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INDENTURE

between

SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION

and

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

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Dated as of March 1, 2008

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Relating to

SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION  
SALES TAX REVENUE BONDS  
(LIMITED TAX BONDS)

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## INDENTURE

This INDENTURE, dated as of March 1, 2008 (as more fully defined in Section 1.02, the "Indenture"), between the SAN DIEGO COUNTY REGIONAL TRANSPORTATION COMMISSION, a public entity duly established and existing under the laws of the State of California (the "Commission"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association duly organized and existing under and by virtue of the laws of the United States of America, as trustee (the "Trustee");

### WITNESSETH:

WHEREAS, the Commission adopted the San Diego Transportation Improvement Program Ordinance and Expenditure Plan on July 31, 1987 (as amended, the "1987 Ordinance"), pursuant to the provisions of Sections 132000 through 132314, inclusive, of the Public Utilities Code of the State of California, which 1987 Ordinance provided for the imposition of a retail transactions and use tax (the "retail transactions and use tax") applicable in the incorporated and unincorporated territory of the County of San Diego (the "County") in accordance with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code at the rate of one-half of one percent (1/2%) for a period not to exceed twenty (20) years;

WHEREAS, by its terms the 1987 Ordinance became effective at the close of the polls on November 3, 1987, the day of the election at which the proposition imposing the retail transactions and use tax was adopted by a majority vote of the electors voting on such proposition;

WHEREAS, in order to provide for the extension of the initial term of the retail transactions and use tax for a period of forty (40) years, the Commission adopted the San Diego Transportation Improvement Program Ordinance and Expenditure Plan (the "Sales Tax Extension Ordinance") on May 28, 2004;

WHEREAS, by its terms the Sales Tax Extension Ordinance became effective on November 3, 2004, the day following the date of the election at which the proposition providing for the extension of the retail transactions and use tax was approved by at least two-thirds of the electors voting on such proposition;

WHEREAS, pursuant to Section 132310 of the California Public Utilities Code, the Commission is authorized to issue limited tax bonds, secured by and payable from revenues of the retail transactions and use tax;

WHEREAS, the Commission has heretofore entered into an Indenture, dated as of October 1, 1992 (as supplemented and amended from time to time pursuant to its terms, the "Existing Indenture"), between the Commission and U.S. Bank National Association, successor by merger to U.S. Bank Trust National Association, formerly known as First Trust of California, National Association, successor trustee to Bank of America National Trust and Savings Association, as trustee, pursuant to which the Commission has issued certain limited tax bonds (the "Existing Bonds") payable from and secured by the revenues of the retail transactions and use tax (as more fully defined in Section 1.02, the "Sales Tax Revenues");

WHEREAS, the Commission has heretofore entered into an Amended and Restated Subordinate Indenture, dated as of November 1, 2005 (as supplemented and amended from time to time pursuant to its terms, the "Subordinate Indenture"), between the Commission and U.S. Bank National Association, as trustee, pursuant to which the Commission has issued certain limited tax bonds (the "Existing Notes") payable from and secured by the Sales Tax Revenues on a basis subordinate to the Existing Bonds;

WHEREAS, the Commission has determined to enter into a First Supplement to the Subordinate Indenture, discharging the Series A Notes and Series C Notes (as those terms are defined in the Subordinate Indenture) and terminating the authority to issue any further Series A Notes or Series C Notes, but confirming in all respects the authority to issue Series B Notes as granted by the Subordinate Indenture;

WHEREAS, the Bank (as that term is defined in the Subordinate Indenture) providing support facilities for the Series B Notes has consented to the execution and delivery of this Indenture;

WHEREAS, the Commission has determined to enter into this Indenture in order to provide for the authentication and delivery of certain limited tax bonds (the "Bonds"), to establish and declare the terms and conditions upon which the Bonds and other obligations secured by the retail transactions and use tax shall be issued and secured and to secure the payment of the principal thereof, premium (if any), and interest on the Bonds and obligations secured by the retail transactions and use tax on a parity with the Bonds (as more fully defined in Section 1.02, "Parity Obligations");

WHEREAS, the execution and delivery of this Indenture has in all respects been duly and validly authorized by a resolution duly passed and approved by the Commission; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and the entering into of this Indenture do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Indenture;

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that in order to secure the payment of the principal of, premium, if any, and the interest on all Bonds at any time issued, authenticated and delivered hereunder, to secure the payment of Parity Obligations in accordance with terms hereof and to provide the terms and conditions under which all property, rights and interests hereby assigned and pledged are to be dealt with and disposed of, and to secure performance and observance of the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes hereinafter expressed, and in consideration of the premises and of the material covenants herein contained and of the purchase and acceptance of the Bonds by the owners thereof, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Commission does hereby agree and covenant with the Trustee for the benefit of the respective owners, from time to time, of the Bonds, or any part thereof, and for the benefit of the holders of Parity Obligations, in accordance with terms hereof, as follows:

**ARTICLE I**  
**EQUALITY OF SECURITY; DEFINITIONS;**  
**CONTENT OF CERTIFICATES AND OPINIONS**

**SECTION 1.01**      **Equality of Security.** In consideration of the acceptance of the Bonds by the owners thereof from time to time, this Indenture shall be deemed to be and shall constitute a contract among the Commission, the Trustee and the owners from time to time of the Bonds and the covenants and agreements herein set forth to be performed by or on behalf of the Commission or the Trustee shall be for the equal and proportionate benefit, security and protection of all owners of the Bonds, without preference, priority or distinction as to security or otherwise of any of the Bonds over any of the others by reasons of the Series, time of issue, sale or negotiation thereof or for any cause whatsoever, except as expressly provided therein or herein. Nothing herein shall prevent additional security being provided for the benefit of a particular Series of Bonds under any supplement to this Indenture.

**SECTION 1.02**      **Definitions.** Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Indenture and of any Supplemental Indenture and of any certificate, opinion or other document herein mentioned, have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined.

"**Accreted Value**" means, with respect to any Capital Appreciation Bond, the principal amount thereof plus the interest accrued thereon, compounded at the approximate interest rate thereon on each date specified therein. The Accreted Value at any date shall be the amounts set forth in the Accreted Value Table as of such date, if such date is a compounding date, and if not, as of the immediately preceding compounding date.

"**Accreted Value Table**" means the table denominated as such which appears as an exhibit to, and to which reference is made in, a Supplemental Indenture providing for a Series of Capital Appreciation Bonds issued pursuant to such Supplemental Indenture.

"**Act**" means the San Diego County Regional Transportation Commission Act, Chapter 2 of Division 12.7 (Section 132000 et seq.) of the Public Utilities Code of the State as now in effect and as it may from time to time hereafter be amended or supplemented.

"**Alternate Credit Enhancement**" means, with respect to a Series of Bonds, any Insurance, letter of credit, line of credit, surety bond or other instrument, if any, which secures or guarantees the payment of principal of and interest on a Series of Bonds, issued by an insurance company, commercial bank, pension fund or other financial institution, and delivered or made available to the Trustee, as a replacement or substitution for any Credit Enhancement then in effect.

"**Alternate Liquidity Facility**" means, with respect to a Series of Bonds, a line of credit, letter of credit, standby purchase agreement or similar liquidity facility, issued by a commercial bank, insurance company, pension fund or other financial institution, and delivered or made available to the Trustee, as a replacement or substitute for any Liquidity Facility then in effect.



**"Annual Debt Service"** means, for any Fiscal Year, the aggregate amount (without duplication) of principal and interest on all Bonds and Parity Obligations becoming due and payable during such Fiscal Year calculated using the principles and assumptions set forth under the definition of Debt Service.

**"Assumed Debt Service"** means for any Fiscal Year the aggregate amount of principal and interest which would be payable on all Bonds if each Excluded Principal Payment were amortized on a substantially level debt service basis for a period commencing on the date of calculation of such Assumed Debt Service and ending on the earlier of (i) the date specified by the Commission not exceeding thirty (30) years from the date of calculation, or (ii) the Tax Expiration Date, such Assumed Debt Service to be calculated on a level debt service basis, based on a fixed interest rate equal to the rate at which the Commission could borrow for such period, as set forth in a certificate of a financial advisor or investment banker, delivered to the Trustee, who may rely conclusively on such certificate, such certificate to be delivered within thirty (30) days of the date of calculation.

**"Authorized Representative"** means the Chair of the Board of Directors, the Executive Director, the Chief Deputy Executive Director, the Director of Finance, the Finance Manager, or any other person designated to act on behalf of the Commission by a written certificate furnished to the Trustee containing the specimen signature of such person and signed on behalf of the Commission by an Authorized Representative.

**"Beneficial Owner"** means any Person who has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of any Bond, including, without limitation, any Person holding Bonds through nominees or depositories, including the Securities Depository.

**"Board"** means the Board of Directors of the Commission.

**"Bond Obligation"** means, as of any given date of calculation, (1) with respect to any Outstanding Current Interest Bond, the principal amount of such Bond, and (2) with respect to any Outstanding Capital Appreciation Bond, the Accreted Value thereof.

**"Bond Reserve Fund"** means any fund by that name established with respect to one or more Series of Bonds pursuant to the Supplemental Indenture establishing the terms and provisions of such Series of Bonds.

**"Bond Reserve Requirement"** with respect to a Series of Bonds for which the Commission shall have established a Bond Reserve Fund shall have the meaning specified in the Supplemental Indenture establishing the terms and provisions of such Series of Bonds.

**"Bondholder"** or **"Holder"**, whenever used herein with respect to a Bond, means the person in whose name such Bond is registered.

**"Bonds"** means the San Diego County Regional Transportation Commission Sales Tax Revenue Bonds (Limited Tax Bonds) authorized by, and at any time Outstanding pursuant to, this Indenture.

**"Business Day"** means, except as is otherwise provided in the Supplemental Indenture pursuant to which a Series of Bonds are issued, any day other than (1) a Saturday, Sunday, or a day on which banking institutions in the State, the State of New York or the jurisdiction in which the Corporate Trust Office of the Trustee is located are authorized or obligated by law or executive order to be closed, or (2) for purposes of payments and other actions relating to Bonds secured by a Credit Enhancement or supported by a Liquidity Facility, a day upon which commercial banks in the city in which is located the office of the issuing bank at which demands for payment under the Credit Enhancement or Liquidity Facility, as applicable, are to be presented are authorized or obligated by law or executive order to be closed, or (3) a day on which the New York Stock Exchange is closed.

**"Capital Appreciation Bonds"** means the Bonds of any Series designated as Capital Appreciation Bonds in the Supplemental Indenture providing for the issuance of such Series of Bonds and on which interest is compounded and paid at maturity or on prior redemption.

**"Certificate," "Statement," "Request," "Requisition" and "Order"** of the Commission mean, respectively, a written certificate, statement, request, requisition or order signed in the name of the Commission by an Authorized Representative. If and to the extent required by Section 1.03, each such instrument shall include the statements provided for in Section 1.03.

**"Code"** means the Internal Revenue Code of 1986, and the regulations applicable thereto or issued thereunder, or any successor to the Internal Revenue Code of 1986. Reference to any particular Code section shall, in the event of such a successor Code, be deemed to be reference to the successor to such Code section.

**"Commission"** means the San Diego County Regional Transportation Commission, a public entity of the State, duly organized and existing under the Act.

**"Continuing Disclosure Agreement"** means, with respect to each Series of Bonds requiring an undertaking regarding disclosure under Rule 15c2-12, the Continuing Disclosure Agreement, dated the date of issuance of such Series of Bonds, executed by the Commission and a Dissemination Agent, as the same may be supplemented, modified or amended in accordance with its terms.

**"Corporate Trust Office"** or corporate trust office means the corporate trust office of the Trustee at U.S. Bank National Association, 633 West 5th Street, 24th Floor, Los Angeles, California 90071, Attention: Corporate Trust Division, or such other or additional offices as may be designated by the Trustee from time to time.

**"Costs of Issuance"** means all items of expense directly or indirectly payable by or reimbursable to the Commission and related to the authorization, execution, sale and delivery of a Series of Bonds, including but not limited to advertising and printing costs, costs of preparation and reproduction of documents, filing and recording fees, travel expenses and costs relating to rating agency meetings and other meetings concerning such Series of Bonds, initial fees and charges of the Trustee, legal fees and charges, fees and disbursements of consultants and professionals, financial advisor fees and expenses, rating agency fees, fees and charges for preparation, execution, transportation and safekeeping of Bonds, surety, insurance, credit

enhancement and liquidity costs, termination fees payable in connection with the termination of an Interest Rate Swap Agreement in connection with the delivery of such Series of Bonds, and any other cost, charge or fee in connection with the initial delivery of a Series of Bonds or any Parity Obligations delivered in connection with a Series of Bonds.

