issuer Representative, to authenticate and deliver the Bonds to, and/or on the order of, the Purchaser;

(ii) A duly executed original of the Indenture;

(iii) A duly executed original of the Agreement;

(iv) A copy of the Bond Legislation;

(v) A written opinion of counsel, who may be counsel for the Issuer, to the effect that: (a) the documents submitted to the Trustee in connection with the request then being made comply with the requirements of this Indenture; (b) the issuance of the Bonds has been duly authorized; (c) all filings required to be made under Section 10.1 of this Indenture have been made; and (d) all conditions precedent to the delivery of the Bonds have been fulfilled;

(vi) A written opinion of bond counsel selected by the Issuer with the concurrence of the Lessee to the effect that when executed for and in the name and on behalf of the Issuer and when authenticated and delivered by the Trustee, the Bonds will be valid and legal limited and special obligations of the Issuer in accordance with their terms and will be secured hereunder with all of the Issuer's right, title and interest in the Revenues, the Agreement, the Bond Fund (except as to any provision made by or pursuant to Sections 4.5, 5.6 or 5.7 hereof), the Project Fund and the moneys and investments therein to provide for payment of Bond Service Charges on the Bonds; and

(vii) A duly executed copy of the initial Home Office Payments Agreement.

SECTION 2.5 Issuance and Delivery of Additional Bonds. At the request of the Lessee, with the prior written consent of the Holders of all Outstanding Bonds, the Issuer may issue Additional Bonds from time to time for any purpose permitted by the Act.

Those Additional Bonds shall be on a parity with the Bonds and any Additional Bonds theretofore or thereafter issued and outstanding as to the assignment to the Trustee of the Issuer's right, title and interest in the Revenues, the Agreement and the Bond Fund and the investments therein to provide for satisfaction of Bond Service Charges on the Bonds; provided, that nothing herein shall prevent payment of Bond Service Charges on Additional Bonds from (i) being otherwise secured and protected from sources or by property or instruments not applicable to the Bonds and any Additional Bonds, or (ii) not being secured or protected from sources or by property or instruments applicable to the Bonds or Additional Bonds.

Before the Trustee shall authenticate and deliver any Additional Bonds as a condition precedent, the Trustee shall receive the following items:

1. Original executed counterparts of any amendments or supplements to the Agreement and this Indenture entered into in connection with the issuance of the Additional Bonds, which are necessary or advisable, in the opinion of nationally recognized bond counsel, selected by the Issuer with the concurrence of the Lessee, to provide that the Additional Bonds will be issued in compliance with the provisions of this Indenture.
2. A copy of the written request from the Lessee to the Issuer for issuance of the Additional Bonds.
3. A copy of the Bond Legislation, certified by the Clerk of the Legislative Authority.
4. A request and authorization to the Trustee on behalf of the Issuer, signed by the Authorized Issuer Representative, to authenticate and deliver the Additional Bonds to, or on the order of, the Purchaser thereof upon payment to the Trustee of the amount specified therein (including without limitation, any accrued interest), which amount shall be deposited as provided in the applicable Bond Legislation or Supplemental Indenture.
5. The written opinion of counsel, who may be counsel for the Issuer, to the effect that: (a) the documents submitted to the Trustee in connection with the request then being made comply with the requirements of this Indenture; (b) the issuance of the Additional Bonds has been duly authorized; (c) all filings required to be made under Section 10.1 of this Indenture have been made; and (d) all conditions precedent to the delivery of the Additional Bonds have been fulfilled.
6. A written opinion of nationally recognized bond counsel, selected by the Issuer with the concurrence of the Lessee, to the effect that when executed for and in the name and on behalf of the Issuer and when authenticated and delivered by the Trustee, those Additional Bonds will be valid and legal limited and special obligations of the Issuer in accordance with their terms and will be secured hereunder equally and on a parity with all other Bonds at the time outstanding hereunder as to the assignment to the Trustee of the Issuer's right, title and interest in the Revenues, the Agreement and the Bond Fund (except as to any provision

made by or pursuant to Sections 4.5, 5.6 or 5.7 hereof) and the moneys and investments therein to provide for payment of Bond Service Charges on the Bonds.

7. The written approval of all the Holders of Bonds, as provided in Section 8.3 hereof, to the issuance and delivery of the Additional Bonds.

When (a) the documents listed above have been received by the Trustee, and (b) the Additional Bonds have been executed and authenticated, the Trustee shall deliver the Additional Bonds to or on the order of the Purchaser thereof, but only upon payment to the Trustee of the specified amount (including without limitation, any accrued interest) set forth in the request and authorization to which reference is made in paragraph 4 above.

ARTICLE 3

TERMS OF BONDS GENERALLY

SECTION 3.1 Form of Bonds. The Bonds, the certificate of authentication and the form of assignment shall be substantially in the form as set forth in Exhibit A to this Indenture with, in the case of Additional Bonds, any omissions, insertions and variations which may be authorized or permitted by the Bond Legislation authorizing, or the Supplemental Indenture entered into in connection with, those Additional Bonds, all consistent with this Indenture.

All Bonds shall be in fully registered form, and, except as provided in Section 3.5 hereof, the Holder of a Bond shall be regarded as the absolute owner thereof for all purposes of this Indenture.

The Bonds shall bear any designations which may be necessary or advisable to distinguish them from other bonds, shall be negotiable instruments in accordance with the Act, and shall express the purpose for which they are issued and any other statements or legends which may be required by law. Each Bond shall be of a single maturity, unless the Trustee, subject to Section 2.5 of this Indenture, shall approve the authentication and delivery of a Bond of more than one (1) maturity.

SECTION 3.2 Terms. The Bonds shall be dated, shall mature in the year and the amount, shall bear interest at the rate per annum, shall be payable on the date, shall indicate the Registrar, Paying Agent and Authenticating Agent, shall be of the denomination, shall be subject to redemption on the terms and conditions and shall have any other terms which are set forth or provided for in this Indenture, the Bond Legislation and the Supplemental Indenture, in the case of any issue of Additional Bonds.

SECTION 3.3 Execution and Authentication of Bonds. Unless otherwise provided in the Bond Legislation, each Bond shall be signed by the Mayor of the City of Louisville whose signature shall be attested by the Metro Council Clerk of the Issuer (provided that any or all of those signatures may be facsimiles) and shall bear the seal or a facsimile of the seal of the Issuer. In case any officer whose signature or a facsimile of whose signature shall appear on any Bond shall cease to be that officer before the issuance of the Bond, his signature or the facsimile thereof nevertheless shall be valid and sufficient for all purposes, the same as if he had remained in office until that time. Any Bond may be executed on behalf of the Issuer by an officer who,

on the date of execution is the proper officer, although on the date of the Bond that person was not the proper officer.

No Bond shall be valid or become obligatory for any purpose or shall be entitled to any security or benefit under this Indenture unless and until a certificate of authentication, substantially in the form set forth in Exhibit A to this Indenture, has been signed by the Trustee or by any Authenticating Agent on behalf of the Trustee. The authentication by the Trustee or by an Authenticating Agent upon any Bond shall be conclusive evidence that the Bond so authenticated has been duly authenticated and delivered hereunder and is entitled to the security and benefit of this Indenture. The certificate of the Trustee or an Authenticating Agent may be executed by any person authorized by the Trustee or Authenticating Agent, but it shall not be necessary that the same authorized person sign the certificates of authentication on all of the Bonds.

SECTION 3.4 Source of Payment of Bonds. To the extent in and except as otherwise permitted by this Indenture, (i) the Bonds shall be limited and special obligations of the Issuer and the Bond Service Charges thereon shall be satisfied equally and ratably solely from the Revenues; and (ii) Bond Service Charges shall be secured by the assignment of Revenues hereunder and by this Indenture; and (iii) satisfaction of Bond Service Charges on any Additional Bonds may be otherwise secured and protected from sources or by property or instruments not applicable to the Bonds and any Additional Bonds, or not secured and protected from sources or by property or instruments applicable to the Bonds or Additional Bonds. Notwithstanding anything to the contrary in the Bond Legislation, the Bonds or this Indenture, **THE BONDS DO NOT AND SHALL NOT REPRESENT OR CONSTITUTE A DEBT OR PLEDGE OF THE FAITH AND CREDIT OR THE TAXING POWER OF THE ISSUER OR OF THE STATE OR OF ANY POLITICAL SUBDIVISION, MUNICIPALITY OR OTHER LOCAL AGENCY THEREOF. THE ISSUER SHALL NEVER BE REQUIRED TO PAY FROM ITS OWN FUNDS ANY OBLIGATIONS DERIVING FROM THE ISSUANCE OF THE BONDS.**

SECTION 3.5 Payment and Ownership of Bonds. Subject to Section 3.9 hereof, Bond Service Charges shall be payable on any Bond, in lawful money of the United States of America without deduction for the services of the Trustee or any Paying Agent or otherwise satisfied as agreed to between the Lessee and the Purchaser. The principal of any Bond shall be satisfied at maturity or on the date of any optional redemption to a Holder upon presentation and surrender of such Bond at the designated corporate trust office of the Trustee, or at the office, designated by the Trustee, of any Paying Agent; and interest on any Bond shall be satisfied on each Interest Payment Date with the Person in whose name the Bond (or one (1) or more Predecessor Bonds) is registered at the close of business on the Regular Record Date applicable to that Interest Payment Date on the Register at the address appearing therein; provided that with respect to the Purchaser of the Bonds and notwithstanding any provision to the contrary in this Indenture other than in Section 3.9 unless otherwise instructed by such Purchaser, all payments, if in cash, of Bond Service Charges on the Bonds shall be made by wire or account transfer in immediately available funds to the Trustee by such Purchaser without presentation or surrender of the Bonds registered in the name of such Purchaser or its nominee; provided, however, that when the final amount of Bond Service Charges is due with respect to a Bond registered in the

name of such Purchaser, the principal of that Bond shall be deemed satisfied only on surrender of that Bond to the Trustee.

If and to the extent that the Issuer shall fail to make payment or provision for payment or other satisfaction of interest on any Bond on any Interest Payment Date, that interest shall cease to be payable to the Person who was the Holder of that Bond (or of one (1) or more Predecessor Bonds) as of the applicable Regular Record Date. When moneys or other consideration become available for payment or satisfaction of the interest, (i) the Trustee shall, pursuant to Section 7.6(d), establish a Special Record Date for the payment or satisfaction of that interest which shall be not more than ten (10) nor fewer than five (5) days prior to the date of the proposed payment or satisfaction, and (ii) the Trustee shall cause notice of the proposed payment and of the Special Record Date to be mailed by first class mail, postage prepaid, to each Holder at its address as it appears on the Register not fewer than five (5) days prior to the Special Record Date and, thereafter, the interest shall be payable to or otherwise satisfied with the Persons who are the Holders of the Bonds (or their respective Predecessor Bonds) at the close of business on the Special Record Date.

Subject to the foregoing, each Bond delivered under this Indenture upon transfer thereof, or in exchange for or in replacement of any other Bond, shall carry the rights to interest accrued and unpaid, and to accrue on that Bond, or which were carried by that Bond.

Except as provided in this Section 3.5 and in the first paragraph of Section 3.7 hereof, (i) the Holder of any Bond shall be deemed and regarded as the absolute owner thereof for all purposes of this Indenture, (ii) payment of or on account of the Bond Service Charges on any Bond shall be made only to or upon the order of that Holder or its duly authorized attorney in the manner permitted by this Indenture, and (iii) neither the Issuer, the Trustee, the Registrar nor any Paying Agent or Authenticating Agent shall, to the extent permitted by law, be affected by notice to the contrary. All of those payments shall be valid and effective to satisfy and discharge the liability upon that Bond, including without limitation, the interest thereon, to the extent of the amount or amounts so paid.

SECTION 3.6 Transfer and Exchange of Bonds. So long as any of the Bonds remain outstanding, the Issuer will cause books for the registration and transfer for Bonds, as provided in this Indenture, to be maintained and kept at the designated office of the Registrar.

Unless otherwise provided in the Bond Legislation or Supplemental Indenture, Bonds may be exchanged, at the option of their Holder, for Bonds in an aggregate principal amount equal to the unmatured and unredeemed principal amount of, and bearing interest at the same rate and maturing on the same date or dates as, the Bonds being exchanged. The exchange shall be made (i) upon compliance with any requirements set forth in any Home Office Payments Agreement entered into pursuant to Section 3.9 hereof, and (ii) upon presentation and surrender of the Bonds being exchanged at the designated office of the Registrar or at the designated office of any Authenticating Agent for the Bonds, together with an assignment duly executed by the Holder or its duly authorized attorney in any form which shall be satisfactory to the Registrar or the Authenticating Agent, as the case may be.

Any Bond may be transferred upon the Register, (i) upon compliance with any requirements set forth in any Home Office Payments Agreement entered into pursuant to Section 3.9 hereof, and (ii) upon presentation and surrender thereof at the designated office of the Registrar or the designated office of any Authenticating Agent, together with an assignment duly executed by the Holder or its duly authorized attorney in any form which shall be satisfactory to the Registrar or the Authenticating Agent, as the case may be. Upon transfer of any Bond and on request of the Registrar or the Authenticating Agent, the Issuer shall execute in the name of the transferee, and the Registrar or the Authenticating Agent, as the case may be, shall authenticate and deliver, a new Bond or Bonds, in an aggregate principal amount equal to the unmatured and unredeemed principal amount of, and bearing interest at the same rate and maturing on the same date or dates as, the Bonds presented and surrendered for transfer.

In all cases in which Bonds shall be exchanged or transferred hereunder, the Issuer shall execute, and the Registrar or any Authenticating Agent, as the case may be, shall authenticate and deliver, Bonds in accordance with the provisions of this Indenture. The exchange or transfer shall be made without charge; provided, that the Issuer and the Registrar or the Authenticating Agent, as the case may be, may make a charge for every exchange or transfer of Bonds sufficient to reimburse them for any tax or excise required to be paid with respect to the exchange or transfer. The charge shall be paid before a new Bond is delivered.