**"Costs of Issuance Fund"** means a fund by that name established pursuant to the provisions of a Supplemental Indenture to pay Costs of Issuance with respect to a Series of Bonds being issued pursuant to such Supplemental Indenture.

**"Costs of the Project"** means all items of expense related to the Project and directly or indirectly payable by or reimbursable to the Commission in accordance with the Act and the Ordinance.

**"Counterparty"** means an entity which has entered into an Interest Rate Swap Agreement with the Commission.

**"Credit Enhancement"** means, with respect to a Series of Bonds, any Insurance, letter of credit, line of credit, surety bond or other instrument, if any, which secures or guarantees the payment of principal of and interest on a Series of Bonds, issued by an insurance company, commercial bank or other financial institution, and delivered or made available to the Trustee, as from time to time supplemented or amended pursuant to its terms, or, in the event of the delivery or availability of an Alternate Credit Enhancement, such Alternate Credit Enhancement.

**"Credit Provider"** means, with respect to a Series of Bonds, the Insurer, commercial bank or other financial institution issuing (or having primary obligation, or acting as agent for the financial institutions obligated, under) a Credit Enhancement then in effect with respect to such Series of Bonds.

**"Current Interest Bonds"** means the Bonds of any Series designated as Current Interest Bonds in the Supplemental Indenture providing for the issuance of such Series of Bonds and that pay interest to the Holders thereof on a periodic basis prior to maturity.

**"Debt Service,"** when used with respect to any Bonds or Parity Obligations (for purposes of this definition of "Debt Service," herein collectively referred to as "Obligations"), means, as of any date of calculation and with respect to any Fiscal Year, the sum of (1) the interest falling due on such Obligations during such Fiscal Year and (2) the principal or Mandatory Sinking Account Payments required with respect to such Obligations during such Fiscal Year; computed on the assumption that no portion of such Obligations shall cease to be Outstanding during such Fiscal Year except by reason of the application of such scheduled payments; provided, however, that for purposes of such computation:

(A) Excluded Principal Payments (and the interest related thereto provided such interest is being paid from the same source as the Excluded Principal Payments) shall be excluded from such calculation and Assumed Debt Service shall be included in such calculation;

(B) in determining the principal amount due in each Fiscal Year, payment shall (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made in accordance with any amortization schedule

established for such Obligations, including any Mandatory Sinking Account Payments or any scheduled redemption or payment of Obligations on the basis of Accreted Value, and for such purpose, the redemption payment or payment of Accreted Value shall be deemed a principal payment and interest that is compounded and paid as Accreted Value shall be deemed due on the scheduled redemption or payment date of such Capital Appreciation Bond;

(C) if any Obligations bear, or if any Obligations proposed to be issued will bear, interest at a variable interest rate for which an Interest Rate Swap Agreement is not in place and the interest on which is excluded or expected to be excluded from gross income for federal income tax purposes, the interest rate on such Obligations for periods when the actual interest rate cannot yet be determined shall be assumed to be equal to the average of the SIFMA Swap Index for the five (5) years preceding such date of calculation;

(D) if any Obligations bear, or if any Obligations proposed to be issued will bear, interest at a variable interest rate for which an Interest Rate Swap Agreement is not in place and the interest on which is included or expected to be included in gross income for federal income tax purposes, the interest rate on such Obligations shall be calculated at an interest rate equal to 100% of the average One Month USD LIBOR Rate during the five (5) years preceding such date of calculation;

(E) with respect to any Obligations bearing interest, or expected to bear interest, at a variable interest rate for which an Interest Rate Swap Agreement is in place providing for a fixed rate of interest to maturity or for a specific term with respect to such Obligations, the interest rate on such Obligations shall be assumed to be the synthetic fixed interest rate specified in such Interest Rate Swap Agreement for such term; provided that if, pursuant to a Certificate of the Commission filed with the Trustee, the sum of (i) interest payable on such Obligations, plus (ii) amounts payable by the Commission under such Interest Rate Swap Agreement, less (iii) amounts receivable by the Commission under such Interest Rate Swap Agreement, is expected to be greater than the interest payable on the Obligations to which such Interest Rate Swap Agreement relates (i.e., if such Interest Rate Swap Agreement is an "off-market" Interest Rate Swap Agreement), then, in such instance, such excess amounts payable by the Commission under such Interest Rate Swap Agreement shall be included in the calculation of Debt Service;

(F) with respect to any Obligations bearing interest, or expected to bear interest, at a fixed interest rate for which an Interest Rate Swap Agreement is in place providing for a net variable interest rate with respect to such Obligations for a specific term, the interest rate on such Obligations shall be assumed to be equal for such term to the sum of (i) the fixed interest rate or rates to be paid on the Obligations, minus (ii) the fixed interest rate receivable by the Commission under such Interest Rate Swap Agreement, plus (iii) the average interest rate of the index on which the Interest Rate Swap Agreement is based, as identified in a Certificate of the Commission, or, if not based on an identifiable index, then the SIFMA Swap Index, in each case, over the five (5) years preceding the date of calculation;

(G) if any Obligations feature an option, on the part of the owners or an obligation under the terms of such Obligations, to tender all or a portion of such Obligations to the Commission, the Trustee or other fiduciary or agent, and requires that such Obligations or portion thereof be purchased if properly presented, then for purposes of determining the amounts

of principal and interest due in any Fiscal Year on such Obligations, the options or obligations of the owners of such Obligations to tender the same for purchase or payment prior to the stated maturity or maturities shall be ignored and not treated as a principal maturity; and

(H) principal and interest payments on Obligations shall be excluded to the extent such payments are to be paid from Revenues then held on deposit by the Trustee or from other amounts on deposit with the Trustee or other fiduciary in escrow specifically therefor and interest payments shall be excluded to the extent that such interest payments are to be paid from the proceeds of Obligations held by the Trustee or other fiduciary as capitalized interest specifically to pay such interest.

**"Defeasance Securities"** means: (i) U.S. Treasury Certificates, Notes and Bonds, including State and Local Government Series securities; (ii) direct obligations of the U.S. Treasury which have been stripped by the U.S. Treasury itself; (iii) Resolution Funding Corp. securities ("REFCORP"), provided, however, only the interest component of REFCORP strips which have been stripped by request to the Federal Reserve Bank of New York in book entry form are acceptable; (iv) pre-refunded municipal bonds rated "Aaa" by Moody's and "AAA" by Standard & Poor's, provided, however, that if such municipal bonds are rated only by Standard & Poor's, then such pre-refunded municipal bonds must have been pre-refunded with cash, direct United States or United States guaranteed obligations, or "AAA" rated pre-refunded municipal bonds; (v) obligations issued by the following agencies, which are backed by the full faith and credit of the United States: (a) Farmers Home Administration (FmHA) - certificates of beneficial ownership; (b) General Services Administration - participation certificates; (c) U.S. Maritime Administration - Guaranteed Title XI financing; (d) Small Business Administration guaranteed participation certificates and guaranteed pool certificates; (e) GNMA guaranteed MSB and participation certificates; and (f) U.S. Department of Housing and Urban Development (HUD) Local Authority Bonds, or (vi) certain obligations of government-sponsored agencies that are not backed by the full faith and credit of the United States limited to: (a) Federal Home Loan Mortgage Corp. (FHLMC) debt obligations; (b) Farm Credit System (formerly Federal Land Banks, Federal Intermediate Credit Banks, and Banks for Cooperatives) consolidated system-wide bonds and notes; (c) Federal Home Loan Banks (FHL Banks) consolidated debt obligations; (d) Federal National Mortgage Association (FNMA) debt obligations; (e) Student Loan Marketing Association (SLMA) debt obligations; and (f) Financing Corp. (FICO) debt obligations; and (g) other obligations approved by the Rating Agencies for defeasance escrows rated in the highest Rating Category.

**"Dissemination Agent"** means, with respect to each Series of Bonds requiring an undertaking regarding disclosure under Rule 15c2-12(b)(5), the dissemination agent under the Continuing Disclosure Agreement delivered in connection with such Series of Bonds, or any successor dissemination agent designated in writing by the Commission and which has entered into a Continuing Disclosure Agreement with the Commission.

**"DTC"** means The Depository Trust Company, New York, New York, or any successor thereto.

**"Electronic Means"** means facsimile transmission, email transmission or other similar electronic means of communication providing evidence of transmission, including a telephone communication confirmed by any other method set forth in this definition.

**"Event of Default"** means any of the events specified in Section 7.01.

**"Excluded Principal Payments"** means each payment of principal of Bonds or Parity Obligations which the Commission determines (in the Certificate of the Commission) that the Commission intends to pay with moneys that are not Sales Tax Revenues (such as commercial paper, balloon indebtedness or bond anticipation notes) but from future debt obligations of the Commission, grants from the State or federal government, or any agency or instrumentality thereof, or any other source of funds of the Commission, upon which determination of the Commission the Trustee may conclusively rely. No such determination shall affect the security for such Bonds or the obligation of the Commission to pay such payments from Sales Tax Revenues or amounts on deposit in the Bond Reserve Fund, if any. No payment of principal of Bonds may be determined to be an Excluded Principal Payment unless it is due on or prior to the Tax Expiration Date.

**"Existing Notes"** means the San Diego County Regional Transportation Commission Subordinate Sales Tax Revenue Commercial Paper Notes (Limited Tax Bonds), Series A, Series B and Series C, authorized by, and at any time Outstanding pursuant to, the Subordinate Indenture.

**"Fees and Expenses Fund"** means the fund by that name established pursuant to Section 5.02.

**"Fiscal Year"** means the period beginning on July 1 of each year and ending on the next succeeding June 30, or any other 12-month period hereafter selected and designated as the official fiscal year period of the Commission, which designation shall be provided to the Trustee in a Certificate delivered by the Commission.

**"Fitch"** means Fitch Inc., and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term "Fitch" shall be deemed to refer to any other nationally recognized securities rating agency selected by the Commission.

**"Holder"** or **"Bondholder,"** whenever used herein with respect to a Bond, means the person in whose name such Bond is registered.

**"Indenture"** means this Indenture, dated as of March 1, 2008, between the Trustee and the Commission, as originally executed or as it may from time to time be supplemented or amended by any Supplemental Indenture delivered pursuant to the provisions hereof.

**"Index Agent"** means the Trustee or such other Person acceptable to the Trustee as may be designated by the Commission to act as the Index Agent for the Trustee.

**"Initial Swaps"** means the following Interest Rate Swap Agreements, in a combined notional amount of \$600,000,000:

- a. ISDA Master Agreement, dated as of November 22, 2005, between Bank of America, N.A. ("BofA") and the Commission, as supplemented by the Schedule, dated as of November 22, 2005 and the confirmation of a transaction entered into on November 22, 2005 between BofA and the Commission;
- b. ISDA Master Agreement, dated as of November 22, 2005, between Goldman Sachs Mitsui Marine Derivative Products, L.P. ("Goldman") and the Commission, as supplemented by the Schedule, dated as of November 22, 2005 and the confirmation of a transaction entered into on November 29, 2005 between Goldman and the Commission; and
- c. ISDA Master Agreement, dated as of November 22, 2005, between Merrill Lynch Capital Services, Inc. ("MLCS") and the Commission, as supplemented by the Schedule, dated as of November 22, 2005 and the confirmation of a transaction entered into on November 22, 2005 between MLCS and the Commission.

**"Insurance"** means any financial guaranty insurance policy or municipal bond insurance policy issued by an Insurer insuring the payment when due of principal of and interest on a Series of Bonds as provided in such financial guaranty insurance policy or municipal bond insurance policy.

**"Insurer"** means any provider of Insurance with respect to a Series of Bonds.

**"Interest Fund"** means the fund by that name established pursuant to Section 5.02.

**"Interest Payment Date,"** with respect to each Series of Bonds, shall have the meaning specified in the Supplemental Indenture establishing the terms and provisions of such Series of Bonds.

**"Interest Rate Swap Agreement"** means an interest rate swap, cap, collar, option, floor, forward, derivative, or other hedging agreement, arrangement or security, however denominated, entered into between the Commission and a Counterparty, in connection with or incidental to, the issuance or carrying of Bonds, including, without limitation, an interest rate swap, cap, collar, option, floor, forward, derivative, or other hedging agreement, arrangement or security entered into in advance of the issuance of Bonds.

**"Investment Securities"** means the following:

(1) any bonds or other obligations which as to principal and interest constitute direct obligations of, or are unconditionally guaranteed by, the United States of America, including obligations of any of the federal agencies and federally sponsored entities set forth in clause (3) below to the extent unconditionally guaranteed by the United States of America;

(2) any certificates, receipts, securities or other obligations evidencing ownership of, or the right to receive, a specified portion of one or more interest payments or principal payments, or any combination thereof, to be made on any bond, note, or other obligation described above in clause (1);

(3) obligations of the Federal National Mortgage Association, the Government National Mortgage Association, Federal Home Loan Banks, Farmers Home Administration and Federal Home Loan Mortgage Corporation;

(4) housing authority bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States of America; or project notes issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States of America;

(5) obligations of any state, territory or commonwealth of the United States of America or any political subdivision thereof or any agency or department of the foregoing; provided that at the time of their purchase such obligations are rated in either of the two highest long-term or highest short-term Rating Categories by both Moody's and Standard & Poor's;

(6) any bonds or other obligations of any state of the United States of America or any political subdivision thereof (a) which are not callable prior to maturity or as to which irrevocable instructions have been given to the trustee of such bonds or other obligations by the obligor to give due notice of redemption and to call such bonds for redemption on the date or dates specified in such instructions, (b) which are secured as to principal and interest and redemption premium, if any, by a fund consisting only of cash or bonds or other obligations of the character described above in clause (1) or (2) which fund may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the interest payment dates and the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, (c) as to which the principal of and interest on the bonds and obligations of the character described above in clause (1) or (2) which have been deposited in such fund along with any cash on deposit in such fund are sufficient to pay the principal of and interest and redemption premium, if any, on the bonds or other obligations described in this clause (6) on the interest payment dates and the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to in subclause (a) of this clause (6), as appropriate, and (d) which have been rated in one of the two highest long-term Rating Categories by Moody's and Standard & Poor's;

(7) bonds, notes, debentures or other evidences of indebtedness issued or guaranteed by any corporation which are, at the time of purchase, rated by both Moody's and Standard & Poor's in their respective highest short-term Rating Categories, or, if the term of such indebtedness is longer than three (3) years, rated by both Moody's and Standard & Poor's in one of their respective two highest long-term Rating Categories, for comparable types of debt obligations;

(8) demand or time deposits or certificates of deposit, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of any state of the United States of America or any national banking association (including the



Trustee), provided that such certificates of deposit shall be purchased directly from such a bank, trust company or national banking association and shall be either (a) continuously and fully insured by the Federal Deposit Insurance Corporation, or (b) continuously and fully secured by such securities and obligations as are described above in clauses (1) through (5), inclusive, which shall have a market value (exclusive of accrued interest) at all times at least equal to the principal amount of such certificates of deposit and shall be lodged with the Trustee, as custodian, by the bank, trust company or national banking association issuing such certificates of deposit, and the bank, trust company or national banking association issuing each such certificate of deposit required to be so secured shall furnish the Trustee with an undertaking satisfactory to it that the aggregate market value of all such obligations securing each such certificate of deposit will at all times be an amount equal to the principal amount of each such certificate of deposit and the Trustee shall be entitled to rely on each such undertaking;

(9) taxable commercial paper, other than that issued by bank holding companies, or tax-exempt commercial paper rated in the highest Rating Category by both Moody's and Standard & Poor's;

(10) variable rate obligations required to be redeemed or purchased by the obligor or its agent or designee upon demand of the holder thereof secured as to such redemption or purchase requirement by a liquidity agreement with a corporation and as to the payment of interest and principal either upon maturity or redemption (other than upon demand by the holder thereof) thereof by an unconditional credit facility of a corporation, provided that the variable rate obligations themselves are rated in the highest Rating Category for its short-term rating, if any, and in either of the two highest Rating Categories for its long-term rating, if any, by both Moody's and Standard & Poor's, and that the corporations providing the liquidity agreement and credit facility have, at the date of acquisition of the variable rate obligation by the Trustee, an outstanding issue of unsecured, uninsured and unguaranteed debt obligations rated in either of the two highest long-term Rating Categories by both Moody's and Standard & Poor's;

(11) any repurchase agreement with any bank or trust company organized under the laws of any state of the United States or any national banking association (including the Trustee) having a minimum permanent capital of one hundred million dollars (\$100,000,000) or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, which agreement is secured by any one or more of the securities and obligations described in clauses (1), (2), (3) or (4) above, which shall have a market value (exclusive of accrued interest and valued at least monthly) at least equal to the principal amount of such investment and shall be lodged with the Trustee or other fiduciary, as custodian for the Trustee, by the bank, trust company, national banking association or bond dealer executing such repurchase agreement, and the entity executing each such repurchase agreement required to be so secured shall furnish the Trustee with an undertaking satisfactory to it that the aggregate market value of all such obligations securing each such repurchase agreement (as valued at least monthly) will be an amount equal to the principal amount of each such repurchase agreement and the Trustee shall be entitled to rely on each such undertaking;

(12) any cash sweep or similar account arrangement of or available to the Trustee, the investments of which are limited to investments described in clauses (1), (2), (3), (4), (5) and (11) of this definition of Investment Securities and any money market fund, the entire investments of which are limited to investments described in clauses (1), (2), (3), (4), (5) and (11) of this definition of Investment Securities; provided that as used in this clause (12) and clause (13) investments will be deemed to satisfy the requirements of clause (11) if they meet the requirements set forth in clause (11) ending with the words "clauses (1), (2), (3) or (4) above" and without regard to the remainder of such clause (11);

(13) any investment agreement with a financial institution or insurance company which: (a) has at the date of execution thereof an outstanding issue of unsecured, uninsured and unguaranteed debt obligations or a claims paying ability rated in either of the two highest long-term Rating Categories by both Moody's and Standard & Poor's; or (b) is fully secured by obligations described in items (1), (2), (3) or (4) of the definition of Investment Securities which are (A) valued not less frequently than monthly and have a fair market value, exclusive of accrued interest, at all times at least equal to the principal amount of the investment, (B) held by the Trustee or other custodian acceptable to the Trustee, (C) subject to a perfected first lien in the Trustee, and (D) free and clear from all third party liens;

(14) shares of beneficial interest in diversified management companies investing exclusively in securities and obligations described in clauses (1) through (13) of this definition of Investment Securities and which companies have either the highest rating by both Moody's and Standard & Poor's or have an investment advisor registered with the Securities and Exchange Commission with not less than five (5) years experience investing in such securities and obligations and with assets under management in excess of \$500,000,000;

(15) shares in a common law trust established pursuant to Title 1, Division 7, Chapter 5 of the Government Code of the State which invests exclusively in investments permitted by Section 53635 of Title 5, Division 2, Chapter 4 of the Government Code of the State, as it may be amended;

(16) bankers' acceptances issued by domestic or foreign banks, which are eligible for purchase by the Federal Reserve System, the short-term paper of which is rated in the highest category by both Moody's and Standard & Poor's, which purchases may not exceed two hundred seventy (270) days maturity;

(17) the pooled investment fund of the County of San Diego, California, which is administered in accordance with the investment policy of said County as established by the Treasurer/Tax Collector thereof, as permitted by Section 53601 of the Government Code of the State, copies of which policy are available upon written request to said Treasurer/Tax Collector;

(18) the Local Agency Investment Fund or similar pooled fund operated by or on behalf of the State of California and which is authorized to accept investments of moneys held in any of the funds or accounts established pursuant to this Indenture; and

(19) Any other forms of investments, including repurchase agreements, approved in writing by each Credit Provider and Liquidity Provider then providing Credit Enhancement or a Liquidity Facility for a Series of Bonds.

**"Law"** means the Act, Chapter 6 of Part 1 of Division 2 of Title 5 (Section 54300 et seq.) of the Government Code of the State as referenced in the Act, and Articles 10 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 (Section 53570 et seq.) of the Government Code of the State, in each case as now in effect and as it may from time to time hereafter be amended or supplemented.

**"Letter of Credit Account"** means an account by that name established to hold funds that are drawn on Credit Enhancement provided in the form of a letter of credit and that are to be applied to pay the principal of or interest on a Series of Bonds, which account shall be established pursuant to the Supplemental Indenture establishing the terms and provisions of such Series of Bonds.

**"Liquidity Facility"** means, with respect to a Series of Bonds, a line of credit, letter of credit, standby purchase agreement or similar liquidity facility securing or guaranteeing the payment of purchase price of such Series of Bonds and issued by a commercial bank, insurance company, pension fund or other financial institution, and delivered or made available to the Trustee, as from time to time supplemented or amended pursuant to its terms, or, in the event of the delivery or availability of an Alternate Liquidity Facility, such Alternate Liquidity Facility.

**"Liquidity Facility Bonds"** means any Bonds purchased with moneys drawn under (or otherwise obtained pursuant to the terms of) a Liquidity Facility, but excluding any Bonds no longer considered to be Liquidity Facility Bonds in accordance with the terms of the applicable Liquidity Facility.

**"Liquidity Facility Rate"** means, with respect to a Series of Bonds, the interest rate per annum, if any, specified as applicable to Liquidity Facility Bonds in the Liquidity Facility delivered in connection with such Series of Bonds.

**"Liquidity Provider"** means, with respect to a Series of Bonds, the commercial bank, insurance company, pension fund or other financial institution issuing (or having primary obligation, or acting as agent for the financial institutions obligated, under) a Liquidity Facility then in effect with respect to such Series of Bonds.

**"Mandatory Sinking Account Payment"** means, with respect to Bonds of any Series and maturity, the amount required by the Supplemental Indenture establishing the terms and provisions of such Series of Bonds to be deposited by the Commission in a Sinking Account for the payment of Term Bonds of such Series and maturity.

**"Maturity Date"** means, with respect to a Series of Bonds, the date of maturity or maturities specified in the Supplemental Indenture establishing the terms and provisions of such Series of Bonds.

**"Maximum Annual Debt Service"** means the maximum amount of Annual Debt Service becoming due and payable on all Bonds Outstanding and all Parity Obligations outstanding during the period from the date of such calculation through the final maturity date of the Bonds and Parity Obligations, calculated utilizing the assumptions set forth under the definition of Debt Service.

**"Maximum Interest Rate"** means, with respect to all Bonds other than Liquidity Facility Bonds, the lesser of (i) twelve percent (12%) and (ii) the maximum rate of interest that may legally be paid on the Bonds from time to time, and means, with respect to Liquidity Facility Bonds, the lesser of (x) the Liquidity Facility Rate and (ii) the maximum rate of interest that may legally be paid on the Liquidity Facility Bonds from time to time.

**"Moody's"** means Moody's Investors Service, a corporation duly organized and existing under the laws of the State of Delaware, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency selected by the Commission.

**"1987 Ordinance"** means the San Diego Transportation Improvement Program Ordinance and Expenditure Plan, adopted by the Commission on July 31, 1987 and approved by a majority of the electors voting on such proposition on November 3, 1987, as supplemented and amended.

**"Notice Parties"** means, as and to the extent applicable, the Commission, the Trustee, the Credit Provider, if any, for the Series of Bonds to which the notice being given relates, the auction agent, if any, for the Series of Bonds to which the notice being given relates, the broker-dealer, if any, for the Series of Bonds to which the notice being given relates, the Liquidity Provider, if any, for the Series of Bonds to which the notice being given relates, the Index Agent, if any, for the Series of Bonds to which the notice being given relates, and the remarketing agent, if any, for the Series of Bonds to which the notice being given relates.

**"Obligations"** has the meaning given to such term in the definition of "Debt Service."

**"One Month USD LIBOR Rate"** means the rate for deposits in U.S. dollars for a one-month maturity that appears on Reuters Screen LIBOR01 Page (or such other page as may replace that page on that service, or such other service as may be nominated by the British Bankers Association, for the purpose of displaying London interbank offered rates for U.S. dollar deposits) as of 11:00 a.m., London time, on the date of determination of such rate, except that, if such rate does not appear on such page on such date, the One Month USD LIBOR Rate means a rate determined on the basis of the rates at which deposits in U.S. dollars for a one-month maturity and in a principal amount of at least U.S. \$1,000,000 are offered at approximately 11:00 a.m., London time, on such date, to prime banks in the London interbank market by three major banks in the London interbank market (herein referred to as the "Reference Banks")

selected by the Trustee (provided, however, that the Trustee may appoint an agent to identify such Reference Banks). The Trustee or its agent is to request the principal London office of each of such Reference Banks to provide a quotation of its rate. If at least two such quotations are provided, the One Month LIBOR Rate will be the arithmetic mean of such quotations. If fewer than two quotations are provided, the One Month LIBOR Rate will be the arithmetic mean of the rates quoted by three (if three quotations are not provided, two or one, as applicable) major banks in New York City, selected by the Trustee or its agent, at approximately 11:00 a.m., New York City time, on such date for loans in U.S. dollars to leading European banks in a principal amount of at least U.S. \$1,000,000 having a one-month maturity. If none of the banks in New York City selected by the Trustee or its agent is then quoting rates for such loans, then the One Month LIBOR Rate for the ensuing interest period will mean the One Month LIBOR Rate most recently in effect.