All Bonds issued upon any transfer or exchange of Bonds shall be the valid obligations of the Issuer, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Bonds surrendered upon transfer or exchange. Neither the Issuer, the Registrar nor the Authenticating Agent, as the case may be, shall be required to make any exchange or transfer of a Bond during a period beginning at the opening of business five (5) days before the day of the mailing of a notice of redemption of Bonds and ending at the close of business on the day of such mailing or to transfer or exchange any Bonds selected for redemption, in whole or in part.

In case any Bond is redeemed in part only, on or after the redemption date and upon presentation and surrender of the Bond, the Issuer shall cause execution of, and the Registrar or any Authenticating Agent for that Bond shall authenticate and deliver, a new Bond or Bonds in an aggregate principal amount equal to the unmatured and unredeemed portion of, and bearing interest at the same rate and maturing on the same date or dates as, the Bond redeemed in part.

For purposes of this Section, the Trustee shall establish the designated office of the Registrar and the Authenticating Agent and shall notify the Issuer of same.

SECTION 3.7 Mutilated, Lost, Wrongfully Taken or Destroyed Bonds. If any Bond is mutilated, lost, wrongfully taken or destroyed, in the absence of written notice to the Issuer or the Registrar that a lost, wrongfully taken or destroyed Bond has been acquired by a bona fide purchaser, the Issuer shall execute, and the Registrar shall authenticate and deliver, a new Bond of like date, maturity and denomination as the Bond mutilated, lost, wrongfully taken or destroyed; provided, that (a) in the case of any mutilated Bond, the mutilated Bond first shall be surrendered to the Registrar, and (b) in the case of any lost, wrongfully taken or destroyed Bond, there first shall be furnished to the Issuer, the Lessee, the Trustee and the Registrar evidence of the loss, wrongful taking or destruction satisfactory to the Authorized Lessee

Representative, the Trustee and the Registrar, together with indemnity satisfactory to them and to the Authorized Issuer Representative.

If any lost, wrongfully taken or destroyed Bond shall have matured, instead of issuing a new Bond, the Authorized Lessee Representative may direct the Trustee to pay that Bond without surrender thereof upon the furnishing of satisfactory evidence and indemnity as in the case of issuance of a new Bond. The Issuer, the Registrar and the Trustee may charge the Holder of a mutilated, lost, wrongfully taken or destroyed Bond their reasonable fees and expenses in connection with their actions pursuant to this Section.

Every new Bond issued pursuant to this Section by reason of any Bond being mutilated, lost, wrongfully taken or destroyed (i) shall constitute, to the extent of the outstanding principal amount of the Bond lost, mutilated, taken or destroyed, an additional contractual obligation of the Issuer, regardless of whether the mutilated, lost, wrongfully taken or destroyed Bond shall be enforceable at any time by anyone and (ii) shall be entitled to all of the benefits of this Indenture equally and proportionately with any and all other Bonds issued and outstanding hereunder.

All Bonds shall be held and owned on the express condition that the foregoing provisions of this Section are exclusive with respect to the replacement or payment of mutilated, lost, wrongfully taken or destroyed Bonds and, to the extent permitted by law, shall preclude any and all other rights and remedies with respect to the replacement or payment of negotiable instruments or other investment securities without their surrender, notwithstanding any law or statute to the contrary now existing or enacted hereafter.

SECTION 3.8 Cancellation of Bonds. Any Bond surrendered pursuant to this Article for the purpose of payment or retirement or for exchange, replacement or transfer shall be cancelled upon presentation and surrender thereof to the Registrar, the Trustee or any Paying Agent or Authenticating Agent. Any Bond cancelled by the Trustee or a Paying Agent or Authenticating Agent shall be transmitted promptly to the Registrar by the Trustee, Paying Agent or Authenticating Agent.

The Issuer, or the Lessee on behalf of the Issuer, may deliver at any time to the Registrar for cancellation any Bonds previously authenticated and delivered hereunder, which the Issuer or the Lessee may have acquired in any manner whatsoever. All Bonds so delivered shall be cancelled promptly by the Registrar. Unless otherwise directed by the Issuer, cancelled Bonds shall be retained and stored by the Registrar in accordance with the Trustee's policies and procedures after their cancellation. The Registrar shall provide certificates describing the destruction of cancelled Bonds to the Issuer upon the Issuer's written request.

SECTION 3.9 Home Office Payments Agreement. Notwithstanding any provision of this Indenture or of any Bond to the contrary, the Issuer and the Trustee, at the time of execution of this Indenture, have entered into a home office payments agreement (the initial "Home Office Payments Agreement") with the Purchaser providing for the making to the Purchaser, of all payments or satisfaction of payment of principal and interest on such Bond or any part thereof at a place and in a manner other than as provided in this Indenture and in the Bonds without presentation or surrender of such Bond, upon such conditions as shall be satisfactory to the Trustee (including the payment by the Lessee of rental payments (or a portion

thereof) or satisfaction thereof under the Lease on behalf of the Issuer directly to the Holders of the Bonds in satisfaction of the principal and interest on the Bonds). The Trustee agrees to make or permit to be made payments or satisfaction of payment of principal and interest on the Bonds in accordance with the provisions of such Home Office Payments Agreement. The Trustee shall not be liable to any such Holder or to the Issuer for any act or omission to act on the part of the Issuer, any such Holder or any agent of the Issuer, in connection with any such agreement, and the Trustee shall have no obligation in connection with any payment or satisfaction of payment of principal or interest made. Upon the registration of transfer of any registered Bond being paid in accordance with the provisions of a Home Office Payments Agreement permitted by this Section, the Holder of such registered bond, prior to the delivery of such Bond to the transferee, shall make a notation on such Bond of the date to which interest has been paid or satisfied and the amount of advances, any prepayments made on account of the principal advanced thereof, and the Trustee shall not be deemed to have notice of any such payment or satisfaction of payment. Such Home Office Payments Agreement shall provide that it becomes effective upon the issuance and delivery of the Bonds and continues in effect until the earlier of (i) the principal and the interest on the Bonds having been fully paid or otherwise satisfied pursuant to the provisions of this Indenture or (ii) the Purchaser (or any successor thereto) and the Lessee (or any successor thereto) agreeing to terminate the Home Office Payments Agreement. Such Home Office Payments Agreement shall further provide that it inures to the benefit of and is binding on the respective successors and assigns of the parties thereto and any transferees of the Bonds.

ARTICLE 4

REDEMPTION OF BONDS

SECTION 4.1 **Optional Redemption.** The Bonds are subject to redemption at any time in whole or in part on any date, at the option of the Issuer, upon the written direction of the Lessee and the Holder, at redemption prices equal to the principal amount redeemed plus, in each case, interest accrued to the redemption date.

SECTION 4.2 **Partial Redemption.** If fewer than all of the outstanding Bonds are called for redemption at one (1) time, the amount of each such redemption shall be noted by the Purchaser on Exhibit A to the Bond that is affected by such redemption. The Registrar shall maintain the records as to the official outstanding principal amount of the Bonds. In the event that there is more than one (1) Bond, and if fewer than all of the outstanding Bonds of a series are called for redemption at one (1) time, those Bonds which are called shall be called in inverse order of the maturities of the Bonds to be redeemed.

SECTION 4.3 **Issuer's Election to Redeem.** The Bonds shall be redeemed only by written notice from the Issuer to the Trustee, given at the direction of the Lessee and the Holder, or by written notice from the Lessee to the Trustee on behalf of the Issuer. That notice shall specify the redemption date and the principal amount of each maturity of Bonds to be redeemed, and shall be given at least ten (10) Business Days prior to the redemption date or such shorter period as shall be acceptable to the Trustee.

SECTION 4.4 **Notice of Redemption.** The notice of the call for redemption of Bonds shall identify (i) by designation, series, letters, numbers or other distinguishing marks, the

Bonds or portions thereof to be redeemed; (ii) the redemption price to be paid; (iii) the date fixed for redemption; and (iv) the place or places where the amounts due upon redemption are payable or to be otherwise satisfied. Except as set forth below, 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 five (5) days prior to the date fixed for redemption, to the Holder of each Bond subject to redemption in whole or in part at the Holder's address shown on the Register on the fifteenth (15th) day preceding that mailing; provided, however, so long as the Purchaser is the sole Holder of the Bonds, notice of redemption shall be given to the Purchaser by sending a facsimile transmission, at least one (1) day prior to the date fixed for redemption; provided, further to the extent any Home Office Payments Agreement does not require the Trustee to provide redemption notices, the terms of the Home Office Payments Agreement shall control. Failure to receive notice by mailing or any defect in that notice regarding any Bond, however, shall not affect the validity of the proceedings for the redemption of any Bond.

SECTION 4.5 Payment of Redeemed Bonds. Notice having been mailed in the manner provided in Section 4.4 hereof, and, in the event of optional redemption pursuant to Section 4.1 hereof, the Bonds and portions thereof called for redemption shall become due on the redemption date, and upon presentation and surrender thereof at the place or places specified in that notice, shall be paid or otherwise satisfied at the redemption price, plus interest accrued to the redemption date.

If money or other consideration for the redemption of all of the Bonds and portions thereof to be redeemed, together with interest accrued thereon to the redemption date, is held by or on behalf of the Trustee or any Paying Agent on the redemption date, so as to be available therefor on that date and if notice of redemption has been deposited in the mail as aforesaid, or if the Holder(s) of the remaining outstanding principal of the Bonds shall agree to waive all of such payments in writing, then from and after the redemption date those Bonds and portions thereof called for redemption shall cease to bear interest and no longer shall be considered to be outstanding hereunder. If those moneys or other consideration shall not be so available on the redemption date, or such Holder(s) waiver shall not have been delivered, or notice shall not have been deposited in the mail as aforesaid, those Bonds and portions thereof shall continue to bear interest, until they are paid, at the same rate as they would have borne had they not been called for redemption.

All moneys deposited in the Bond Fund and held by the Trustee or a Paying Agent for the redemption of particular Bonds shall be held in trust for the account of the Holders thereof and shall be paid to them, respectively, upon presentation and surrender of those Bonds.

SECTION 4.6 Variation of Redemption Provisions. The provisions of this Article 4, insofar as they apply to issuance of Additional Bonds, may be varied by the Supplemental Indenture.

ARTICLE 5

PROVISIONS AS TO FUNDS, PAYMENTS, PROJECT AND AGREEMENT

SECTION 5.1 Creation of Project Fund. There is hereby created by the Issuer and ordered maintained as a separate trust account (except when invested as provided hereinafter) in the custody of the Trustee (unless and for so long as there is in effect a Home Office Payments Agreement in which event the account shall be an account of the Purchaser for which the Trustee shall have no liability or obligation to monitor), a trust fund for the Bonds designated “Louisville/Jefferson County Metro Government – Boyd Real Property, LLC Project Fund” (the “Project Fund”). Unless (a) there are Home Office Payments Agreements in effect or (b) otherwise set forth in the Bond Legislation or Supplemental Indenture relating to the issuance of Additional Bonds, there shall be deposited in the Project Fund the proceeds of the sale of the Bonds (as funded by the Purchaser from time to time upon request by the Lessee so that the Lessee may draw down from time to time the proceeds requested (but in no event may the amounts requested to be funded in the aggregate exceed \$119,000,000), other than any proceeds representing accrued interest, if any, which shall be deposited in the Bond Fund pursuant to Section 5.4 hereof, any proceeds from the award of any condemnation proceedings or any nonmonetary consideration that may be tendered for the Bonds.

Pending disbursement pursuant to the Agreement, the moneys and Eligible Investments to the credit of the Project Fund shall constitute a part of the Revenues assigned to the Trustee as security for the payment of the Bond Service Charges.

SECTION 5.2 Disbursement from and Records of Project Fund. Moneys in the Project Fund shall be disbursed in accordance with the provisions of the Agreement. To the extent there is no Home Office Payments Agreement in effect, and the Trustee holds and disburses funds from the Project Fund, the Trustee shall cause to be kept and maintained accurate records pertaining to the Project Fund and all disbursements therefrom (and the Trustee may conclusively rely upon the initialed Exhibit A to the Bond for any draws of proceeds and redemption of the Bonds). If requested by the Issuer or the Lessee in writing, after the Project has been completed and a certificate of payment of all costs is filed as provided in Section 5.3 hereof, the Trustee shall file copies of the records pertaining to the Project Fund and disbursements therefrom with the Issuer and the Lessee. Unless otherwise provided in the Bond Legislation or a Supplemental Indenture, this Section shall apply to the disbursement of the proceeds of any issue of Additional Bonds. Notwithstanding the foregoing, to the extent there is in effect a Home Office Payments Agreement, the Trustee has no obligation to maintain records pertaining to the Project Fund.

SECTION 5.3 Completion of the Project. The completion of the Project and payment of all costs and expenses incident thereto shall be evidenced by the filing with the Trustee of

(a) the certificate of the Authorized Lessee Representative required by Section 3.6 of the Agreement unless there is a Home Office Payments Agreement in which case the certificate shall be delivered to the Purchaser, and

(b) a certificate signed by the Authorized Lessee Representative as required by Section 3.6(d) of the Lease stating that all obligations and costs in connection with the Project and payable out of the Project Fund have been paid and discharged, except for amounts retained by the Trustee (or the Purchaser if there is a Home Office Payments Agreement) as provided under the Agreement for the payment of costs of the Project not then due and payable.

As soon as practicable after the filing with the Trustee of the certificate to which reference is made in clause (b) above, any balance remaining in the Project Fund (other than the amounts retained by the Trustee (or the Purchaser if there is a Home Office Payments Agreement) as described in the preceding sentence) shall be deposited or applied in accordance with the direction of the Authorized Lessee Representative pursuant to Section 3.4 of the Agreement. If there is in effect a Home Office Payments Agreement, the Trustee shall be obligated to deposit or apply amounts retained by the Purchaser only to the extent such amounts have been transferred to the Trustee. Unless otherwise provided in the Bond Legislation or a Supplemental Indenture, this Section shall apply to any additional property financed with the proceeds of any issue of Additional Bonds.