**"Opinion of Bond Counsel"** means a written opinion of a law firm of national standing in the field of public finance selected by the Commission.

**"Ordinance"** means, collectively, the 1987 Ordinance and the Sales Tax Extension Ordinance, and any amendments or extensions thereto, together with any future ordinance that is adopted pursuant to the Act from time to time and that is designated as an "Ordinance" hereunder pursuant to a Supplemental Indenture, as such future ordinance may be amended or extended pursuant to the Act from time to time.

**"Outstanding,"** when used as of any particular time with reference to Bonds, means (subject to the provisions of Section 11.09) all Bonds theretofore, or thereupon being, authenticated and delivered by the Trustee under this Indenture except: (1) Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation; (2) Bonds with respect to which all liability of the Commission shall have been discharged in accordance with Section 10.02, including Bonds (or portions of Bonds) referred to in Section 11.10; and (3) Bonds for the transfer or exchange of or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Trustee pursuant to this Indenture; provided, however, that in the event the principal of or interest due on any Bonds shall be paid by the Credit Provider pursuant to the Credit Enhancement issued in connection with such Bonds, such Bonds shall remain Outstanding for all purposes and shall not be considered defeased or otherwise satisfied or paid by the Commission and the pledge of Revenues and all covenants, agreements and other obligations of the Commission to the Holders shall continue to exist and shall run to the benefit of such Credit Provider and such Credit Provider shall be subrogated to the rights of such Holders.

**"Parity Obligations"** means (i) any indebtedness, installment sale obligation, lease obligation or other obligation of the Commission for borrowed money, (ii) any obligation to pay the Rebate Requirement, (iii) the Initial Swaps and any other Interest Rate Swap Agreement (excluding in each case fees and expenses and termination payments on Interest Rate Swap Agreements, including the Initial Swaps, which fees and expenses and termination payments shall be secured by a lien and charge on the Sales Tax Revenues subordinate to the lien and charge upon Sales Tax Revenues that secures the Bonds, Parity Obligations and payment of principal of and interest on Subordinate Obligations) entered into in connection with a Series of Bonds, in each case (other than in the case of the Initial Swaps) incurred in accordance with

Section 3.05(C), and in each case having an equal lien and charge upon the Sales Tax Revenues and therefore being payable on a parity with the Bonds (whether or not any Bonds are Outstanding).

**"Participating Underwriter"** means any of the original underwriters of a Series of Bonds required to comply with Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission, under the Securities Exchange Act of 1934, as the same may be amended from time to time.

**"Person"** means an association, corporation, firm, partnership, trust, or other legal entity or group of entities, including a governmental entity or any agency or political subdivision thereof.

**"Principal Fund"** means the fund by that name established pursuant to Section 5.02.

**"Principal Office"** means, with respect to the Trustee, the corporate trust office of the Trustee at 633 West 5th Street, 24th Floor, Los Angeles, California 90071, Attention: Corporate Trust Division, or such other or additional offices as may be designated by the Trustee from time to time, and means, with respect to a Credit Provider or a Liquidity Provider, the office designated as such in writing by such party in a notice delivered to the Trustee and the Authority.

**"Project"** means transportation facility and public infrastructure improvements within the County of San Diego permitted by the Ordinance and the Act, including, but not limited to, transportation and service improvements for highways, rail transit services, bus services, local streets and roads, bicycle and pedestrian facilities, community infrastructure to support smart growth development, environmental mitigation and enhancement projects, and the payment of all costs incidental to or connected with the accomplishment of such purposes, including, without limitation, costs of land acquisition, engineering, inspection, legal, fiscal agents, financial consultant and other fees, bond and other reserve funds, working capital, bond or note interest estimated to accrue during the construction period and for a period of not to exceed twelve months after completion of construction, and expenses for all proceedings for the authorization, issuance and sale of Bonds.

**"Project Fund"** means, with respect to any Series of Bonds, a fund by that name established pursuant to the provisions of a Supplemental Indenture to hold the proceeds of a Series of Bonds or a portion thereof prior to expenditure on the portion of the Project being financed with the proceeds of such Series of Bonds.

**"Proportionate Basis,"** when used with respect to the redemption of Bonds, means that the amount of Bonds of each maturity to be redeemed shall be determined as nearly as practicable by multiplying the total amount of funds available for redemption by the ratio which the amount of Bond Obligation of Bonds of such maturity bears to the amount of all Bond Obligation of Bonds to be redeemed, provided, however that, any Bond may only be redeemed in an authorized denomination. For purposes of the foregoing, Term Bonds shall be deemed to mature in the years and in the amounts of the Mandatory Sinking Account Payments, and Capital Appreciation Bonds and Current Interest Bonds maturing or subject to Mandatory Sinking Account Payments in the same year shall be treated as separate maturities. When used with

respect to the payment or purchase of a portion of Bonds, "Proportionate Basis" shall have the same meaning set forth above except that "pay" or purchase" shall be substituted for "redeem" or "redemption" and "paid" or "purchased" shall be substituted for "redeemed."

**"Purchase Fund"** means a fund by that name established to hold funds to be applied to pay the purchase price of a Series of Bonds, which fund shall be established pursuant to the Supplemental Indenture establishing the terms and provisions of such Series of Bonds.

**"Rating Agency"** means, as and to the extent applicable to a Series of Bonds, each of Fitch, Moody's and Standard & Poor's then maintaining a rating on such Series of Bonds at the request of the Commission.

**"Rating Category"** means: (i) with respect to any long-term rating category, all ratings designated by a particular letter or combination of letters, without regard to any numerical modifier, plus or minus sign or other modifier; and (ii) with respect to any short-term or commercial paper rating category, all ratings designated by a particular letter or combination of letters and taking into account any numerical modifier, but not any plus or minus sign or other modifier.

**"Rebate Fund"** means that fund by that name established pursuant to Section 5.09.

**"Rebate Instructions"** means, with respect to any Series of Bonds, those calculations and directions required to be delivered to the Trustee by the Commission pursuant to the Tax Certificate delivered in connection with such Series of Bonds.

**"Rebate Requirement"** means, with respect to any Series of Bonds, the Rebate Requirement determined in accordance with the Tax Certificate delivered in connection with such Series of Bonds.

**"Record Date,"** with respect to each Series of Bonds, shall have the meaning specified in the Supplemental Indenture establishing the terms and provisions of such Series of Bonds.

**"Redemption Fund"** means the fund by that name established pursuant to Section 5.08.

**"Redemption Price"** means, with respect to any Bond (or portion thereof) the Bond Obligation of such Bond (or portion thereof) plus the applicable premium, if any, payable upon redemption thereof pursuant to the provisions of such Bond and this Indenture.

**"Refunding Bonds"** means a Series of Bonds or a portion of a Series of Bonds issued pursuant to the provisions set forth in Section 3.04.

**"Repositories"** means the public or private entities designated as Repositories in a Continuing Disclosure Agreement entered into in connection with a Series of Bonds.

**"Reserve Facility"** means any insurance policy, letter of credit or surety bond issued by a Reserve Facility Provider, meeting the requirements set forth in Section 5.05, and delivered to the Trustee in satisfaction of all or a portion of the Bond Reserve Requirement applicable to one or more Series of Bonds.

**"Reserve Facility Provider"** means any issuer of a Reserve Facility.

**"Revenue Fund"** means the Revenue Fund established pursuant to Section 5.01.

**"Revenues"** means: (i) all Sales Tax Revenues; and (ii) all Swap Revenues. In accordance with the provisions set forth in Section 3.02, the Commission by Supplemental Indenture may provide for additional revenues or assets of the Commission to be included in the definition of Revenues hereunder.

**"Rule 15c2-12"** means Securities and Exchange Commission Rule 15c2-12, as supplemented and amended from time to time.

**"Sales Tax Extension Ordinance"** means the San Diego Transportation Program Ordinance and Expenditure Plan, adopted by the Commission on May 28, 2004, and approved by at least two-thirds of electors voting on such proposition in the November 2, 2004 election.

**"Sales Tax Revenues"** means the amounts available for distribution to the Commission on and after July 1, 1988 on account of the retail transactions and use tax imposed in the County of San Diego pursuant to the Act and the Ordinance after deducting amounts payable by the Commission to the State Board of Equalization for costs and expenses for its services in connection with the retail transactions and use taxes collected pursuant to the Act.

**"Securities Depository"** means DTC, or, in accordance with then-current guidelines of the Securities and Exchange Commission, such other securities depository, or no such depositories, as the Commission may designate in a Request of the Commission delivered to the Trustee.

**"Serial Bonds"** means Bonds, maturing in specified years, for which no Mandatory Sinking Account Payments are provided.

**"Series,"** whenever used herein with respect to Bonds, means all of the Bonds designated as being of the same series, authenticated and delivered in a simultaneous transaction regardless of variations in maturity, interest rate, redemption and other provisions, and any Bonds thereafter authenticated and delivered upon transfer or exchange or in lieu of or in substitution for (but not to refund) such Bonds as herein provided.

**"SIFMA Swap Index"** means, on any date, a rate determined on the basis of the seven-day high grade market index of tax-exempt variable rate demand obligations, as produced by Municipal Market Data and published or made available by the Securities Industry & Financial Markets Association (formerly the Bond Market Association) ("SIFMA") or any Person acting in cooperation with or under the sponsorship of SIFMA and acceptable to the Trustee and effective from such date.

**"Sinking Account"** means an account by that name established in the Principal Fund pursuant to Section 5.04 for the payment of Term Bonds.

**"Standard & Poor's" or "S&P"** means Standard & Poor's, a division of The McGraw-Hill Companies, Inc., a corporation duly organized and existing under and by virtue of the laws



of the State of New York, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term "Standard & Poor's" shall be deemed to refer to any other nationally recognized securities rating agency selected by the Commission.

"**State**" means the State of California.

"**State Board of Equalization**" means the California State Board of Equalization.

"**Subordinate Indenture**" means the Amended and Restated Subordinate Indenture, dated as of November 1, 2005, between the Commission and U.S. Bank National Association, as trustee, as supplemented and amended from time to time pursuant to its terms.

"**Subordinate Obligations**" means the Existing Notes, any other obligations of the Commission that constitute "Parity Debt" under and as defined in the Subordinate Indenture, and any other obligations of the Commission issued or incurred in accordance with Section 3.05(D).

"**Subordinate Obligations Fund**" means the fund by that name established pursuant to Section 5.02.

"**Subordinate Trustee**" means U.S. Bank National Association, as trustee under the Subordinate Indenture, and its successors and assigns.

"**Supplemental Indenture**" means any indenture hereafter duly executed and delivered, supplementing, modifying or amending this Indenture, but only if and to the extent that such supplemental indenture is authorized specifically hereunder.

"**Swap Revenues**" means all regularly-scheduled amounts (but not termination payments) owed or paid to the Commission by any Counterparty under any Interest Rate Swap Agreement after offset for the regularly-scheduled amounts (but not termination payments) owed or paid by the Commission to such Counterparty under such Interest Rate Swap Agreement.

"**Tax Certificate**" means each Tax Certificate delivered by the Commission at the time of issuance and delivery of a Series of Bonds, as the same may be amended or supplemented in accordance with its terms.

"**Tax Expiration Date**" means March 31, 2048, or such later date to which the levy of the retail transactions and use tax is extended in accordance with the Act and the Ordinance.

"**Term Bonds**" means Bonds payable at or before their specified maturity date or dates from Mandatory Sinking Account Payments established for that purpose and calculated to retire such Bonds on or before their specified maturity date or dates.

"**Trustee**" means U.S. Bank National Association, a national banking association duly organized and existing under and by virtue of the laws of the United States of America, or its successor, as Trustee as provided in Section 8.01.

"**2008 Bonds**" means the San Diego County Regional Transportation Commission Sales Tax Revenue Bonds (Limited Tax Bonds), 2008 Series A, 2008 Series B, 2008 Series C, and 2008 Series D authorized by, and at any time Outstanding pursuant to, this Indenture.