SECTION 5.4 Creation of Bond Fund. There is hereby created by the Issuer and ordered maintained as a separate deposit account (except when invested as hereinafter set forth) in the custody of the Trustee (unless and for so long as there is in effect a Home Office Payments Agreement in which event the account shall be an account of the Purchaser for which the Trustee shall have no liability or obligation to monitor) a trust fund to be designated “Louisville/Jefferson County Metro Government – Boyd Real Property, LLC Bond Fund” (the “Bond Fund”).

Unless (a) there are Home Office Payments Agreements in effect or (b) otherwise set forth in the Bond Legislation or a Supplemental Indenture relating to the issuance of Additional Bonds, there shall be deposited in the Bond Fund (and credited, if required by this Indenture or the Agreement, to appropriate accounts therein), from the proceeds of the sale of the Bonds any accrued interest paid by the Purchaser.

The Bond Fund (and accounts therein for which provision is made in this Indenture or in the Agreement) and the moneys and Eligible Investments therein shall be used solely and exclusively for the payment of Bond Service Charges as they become due at stated maturity, by redemption, upon acceleration or pursuant to any mandatory sinking fund requirements all as provided herein and in the Agreement; provided, that no part thereof shall be used to redeem any Bonds prior to maturity, except as may be provided otherwise herein or in the Agreement.

The Trustee shall transmit to the Paying Agent, as appropriate, from moneys in the Bond Fund, amounts sufficient to make timely payments of principal of and interest on the Bonds to be made by the Paying Agent and then due and payable. The Issuer authorizes and directs the Trustee to cause withdrawal of moneys from the Bond Fund which are available for the purpose of paying, and are sufficient to pay, the principal of such Bonds as it becomes due and payable (whether at stated maturity, by redemption, upon acceleration or pursuant to any mandatory sinking fund requirements), for the purposes of paying or transferring moneys to the Paying Agent which are necessary to pay such principal and interest.

As provided in the Agreement, Bond Service Charges shall be payable, as they become due, from amounts lawfully available to the Trustee, including without limitation, proceeds from the sale or liquidation of any collateral then pledged to the Trustee.

SECTION 5.5 **Investment of Bond Fund and Project Fund**. For so long as there is no Home Office Payments Agreement in effect, moneys in the Bond Fund and the Project Fund, if any, shall be invested and reinvested by the Trustee in Eligible Investments at the written direction of the Authorized Lessee Representative; provided, that all moneys held by the Trustee to pay Bond Service Charges shall be invested in Government Obligations. In the event no such instructions are received by the Trustee, such amounts shall be held uninvested in cash, without liability for interest, pending receipt of such investment instructions, and such written direction shall be deemed to be a certification that such directed investments constitute Eligible Investments. The Trustee shall be fully protected in conclusively relying on written investment directions provided to it as to the suitability and legality of such directed investments. Investments of moneys in the Bond Fund shall mature or be redeemable at the option of the Trustee at the times and in the amounts necessary to provide moneys to pay Bond Service Charges as they become due at stated maturity or by redemption. Each investment of moneys in the Project Fund shall mature or be redeemable at such time as may be necessary to make payments from the Project Fund.

Any investments may be purchased from or sold to the Trustee, the Registrar, an Authenticating Agent or a Paying Agent, or any bank, trust company or savings and loan association affiliated with any of the foregoing. The Trustee, at the best price reasonably obtainable, shall sell or redeem investments credited to the Bond Fund to apply sufficient moneys applicable hereunder to and at the times required for the purposes of paying Bond Service Charges when due as aforesaid, and shall do so without necessity for any order on behalf of the Issuer and without restriction by reason of any order. The Trustee shall have no liability whatsoever for the sale or redemption price of any investments. An investment made from moneys credited to the Bond Fund or the Project Fund shall constitute part of the respective Fund, and each respective Fund shall be credited with all proceeds of sale and income from investment of moneys credited thereto. For purposes of this Indenture, those investments shall be valued at face amount or market value, whichever is less.

Confirmations are not required from the Trustee for permitted investments included in a monthly statement rendered by the Trustee, and no statement need be rendered by the Trustee for any fund of account if no investment or income accrual activity occurred in such fund or account during such month. The Trustee shall have no responsibility or liability for any diminution in value on any Eligible Investment made hereunder.

SECTION 5.6 **Moneys to be Held in Trust**. All moneys required or permitted to be deposited with or paid to the Trustee or any Paying Agent under any provision of this Indenture or the Agreement, and any investments thereof, shall be held by the Trustee or the Paying Agent in trust. Except for (i) moneys deposited with or paid to the Trustee or any Paying Agent for the redemption of Bonds, notice of the redemption of which shall have been duly given, and (ii) moneys held by the Trustee pursuant to Section 5.7 hereof, all moneys described in the preceding sentence held by the Trustee or any Paying Agent shall be subject to the lien hereof while so held.

SECTION 5.7 Nonpresentment of Bonds. In the event that any Bond shall not be presented for payment when the principal thereof becomes due in whole or in part, either at stated maturity, by redemption or pursuant to any mandatory sinking fund requirements, or a check or draft for interest is uncashed, if moneys sufficient to pay or other consideration sufficient to satisfy the principal then due of that Bond or of such check or draft shall have been made available to the Trustee for the benefit of its Holder, all liability of the Issuer to that Holder for such payment or other satisfaction of the principal then due of the Bond or of such check or draft thereupon shall cease and be discharged completely. Thereupon, it shall be the duty of the Trustee to hold those moneys, without liability for interest thereon, in an account separate and apart from this Indenture for the exclusive benefit of the Holder, who shall be restricted thereafter exclusively to those moneys for any claim of whatever nature.

Any of those moneys which shall be so held by the Trustee, and which remain unclaimed by the Holder of a Bond not presented for payment or check or draft not cashed for a period of two (2) years after the due date thereof, shall be paid to the Lessee as provided in Section 10.3 of the Agreement, free of any trust or lien. Thereafter, the Holder of that Bond shall look only to the Lessee for payment and then only to the amounts so received by the Lessee without any interest thereon, and the Trustee shall not have any responsibility with respect to those moneys.

SECTION 5.8 Repayment to the Lessee from the Bond Fund. Except as provided in Section 5.7 hereof, any amounts remaining in the Bond Fund (i) after all of the outstanding Bonds shall be deemed paid and discharged under the provisions of this Indenture, and (ii) after payment of all fees, including counsel fees, charges and expenses of the Trustee, the Registrar and any Paying Agents or Authenticating Agents and of all other amounts required to be paid under this Indenture and the Agreement, shall be paid to the Lessee, to the extent that those amounts are in excess of those necessary to effect the payment and discharge of the outstanding Bonds.

ARTICLE 6

THE TRUSTEE, REGISTRAR, PAYING AGENTS AND AUTHENTICATING AGENTS

SECTION 6.1 Trustee's Acceptance and Responsibilities. The Trustee accepts the trusts imposed upon it by this Indenture, and agrees to observe and perform those trusts, but only upon and subject to the terms and conditions set forth in this Article, to all of which the parties hereto and the Holders agree.

(a) Prior to the occurrence of a default or an Event of Default (as defined in Section 7.1 hereof) of which the Trustee has been notified, as provided in paragraph (f) of Section 6.2 hereof, and after the cure or waiver of all defaults or Events of Default which may have occurred,

(i) the Trustee undertakes to perform only those duties and obligations which are set forth expressly and specifically in this Indenture, and no duties or obligations shall be implied to the Trustee;

(ii) in the absence of bad faith on its part, the Trustee may rely conclusively as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are required specifically to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(b) In case a default or an Event of Default has occurred and is continuing hereunder (of which the Trustee has been notified), the Trustee shall exercise those rights and powers, but only if instructed as set forth in Section 7.3, vested in it by this Indenture and shall use the same degree of care and skill in their exercise, as a prudent person would exercise or use under similar circumstances.

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own gross negligence, or its own willful misconduct, except that,

(i) this Subsection shall not be construed to affect the limitation of the Trustee's duties and obligations provided in subparagraph (a)(i) of this Section or the Trustee's right to rely on the truth of statements and the correctness of opinions as provided in subparagraph (a)(ii) of this Section;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by any one (1) of its officers, unless it shall be established that the Trustee was grossly negligent in ascertaining the pertinent facts;

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a majority in principal amount of the Bonds then outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture; and

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

SECTION 6.2 **Certain Rights and Obligations of the Trustee.** Except as otherwise provided in Section 6.1 hereof:

(a) The Trustee (i) may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents or receivers (but shall not be answerable therefor if appointed in accordance with the standard specified above), (ii) shall be entitled to the advice of counsel concerning all matters of trusts hereof and duties hereunder, and (iii) may pay reasonable compensation in all cases to all of those attorneys, agents, receivers and employees reasonably employed by it in connection with the trusts hereof. The Trustee may act upon the

opinion or advice of any attorney (who may be the attorney or attorneys for the Issuer or the Lessee) approved by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action taken or omitted to be taken in good faith in reliance upon that opinion or advice.

(b) Except for its certificate of authentication on the Bonds, the Trustee shall not be responsible for:

- (i) any recital in this Indenture or in the Bonds,
- (ii) the validity, priority, recording, re-recording, filing or re-filing of this Indenture or any Supplemental Indenture,
- (iii) any instrument or document of further assurance or collateral assignment,
- (iv) any financing statements, amendments thereto or continuation statements,
- (v) insurance of the Project or collection of insurance moneys,
- (vi) the validity of the execution by the Issuer of this Indenture, any Supplemental Indenture or instruments or documents of further assurance,
- (vii) the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby,
- (viii) the value of or title to the Project, or
- (ix) the maintenance of the security hereof.

The Trustee shall not be bound to ascertain or inquire as to the observance or performance of any covenants, agreements or obligations on the part of the Issuer or the Lessee under the Agreement except as set forth hereinafter; but the Trustee may require of the Issuer or the Lessee full information and advice as to the observance or performance of those covenants, agreements and obligations. The Trustee shall have prepared and delivered annually to each of the Holders Form 1099s relating to the interest paid on the Bonds to such Holders (except that the Trustee shall have no responsibility for the preparation and delivery of such 1099s for so long as there is in effect a Home Office Payments Agreement). Except as otherwise provided in Section 7.4 hereof, the Trustee shall have no obligation to observe or perform any of the duties of the Issuer under the Agreement.

(c) The Trustee shall not be accountable for the application by the Lessee or any other Person of the proceeds of any Bonds authenticated or delivered hereunder.

(d) The Trustee shall be protected, in the absence of bad faith on its part, in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document reasonably believed by it to be genuine and correct and to have been signed or sent by

the proper Person or Persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any Person who is the Holder of any Bonds at the time of making the request or giving the authority or consent, shall be conclusive and binding upon all future Holders of the same Bond and Bonds issued in exchange therefor or in place thereof.

(e) As to the existence or nonexistence of any fact for which the Issuer or the Lessee may be responsible or as to the sufficiency or validity of any instrument, document, report, paper or proceeding, the Trustee, in the absence of bad faith on its part, shall be entitled to rely upon a certificate signed on behalf of the Issuer or the Lessee by an authorized officer thereof as sufficient evidence of the facts recited therein. Prior to the occurrence of a default or Event of Default hereunder of which the Trustee has been notified, as provided in paragraph (f) of this Section, the Trustee may accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient; provided, that the Trustee in its discretion may require and obtain any further evidence which it deems to be necessary or advisable in its sole discretion; and, provided further, that the Trustee shall not be bound to secure any further evidence. The Trustee may accept a certificate of the officer, or an assistant thereto, having charge of the appropriate records, to the effect that legislation has been enacted by the Legislative Authority in the form recited in that certificate, as conclusive evidence that the legislation has been duly enacted and is in full force and effect.

(f) The Trustee shall not be required to take notice, and shall not be deemed to have notice, of any default or Event of Default hereunder, except Events of Default described in paragraphs (a) and (b) of Section 7.1 hereof (to the extent there is a Home Office Payments Agreement the Trustee shall not be deemed to have notice of the occurrence of such event unless the Trustee receives written notice as described herein), unless the Trustee shall be notified specifically of the default or Event of Default in a written instrument or document delivered to its designated corporate trust office by the Issuer or by the Holders of at least one hundred percent (100%) of the aggregate principal amount of Bonds then outstanding. In the absence of delivery of a notice satisfying those requirements, the Trustee may assume conclusively that there is no default or Event of Default.

(g) At any reasonable time, the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives (i) may inspect and copy fully all books, papers and records of the Issuer pertaining to the Project and the Bonds, and (ii) may make any memoranda from and in regard thereto as the Trustee may desire.

(h) The Trustee shall not be required to give any bond or security with respect to the execution of these trusts and powers or otherwise in respect of the premises.

(i) Notwithstanding anything contained elsewhere in this Indenture, the Trustee may demand any showings, certificates, reports, opinions, appraisals and other information, and any corporate action and evidence thereof, in addition to that required by the terms hereof, as a condition to the authentication of any Bonds or the taking of any action whatsoever within the purview of this Indenture, if the Trustee deems it to be desirable for the purpose of establishing the right of the Issuer to the authentication of any Bonds or the right of any Person to the taking of any other action by the Trustee; provided, that the Trustee shall not be required to make that demand.

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

(k) The Trustee may execute any of the trusts or powers hereunder or perform and duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.

(l) Before taking action hereunder pursuant to Section 6.4 or Article 7 hereof (with the exception of declaring a default or accelerating the Bonds), the Trustee may require that a satisfactory indemnity bond be furnished to it for the reimbursement of all expenses which it may incur and to protect against all liability by reason of any action so taken, except liability which is adjudicated to have resulted from its gross negligence or willful misconduct. The Trustee may take action without that indemnity, and in that case, the Lessee shall reimburse the Trustee for all of the Trustee's expenses, including counsel fees, pursuant to Section 6.3 hereof.