"**Variable Rate Indebtedness**" means any indebtedness, including Bonds, Parity Obligations, and Subordinate Obligations, the interest rate on which is not fixed at the time of incurrence of such indebtedness, and has not at some subsequent date been fixed, at a numerical rate or rates for the entire term of such indebtedness.

**SECTION 1.03**      **Content of Certificates.** Every certificate provided for in this Indenture with respect to compliance with any provision hereof shall include: (1) a statement that the person making or giving such certificate has read such provision and the definitions herein relating thereto; (2) a brief statement as to the nature and scope of the examination or investigation upon which the certificate is based; (3) a statement that, in the opinion of such person, he or she has made or caused to be made such examination or investigation as is necessary to enable him to express an informed opinion with respect to the subject matter referred to in the instrument to which his signature is affixed; and (4) a statement as to whether, in the opinion of such person, such provision has been complied with.

Any such certificate given by an officer of the Commission may be based, insofar as it relates to legal or accounting matters, upon a certificate or opinion of or representation by counsel, an accountant, a financial advisor, an investment banker or an independent consultant, unless such officer knows, or in the exercise of reasonable care should have known, that the certificate, opinion or representation with respect to the matters upon which such certificate or statement may be based, as aforesaid, is erroneous. Any such certificate or opinion made or given by counsel, an accountant, a financial advisor, and investment banker or an independent consultant may be based, insofar as it relates to factual matters (with respect to which information is in the possession of the Commission) upon a certificate or opinion of or representation by an officer of the Commission, unless such counsel, accountant, financial advisor, investment banker or independent consultant knows, or in the exercise of reasonable care should have known, that the certificate or opinion or representation with respect to the matters upon which such person's certificate or opinion or representation may be based, as aforesaid, is erroneous. The same officer of the Commission, or the same counsel, accountant financial advisor, investment banker or independent consultant, as the case may be, need not certify to all of the matters required to be certified under any provision of this Indenture, but different officers, counsel, accountants, financial advisors, investment bankers or independent consultants may certify to different matters, respectively.

## **ARTICLE II THE BONDS**

**SECTION 2.01**      **Authorization of Bonds.** Bonds may be issued hereunder as fully registered bonds without coupons, in book-entry form or otherwise, from time to time as the issuance thereof is approved by the Commission. The maximum principal amount of Bonds which may be issued hereunder is not limited; subject, however, to any limitations contained in the Law and to the right of the Commission, which is hereby reserved, to limit the aggregate principal amount of Bonds which may be issued or Outstanding hereunder. The Bonds are

designated generally as "San Diego County Regional Transportation Commission Sales Tax Revenue Bonds" and shall include in the name "Limited Tax Bonds," each Series thereof to bear such additional designation as may be necessary or appropriate to distinguish such Series from every other Series of Bonds. The Bonds may be issued in such Series as from time to time shall be established and authorized by the Commission, subject to the covenants, provisions and conditions herein contained.

**SECTION 2.02**      **Terms of the Bonds.** The Bonds of each Series shall bear interest, if any, at such rate or rates or determined in such manner and payable at such intervals as may be determined by the Commission at the time of issuance thereof pursuant to the Supplemental Indenture under which issued, not to exceed the Maximum Interest Rate, and shall mature and become payable on such date or dates and in such year or years as the Commission may determine by the Supplemental Indenture creating such Series. Principal of and interest on such Bonds shall be payable in such manner as may be specified in the Supplemental Indenture creating such Series. The Bonds of each Series shall be issued in such denominations as may be authorized by the Supplemental Indenture creating such Series.

Unless otherwise provided in the Supplemental Indenture delivered in connection with such Series of Bonds, the Bonds of each Series shall be initially registered in the name of "Cede & Co.," as nominee of the Securities Depository and shall be evidenced by one bond certificate for each maturity of each Series of Bonds. Registered ownership of any Series of Bonds, or any portion thereof, may not thereafter be transferred except as set forth in Section 2.10, or in the event the use of the Securities Depository is discontinued, in accordance with the provisions set forth in Section 2.05.

**SECTION 2.03**      **Form of Bonds.** The Bonds of any Series shall be in such form or forms as may be specified in the Supplemental Indenture creating such Series.

**SECTION 2.04**      **Execution of Bonds.** The Bonds shall be executed in the name and on behalf of the Commission by the facsimile or manual signature of the Chairperson of the Commission and attested by the facsimile or manual signature of the Director of Finance of the Commission. Unless otherwise provided in any Supplemental Indenture, the Bonds shall then be delivered to the Trustee for authentication by the Trustee. In case any of the officers who shall have signed or attested any of the Bonds shall cease to be such officer or officers of the Commission before the Bonds so signed or attested shall have been authenticated or delivered by the Trustee or issued by the Commission, such Bonds may nevertheless be authenticated, delivered and issued and, upon such authentication, delivery and issue, shall be as binding upon the Commission as though those who signed and attested the same had continued to be such officers of the Commission, and also any Bond may be signed and attested on behalf of the Commission by such persons as at the actual date of execution of such Bond shall be the proper officers of the Commission although at the nominal date of such Bond any such person shall not have been such officer of the Commission.

Except as may be otherwise be provided in a Supplemental Indenture establishing the terms and provisions of a Series of Bonds, only such of the Bonds as shall bear thereon a certificate of authentication substantially in the form recited in the Supplemental Indenture creating such Series of Bonds, manually executed by the Trustee, shall be valid or obligatory for

any purpose or entitled to the benefits of this Indenture, and such certificate of authentication when manually executed by the Trustee shall be conclusive evidence that the Bonds so authenticated have been duly executed, authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

**SECTION 2.05**      **Transfer of Bonds.** Any Bond may, in accordance with its terms, be transferred, upon the register required to be kept pursuant to the provisions of Section 2.07, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form acceptable to the Trustee.

Whenever any Bond or Bonds shall be surrendered for transfer, the Commission shall execute and the Trustee shall authenticate and deliver a new Bond or Bonds, of the same Series, tenor, maturity and interest rate and a like aggregate principal amount; provided that, unless otherwise provided in any Supplemental Indenture, no registration of transfer may occur during the period established by the Trustee for selection of Bonds for redemption, or of any Bond or portion of a Bond so selected for redemption. The Trustee shall require the Bondholder requesting such transfer to pay any tax or other governmental charge required to be paid with respect to such transfer.

**SECTION 2.06**      **Exchange of Bonds.** Bonds may be exchanged at the Corporate Trust Office of the Trustee for a like aggregate principal amount of Bonds of other authorized denominations of the same Series, tenor, maturity and interest rate; provided that, unless otherwise provided in any Supplemental Indenture, no exchange may occur during the period established by the Trustee for selection of Bonds for redemption, or of any Bond or portion of a Bond so selected for redemption. The Trustee shall require the Bondholder requesting such exchange to pay any tax or other governmental charge required to be paid with respect to such exchange.

**SECTION 2.07**      **Bond Register.** Unless otherwise provided in a Supplemental Indenture delivered in connection with a Series of Bonds, the Trustee will keep or cause to be kept, at its Corporate Trust Office sufficient books for the registration and transfer of each Series of Bonds, which shall at all times be open to inspection during normal business hours by the Commission and each Credit Provider upon reasonable prior notice; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on such books, Bonds as hereinbefore provided.

**SECTION 2.08**      **Temporary Bonds.** The Bonds may be issued in temporary form exchangeable for definitive Bonds when ready for delivery. Any temporary Bond may be printed, lithographed or typewritten, shall be of such denomination as may be determined by the Commission, shall be in registered form and may contain such reference to any of the provisions of this Indenture as may be appropriate. A temporary Bond may be in the form of a single Bond payable in installments, each on the date, in the amount and at the rate of interest established for the Bonds maturing on such date. Every temporary Bond shall be executed by the Commission and authenticated by the Trustee upon the same conditions and in substantially the same manner as the definitive Bonds. If the Commission issues temporary Bonds the Commission will execute and deliver definitive Bonds as promptly thereafter as practicable, and thereupon the

temporary Bonds may be surrendered, for cancellation, in exchange therefor at the Corporate Trust Office of the Trustee and the Trustee shall authenticate and deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of authorized denominations of the same Series, tenor and maturity or maturities. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under this Indenture as definitive Bonds authenticated and delivered hereunder.

**SECTION 2.09**      **Bonds Mutilated; Lost; Destroyed or Stolen.** If any Bond shall become mutilated, the Commission, at the expense of the Holder of said Bond, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like Series, tenor, maturity and interest rate in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. Every mutilated Bond so surrendered to the Trustee shall be canceled by the Trustee and delivered to, or upon the Order of, the Commission. If any Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Commission and to the Trustee and, if such evidence be satisfactory to both and indemnity satisfactory to both shall be given, the Commission, at the expense of the Holder, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like Series, tenor, maturity and interest rate in lieu of and in substitution for the Bond so lost, destroyed or stolen (or if any such Bond shall have matured or shall have been called for redemption, instead of issuing a substitute Bond, the Trustee may pay the same without surrender thereof upon receipt of the aforementioned indemnity). The Commission may require payment of a sum not exceeding the actual cost of preparing each new Bond issued under this Section and of the expenses which may be incurred by the Commission and the Trustee in the premises. Any Bond issued under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the Commission whether or not the Bond so alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be entitled to the benefits of this Indenture with all other Bonds secured by this Indenture. Neither the Commission nor the Trustee shall be required to treat both the original Bond and any replacement Bond as being Outstanding for the purpose of determining the principal amount of Bonds which may be issued hereunder or for the purpose of determining any percentage of Bonds Outstanding hereunder, but both the original and replacement Bond shall be treated as one and the same.

**SECTION 2.10**      **Use of Securities Depository.** Unless otherwise provided in a Supplemental Indenture delivered in connection with a Series of Bonds, notwithstanding any provision of this Indenture to the contrary:

(A) The Bonds shall be delivered and registered as provided in Section 2.02. Registered ownership of any Series of Bonds, or any portion thereof, may not thereafter be transferred except:

(1) To any successor of the Securities Depository or its nominee, or to any substitute depository designated pursuant to clause (2) of this subsection (A) (each, a "substitute depository"); provided that any successor of the Securities Depository or substitute depository shall be qualified under any applicable laws to provide the service proposed to be provided by it;

(2) To any substitute depository designated by the Commission upon (a) the resignation of the Securities Depository or its successor (or any substitute depository or its successor) from its functions as depository or (b) a determination by the Commission that the Securities Depository or its successor (or any substitute depository or its successor) is no longer able to carry out its functions as depository; provided that any such substitute depository shall be qualified under any applicable laws to provide the services proposed to be provided by it; or

(3) To any Person as provided below, upon (a) the resignation of the Securities Depository or its successor (or substitute depository or its successor) from its functions as depository; provided that no substitute depository can be obtained or (b) a determination by the Commission that it is in the best interests of the Commission to remove the Securities Depository or its successor (or any substitute depository or its successor) from its functions as depository.

(B) In the case of any transfer pursuant to clause (1) or clause (2) of subsection (A) above, upon receipt of the Outstanding Bonds by the Trustee, together with a Statement of the Commission to the Trustee, a single new Bond for each maturity of each Series of Bonds then Outstanding shall be executed and delivered in the aggregate principal amount of the Bonds of such Series then Outstanding, registered in the name of such successor or such substitute depository, or their nominees, as the case may be, all as specified in such Statement of the Commission. In the case of any transfer pursuant to clause (3) of subsection (A) hereof, upon receipt of the Outstanding Bonds by the Trustee together with the Statement of the Commission to the Trustee, new Bonds of each Series then Outstanding shall be authorized and prepared by the Commission and authenticated and delivered by the Trustee in such authorized denominations and registered in the names of such Persons as are requested in such a Statement of the Commission, numbered in such manner as the Trustee shall determine, subject to the limitations of Section 2.02.

(C) In the case of partial redemption or an advance refunding of any Series of the Bonds evidencing all or a portion of such amount Outstanding, the Securities Depository shall make an appropriate notation on such Bonds indicating the date and amounts of such reduction in principal, in form acceptable to the Trustee.

(D) The Commission and the Trustee shall be entitled to treat the Person in whose name any Bond is registered as the Bondholder thereof for all purposes of the Indenture and any applicable laws, notwithstanding any notice to the contrary received by the Trustee or the Commission; and the Commission and the Trustee shall have no responsibility for transmitting payments to, communicating with, notifying or otherwise dealing with any Beneficial Owners of the Bonds. Neither the Commission nor the Trustee will have any responsibility or obligations, legal or otherwise, to the Beneficial Owners or to any other party including the Securities Depository or its successor (or substitute depository or its successor), except for the Holder of any Bond.