(m) Unless otherwise provided herein, all moneys received by the Trustee under this Indenture shall be held in trust for the purposes for which those moneys were received, until those moneys are used, applied or invested as provided herein; provided, that those moneys need not be segregated from other moneys, except to the extent required by this Indenture or by law. The Trustee shall not have any liability for interest on any moneys received hereunder, except to the extent expressly provided herein or agreed with the Issuer or the Lessee.

(n) Any legislation by the Legislative Authority, and any opinions, certificates and other instruments and documents for which provision is made in this Indenture, may be accepted by the Trustee, in the absence of bad faith on its part, as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection and authority to the Trustee for its actions taken hereunder.

(o) The Trustee, in acting in any other capacity under this Indenture, shall be afforded the same protections, rights and immunities as the Trustee.

SECTION 6.3 Fees, Charges and Expenses of Trustee, Registrar, Paying Agent and Authenticating Agent. The Trustee, the Registrar and any Paying Agent or Authenticating Agent shall be entitled to payment or reimbursement by the Lessee, as provided in the Agreement, for reasonable fees and expenses for its Ordinary Services rendered hereunder and for all advances, counsel fees and expenses and other Ordinary Expenses reasonably and necessarily paid or incurred by them in connection with the provision of Ordinary Services. For purposes hereof, fees for Ordinary Services provided for by their respective standard fee schedules shall be considered reasonable. In the event that it should become necessary for any of them to perform Extraordinary Services, they shall be entitled to reasonable extra compensation therefor and to reimbursement for reasonable and necessary Extraordinary Expenses (including attorneys' fees and expenses) incurred in connection therewith.

Without creating a default or an Event of Default hereunder, however, the Lessee may contest in good faith the necessity for any Extraordinary Service and Extraordinary Expense and the reasonableness of any fee, charge or expense.

The Trustee, the Registrar and any Paying Agent or Authenticating Agent shall not be entitled to compensation or reimbursement for Extraordinary Services or Extraordinary Expenses occasioned by their gross negligence or willful misconduct. The reasonable fees and expenses (including attorneys' fees and expenses) for their respective Ordinary Services and charges for the foregoing shall be entitled to payment and reimbursement only from (i) the Project Fund, (ii) the Additional Payments made by the Lessee pursuant to the Agreement, or (iii) from other moneys available therefor. Any amounts payable to the Trustee, the Registrar or any Paying Agent or Authenticating Agent pursuant to this Section 6.3 shall be payable upon demand and shall bear interest from the date of demand therefor at the Default Rate. The initial or acceptance fees of the Trustee and the fees, charges and expenses of the Trustee, the Registrar or any Paying Agent and Authenticating Agent described above (including attorneys' fees and expenses), may be paid by the Trustee from the applicable Project Fund as and when due to the extent that those fees, charges and expenses become due as provided in the Agreement.

SECTION 6.4 Intervention by Trustee. The Trustee may intervene on behalf of the Holders, and shall intervene if requested to do so in writing by the Holders of at least one hundred percent (100%) of the aggregate principal amount of Bonds then outstanding, in any judicial proceeding to which the Issuer or the Lessee is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of Holders of the Bonds. The rights and obligations of the Trustee under this Section are subject to the approval of that intervention by a court of competent jurisdiction. As a condition precedent to intervening, the Trustee may require that a satisfactory indemnity bond be provided to it in accordance with Sections 6.1 and 6.2 hereof before it takes action hereunder.

SECTION 6.5 Successor Trustee. Anything herein to the contrary notwithstanding,

(a) any corporation or association (i) into which the Trustee may be converted or merged, (ii) with which the Trustee or any successor to it may be consolidated, or (iii) to which it may sell or transfer its assets and municipal trust business as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, merger, consolidation, sale or transfer, ipso facto, shall be and become successor Trustee hereunder and shall be vested with all of the title to the whole property or trust estate hereunder; and

(b) that corporation or association shall be vested further, as was its predecessor, with each and every trust, property, remedy, power, right, duty, obligation, discretion, privilege, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by, vested in or conveyed to the Trustee, without the execution or filing of any instrument or document or any further act on the part of any of the parties hereto.

Any successor Trustee, however, (i) shall be a trust company or a bank having the powers of a trust company, and (ii) shall have a reported capital, surplus and undivided profits aggregating not less than \$100,000,000.

SECTION 6.6 Appointment of Co-Trustee. It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including without limitation, the laws of the State) denying or restricting the right of banks or trust companies to transact business as trustees in that jurisdiction. It is recognized that, (a) if there is litigation under this Indenture or other instruments or documents relating to the Bonds and the Project, and in particular, in case of the enforcement hereof or thereof upon a default or an Event of Default, or (b) if the Trustee should deem that, by reason of any present or future law of any jurisdiction, it may not (i) exercise any of the powers, rights or remedies granted herein to the Trustee, (ii) hold title to the properties, in trust, as granted herein, or (iii) take any action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an individual or additional institution as a Co-Trustee. The following provisions of this Section are adapted to these ends.

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

Should any instrument or document in writing from the Issuer reasonably be required by the Co-Trustee so appointed by the Trustee for vesting and conveying more fully and certainly in and to that Co-Trustee those trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens, that instrument or document shall be executed, acknowledged and delivered, but not prepared, by the Issuer. In case any Co-Trustee or a successor to it shall die, become incapable of acting, resign or be removed, all of the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens of the Co-Trustee shall be exercised by, vest in and be conveyed to the Trustee, to the extent permitted by law, until the appointment of a successor to the Co-Trustee.

Notwithstanding the foregoing, the appointment of a Co-Trustee shall not reduce the Trustee's primary fiduciary duties. The Trustee shall have no liability whatsoever for any actions or inactions of the Co-Trustee.

SECTION 6.7 Resignation by the Trustee. The Trustee may resign at any time from the trusts created hereby by giving written notice of the resignation to the Issuer, the Lessee, the Registrar, and any Paying Agent and Authenticating Agent of Bonds then outstanding and by giving written notice of the resignation to the Holders as their names and addresses appear on the Register at the close of business fifteen (15) days prior to the giving of notice. The resignation shall take effect upon the appointment of a successor Trustee.

SECTION 6.8 Removal of the Trustee. The Trustee may be removed at any time upon 30 days' prior notice by an instrument or document or concurrent instruments or documents in writing delivered to the Trustee, with copies thereof mailed to the Issuer, the Registrar, any

Paying Agent and Authenticating Agent and the Lessee, and signed by or on behalf of the Holders of not less than a majority in aggregate principal amount of the Bonds then outstanding.

The Trustee may also be removed at any time for any breach of trust or for acting or proceeding in violation of, or for failing to act or proceed in accordance with, any provision of this Indenture with respect to the duties and obligations of the Trustee of any court of competent jurisdiction upon the application of the Issuer or the Holders of not less than one hundred percent (100%) in aggregate principal amount of the Bonds then outstanding under this Indenture.

SECTION 6.9 Appointment of Successor Trustee. If (a) the Trustee shall resign, shall be removed, shall be dissolved, or shall become otherwise incapable of acting hereunder, (b) the Trustee shall be taken under the control of any public officer or officers, or (c) a receiver shall be appointed for the Trustee by a court, then a successor Trustee shall be appointed by the Issuer, with the written consent of the Lessee; provided, that if a successor Trustee is not so appointed within thirty (30) days after (i) a notice of resignation or an instrument or document of removal is received by the Issuer, as provided in Sections 6.7 and 6.8 hereof, respectively, or (ii) the Trustee is dissolved, taken under control, becomes otherwise incapable of acting or a receiver is appointed, in each case, as provided above, then, so long as the Issuer shall not have appointed a successor Trustee, the Holders of a majority in aggregate principal amount of Bonds then outstanding may designate a successor Trustee by an instrument or document or concurrent instruments or documents in writing signed by or on behalf of those Holders. If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Section, the Holder of any Bond outstanding hereunder or any retiring Trustee may apply to any court of competent jurisdiction to appoint a successor Trustee at the expense of the Issuer. Such court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Trustee.

Every successor Trustee appointed pursuant to this Section (a) shall be a trust company or a bank having the powers of a trust company, (b) shall have a reported capital, surplus and undivided profits aggregating not less than \$100,000,000 and (c) shall be willing to accept the trusteeship under the terms and conditions of this Indenture.

Every successor Trustee appointed hereunder shall execute and acknowledge, and shall deliver to its predecessor, the Issuer and the Lessee, an instrument or document in writing accepting the appointment. Thereupon, without any further act, the successor shall become vested with all of the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens of its predecessor. Upon the written request of its successor, the Issuer or the Lessee, the predecessor Trustee (a) shall execute and deliver an instrument or document transferring to its successor all of the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens of the predecessor Trustee hereunder, and (b) shall take any other action necessary to duly assign, transfer and deliver to its successor all property (including without limitation, all securities and moneys) held by it as Trustee. Should any instrument or document in writing from the Issuer be requested by any successor Trustee for vesting and conveying more fully and certainly in and to that successor the trusts, properties, remedies, powers, rights, duties, obligations, discretions,

privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens vested or conveyed or intended to be vested or conveyed hereby in or to the predecessor Trustee, the Issuer shall execute, acknowledge and deliver that instrument or document.

In the event of a change in the Trustee, the predecessor Trustee shall cease to be custodian of any moneys which it may hold pursuant to this Indenture and shall cease to be Registrar, Authenticating Agent and a Paying Agent for any of the Bonds, to the extent it served in any of those capacities. The successor Trustee shall become custodian and, if applicable, Registrar, Authenticating Agent and a Paying Agent.

SECTION 6.10 Adoption of Authentication. In case any of the Bonds shall have been authenticated, but shall not have been delivered, any successor Trustee, Registrar or Authenticating Agent may adopt the certificate of authentication of any predecessor Trustee, Registrar or Authenticating Agent and may deliver those Bonds so authenticated as provided herein. In case any Bonds shall have been authenticated, any successor Trustee, Registrar or Authenticating Agent may authenticate those Bonds either in the name of any predecessor or in its own name. In all cases, the certificate of authentication shall have the same force and effect as provided in the Bonds or in this Indenture with respect to the certificate of authentication of the predecessor Trustee, Registrar or Authenticating Agent.

SECTION 6.11 Registrars.

(a) Succession. Anything herein to the contrary notwithstanding, any corporation or association (i) into which a Registrar may be converted or merged, (ii) with which a Registrar or any successor to it may be consolidated, or (iii) to which it may sell or transfer its assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, merger, consolidation, sale or transfer, ipso facto, shall be and become successor Registrar to that Registrar hereunder and shall be vested with each and every power, right, duty, obligation, discretion and privilege expressed or intended by this Indenture to be exercised by or vested in the predecessor Registrar, without the execution or filing of any instrument or document or any further act on the part of any of the parties hereto.

(b) Resignation. A Registrar may resign at any time by giving written notice of its resignation to the Issuer, the Lessee, the Trustee, the Purchaser, so long as it remains a Holder of Bonds then outstanding for which the Registrar is Registrar, and to each Paying Agent and Authenticating Agent for Bonds, at least thirty (30) days before the resignation is to take effect. The resignation shall take effect immediately, however, upon the appointment of a successor Registrar, if the successor Registrar is appointed and accepts that appointment before the time stated in the notice.

(c) Removal. The Registrar may be removed at any time by an instrument or document or concurrent instruments or documents in writing delivered to the Registrar, with copies thereof mailed to the Issuer, the Trustee and the Lessee, and signed by or on behalf of the Holders of not less than a majority in aggregate principal amount of the Bonds then outstanding.

(d) Appointment of Successors. If (i) a Registrar shall resign, shall be removed, shall be dissolved, or shall become otherwise incapable of acting hereunder, (ii) a Registrar shall

be taken under the control of any public officer or officers, (iii) a receiver shall be appointed for a Registrar by a court, or (iv) a Registrar shall have an order for relief entered in any case commenced by or against it under the federal bankruptcy laws or commence a proceeding under any federal or state bankruptcy, insolvency, reorganization or similar law, or have such a proceeding commenced against it and either have an order of insolvency or reorganization entered against it or have the proceeding remain undismissed and unstayed for ninety (90) days, then a successor Registrar shall be appointed by the Authorized Issuer Representative, with the written consent of the Lessee and the Trustee; provided, that if a successor Registrar is not so appointed within ten (10) days after (A) a notice of resignation or an instrument or document of removal is received by the Issuer, as provided above, or (B) the Registrar is dissolved, taken under control, becomes otherwise incapable of acting or a receiver is appointed, in each case, as provided above, then, if the Authorized Issuer Representative shall not have appointed a successor Registrar, the Trustee or the Holders of a majority in aggregate principal amount of the Bonds then outstanding may designate a successor Registrar by an instrument or document or concurrent instruments or documents in writing signed by the Trustee, or in the case of the Holders, by or on behalf of those Holders.

Every successor Registrar appointed hereunder shall execute and acknowledge, and shall deliver to its predecessor, the Issuer, the Trustee and the Lessee, an instrument or document in writing accepting the appointment. Thereupon, without any further act, the successor shall become vested with all of the properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, titles and interests of its predecessor. Upon the written request of its successor, the Issuer or the Lessee, a predecessor Registrar (i) shall execute and deliver an instrument or document transferring to its successor all of the properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, titles and interests of it as predecessor Registrar hereunder, and (ii) shall take any other action necessary to duly assign, transfer and deliver to its successor all property and records (including without limitation, the Register and any cancelled Bonds) held by it as Registrar. Should any instrument or document in writing from the Issuer be requested by any successor Registrar for vesting, and conveying more fully and certainly in and to that successor the properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, titles and interests vested or conveyed or intended to be vested or conveyed hereby in or to a predecessor Registrar, the Issuer shall execute, acknowledge and deliver that instrument or document.

SECTION 6.12 Designation and Succession of Paying Agent. For so long as there is no Home Office Payments Agreement in effect, the Trustee shall be a Paying Agent for the Bonds, and, with the consent of the Issuer, the Trustee may appoint a Paying Agent or Agents with power to act on its behalf and subject to its direction in the payment of Bond Service Charges on Bonds. It is the responsibility of the Trustee to establish the duties and responsibilities of any Paying Agent for the purposes of this Indenture, to the extent not specified herein.

Any corporation or association with or into which any Paying Agent may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, consolidation or conversion to which any Paying Agent shall be a party, or any corporation or association succeeding to the trust business of any Paying Agent, shall be the

successor of that Paying Agent hereunder, if that successor corporation or association is otherwise eligible hereunder, without the execution or filing of any paper or any further act on the part of the parties hereto or the Paying Agent or that successor corporation or association.

Any Paying Agent may at any time resign by giving written notice of resignation to the Trustee, to the Registrar and to the Lessee. The Trustee may at any time terminate the agency of any Paying Agent by giving written notice of termination to such Paying Agent, to the Registrar and to the Lessee. Upon receiving such a notice of resignation or upon such termination, or in case at any time any Paying Agent shall cease to be eligible under this Section, the Trustee may appoint a successor Paying Agent. The Trustee shall give written notice of appointment of a successor Paying Agent to the Lessee, to the Issuer and to the Registrar and shall mail, within ten (10) days after that appointment, notice thereof to all Holders as their names and addresses appear on the Register on the date of that appointment.

The Trustee shall pay to any Paying Agent from time to time reasonable compensation as authorized in Section 6.3 hereof for its services, and the Trustee shall be entitled to be reimbursed for such payments, subject to Section 6.3 hereof.

The Issuer shall cause the Lessee to pay any Paying Agent from time to time for reasonable compensation as authorized in Section 6.3 hereof for the services of any Paying Agent.

The provisions of Section 3.5 and Subsection 6.2(d) shall be applicable to any Paying Agent.

SECTION 6.13 Designation and Succession of Authenticating Agent. With the consent of the Issuer, the Trustee may appoint an Authenticating Agent or Agents, in addition to the Registrar, with power to act on its behalf and subject to its direction in the authentication and delivery of Bonds in connection with transfers and exchanges under Section 3.6 and 4.2 hereof. For all purposes of this Indenture, the authentication and delivery of Bonds by an Authenticating Agent pursuant to this Section shall be deemed to be authentication and delivery of those Bonds “by the Trustee.”

Any corporation or association with or into which any Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, consolidation or conversion to which any Authenticating Agent shall be a party, or any corporation or association succeeding to the trust business of any Authenticating Agent, shall be the successor of that Authenticating Agent hereunder, if that successor corporation or association is otherwise eligible hereunder, without the execution or filing of any paper or any further act on the part of the parties hereto or the Authenticating Agent or such successor corporation.

Any Authenticating Agent may at any time resign by giving written notice of resignation to the Trustee, to the Registrar and to the Lessee. The Trustee may at any time terminate the agency of any Authenticating Agent by giving written notice of termination to such Authenticating Agent, to the Registrar and to the Lessee. Upon receiving such a notice of resignation or upon such a termination, or in case at any time any Authenticating Agent shall

cease to be eligible under this Section, the Trustee may appoint a successor Authenticating Agent. The Trustee shall give written notice of appointment of a successor Authenticating Agent to the Lessee, the Issuer and the Registrar and shall mail, within ten (10) days after that appointment, notice thereof to all Holders as their names and addresses appear on the Register on the date of that appointment.

The Issuer shall cause the Lessee to pay any Authenticating Agent from time to time for reasonable compensation as authorized in Section 6.3 hereof for the services of any Authenticating Agent.

The provisions of Section 3.5 and Subsections 6.2(b), (c), (d), (h) and (i) shall be applicable to any Authenticating Agent.

SECTION 6.14 Dealing in Bonds. The Trustee, a Registrar, a Paying Agent and an Authenticating Agent, their affiliates, and any directors, officers, employees or agents thereof, in good faith, may become the owners of Bonds as secured hereby with the same rights which it or they would have hereunder if the Trustee, the Registrar, Paying Agent or Authenticating Agent did not serve in those capacities.

SECTION 6.15 Representations, Agreement and Covenants of Trustee. The Trustee hereby represents that it is a national banking association, and that it or a bank holding system of which it is a member has an unimpaired reported capital, surplus and undivided profits aggregating not less than \$100,000,000. The Trustee covenants that it will take such action, if any, as is necessary to exercise corporate trust powers in the State, and that it or a bank holding system of which it is a member will maintain an unimpaired reported capital, surplus and undivided profits aggregating not less than \$100,000,000. The Trustee accepts and agrees to observe and perform the duties and obligations of the Trustee to which reference is made in any instrument or document providing security for any of the Bonds.

ARTICLE 7

DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND HOLDERS

SECTION 7.1 Defaults; Events of Default. The occurrence of any of the following events is defined as and declared to be and to constitute an Event of Default hereunder:

(a) Payment or satisfaction of any interest on any Bond shall not be made when and as that interest shall become due and such failure to pay or satisfy shall continue for ten (10) days after notice from the Trustee of such failure to pay or satisfy;

(b) Payment or satisfaction of the principal of any Bond shall not be made when and as that principal shall become due, whether at stated maturity, by redemption, by acceleration or otherwise;

(c) Failure by the Issuer to observe or perform any other covenant, agreement or obligation on its part to be observed or performed contained in this Indenture or in the Bonds, which failure shall have continued for a period of sixty (60) days after written notice, by

registered or certified mail, to the Issuer and the Lessee specifying the failure and requiring that it be remedied, which notice may be given by the Trustee in its discretion and shall be given by the Trustee at the written request of Holders of not less than one hundred percent (100%) in aggregate principal amount of Bonds then outstanding; or

(d) The occurrence and continuance of an Event of Default under the Agreement.

SECTION 7.2 Notice of Default. If an Event of Default of which the Trustee has notice pursuant to this Indenture, shall occur, the Trustee shall give written notice of the Event of Default, by registered or certified mail, to the Issuer, the Lessee, the Registrar and any Paying Agent and Authenticating Agent and each Holder, mailed within five (5) Business Days after the Trustee has actual knowledge of the Event of Default.

SECTION 7.3 Acceleration. Upon (i) the occurrence of an Event of Default as specified in Section 7.1 hereof, (ii) provision of the notice in Section 7.2 above, and (iii) receipt of approval of one hundred percent (100%) of the Holders, in a form satisfactory to the Trustee, the Trustee shall declare, by a notice in writing sent to the Lessee and the Issuer, the principal and interest on all Bonds then outstanding (if not then due and payable), together with interest accrued thereon, to be due immediately.

Any such declaration shall be by notice in writing to the Issuer and the Lessee, and, upon said declaration, principal of and interest on all Bonds shall become and be immediately due. The Trustee immediately upon such declaration shall give notice thereof in the same manner as provided in Section 4.4 hereof with respect to the redemption of the Bonds. Such notice shall specify the date on which payment of principal and interest shall be tendered to the Holders of Bonds, or such payment shall be otherwise satisfied. Upon any declaration of acceleration hereunder, the Trustee shall immediately exercise such rights as it may have under the Agreement to declare all payments thereunder to be immediately due.

SECTION 7.4 Other Remedies, Rights of Holders. In addition to taking action under Section 7.3 hereof, upon the occurrence and continuation of an Event of Default, the Trustee may pursue any available remedy to enforce the payment of Bond Service Charges or the observance and performance of any other covenant, agreement or obligation under this Indenture or the Agreement or any other instrument providing security, directly or indirectly, for the Bonds.

If, upon the occurrence and continuance of an Event of Default, the Trustee is requested so to do by the Holders of at least one hundred percent (100%) in aggregate principal amount of Bonds outstanding, in a form satisfactory to the Holders, the Trustee (subject to the provisions of Sections 6.1 and 6.2 and particularly subparagraph 6.1(c)(iv) and Subsection 6.2(1) of those Sections), shall exercise any rights and powers conferred by this Section and by Section 7.3 hereof.

No remedy conferred upon or reserved to the Trustee (or to the Holders) by this Indenture is intended to be exclusive of any other remedy. Each remedy shall be cumulative and shall be in addition to every other remedy given hereunder or otherwise to the Trustee or to the Holders now or hereafter existing.

No delay in exercising or omitting to exercise any remedy, right or power accruing upon any default or Event of Default shall impair that remedy, right or power or shall be construed to be a waiver of any default or Event of Default or acquiescence therein. Every remedy, right and power may be exercised from time to time and as often as may be deemed to be expedient.

No waiver of any default or Event of Default hereunder, whether by the Trustee or by the Holders, shall extend to or shall affect any subsequent default or Event of Default or shall impair any remedy, right or power consequent thereon.

The Issuer hereby agrees that the Trustee, as the assignee of any remedy, right or power upon the occurrence of an Event of Default, is empowered to enforce each such remedy, right and power granted to the Issuer under the Agreement. In exercising any remedy, right or power thereunder or hereunder, the Trustee shall take any action which would serve the interests of the Holders in the judgment of the Trustee, applying the standards described in Section 6.1 and 6.2 hereof. The foregoing shall not limit the Trustee's obligations under Section 7.3 hereof.

SECTION 7.5 Right of Holders to Direct Proceedings. Anything to the contrary of this Indenture notwithstanding, the Holders of a one hundred percent (100%) in the aggregate principal amount of Bonds then outstanding shall have the right at any time to direct, by an instrument or document or instruments or documents in writing executed and delivered to the Trustee, the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture or any other proceedings hereunder; provided, that (a) any direction shall not be other than in accordance with the provisions of law and of this Indenture, (b) the Trustee shall be indemnified as provided in Sections 6.1 and 6.2, and (c) the Trustee may take any other action which it deems to be proper and which is not inconsistent with the direction.

SECTION 7.6 Application of Moneys. All moneys or the consideration received by the Trustee after acceleration of the maturity of the Bonds shall be applied by the Trustee to and only to the payment or satisfaction, as applicable, of principal of and interest on the Bonds. Subject to the foregoing, after payment of any costs, expenses, liabilities and advances paid, incurred or made by the Trustee in the collection of moneys pursuant to any right given or action taken under the provisions of this Article or the provisions of the Agreement (including without limitation, reasonable attorneys' fees and expenses, except as limited by law or judicial order or decision entered in any action taken under this Article 7), and the creation of a reasonable reserve for anticipated fees, costs, and expenses, all moneys received by the Trustee, shall be applied as follows, subject to any provision made pursuant to Sections 4.5, 5.6 or 5.7 hereof:

(a) unless the principal of all of the Bonds shall have become or shall have been declared to be due, all of those moneys shall be deposited in the Bond Fund and shall be applied:

First -- To the payment to the Holders entitled thereto of or satisfaction of all installments of interest then due on the Bonds, in the order of the dates of maturity of the installments of that interest, beginning with the earliest date of maturity and, if the amount available is not sufficient to pay or satisfy in full any particular installment, then to the payment or satisfaction thereof ratably, according to the amounts due on that installment, to the Holders entitled thereto, without any discrimination or privilege; and

Second -- To the payment to the Holders entitled thereto of or satisfaction of the unpaid principal of any of the Bonds which shall have become due (other than Bonds previously called for redemption for the payment of which moneys or other consideration are held pursuant to the provisions of this Indenture), whether at stated maturity or by redemption, in the order of their due dates, beginning with the earliest due date, with interest on those Bonds from the respective dates upon which they became due at the rates specified in those Bonds, and if the amount available is not sufficient to pay or satisfy in full all Bonds due on any particular date, together with that interest, then to the payment or satisfaction thereof ratably, according to the amounts of principal due on that date, to the Holders entitled thereto, without any discrimination or privilege;

(b) If the principal of all of the Bonds shall have become due or shall have been declared to be due pursuant to this Article, all of those moneys shall be deposited into the Bond Fund and shall be applied to the payment or satisfaction of the principal and interest then due and unpaid upon the Bonds, without preference or priority as between principal and interest of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due for principal and interest, to the Holders entitled thereto, without any discrimination or privilege.

(c) If the principal of all of the Bonds shall have been declared to be due pursuant to this Article, and if that declaration thereafter shall have been rescinded and annulled under the provisions of Section 7.10 hereof, subject to the provisions of paragraph (b) of this Section in the event that the principal of all of the Bonds shall become due later, the moneys shall be deposited in the Bond Fund and shall be applied in accordance with the provisions of Article 5.

(d) Whenever moneys or other consideration are to be applied pursuant to the provisions of this Section, those moneys or other consideration shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of moneys or other consideration available for application and the likelihood of additional moneys becoming available for the application in the future. Whenever the Trustee shall direct the application of those moneys or other consideration, it shall fix the date upon which the application is to be made, and upon that date, interest shall cease to accrue on the amounts of principal, if any, to be paid or satisfied on that date, provided the moneys or other consideration are available therefor. The Trustee shall give notice of the deposit with it of any moneys or other consideration and of the fixing of that date, all consistent with the requirements of Section 3.5 hereof for the establishment of, and for giving notice with respect to, a Special Record Date of the payment or satisfaction of overdue interest. The Trustee shall not be required to make payment or acknowledge satisfaction of principal of a Bond to the Holder thereof, until the Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if it is paid or acknowledge satisfaction fully.

SECTION 7.7 Remedies Vested in Trustee. All rights of action (including without limitation, the right to file proofs of claim) under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceeding relating thereto. Any suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining any Holders as plaintiffs

or defendants. Any recovery of judgment shall be for the benefit of the Holders of the outstanding Bonds, subject to the provisions of this Indenture.

SECTION 7.8 Rights and Remedies of Holders. A Holder shall not have the right to institute any suit, action or proceeding for the enforcement of this Indenture, for the execution of any trust hereof, or for the exercise of any other remedy hereunder, unless:

(a) there has occurred and is continuing an Event of Default of which the Trustee has been notified, as provided in paragraph (f) of Section 6.2 hereof, or of which it is deemed to have notice under that paragraph,

(b) the Holders of at least one hundred percent (100%) in aggregate principal amount of Bonds then outstanding shall have made written request, in a form satisfactory to the Trustee, to the Trustee and shall have afforded the Trustee reasonable opportunity to proceed to exercise the remedies, rights and powers granted herein or to institute the suit, action or proceeding in its own name, and shall have offered indemnity to the Trustee as provided in Sections 6.1 and 6.2 hereof, and

(c) the Trustee thereafter shall have failed or refused to exercise the remedies, rights and powers granted herein or to institute the suit, action or proceeding in its own name.