(E) So long as the Outstanding Bonds are registered in the name of Cede & Co. or its registered assign, the Commission and the Trustee shall cooperate with Cede & Co., as sole registered Bondholder, and its registered assigns in effecting payment of the principal of,

redemption premium, if any, purchase price and interest on the Bonds by arranging for payment in such manner that funds for such payments are properly identified and are made immediately available on the date they are due.

### ARTICLE III ISSUANCE OF BONDS

**SECTION 3.01**     **Issuance of Bonds.** Whenever the Commission shall determine to issue a Series of Bonds hereunder, the Commission (i) shall authorize the execution of a Supplemental Indenture specifying the principal amount, and prescribing the forms of Bonds of such Series and providing the terms, conditions, distinctive designation, denominations, date, maturity date or dates, interest rate or rates (or the manner of determining the same), redemption provisions, tender provisions, if any, and place or places of payment of principal or Redemption Price, if any, of and interest on such Bonds, and any other provisions respecting the Bonds of such Series not inconsistent with the terms of this Indenture, (ii) shall execute such Supplemental Indenture and (iii) shall deliver such Supplemental Indenture to the Trustee for execution.

**SECTION 3.02**     **Issuance of Additional Bonds.** Subsequent to the issuance of the 2008 Bonds, the Commission may by Supplemental Indenture establish one or more additional Series of Bonds, payable from Sales Tax Revenues and secured by the pledge made under this Indenture equally and ratably with the 2008 Bonds, and the Commission may issue, and the Trustee may authenticate and deliver to the purchasers thereof, Bonds of any Series so established, in such principal amount as shall be determined by the Commission, but only, with respect to each additional Series of Bonds issued subsequent to the 2008 Bonds issued hereunder, upon compliance by the Commission with the provisions of this Section 3.02, Section 3.03 and any additional requirements set forth in said Supplemental Indenture and subject to the specific conditions set forth below, each of which is hereby made a condition precedent to the issuance of any such additional Series of Bonds.

(A) No Event of Default shall have occurred and then be continuing.

(B) Subject to the provisions of Section 5.05, in the event a Supplemental Indenture providing for the issuance of such Series shall require either (i) the establishment of a Bond Reserve Fund to provide additional security for such Series of Bonds or (ii) that the balance on deposit in an existing Bond Reserve Fund be increased, forthwith upon the receipt of the proceeds of the sale of such Series, to an amount at least equal to the Bond Reserve Requirement with respect to such Series of Bonds and all other Bonds secured by such Bond Reserve Fund to be considered Outstanding upon the issuance of such additional Series of Bonds, the Supplemental Indenture providing for the issuance of such additional Series of Bonds shall require deposit of the amount necessary. Said deposit shall be made as provided in the Supplemental Indenture providing for the issuance of such additional Series of Bonds and may be made from the proceeds of the sale of such Series of Bonds or from other funds of the Commission or from both such sources or may be made in the form of a Reserve Facility.

(C) The aggregate principal amount of Bonds issued hereunder shall not exceed any limitation imposed by law or by any Supplemental Indenture.

(D) The Commission shall place on file with the Trustee a Certificate of the Commission certifying that the amount of Sales Tax Revenues collected during the Fiscal Year for which audited financial statements are available preceding the date on which such additional Series of Bonds will become Outstanding shall have been at least equal to 1.3 times Maximum Annual Debt Service on all Series of Bonds and Parity Obligations then Outstanding and the additional Series of Bonds then proposed to be issued, which Certificate shall also set forth the computations upon which such Certificate is based.

(E) Principal payments of each additional Series of Bonds shall be due on April 1 or October 1 in each year in which principal is to be paid if and to the extent deemed practical in the reasonable judgment of the Commission with regard to the type of Bond to be issued, and, if the interest on such Series of Bonds is to be paid semiannually, such interest payments shall be due on April 1 and October 1 in each year to the extent deemed practical in the reasonable judgment of the Commission with regard to the type of Bond to be issued.

Nothing in this Section or in this Indenture contained shall prevent or be construed to prevent the Supplemental Indenture providing for the issuance of an additional Series of Bonds from pledging or otherwise providing, in addition to the security given or intended to be given by this Indenture, additional security for the benefit of such additional Series of Bonds or any portion thereof.

In the event additional assets or revenues are included within the definition of "Revenues" by a Supplemental Indenture, such additional assets or revenues shall be included in the calculations to be provided in subsection (D) above as if such additional assets or revenues had always been included in "Revenues."

**SECTION 3.03**      **Proceedings for Issuance of Additional Bonds.** Subsequent to the issuance of the 2008 Bonds, before any additional Series of Bonds shall be issued and delivered, the Commission shall file each of the documents identified below with the Trustee (upon which documents the Trustee may conclusively rely in determining whether the conditions precedent to the issuance of such Series of Bonds have been satisfied).

(A) A Supplemental Indenture authorizing such Series executed by the Commission.

(B) A Certificate of the Commission certifying: (i) that no Event of Default has occurred and is then continuing; and (ii) that the requirements specified in Section 3.02(B) and Section 3.02(C) hereof have been satisfied by the Commission.

(C) A Certificate of the Commission certifying (on the basis of computations made no later than the date of sale of such Series of Bonds) that the requirement of Section 3.02(D) is satisfied.

(D) An Opinion of Bond Counsel to the effect that the Supplemental Indenture is being entered into in accordance with this Indenture and that such Series of Bonds, when duly executed by the Commission and authenticated and delivered by the Trustee, will be valid and binding obligations of the Commission.



**SECTION 3.04      Issuance of Refunding Bonds.**

(A) Refunding Bonds may be authorized and issued by the Commission without compliance with the provisions of Sections 3.02(D) or 3.03(C); provided that the Trustee shall have been provided with a Certificate of the Commission to the effect that the Commission has determined one of the following: (i) that Maximum Annual Debt Service on all Bonds Outstanding and all Parity Obligations outstanding following the issuance of such Refunding Bonds is less than or equal to Maximum Annual Debt Service on all Bonds Outstanding and all Parity Obligations outstanding prior to the issuance of such Refunding Bonds, or (ii) that the Commission expects a reduction in Debt Service on all Bonds Outstanding and all Parity Obligations outstanding to result from the refunding to be effected with the proceeds of such Refunding Bonds. Such Refunding Bonds may be issued in an aggregate principal amount sufficient (together with any additional funds available or to become available) to provide funds for the payment of all or a portion of the following:

- (1) the principal or Redemption Price of the Outstanding Bonds or outstanding Parity Obligations to be refunded;
- (2) all expenses incident to the calling, retiring or paying of such Outstanding Bonds or outstanding Parity Obligations and the Costs of Issuance of such Refunding Bonds;
- (3) any termination payment owed by the Commission to a Counterparty after offset for any payments made to the Commission from such Counterparty under any Interest Rate Swap Agreement that was entered into in connection with the Bonds or Parity Obligations to be refunded;
- (4) interest on all Outstanding Bonds or outstanding Parity Obligations to be refunded to the date such Bonds or Parity Obligations will be called for redemption or paid at maturity;
- (5) interest on the Refunding Bonds from the date thereof to the date of payment or redemption of the Bonds or Parity Obligations to be refunded; and
- (6) funding a Bond Reserve Fund for the Refunding Bonds, if required.

(B) Before such Series of Refunding Bonds shall be issued and delivered pursuant to this Section 3.04, the Commission shall file each of the documents identified below with the Trustee (upon which documents the Trustee may conclusively rely in determining whether the conditions precedent to the issuance of such Series of Refunding Bonds have been satisfied).

- (1) A Supplemental Indenture authorizing such Series of Refunding Bonds executed by the Commission.
- (2) A Certificate of the Commission certifying: (i) that Maximum Annual Debt Service on all Bonds and Parity Obligations which will be outstanding following the issuance of such Series of Refunding Bonds is less than or equal to Maximum Annual Debt Service on all Bonds Outstanding and Parity Obligations outstanding prior to the

issuance of such Refunding Bonds or that the Commission expects a reduction in Debt Service on all Bonds Outstanding and all Parity Obligations outstanding to result from the refunding to be effected with the proceeds of such Refunding Bonds; and (ii) that the requirements of Sections 3.02(A), (B), and (C) hereof are satisfied.

(3) If any of the Bonds to be refunded are to be redeemed prior to their stated maturity dates, irrevocable instructions to the Trustee to give the applicable notice of redemption or a waiver of the notice of redemption signed by the Holders of all or the portion of the Bonds or Parity Obligations to be redeemed, or proof that such notice has been given by the Commission; provided, however, that in lieu of such instructions or waiver or proof of notice of redemption, the Commission may cause to be deposited with the Trustee all of the Bonds and Parity Obligations proposed to be redeemed (whether canceled or uncanceled) with irrevocable instructions to the Trustee to cancel said Bonds or Parity Obligations so to be redeemed upon the exchange and delivery of said Refunding Bonds; and provided further that no provision of this Indenture shall be construed to require the redemption of Bonds prior to their respective maturity dates in connection with the refunding thereof.

(4) An Opinion of Bond Counsel to the effect that the Supplemental Indenture is being entered into in accordance with this Indenture and that such Series of Refunding Bonds, when duly executed by the Commission and authenticated and delivered by the Trustee, will be valid and binding obligations of the Commission.

(5) The proceeds of the sale of the Refunding Bonds shall be applied by the Trustee according to the written direction of the Commission to the retirement of the Outstanding Bonds or Parity Obligations for the refunding of which said Refunding Bonds are to be issued. All Bonds or Parity Obligations purchased, redeemed or retired by use of funds received from the sale of Refunding Bonds, and all Bonds surrendered to the Trustee against the issuance of Refunding Bonds, shall be forthwith canceled and shall not be reissued.

**SECTION 3.05 Limitations on the Issuance of Obligations Payable from Sales Tax Revenues; Parity Obligations; Subordinate Obligations.** Subsequent to the issuance of the 2008 Bonds, the Commission will not, so long as any Bonds are Outstanding, issue any obligations or securities, howsoever denominated, payable in whole or in part from Sales Tax Revenues except as set forth below.

(A) Bonds authorized pursuant to Sections 3.01 and 3.02.

(B) Refunding Bonds authorized pursuant to Section 3.04.

(C) Parity Obligations, provided that the following conditions to the issuance or incurrence of such Parity Obligations are satisfied:

(1) Such Parity Obligations have been duly and legally authorized by the Commission for any lawful purpose;

(2) No Event of Default shall have occurred and then be continuing, as evidenced by the delivery of a Certificate of the Commission to that effect, which Certificate of the Commission shall be filed with the Trustee;

(3) Such Parity Obligations are being issued or incurred either (i) for purposes of refunding in compliance with the requirements for the issuance of Refunding Bonds set forth in Section 3.04 or (ii) the Commission shall have placed on file with the Trustee a Certificate of the Commission, upon which the Trustee may conclusively rely certifying (on the basis of calculations made no later than the date of sale or incurrence of such Parity Obligations, as applicable) that the requirements set forth in Section 3.02(D) relating to the issuance of an additional Series of Bonds have been satisfied with respect to such Parity Obligations, which Certificate shall also set forth the computations upon which such Certificate is based;

(4) As and to the extent applicable, the Trustee shall be designated as paying agent or trustee for such Parity Obligations and the Commission shall deliver to the Trustee a transcript of the proceedings providing for the issuance of such Parity Obligations (but the Trustee shall not be responsible for the validity or sufficiency of such proceedings or such Parity Obligations).

(D) Subordinate Obligations that are payable as to principal, premium, interest and reserve fund requirements, if any, only out of Sales Tax Revenues after the prior payment of all amounts then required to be paid hereunder from Sales Tax Revenues for principal, premium, interest and reserve fund requirements, if any, for all Bonds Outstanding, and all Parity Obligations outstanding, as the same become due and payable, and at the times and in the amounts as required in this Indenture and in the instrument or instruments pursuant to which any Parity Obligations were issued or incurred, provided that the following conditions to issuance or incurrence of such Subordinate Obligations are satisfied:

(1) Such Subordinate Obligations have been duly and legally authorized by the Commission for any lawful purpose;

(2) No Event of Default shall have occurred and then be continuing, as evidenced by the delivery to the Trustee of a Certificate of the Commission to that effect;

(3) Such Subordinate Obligations are being issued or incurred either (i) for purposes of refunding in compliance with the requirements for the issuance of Refunding Bonds set forth in Section 3.04 or (ii) the Commission shall deliver to the Trustee a Certificate of the Commission certifying that the lesser of (x) the amounts of Sales Tax Revenues for a period of twelve (12) consecutive months (selected by the Commission) during the eighteen (18) months immediately preceding the date on which such additional Series of Bonds will become Outstanding, or (y) the estimated Sales Tax Revenues for the Fiscal Year in which such Subordinate Obligations are to be issued or incurred, shall have been, or will be, as applicable, at least equal to 1.0 times Maximum Annual Debt Service, on all Series of Bonds and Parity Obligations then Outstanding and the additional Subordinate Obligations then proposed to be issued or incurred, which Certificate shall also set forth the computations upon which such Certificate is based; and

(4) As and to the extent applicable, the Trustee shall be designated as paying agent or trustee for such Subordinate Obligations and the Commission shall deliver to the Trustee a transcript of the proceedings providing for the issuance of such Subordinate Obligations (but the Trustee shall not be responsible for the validity or sufficiency of such proceedings or such Subordinate Obligations).