At the option of the Trustee, that notification (or notice), request, opportunity and offer of indemnity are conditions precedent in every case, to the institution of any suit, action or proceeding described above.

No one (1) or more Holders of the Bonds shall have any right to affect, disturb or prejudice in any manner whatsoever the security or benefit of this Indenture by its or their action, or to enforce, except in the manner provided herein, any remedy, right or power hereunder. Any suit, action or proceedings shall be instituted, had and maintained in the manner provided herein for the benefit of the Holders of all Bonds then outstanding. Nothing in this Indenture shall affect or impair, however, the right of any Holder to enforce the payment or satisfaction of the Bond Service Charges on any Bond owned by that Holder at and after the maturity thereof, at the place, from the sources and in the manner expressed in that Bond.

SECTION 7.9 Termination of Proceedings. In case the Trustee shall have proceeded to enforce any remedy, right or power under this Indenture in any suit, action or proceedings, and the suit, action or proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, the Issuer, the Trustee and the Holders shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Trustee shall continue as if no suit, action or proceedings had been taken.

(a) **Waivers of Events of Default.** Except as hereinafter provided, at any time, in its discretion, the Trustee may waive any Event of Default hereunder and its consequences and may rescind and annul any declaration of maturity of principal of the Bonds, provided that all principal of and interest on the Bonds in arrears together with interest thereon (to the extent permitted by law) at the rate of interest borne by the Bonds and all fees and expenses of the Trustee and the Issuer have been paid or provided for. The Trustee shall do so upon the written

request of the Holders of one hundred percent (100%), in a form satisfactory to the Trustee, in principal amount of all Bonds then outstanding in respect of which an Event of Default exists.

In the case of a waiver or rescission and annulment, or in case any suit, action or proceedings taken by the Trustee on account of any Event of Default shall have been discontinued, abandoned or determined adversely to the Trustee, the Issuer, the Trustee and the Holders shall be restored to their former positions and rights hereunder, respectively. No waiver or rescission shall extend to any subsequent or other Event of Default or impair any right consequent thereon.

ARTICLE 8

SUPPLEMENTAL INDENTURES

SECTION 8.1 Supplemental Indentures Generally. The Issuer and the Trustee may enter into indentures supplemental to this Indenture, as provided in this Article and pursuant to the other provisions therefor in this Indenture.

SECTION 8.2 Supplemental Indentures Not Requiring Consent of Holders. Without the consent of, or notice to, any of the Holders, the Issuer and the Trustee may enter into indentures supplemental to this Indenture which shall not, in the opinion of the Issuer and the Trustee, be inconsistent with the terms and provisions hereof for any one (1) or more of the following purposes:

- (a) To cure any ambiguity, inconsistency or formal defect or omission in this Indenture;
- (b) To grant to or confer upon the Trustee for the benefit of the Holders any additional rights, remedies, powers or authority that lawfully may be granted to or conferred upon the Holders or the Trustee;
- (c) To assign additional revenues under this Indenture;
- (d) To accept additional security and instruments and documents of further assurance with respect to the Project;
- (e) To add to the covenants, agreements and obligations of the Issuer under this Indenture, other covenants, agreements and obligations to be observed for the protection of the Holders, or to surrender or limit any right, power or authority reserved to or conferred upon the Issuer in this Indenture;
- (f) To evidence any succession to the Issuer and the assumption by its successor of the covenants, agreements and obligations of the Issuer under this Indenture, the Agreement and the Bonds;
- (g) To permit the Trustee to comply with any obligations imposed upon it by law;

(h) To specify further the duties and responsibilities of, and to define further the relationship among the Trustee, the Registrar and any Authenticating Agent or Paying Agent;

(i) To achieve compliance of this Indenture with any applicable federal securities laws or the Act;

(j) To permit any other amendment which is not to the prejudice of the Trustee or the Holders; and

The provisions of Subsections 8.2(g) and (i) shall not be deemed to constitute a waiver by the Trustee, the Registrar, the Issuer or any Holder of any right which it may have in the absence of those provisions to contest the application of any change in law to this Indenture or the Bonds.

SECTION 8.3 Supplemental Indentures Requiring Consent of Holders.

Exclusive of Supplemental Indentures to which reference is made in Section 8.2 hereof and subject to the terms, provisions and limitations contained in this Section, and not otherwise, with the consent of the Holders of all Outstanding Bonds evidenced as provided in this Indenture, and with the consent of the Lessee if required by Section 8.4 hereof, the Issuer and the Trustee may execute and deliver Supplemental Indentures adding any provision to, changing in any manner or eliminating any of the provisions of this Indenture or any Supplemental Indenture or restricting in any manner the rights of the Holders. Nothing in this Section or Section 8.2 hereof shall permit, however, or be construed as permitting:

(a) without the consent of the Holder of each Bond so affected, (i) an extension of the maturity of the principal of or the interest on any Bond so issued, (ii) a reduction in the principal amount of any Bond so issued or the rate of interest thereon, (iii) a reduction in the amount or extension of the times of payment of any mandatory sinking fund requirements thereon, or

(b) without the consent of the Holders of all Bonds then outstanding, (i) the creation of a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (ii) a reduction in the aggregate principal amount of the Bonds required for consent to a Supplemental Indenture.

If the Issuer shall request that the Trustee execute and deliver any Supplemental Indenture for any of the purposes of this Section, upon being satisfactorily indemnified with respect to its expenses in connection therewith, and, if required by Section 8.4 hereof, receipt of the Lessee's consent to the proposed execution and delivery of the Supplemental Indenture, the Trustee shall cause notice of the proposed execution and delivery of the Supplemental Indenture to be mailed by first class mail, postage prepaid, to all Holders of Bonds then outstanding at their addresses as they appear on the Register at the close of business on the fifteenth (15th) day preceding that mailing.

The Trustee shall not be subject to any liability to any Holder by reason of the Trustee's failure to mail, or the failure of any Holder to receive, the notice required by this Section. Any failure of that nature shall not affect the validity of the Supplemental Indenture when there has been consent thereto as provided in this Section. The notice shall be prepared by the Issuer or on behalf of the Issuer by the Lessee, shall set forth briefly the nature of the proposed Supplemental

Indenture and shall state that copies thereof are on file at the principal corporate trust office of the Trustee for inspection by all Holders.

If the Trustee shall receive, within a period prescribed by the Issuer of not less than sixty (60) days but not exceeding one (1) year following the mailing of the notice, an instrument or document or instruments or documents, in form to which the Trustee does not reasonably object, purporting to be executed by the Holders of all the Bonds outstanding (which instrument or document or instruments or documents shall refer to the proposed Supplemental Indenture in the form described in the notice and specifically shall consent to the Supplemental Indenture in substantially that form), the Trustee shall, but shall not otherwise, execute and deliver the Supplemental Indenture in substantially the form to which reference is made in the notice as being on file with the Trustee, without liability or responsibility to any Holder, regardless of whether that Holder shall have consented thereto.

Any consent shall be binding upon the Holder of the Bond giving the consent and, anything herein to the contrary notwithstanding, upon any subsequent Holder of that Bond and of any Bond issued in exchange therefor (regardless of whether the subsequent Holder has notice of the consent to the Supplemental Indenture). A consent may be revoked in writing, however, by the Holder who gave the consent or by a subsequent Holder of the Bond by a revocation of such consent received by the Trustee prior to the execution and delivery by the Trustee of the Supplemental Indenture. At any time after the Holders of all Outstanding Bonds shall have filed their consents to the Supplemental Indenture, the Trustee shall make and file with the Issuer a written statement that the Holders of all Outstanding Bonds have filed those consents. That written statement shall be conclusive evidence that the consents have been so filed.

If the Holders of all Outstanding Bonds shall have consented to the Supplemental Indenture, as provided in this Section, no Holder shall have any right (a) to object to (i) the execution or delivery of the Supplemental Indenture, (ii) any of the terms and provisions contained therein, or (iii) the operation thereof, (b) to question the propriety of the execution and delivery thereof, or (c) to enjoin or restrain the Trustee or the Issuer from that execution or delivery or from taking any action pursuant to the provisions thereof.

SECTION 8.4 Consent of Lessee. With the exception of Section 8.1(k) for which the Lessee shall have been deemed to have granted its consent, anything contained herein to the contrary notwithstanding, a Supplemental Indenture executed and delivered in accordance with this Article 8 which affects any rights of the Lessee shall not become effective unless and until the Lessee shall have consented in writing to the execution and delivery of that Supplemental Indenture. With the exception of any Supplemental Indenture entered into in connection with Section 8.1(k) for which no notice shall be required, the Trustee shall cause notice of the proposed execution and delivery of any Supplemental Indenture and a copy of the proposed Supplemental Indenture to be mailed to the Lessee, as provided in Section 13.3 hereof, (i) at least thirty (30) days (unless waived by the Lessee) before the date of the proposed execution and delivery in the case of a Supplemental Indenture to which reference is made in Section 8.2 hereof, and (ii) at least thirty (30) days (unless waived by the Lessee) before the giving of the notice of the proposed execution and delivery in the case of a Supplemental Indenture for which provision is made in Section 8.3 hereof.

SECTION 8.5 Authorization to Trustee; Effect of Supplement. The Trustee is authorized to join with the Issuer in the execution and delivery of any Supplemental Indenture in accordance with this Article and to make the further agreements and stipulations which may be contained therein. Thereafter,

(a) that Supplemental Indenture shall form a part of this Indenture;

(b) all terms and conditions contained in that Supplemental Indenture as to any provision authorized to be contained therein shall be deemed to be a part of the terms and conditions of this Indenture for any and all purposes;

(c) this Indenture shall be deemed to be modified and amended in accordance with the Supplemental Indenture; and

(d) the respective rights, duties and obligations under this Indenture of the Issuer, the Lessee, the Trustee, the Registrar, the Paying Agent, the Authenticating Agent and all Holders of Bonds then outstanding shall be determined, exercised and enforced hereunder in a manner which is subject in all respects to those modifications and amendments made by the Supplemental Indenture.

Express reference to any executed and delivered Supplemental Indenture may be made in the text of any Bonds issued thereafter, if that reference is deemed necessary or desirable by the Trustee or the Issuer. A copy of any Supplemental Indenture for which provision is made in this Article, except a Supplemental Indenture described in clause (g) of Section 8.2 hereof, shall be mailed by the Trustee to the Registrar, each Authenticating Agent and Paying Agent and the Purchaser, so long as it remains a Holder, of Bonds affected thereby. The Trustee shall not be required to execute any supplemental indenture containing provisions adverse to the Trustee.

SECTION 8.6 Opinion of Counsel. The Trustee shall receive, and shall be fully protected in conclusively relying upon, the opinion of bond counsel approved by it as conclusive evidence that (a) any proposed Supplemental Indenture complies with the provisions of this Indenture and is the legal, valid and binding obligation of the Issuer, (b) all conditions precedent under the Indenture to execution of the proposed Supplemental Indenture have been satisfied, and (c) it is proper for the Trustee to join in the execution of that Supplemental Indenture under the provisions of this Article. That counsel may be counsel for the Issuer or the Lessee.

SECTION 8.7 Modification by Unanimous Consent. Notwithstanding anything contained elsewhere in this Indenture, the rights and obligations of the Issuer and of the Holders, and the terms and provisions of the Bonds and this Indenture or any Supplemental Indenture, may be modified or altered in any respect with the consent of (a) the Issuer, (b) the Holders of all of the Bonds then outstanding, (c) the Trustee, and (d) if required by Section 8.4 hereof, the Lessee, the Lessee and the Holders.

SECTION 8.8 Amendments to Article 8. The Issuer and the Trustee may not execute and deliver Supplemental Indentures adding any provisions to, or changing in any manner or eliminating any of the provisions of, this Article 8, except for the execution and delivery of Supplemental Indentures pursuant to Section 8.2 hereof, without the consent of (a)

the Holder of all of the Bonds then outstanding and (b) if required by Section 8.4 hereof, the Lessee.

ARTICLE 9

RELEASE

SECTION 9.1 Release of Indenture. If (a) the Issuer shall pay all of the Outstanding Bonds, or shall cause them to be satisfied and discharged, or if there otherwise shall be paid to the Holders of the outstanding Bonds, all Bond Service Charges due or to become due thereon, and (b) provision also shall be made for the payment or satisfaction of all other sums payable hereunder or under the Agreement, then this Indenture shall cease, terminate and become null and void (except for those provisions surviving by reason of Section 9.2 hereof), and the covenants, agreements and obligations of the Issuer hereunder shall be released, discharged and satisfied.

Thereupon, and subject to the provisions of Section 9.2 hereof if applicable,

(a) the Trustee shall release this Indenture (except for those provisions surviving by reason of Section 9.2 hereof), and shall execute and deliver to the Issuer any instruments or documents in writing as shall be requisite to evidence that release and discharge or as reasonably may be requested by the Issuer in writing,

(b) the Trustee and any other Paying Agent shall assign and deliver to the Issuer any property subject at the time to the lien of this Indenture which then may be in their possession, except amounts in the Bond Fund required (i) to be paid to the Lessee under Section 5.8 hereof, or (ii) to be held by the Trustee and the Paying Agent under Section 5.7 hereof or otherwise for the payment of Bond Service Charges, and

(c) the Trustee shall receive an Opinion of Counsel certifying that such release is authorized and permitted under the Indenture and all conditions precedent under the Indenture have been satisfied.

SECTION 9.2 Survival of Certain Provisions. Notwithstanding the foregoing, any provisions of the Bond Legislation and this Indenture which relate to the maturity of Bonds, interest payments and dates thereof, optional and mandatory redemption provisions, replacement of mutilated, destroyed, lost or stolen Bonds, the safekeeping and cancellation of Bonds, non-presentment of Bonds, the holding of moneys in trust, repayments to the Lessee from the Bond Fund, the duties of the Trustee and the Registrar in connection with all of the foregoing, and the rights, immunities and protections of the Trustee, Paying Agent, Authenticating Agent and Registrar shall remain in effect and be binding upon the Trustee, the Registrar, the Authenticating Agent, Paying Agent and the Holders notwithstanding the release and discharge of this Indenture. The provisions of this Article shall survive the release, discharge and satisfaction of this Indenture.

ARTICLE 10

COVENANTS AND AGREEMENTS OF THE ISSUER

SECTION 10.1 Covenants and Agreement of the Issuer. In addition to any other covenants and agreements of the Issuer contained in this Indenture or the Bond Legislation, the Issuer further covenants and agrees with the Holders and the Trustee as follows:

(a) Payment of Bond Service Charges. The Issuer will pay or satisfy all Bond Service Charges, or cause them to be paid or satisfied, solely from the sources provided herein, on the dates, at the places and in the manner provided in this Indenture.

(b) Revenues and Assignment of Revenues. The Issuer will not assign the Revenues or create or authorize to be created any debt, lien or charge thereon, other than the assignment thereof under this Indenture.

(c) Recordings and Filings. At the expense of the Lessee and upon the request of the Lessee, the Trustee or the Holders, the Issuer will cause this Indenture, and any related supplements, instruments or documents relating to the assignment made by it under this Indenture to secure the Bonds, to be recorded and filed in the manner and in the places which may be required by law in order to preserve and protect fully the security of the Holders and the rights of the Trustee hereunder. At the expense of the Lessee, the Issuer shall provide to the Trustee copies of all such recordings and filings. The Trustee shall not be responsible for monitoring the recordings and filings, including any continuation statements.

(d) Inspection of Project Books. All books, instruments and documents in the Issuer's possession relating to the Project and the Revenues shall be open to inspection at all times during the Issuer's regular business hours by any accountants or other agents of the Trustee which the Trustee may designate from time to time.

(e) Register. At reasonable times and under reasonable regulations established by the Registrar, the Register may be inspected and copied by the Lessee, the Trustee, and by Holders of one hundred percent (100%) in principal amount of the Bonds then outstanding, or a designated representative thereof.

(f) Rights and Enforcement of the Assignment. The Trustee may enforce, in its name or in the name of the Issuer, all rights of the Issuer for and on behalf of the Holders, except for Unassigned Issuer's Rights, and may enforce all covenants, agreements and obligations of the Lessee under and pursuant to the Agreement, regardless of whether the Issuer is in default in the pursuit or enforcement of those rights, covenants, agreements or obligations. The Issuer, however, will do all things and take all actions on its part necessary to comply with covenants, agreements, obligations, duties and responsibilities on its part to be observed or performed under the Agreement, and will take all actions within its authority to keep the Agreement in effect in accordance with the terms thereof.

SECTION 10.2 Observance and Performance of Covenants, Agreement, Authority and Actions. The Issuer will observe and perform, faithfully at all times all covenants, agreements, authority, actions, undertakings, stipulations and provisions to be observed or performed on its part under the Agreement, this Indenture, the Bond Legislation and the Bonds which are executed, authenticated and delivered under this Indenture, and under all proceedings of its Legislative Authority pertaining thereto.

The Issuer represents and warrants that:

(a) it is duly authorized by the Constitution and laws of the State, including particularly and without limitation the Act, to issue the Bonds, to execute and deliver this Indenture and the Agreement and to provide the security for payment or satisfaction of the Bond Service Charges in the manner and to the extent set forth in this Indenture;

(b) to the best of the Issuer's knowledge, information and belief, all actions required on its part to be performed for the issuance, sale and delivery of the Bonds and for the execution and delivery of this Indenture and the Agreement have been or will be taken duly and effectively;

(c) the Bonds will be valid and enforceable limited and special obligations of the Issuer according to their terms.

ARTICLE 11

AMENDMENTS TO AGREEMENT

SECTION 11.1 Amendments Not Requiring Consent of Holders. Without the consent of or notice to the Holders, the Issuer and the Trustee may consent to any amendment, change or modification of the Agreement as may be required (a) by the provisions of the Agreement or this Indenture, (b) in connection with the issuance of Additional Bonds, as specified in Section 2.4 hereof, (c) for the purpose of curing any ambiguity, inconsistency or formal defect or omission in the Agreement, (d) in connection with an amendment or to effect any purpose for which there could be an amendment of this Indenture pursuant to Section 8.2 hereof, (e) to add to the Agreement additional property (whether personal or real estate) related to the Project or (f) in connection with any other change therein which is not to the prejudice of the Trustee or the Holders of the Bonds.

SECTION 11.2 Amendments Requiring Consent of Holders. Except for the amendments, changes or modifications contemplated in Section 11.1 hereof, neither the Issuer nor the Trustee shall consent to:

(a) any amendment, change or modification of the Agreement which would change the amount or time as of which Lease Payments are required to be paid or satisfied, without the giving of notice as provided in this Section of the proposed amendment, change or modification and receipt of the written consent thereto of the Holders of all of the then Outstanding Bonds, or

(b) any other amendment, change or modification of the Agreement without the giving of notice as provided in this Section of the proposed amendment, change or modification and receipt of the written consent thereto of the Holders of not less than a majority in aggregate principal amount of the Bonds then outstanding.

The consent of the Holders shall be obtained as provided in Section 8.3 hereof with respect to Supplemental Indentures.

If the Issuer and the Lessee shall request at any time the consent of the Trustee to any proposed amendment, change or modification of the Agreement contemplated in subparagraphs (a) or (b), and upon being indemnified satisfactorily, the Trustee shall cause notice of the proposed amendment, change or modification to be provided in the manner which is required by Section 8.3 hereof with respect to notice of Supplemental Indentures. The notice shall be prepared by the Issuer or on behalf of the Issuer by the Lessee, shall set forth briefly the nature of the proposed amendment, change or modification and shall state that copies of the instrument or document embodying it are on file at the principal corporate trust office of the Trustee for inspection by all Holders. The Trustee shall also receive an opinion of counsel reasonably acceptable to the Trustee with respect to the due authorization by the Issuer and the Lessee and enforceability of any such amendment, change or modification of the Agreement against the Issuer and the Lessee.

ARTICLE 12

MEETINGS OF HOLDERS

SECTION 12.1 Purposes of Meetings. A meeting of Holders may be called at any time and from time to time pursuant to the provisions of this Article 12, to the extent relevant to the Holders of all of the Bonds to take any action (a) authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of the Bonds under any provision of this Indenture, or (b) authorized or permitted by law.

SECTION 12.2 Call of Meetings. The Trustee may call at any time a meeting of Holders pursuant to Section 12.1 to be held at any reasonable time and place the Trustee shall determine. Notice of such meeting, setting forth the time, place and generally the subject thereof, shall be mailed by first class mail, postage prepaid, not fewer than five (5) nor more than forty-five (45) days prior to the date of the meeting to the Holders at their addresses as they appear on the Register on the tenth (10th) day preceding such mailing, which tenth (10th) day preceding the mailing shall be the record date for the meeting.

At any time the Legislative Authority or the Lessee or the Holders of at least one hundred percent (100%) in aggregate principal amount of the Bonds shall have requested the Trustee to call a meeting of Holders, by written request setting forth the purpose of the meeting, and the Trustee shall not have mailed the notice of the meeting within ten (10) days after receipt of the request, then the Issuer, the Lessee or the Holders of Bonds in the amount above specified may determine the time and the place of the meeting and may call the meeting to take any action authorized in Section 12.1, by mailing notice thereof as provided above.

Any meetings of Holders shall be valid without notice, if the Holders of all Bonds then outstanding are present in person or by proxy, or if notice is waived before or after the meeting by the Holders of all Bonds outstanding who were not so present at the meeting, and if the Issuer, the Lessee and the Trustee are either present by duly authorized representatives or have waived notice, before or after the meeting.

SECTION 12.3 Voting. To be entitled to vote at any meeting of Holders, a Person shall (a) be a Holder of one (1) or more outstanding Bonds as of the record date for the meeting as determined above, or (b) be a person appointed by an instrument or document in writing as proxy by a Person who is a Holder as of the record date for the meeting, of one (1) or more outstanding Bonds. Each Holder or proxy shall be entitled to one (1) vote for each \$5,000 principal amount of Bonds held or represented by it.

The vote upon any resolution submitted to any meeting of Holders shall be by written ballots on which shall be subscribed the signatures of the Holders of Bonds or of their representatives by proxy and the identifying number or numbers of the Bonds held or represented by them.

SECTION 12.4 Meetings. Notwithstanding any other provisions of this Indenture, the Trustee may make any reasonable regulations which it may deem to be advisable for meetings of Holders, with regard to:

- (a) proof of the holding of Bonds and of the appointment of proxies,
- (b) the appointment and duties of inspectors of votes,
- (c) recordation of the proceedings of those meetings,
- (d) the execution, submission and examination of proxies and other evidence of the right to vote, and
- (e) any other matters concerning the conduct, adjournment or reconvening of meetings which it may deem fit.

The Trustee shall appoint a temporary chair of the meeting by an instrument or document in writing, unless the meeting shall have been called by the Issuer, the Lessee or by the Holders, as provided in Section 12.2, in which case the Issuer, the Lessee or the Holders calling the meeting, as the case may be, shall appoint a temporary chair in like manner. A permanent chair and a permanent secretary of the meeting shall be elected by vote of the Holders of a majority in principal amount of the Bonds represented at the meeting and entitled to vote.

The only Persons who shall be entitled to be present or to speak at any meeting of Holders shall be the Persons entitled to vote at the meeting and their counsel, any representatives of the Trustee or Registrar and their counsel, any representatives of the Issuer and its counsel, any representatives of the Lessee and its counsel.

SECTION 12.5 Miscellaneous. Nothing contained in this Article 12 shall be deemed or construed to authorize or permit any hindrance or delay in the exercise of any right or gifts conferred upon or reserved to the Trustee or to the Holders under any of the provisions of this Indenture or of the Bonds by reason of any call of a meeting of Holders or any rights conferred expressly or impliedly hereunder to make a call.

ARTICLE 13

MISCELLANEOUS

SECTION 13.1 Limitation of Rights. With the exception of rights conferred expressly in this Indenture, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any Person other than the parties hereto, the Registrar, the Authenticating Agent, the Lessee and the Holders of the Bonds any legal or equitable right, remedy, power or claim under or with respect to this Indenture or any covenants, agreements, conditions and provisions contained herein. This Indenture and all of those covenants, agreements, conditions and provisions are intended to be, and are, for the sole and exclusive benefit of the parties hereto, the Lessee and the Holders of the Bonds, as provided herein.

SECTION 13.2 Severability. In case any section or provision of this Indenture, or any covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Indenture, or any application thereof, is held to be illegal or invalid for any reason or is inoperable at any time, that illegality, invalidity or inoperability shall not affect the remainder thereof or any other section or provision of this Indenture or any other covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Indenture, all of which shall be construed and enforced at the time as if the illegal, invalid or inoperable portion were not contained therein.

Any illegality, invalidity or inoperability shall not affect any legal, valid and operable section, provision, covenant, agreement, stipulation, obligation, act, action, part or application, all of which shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law from time to time.

SECTION 13.3 Notices. Except as provided in Section 7.2 hereof, it shall be sufficient service or giving of any notice, request, complaint, demand or other instrument or document, if it is duly mailed by first class mail. Notices to the Issuer, the Lessee and the Trustee shall be addressed as follows: If to the Issuer, at Louisville/Jefferson County Metro Government, 601 W. Jefferson Street, Louisville, Kentucky 40202, Attention: Office of the Mayor. If to the Lessee: Boyd Real Property, LLC, 10001 Linn Station Road, Louisville, Kentucky 40223, Attention: Monty Boyd. If to the Trustee, at U.S. Bank Trust Company, National Association, 435 N. Whittington Parkway, Louisville, Kentucky 40222, Attention: [Amy Anders]. The foregoing parties may designate, by notice given hereunder, any further or different addresses to which any subsequent notice, request, complaint, demand or other instrument or document shall be sent. The Trustee shall designate, by notice to the Issuer and the Lessee, the addresses to which notices or copies thereof shall be sent to the Registrar, the Authenticating Agent and the Paying Agent.

In connection with any notice mailed pursuant to the provisions of this Indenture, a certificate of the Trustee, the Issuer, the Registrar, the Authenticating Agent, the Lessee or the Holders of the Bonds, whichever or whoever mailed that notice, that the notice was so mailed shall be conclusive evidence of the proper mailing of the notice.

SECTION 13.4 Suspension of Mail. If because of the suspension of delivery of first class mail or, for any other reason, the Trustee shall be unable to mail by the required class of mail any notice required to be mailed by the provisions of this Indenture, the Trustee shall give such notice in such other manner as in the judgment of the Trustee shall most effectively approximate mailing thereof, and the giving of that notice in that manner for all purposes of this Indenture shall be deemed to be in compliance with the requirement for the mailing thereof. Except as otherwise provided herein, the mailing of any notice shall be deemed complete upon deposit of that notice in the mail and the giving of any notice by any other means of delivery shall be deemed complete upon receipt of the notice by the delivery service.

SECTION 13.5 Payment Due on Saturdays, Sundays and Holidays. If any Interest Payment Date, the date of maturity of the principal of any Bonds, or date fixed for redemption of any Bonds is other than a Business Day, then payment of interest and principal need not be made by the Trustee or any Paying Agent on that date, but that payment may be made on the next succeeding Business Day with the same force and effect as if that payment were made on the date of maturity or date fixed for redemption.