Notwithstanding the foregoing, Existing Notes may continue to be issued and outstanding from time to time under the Subordinate Indenture without complying with the foregoing provisions of (D).

(E) Termination payments and fees and expenses on Interest Rate Swap Agreements, Liquidity Provider or Credit Provider fees and expenses and other obligations that shall be secured by a lien and charge on the Revenues subordinate to the lien and charge upon the Revenues that secures the Bonds, Parity Obligations and payment of principal of and interest on Subordinate Obligations.

(F) The Commission and the Trustee hereby acknowledge that the Initial Swaps have been entered into by the Commission and that the obligation of the Commission to make payments required under the Initial Swaps (excluding fees and expenses and termination payments under the Initial Swaps) constitutes a Parity Obligation hereunder. The obligation of the Commission to pay fees, expenses and termination payments under the Initial Swaps is secured by a lien and charge on the Sales Tax Revenues subordinate to the lien and charge upon the Sales Tax Revenues that secures the Bonds, Parity Obligations and payment of principal of and interest on Subordinate Obligations.

**SECTION 3.06**      **Calculation of Maximum Annual Debt Service with Respect to Bonds and Parity Obligations.** For purposes of this Article III, Maximum Annual Debt Service with respect to Bonds shall be determined no later than the date of delivery of such Bonds, and no earlier than the sixtieth (60th) day preceding the date of pricing or sale of such Bonds, utilizing the assumptions set forth in the definition of Debt Service. For purposes of this Article III, Maximum Annual Debt Service with respect to Parity Obligations shall be determined no later than the date of incurrence of such Parity Obligations utilizing the assumptions set forth in the definition of Debt Service; provided, however, that if a Parity Obligation is contingent upon funds being provided pursuant to such Parity Obligation to pay principal, or purchase price of, or interest on a Bond, such Parity Obligations shall not be considered outstanding until such payment is made thereunder.

**SECTION 3.07**      **Application of Proceeds.** Proceeds of each Series of Bonds shall be applied as specified in the Supplemental Indenture pursuant to which such Series of Bonds is issued.

**SECTION 3.08**      **Termination of Issuances Under the Existing Indenture.** The Commission will not, as long as any of the Bonds are Outstanding, issue any additional obligations or securities under the provisions of the Existing Indenture. The only obligations payable from Sales Tax Revenues on a parity with the Bonds are the Initial Swaps and the Existing Bonds. All of the outstanding Existing Bonds mature on April 1, 2008, and the Commission will terminate the Existing Indenture pursuant to its terms promptly thereafter.

**ARTICLE IV**  
**REDEMPTION, TENDER AND PURCHASE OF BONDS**

**SECTION 4.01**     Terms of Redemption, Tender and Purchase. Each Series of Bonds may be made subject to redemption or mandatory or optional tender and purchase prior to their respective stated maturities, as a whole or in part, at such time or times, upon such terms and conditions and upon such notice and with such effect as may be provided in the Supplemental Indenture establishing the terms and provisions of such Series of Bonds.

**SECTION 4.02**     Notice of Redemption. Unless otherwise specified in a Supplemental Indenture establishing the terms and provisions of a Series of Bonds, each notice of redemption shall be mailed by the Trustee, not less than ten (10) nor more than ninety (90) days prior to the redemption date, to each Holder and each of the Repositories. A copy of such notice shall also be provided to each of the Notice Parties with respect to Series of Bonds to which such notice relates. Notice of redemption to the Holders, the Repositories and the applicable Notice Parties shall be given by first class mail. Each notice of redemption shall state the date of such notice, the date of issue of the Series of Bonds to which such notice relates, the redemption date, the Redemption Price, the place or places of redemption (including the name and appropriate address or addresses of the Trustee), the CUSIP number (if any) of the maturity or maturities, and, if less than all of any such maturity, the distinctive certificate numbers of the Bonds of such maturity, if any, to be redeemed and, in the case of Bonds to be redeemed in part only, the respective portions of the principal amount thereof to be redeemed. Each such notice shall also state that on said date there will become due and payable on each of said Bonds the Redemption Price thereof or of said specified portion of the principal amount thereof in the case of a Bond to be redeemed in part only, together with interest accrued thereon to the date fixed for redemption, and that from and after such redemption date interest thereon shall cease to accrue, and shall require that such Bonds be then surrendered at the address or addresses of the Trustee specified in the redemption notice. Neither the Commission nor the Trustee shall have any responsibility for any defect in the CUSIP number that appears on any Bond or in any redemption notice with respect thereto, and any such redemption notice may contain a statement to the effect that CUSIP numbers have been assigned by an independent service for convenience of reference and that neither the Commission nor the Trustee shall be liable for any inaccuracy in such CUSIP numbers.

Failure by the Trustee to give notice to any Notice Party or any one or more of the Repositories or failure of any Holder, any Notice Party or any Repository to receive notice or any defect in any such notice shall not affect the sufficiency or validity of the proceedings for redemption.

With respect to any notice of optional redemption of Bonds delivered pursuant to this Section 4.02 or any provision of any Supplemental Indenture, unless, upon the giving of such notice, such Bonds shall be deemed to have been paid within the meaning of Article X hereof, such notice shall state that such redemption shall be conditional upon the receipt by the Trustee on or prior to the date fixed for such redemption of amounts sufficient to pay the principal of, and premium, if any, and interest on, such Bonds to be redeemed, and that if such amounts shall not have been so received said notice shall be of no force and effect and the Commission shall not be required to redeem such Bonds. In the event that such notice of redemption contains such

a condition and such amounts are not so received, the redemption shall not be made and the Trustee shall within a reasonable time thereafter give notice to the Holders to the effect that such amounts were not so received and such redemption was not made, such notice to be given by the Trustee in the manner in which the notice of redemption was given.

Any notice given pursuant to this Section 4.02 may be rescinded by written notice given to the Trustee by the Commission and the Trustee shall give notice of such rescission as soon thereafter as practicable in the same manner, and to the same Persons, as notice of such redemption was given pursuant to this Section 4.02.

**SECTION 4.03**      **Partial Redemption of Bonds.** Upon surrender of any Bond redeemed in part only, the Commission shall execute (but need not prepare) and the Trustee shall authenticate and deliver to the Holder thereof, at the expense of the Commission, a new Bond or Bonds of authorized denominations, and of the same Series, maturity and interest rate, equal in aggregate principal amount to the unredeemed portion of the Bond surrendered.

**SECTION 4.04**      **Effect of Redemption.** Notice of redemption having been duly given as aforesaid, and moneys for payment of the Redemption Price of, together with interest accrued to the redemption date on, the Bonds (or portions thereof) so called for redemption being held by the Trustee, on the redemption date designated in such notice, the Bonds (or portions thereof) so called for redemption shall become due and payable at the Redemption Price specified in such notice together with interest accrued thereon to the redemption date, interest on the Bonds so called for redemption shall cease to accrue, said Bonds (or portions thereof) shall cease to be entitled to any benefit or security under this Indenture and the Holders of said Bonds shall have no rights in respect thereof except to receive payment of said Redemption Price and accrued interest to the date fixed for redemption from funds held by the Trustee for such payment and such funds are hereby pledged to such payment. All Bonds redeemed pursuant to the provisions of this Article shall be canceled upon surrender thereof.

## ARTICLE V SALES TAX REVENUES

### **SECTION 5.01**      **Pledge of Revenues; Revenue Fund.**

(A) As security for the payment of all amounts owing on the Bonds and Parity Obligations, there are irrevocably pledged to the Trustee: (i) all Revenues; and (ii) all amounts, including proceeds of the Bonds, held on deposit in the funds and accounts established hereunder (except for amounts held in the Rebate Fund, any Letter of Credit Account and any Purchase Fund), subject to the provision of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in this Indenture. The collateral identified above shall immediately be subject to this pledge, and this pledge shall constitute a first lien on and security interest in such collateral which shall immediately attach to the collateral and be effective, binding and enforceable against the Commission and all others asserting the rights therein, to the extent set forth, and in accordance with, this Indenture irrespective of whether those parties have notice of this pledge and without the need for any physical delivery, recordation, filing or further act. The pledge of Revenues and all amounts held on deposit in the funds and accounts established hereunder (except for amounts held in the Rebate Fund, any

Letter of Credit Account and any Purchase Fund) herein made shall be irrevocable until all of the Bonds, all Parity Obligations and amounts owed in connection with the Bonds and Parity Obligations are no longer Outstanding.

All Bonds and Parity Obligations shall be of equal rank without preference, priority or distinction of any Bonds and Parity Obligations over any other Bonds and Parity Obligations.

(B) As long as any Bonds are Outstanding or any Parity Obligations remain unpaid, the Commission hereby assigns and shall cause Sales Tax Revenues to be transmitted by the State Board of Equalization directly to the Trustee. The Trustee shall forthwith deposit in a trust fund, designated as the "Revenue Fund," which fund the Trustee shall establish and maintain, all Sales Tax Revenues, when and as received by the Trustee. The Sales Tax Revenues shall be received and held in trust by the Trustee for the benefit of the Holders of the Bonds and the Parity Obligations and shall be disbursed, allocated and applied solely for the uses and purposes set forth in this Indenture. All moneys at any time held in the Revenue Fund shall be held in trust for the benefit of the Holders of the Bonds and the holders of Parity Obligations and shall be disbursed, allocated and applied solely for the uses and purposes set forth in this Indenture.

(C) The Bonds are limited obligations of the Commission and are payable as to both principal and interest, and any premium upon redemption thereof, exclusively from the Revenues and other funds pledged hereunder.

#### **SECTION 5.02      Allocation of Sales Tax Revenues.**

(A) So long as any Bonds are Outstanding and Parity Obligations, Subordinate Obligations, and all other amounts payable hereunder remain unpaid, the Trustee shall set aside in each month following receipt of the Sales Tax Revenues the moneys in the Revenue Fund in the following respective funds (each of which the Trustee shall establish, maintain and hold in trust for the benefit of the Holders of the Bonds and, as and to the extent applicable, the holders of Parity Obligations) in the following amounts, in the following order of priority, the requirements of each such fund (including the making up of any deficiencies in any such fund resulting from lack of Revenues sufficient to make any earlier required deposit) at the time of deposit to be satisfied before any deposit is made to any fund subsequent in priority; provided that on a parity with such deposits the Trustee may set aside or transfer amounts with respect to any outstanding Parity Obligations as provided in the proceedings for such Parity Obligations delivered to the Trustee pursuant to Section 3.05 (which shall be proportionate in the event such amounts are insufficient to provide for all deposits required as of any date to be made with respect to the Bonds and such Parity Obligations):

(1) Interest Fund. Following receipt of the Sales Tax Revenues in each month, the Trustee shall set aside in the Interest Fund as soon as practicable in such month an amount equal to (a) one-sixth of the aggregate half-yearly amount of interest becoming due and payable on the Outstanding Current Interest Bonds (except for Bonds constituting Variable Rate Indebtedness which shall be governed by subparagraph (b) below) during the next ensuing six (6) months (excluding any interest for which there are moneys deposited in the Interest Fund from the proceeds of any Series of Bonds or other source and reserved as capitalized interest to pay such interest during said next ensuing

six (6) months), until the requisite half-yearly amount of interest on all such Outstanding Current Interest Bonds (except for Bonds constituting Variable Rate Indebtedness which shall be governed by subparagraph (b) below) is on deposit in such fund; provided that from the date of delivery of a Series of Current Interest Bonds until the first Interest Payment Date with respect to such Series of Bonds the amounts set aside in such fund with respect to such Series of Bonds shall be sufficient on a monthly pro rata basis to pay the aggregate amount of interest becoming due and payable on said Interest Payment Date with respect to such Series of Bonds, plus (b) the aggregate amount of interest to accrue during that month on Outstanding Variable Rate Indebtedness, calculated, if the actual rate of interest is not known, at the interest rate specified in writing by the Commission, or if the Commission shall not have specified an interest rate in writing, calculated at the maximum interest rate borne by such Variable Rate Indebtedness during the month prior to the month of deposit plus one percent (1%) (provided, however, that the amount of such deposit into the Interest Fund for any month may be reduced by the amount by which the deposit in the prior month exceeded the actual amount of interest accrued and paid during that month on said Outstanding Variable Rate Indebtedness and provided further that the amount of such deposit into the Interest Fund for any month shall be increased by the amount by which the deposit in the prior month was less than the actual amount of interest accruing during that month on said Outstanding Variable Rate Indebtedness). No deposit need be made into the Interest Fund if the amount contained therein is at least equal to the interest to become due and payable on the Interest Payment Dates falling within the next six (6) months upon all of the Bonds issued hereunder and then Outstanding and on April 1 and October 1 of each year any excess amounts in the Interest Fund not needed to pay interest on such date (and not held to pay interest on Bonds having Interest Payment Dates other than April 1 and October 1) shall be transferred to the Commission (but excluding, in each case, any moneys on deposit in the Interest Fund from the proceeds of any Series of Bonds or other source and reserved as capitalized interest to pay interest on any future Interest Payment Dates following such Interest Payment Dates). All Swap Revenues received with respect to the Interest Rate Swap Agreements that are Parity Obligations shall be deposited in the Interest Fund and credited to the above-required deposits.