SECTION 13.6 Instruments of Holders. Any writing, including without limitation, any consent, request, direction, approval, objection or other instrument or document, required under this Indenture to be executed by any Holder may be in any number of concurrent writings of similar tenor and may be executed by that Holder in person or by an agent or attorney appointed in writing. Proof of (a) the execution of any writing, including without limitation, any consent, request, direction, approval, objection or other instrument or document, (b) the execution of any writing appointing any agent or attorney, and (c) the ownership of Bonds, shall be sufficient for any of the purposes of this Indenture, if made in the following manner, and if so made, shall be conclusive in favor of the Trustee with regard to any action taken thereunder, namely:

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

(ii) the fact of ownership of Bonds shall be proved by the Register maintained by the Registrar.

Nothing contained herein shall be construed to limit the Trustee to the foregoing proof, and the Trustee may accept any other evidence of the matters stated therein which it deems to be sufficient. Any writing, including without limitation, any consent, request, direction, approval, objection or other instrument or document, of the Holder of any Bond shall bind every future Holder of the same Bond, with respect to anything done or suffered to be done by the Issuer, the Trustee, the Registrar or any Paying Agent or Authenticating Agent pursuant to that writing.

SECTION 13.7 Priority of this Indenture. This Indenture shall be superior to any liens which may be placed upon the Revenues or any other funds or accounts created pursuant to this Indenture.

SECTION 13.8 Extent of Covenants; No Personal Liability. ALL COVENANTS, STIPULATIONS, OBLIGATIONS AND AGREEMENTS OF THE ISSUER CONTAINED IN THIS INDENTURE ARE AND SHALL BE DEEMED TO BE COVENANTS, STIPULATIONS, OBLIGATIONS AND AGREEMENTS OF THE ISSUER TO THE FULL EXTENT AUTHORIZED BY THE ACT AND PERMITTED BY THE CONSTITUTION OF THE STATE. NO COVENANT, STIPULATION, OBLIGATION OR AGREEMENT OF THE ISSUER CONTAINED IN THIS INDENTURE SHALL BE DEEMED TO BE A COVENANT, STIPULATION, OBLIGATION OR AGREEMENT OF ANY PRESENT OR FUTURE MEMBER, OFFICER, AGENT OR EMPLOYEE OF THE ISSUER, THE LEGISLATIVE AUTHORITY, THE STATE OR ANY AGENCY OR POLITICAL SUBDIVISION THEREOF IN OTHER THAN THAT PERSON'S OFFICIAL CAPACITY. NEITHER THE MEMBERS OF THE LEGISLATIVE AUTHORITY NOR ANY OFFICIALS, EMPLOYEES OR AGENTS OF THE STATE OR ANY AGENCY OR POLITICAL SUBDIVISION THEREOF, NOR ANY OFFICIAL EXECUTING THE BONDS, THIS INDENTURE, THE AGREEMENT OR THE PURCHASE AGREEMENT OR ANY AMENDMENT OR SUPPLEMENT HERETO OR THERETO SHALL BE LIABLE PERSONALLY ON THE BONDS OR BE SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF THE ISSUANCE OR EXECUTION HEREOF OR THEREOF.

SECTION 13.9 Binding Effect. This Indenture shall inure to the benefit of and shall be binding upon the Issuer and the Trustee and their respective successors and assigns, subject, however, to the limitations contained herein.

SECTION 13.10 Counterparts. This Indenture may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

SECTION 13.11 Governing Law. This Indenture and the Bonds shall be deemed to be contracts made under the laws of the State and for all purposes shall be governed and construed in accordance with the laws of the State.

SECTION 13.12 Force Majeure. In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunction of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

SECTION 13.13 U.S.A. Patriot Act. The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. Patriot Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. Patriot Act.

IN WITNESS WHEREOF, the Issuer has caused this Indenture to be executed and delivered for it and in its name and on its behalf by one of its duly authorized officers duly attested; in token of its acceptance of the trusts created hereunder, the Trustee has caused this Indenture to be executed and delivered for it and in its name and on its behalf by one of its duly authorized officers duly attested; and in token of its acceptance of the duties and obligations of the Registrar hereunder, the Registrar has caused this Indenture to be executed and delivered for it and in its name and on its behalf by one of its duly authorized officers duly attested, all as of the day and year first above written.

LOUISVILLE/JEFFERSON COUNTY METRO
GOVERNMENT,
as Issuer

ATTEST:

BY: _____
Sonya Harward
Metro Council Clerk

BY: _____
Greg Fischer
Mayor of the City of Louisville

Approved as to form and legality:

Michael J. O'Connell
Jefferson County Attorney

By: _____
Assistant Jefferson County Attorney

U.S. BANK TRUST COMPANY,
NATIONAL ASSOCIATION,
as Trustee and Registrar

BY: _____
TITLE: Vice President

EXHIBIT A

FORM OF BOND

THIS BOND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE HOLDER OF THIS BOND MAY NOT SELL OR OTHERWISE TRANSFER THIS BOND UNLESS IT IS REGISTERED OR QUALIFIED PURSUANT TO THESE LAWS OR UNLESS EXEMPTIONS ARE AVAILABLE THEREFROM.

THIS BOND HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR THE KENTUCKY DEPARTMENT OF FINANCIAL INSTITUTIONS, NOR HAS EITHER AGENCY PASSED UPON THE ACCURACY OR ADEQUACY OF THIS BOND. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

NO. R-1 Maximum
\$119,000,000

United States of America
Commonwealth of Kentucky
LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT
INDUSTRIAL BUILDING REVENUE BONDS
(BOYD REAL PROPERTY, LLC PROJECT), SERIES 2022

Interest Rate Per Annum: [4.00%]	Maturity Date: [June ____, 2052]	Dated as of: [June ____, 2022]	Date of Delivery: [June ____, 2022]
--	--	--------------------------------------	---

The Louisville/Jefferson County Metro Government (the “Issuer”), a consolidated local government and political subdivision duly organized and validly existing under the laws of the Commonwealth of Kentucky, for value received, promises to pay to Boyd Company, a Kentucky corporation, (hereinafter, the “Purchaser”) or registered assigns, but solely from the sources and in the manner referred to herein, the principal amount of ONE HUNDRED NINETEEN MILLION DOLLARS (\$119,000,000), or such lesser amount as may be drawn upon as indicated in Exhibit A attached hereto, on the aforesaid Maturity Date, unless this Bond is called for earlier redemption, and to pay from those sources interest thereon at the Interest Rate (as defined herein), calculated from the date of delivery, on each December 31 (the “Interest Payment Date”), until the earlier of the aforesaid Maturity Date or the date the aggregate principal amount of the Bonds as hereinafter defined is paid or duly provided for. [“Interest Rate” means 4.00% per annum].

The principal of this Bond is payable upon presentation and surrender hereof at the designated office of U.S. Bank Trust Company, National Association (the “Trustee”), a national banking association, in Louisville, Kentucky, unless otherwise provided in the Indenture hereinafter referred to. Interest on this Bond is payable on each Interest Payment Date by wire or account transfer, or check or draft mailed to the person in whose name this Bond (or one or more predecessor bonds) is registered (or its assignee or designee) (the “Holder”) at the close of business on the fifteenth (15th) day of the preceding month during which there is an Interest

Payment Date (the “Regular Record Date”), on the registration books for this issue maintained by U.S. Bank National Association, as Registrar, at the address appearing therein unless otherwise provided in the Indenture hereinafter referred to. To the extent funds are not available for payment, any interest which is not timely paid or duly provided for shall cease to be payable to the Holder hereof (or of one or more predecessor bonds) as of the Regular Record Date, and shall be payable to the Holder hereof (or of one or more predecessor bonds) at the close of business on a Special Record Date to be fixed by the Trustee for the payment of that overdue interest. Notice of the Special Record Date shall be mailed to Holders not more than ten nor less than five days prior thereto. The principal of and interest on these Bonds as hereinafter defined are payable in lawful money of the United States of America, without deduction for the services of the Registrar. Notwithstanding any payment terms herein set forth in connection with the final payment of principal and interest on this Bond, the final principal due hereunder shall be paid only on surrender of this Bond to the Trustee.

This Bond is one of a duly authorized issue of the Louisville/Jefferson County Metro Government Industrial Building Revenue Bonds (Boyd Real Property, LLC Project), Series 2022 (the “Bonds”), issuable under the Trust Indenture, dated as of [June 1, 2022] (the “Indenture”) between the Issuer and the Trustee, aggregating in the principal amount of not to exceed \$119,000,000, or such lesser amount as may be drawn upon as indicated in Exhibit A attached hereto, and issued for the purpose of assisting Boyd Real Property, LLC, a Kentucky limited liability company (the “Company”) in the financing of the costs of a Project, as defined in the Lease Agreement, dated as of the same date as the Indenture (the “Agreement”), between the Issuer and the Company. The Bonds and any Additional Bonds which may be issued under the Indenture are special and limited obligations of the Issuer, issued or to be issued under and to be secured and entitled to the protection given by the Indenture. The Bonds are issued pursuant to and in full compliance with the Constitution and laws of the Commonwealth of Kentucky, particularly Sections 103.210 through 103.285 (the “Act”) of the Kentucky Revised Statutes, as amended, and pursuant to a Ordinance duly adopted by the Issuer on [June 9, 2022].

Reference is made to the Indenture and the Agreement for a more complete description of the Project, the provisions, among others, with respect to the nature and extent of the security for the Bonds, the rights, duties and obligations of the Issuer, the Trustee and the Holders of the Bonds, and the terms and conditions upon which the Bonds are issued and secured. Each Holder assents, by its acceptance hereof, to all of the provisions of the Indenture. Capitalized terms used herein, unless otherwise defined, shall have the same meanings herein as such capitalized terms shall have in the Agreement or the Indenture.

The Issuer has entered into the Agreement with the Company under the provisions of which the Company, in accordance with and as required by the Act, has agreed to make payments (the “Lease Payments”) sufficient to pay the principal of and interest on this Bond as the same shall become due and payable. The Agreement obligates the Company, among other things, to pay all costs of maintaining, repairing, operating and insuring the Project. The Agreement provides that the Lease Payments shall be paid directly to the Trustee for the account of the Issuer as provided in the Indenture, unless there is in existence a Home Office Payments Agreement, dated as of [June 1, 2022], among the Issuer, the Company, the Trustee and the Purchaser, in which case such payments will be paid directly to the Purchaser. The Agreement also provides that the Company is unconditionally obligated to meet its obligations to pay the Lease Payments and to perform and observe the other agreements on its part contained therein.

Copies of the Indenture and the Agreement are on file in the designated corporate trust office of the Trustee.

The Bond Service Charges on this Bond are payable solely from Revenues, as defined and as provided in the Indenture (being, generally, the amounts payable under the Agreement as Lease Payments and any unexpended proceeds of the Bonds), and are a limited and special obligation of the Issuer only to the extent of the Revenues.

This Bond is issuable only as a fully registered bond and, except as hereinafter provided, in printed or typewritten form, registered in the name of the Purchaser, which shall be considered to be the Holder for all purposes of the Indenture, including, without limitation, payment by the Issuer of Bond Service Charges, and receipt of notices and exercise of rights of Holders.

The Holder agrees to initial in the appropriate space on Exhibit A attached hereto each draw under this Bond and each payment of principal made under this Bond by virtue of optional redemption.

REDEMPTION OF BONDS

This Bond is subject to redemption at any time in whole or in part on any date, at the option of the Issuer, upon the direction of the Company and the Holder, at redemption prices equal to the principal amount redeemed plus, in each case, interest accrued to the redemption date. The amount of any partial redemption shall be noted on Exhibit A, attached hereto and incorporated herein by reference, by the Holder hereof.

On a date no later than the date fixed for redemption, the Company shall pay to the Trustee monies in an amount sufficient, together with other monies (if any) held by the Trustee and available for the redemption of this Bond, to redeem this Bond at the redemption price set forth above.

This Bond shall be redeemed only by written notice from the Issuer to the Trustee, given at the direction of the Company, or by written notice from the Company to the Trustee on behalf of the Issuer. That notice shall specify the redemption date and the principal amount to be redeemed, and shall be given at least ten business days prior to the redemption date or such shorter period as shall be acceptable to the Trustee.

The Indenture permits certain amendments or supplements to the Agreement and the Indenture not prejudicial to the Holders to be made without the consent of or notice to the Holders, and other amendments or supplements thereto to be made with the consent of the Holders of this Bond.

The Holder of this Bond has only those remedies provided in the Indenture.

This Bond shall not be entitled to any security or benefit under the Indenture or be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed.

IT IS HEREBY CERTIFIED, RECITED AND DELIVERED that there have been performed and have happened in regular and due form, as required by law, all acts and conditions necessary to be done or performed by the Issuer or to have happened (i) precedent to and in the issuing of the Bond, in order to make it a legal, valid and binding, special and limited obligation of the Issuer, and (ii) precedent to and in the execution and delivery of the Indenture

and the Agreement; that consideration for the Bond has been received; and that the Bond does not exceed or violate any constitutional or statutory limitation.

THE ISSUER SHALL NOT BE OBLIGATED TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THIS BOND EXCEPT FROM THE REVENUES OR ASSETS PLEDGED THEREFOR AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE ISSUER, THE COMMONWEALTH OF KENTUCKY OR ANY POLITICAL SUBDIVISION OR TAXING AUTHORITY THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY OR INTEREST ON THIS BOND.

IN WITNESS WHEREOF, the Louisville/Jefferson County Metro Government has caused this Bond to be executed in the name of the Issuer by the manual or facsimile signature of its Mayor and to be attested by the manual or facsimile signature of its Metro Council Clerk and its official seal or facsimile thereof to be impressed or imprinted as of the date shown above.

LOUISVILLE/JEFFERSON COUNTY METRO
GOVERNMENT,
as Issuer

ATTEST:

BY: _____
Metro Council Clerk

BY: _____
Mayor

Approved as to form and legality:

Michael J. O'Connell
Jefferson County Attorney

By: _____
Assistant Jefferson County Attorney

AUTHENTICATION CERTIFICATE

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

U.S. Bank Trust Company, National Association,
as Trustee

By: _____
Vice President

Assignment

For value received, the undersigned sells, assigns and transfers unto
_____ the within Bond and irrevocably constitutes and appoints
_____ attorney to transfer that Bond on the books kept for registration thereof,
with full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

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