(2) Principal Fund; Sinking Accounts. Following receipt of the Sales Tax Revenues in each month, the Trustee shall deposit in the Principal Fund as soon as practicable in such month an amount equal to at least (a) one-sixth of the aggregate semiannual amount of Bond Obligation becoming due and payable on the Outstanding Serial Bonds of all Series having semiannual maturity dates within the next six (6) months, plus (b) one-twelfth of the aggregate yearly amount of Bond Obligation becoming due and payable on the Outstanding Serial Bonds of all Series having annual maturity dates within the next twelve (12) months, plus (c) one-sixth of the aggregate of the Mandatory Sinking Account Payments to be paid during the next six-month period into the respective Sinking Accounts for the Term Bonds of all Series for which Sinking Accounts have been created and for which semiannual mandatory redemption is required from said Sinking Accounts, plus (d) one-twelfth of the aggregate of the Mandatory Sinking Account Payments to be paid during the next 12-month period into the respective Sinking Accounts for the Term Bonds of all Series for which Sinking Accounts shall have been created and for which annual mandatory redemption is required from such



Sinking Accounts; provided that if the Commission certifies to the Trustee that any principal payments are expected to be refunded on or prior to their respective due dates or paid from amounts on deposit in a Bond Reserve Fund that would be in excess of the Bond Reserve Requirement applicable to such Bond Reserve Fund upon such payment, no amounts need be set aside towards such principal to be so refunded or paid. All of the aforesaid deposits made in connection with future Mandatory Sinking Account Payments shall be made without priority of any payment into any one such Sinking Account over any other such payment.

In the event that the Sales Tax Revenues shall not be sufficient to make the required deposits so that moneys in the Principal Fund on any principal or mandatory redemption date are equal to the amount of Bond Obligation to become due and payable on the Outstanding Serial Bonds of all Series plus the Bond Obligation amount of and redemption premium on the Outstanding Term Bonds required to be redeemed or paid at maturity on such date, then such moneys shall be applied on a Proportionate Basis and in such proportion as said Serial Bonds and said Term Bonds shall bear to each other, after first deducting for such purposes from said Term Bonds any of said Term Bonds required to be redeemed annually as shall have been redeemed or purchased during the preceding 12-month period and any of said Term Bonds required to be redeemed semiannually as shall have been redeemed or purchased during the six-month period ending on such date or the immediately preceding six month period. In the event that the Sales Tax Revenues shall not be sufficient to pay in full all Mandatory Sinking Account Payments required to be paid at any one time into all such Sinking Accounts, then payments into all such Sinking Accounts shall be made on a Proportionate Basis, in proportion that the respective Mandatory Sinking Account Payments required to be made into each Sinking Account during the then current 12-month period bear to the aggregate of all of the Mandatory Sinking Account Payments required to be made into all such Sinking Accounts during such 12-month period.

No deposit need be made into the Principal Fund so long as there shall be in such fund (i) moneys sufficient to pay the Bond Obligations of all Serial Bonds issued hereunder and then Outstanding and maturing by their terms within the next twelve (12) months plus (ii) the aggregate of all Mandatory Sinking Account Payments required to be made in such 12-month period, but less any amounts deposited into the Principal Fund during such 12-month period and theretofore paid from the Principal Fund to redeem or purchase Term Bonds during such 12-month period; provided that if the Commission certifies to the Trustee that any principal payments are expected to be refunded on or prior to their respective due dates or paid from amounts on deposit in a Bond Reserve Fund that would be in excess of the Bond Reserve Requirement applicable to such Bond Reserve Fund upon such payment, no amounts need be on deposit with respect to such principal payments. At the beginning of each Fiscal Year and in any event not later than April 1 of each year, the Trustee shall request from the Commission a Certificate of the Commission setting forth the principal payments for which deposits will not be necessary pursuant to the preceding sentence and the reason therefor. On April 1 of each year or as soon as practicable thereafter any excess amounts in the Principal Fund not needed to pay principal on such date (and not held to pay principal on Bonds having principal payment dates other than April 1) shall be transferred to the Commission.

(3) Bond Reserve Fund. Upon the occurrence of any deficiency in any Bond Reserve Fund, the Trustee shall make such deposit to such Bond Reserve Fund as is required pursuant to Section 5.05(D), each such deposit to be made as soon as possible in each month, until the balance therein is at least equal to the applicable Bond Reserve Requirement.

(4) Subordinate Obligations Fund. The Trustee shall establish, maintain and hold in trust a separate fund designated as the "Subordinate Obligations Fund." As long as any Subordinate Obligations remain unpaid, any Revenues remaining in the Revenue Fund after the transfers described in (1), (2) and (3) above have been made shall be transferred on the same Business Day to the Subordinate Trustee. After the Subordinate Trustee has made the required deposit of Revenues under the Subordinate Indenture, the Subordinate Trustee shall transfer any remaining Revenues back to the Trustee.

(5) Fees and Expenses Fund. The Trustee shall establish, maintain and hold in trust a separate fund designated as the "Fees and Expenses Fund." At the direction of the Commission, after the transfers described in (1), (2), (3) and (4) above have been made, the Trustee shall deposit as soon as practicable in each month in the Fees and Expenses Fund (i) amounts necessary for payment of fees, expenses and similar charges (including fees, expenses and similar charges relating to any Liquidity Facility or Credit Enhancement for the Bonds or any Parity Obligations) owing in such month or following month by the Commission in connection with the Bonds or any Parity Obligations and (ii) amounts necessary for payment of fees, expenses and similar charges owing in such month or the following month by the Commission in connection with Subordinate Obligations. The Commission shall inform the Trustee of such amounts, in writing, on or prior to the first Business Day of each month.

(B) Any Revenues remaining in the Revenue Fund after the foregoing transfers described in (1), (2), (3), (4) and (5) of subsection (A) above, except as the Commission shall otherwise direct in writing or as is otherwise provided in a Supplemental Indenture, shall be transferred to the Commission on the same Business Day or as soon as practicable thereafter. The Commission may use and apply the Revenues when received by it for any lawful purpose of the Commission, including the redemption of Bonds upon the terms and conditions set forth in the Supplemental Indenture relating to such Bonds and the purchase of Bonds as and when and at such prices as it may determine.

(C) If five (5) days prior to any principal payment date, Interest Payment Date or mandatory redemption date the amounts on deposit in the Revenue Fund, the Interest Fund, the Principal Fund, including the Sinking Accounts therein, and, as and to the extent applicable, any Bond Reserve Fund established in connection with a Series of Bonds with respect to the payments to be made on such upcoming date are insufficient to make such payments, the Trustee shall immediately notify the Commission, in writing, of such deficiency and direct that the Commission transfer the amount of such deficiency to the Trustee on or prior to such payment date. The Commission hereby covenants and agrees to transfer to the Trustee from any Revenues in its possession the amount of such deficiency on or prior to the principal, interest or mandatory redemption date referenced in such notice.

**SECTION 5.03      Application of Interest Fund.** All amounts in the Interest Fund shall be used and withdrawn by the Trustee solely for the purposes of: (a) paying interest on the Bonds as it shall become due and payable (including accrued interest on any Bonds purchased or redeemed prior to maturity pursuant to this Indenture), or for reimbursing the Credit Provider for a drawing for such purposes made on Credit Enhancement provided in the form of an irrevocable, direct-pay letter of credit, and (b) making periodic payments on Interest Rate Swap Agreements, as provided in Section 5.10.

**SECTION 5.04      Application of Principal Fund.**

(A) All amounts in the Principal Fund shall be used and withdrawn by the Trustee solely for the purposes of paying the Bond Obligation of the Bonds when due and payable, except that all amounts in the Sinking Accounts shall be used and withdrawn by the Trustee solely to purchase or redeem or pay at maturity Term Bonds, as provided herein, or for reimbursing the Credit Provider for a drawing for such purposes made on Credit Enhancement provided in the form of an irrevocable, direct-pay letter of credit.

(B) The Trustee shall establish and maintain within the Principal Fund a separate account for the Term Bonds of each Series and maturity, designated as the "\_\_\_\_\_ Sinking Account," inserting therein the Series and maturity designation of such Bonds. On or before the Business Day prior to any date upon which a Mandatory Sinking Account Payment is due, the Trustee shall transfer the amount of such Mandatory Sinking Account Payment (being the principal thereof, in the case of Current Interest Bonds, and the Accreted Value, in the case of Capital Appreciation Bonds) from the Principal Fund to the applicable Sinking Account. With respect to each Sinking Account, on each Mandatory Sinking Account Payment date established for such Sinking Account, the Trustee shall apply the Mandatory Sinking Account Payment required on that date to the redemption (or payment at maturity, as the case may be) of Term Bonds of such Series and maturity for which such Sinking Account was established, in the manner provided in this Indenture or the Supplemental Indenture pursuant to which such Series of Bonds was created; provided that, at any time prior to giving such notice of such redemption, the Trustee shall, upon receipt of a Request of the Commission, apply moneys in such Sinking Account to the purchase of Term Bonds of such Series and maturity at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding accrued interest, which is payable from the Interest Fund) as is directed by the Commission, except that the purchase price (excluding accrued interest, in the case of Current Interest Bonds) shall not exceed the principal amount or Accreted Value thereof. If, during the 12-month period (or six-month period with respect to Bonds having semi-annual Mandatory Sinking Account Payments) immediately preceding said Mandatory Sinking Account Payment date, the Trustee has purchased Term Bonds of such Series and maturity with moneys in such Sinking Account, or, during said period and prior to giving said notice of redemption, the Commission has deposited Term Bonds of such Series and maturity with the Trustee, or Term Bonds of such Series and maturity were at any time purchased or redeemed by the Trustee from the Redemption Fund and allocable to said Mandatory Sinking Account Payment, such Term Bonds so purchased or deposited or redeemed shall be applied, to the extent of the full principal amount thereof, to reduce said Mandatory Sinking Account Payment. All Term Bonds purchased or deposited pursuant to this subsection shall be cancelled by the Trustee and destroyed by the Trustee and a certificate of destruction shall be delivered to the Commission by the Trustee. Any amounts

remaining in a Sinking Account on April 1 of each year following the redemption as of such date of the Term Bonds for which such account was established shall be withdrawn by the Trustee and transferred as soon as practicable to the Commission to be used for any lawful purpose. All Term Bonds purchased from a Sinking Account or deposited by the Commission with the Trustee in a twelve month period ending March 31 (or in a six-month period ending March 31 or September 30 with respect to Bonds having semi-annual Mandatory Sinking Account Payments) and prior to the giving of notice by the Trustee for redemption from Mandatory Sinking Account Payments for such period shall be allocated first to the next succeeding Mandatory Sinking Account Payment for such Series and maturity of Term Bonds, if any, occurring on the next April 1 or October 1, then as a credit against such future Mandatory Sinking Account Payments for such Series and maturity of Term Bonds as may be specified in a Request of the Commission. All Term Bonds redeemed by the Trustee from the Redemption Fund shall be credited to such future Mandatory Sinking Account Payments for such Series and maturity of Term Bonds as may be specified in a Request of the Commission.

**SECTION 5.05**      **Establishment, Funding and Application of Bond Reserve Funds.** The Commission may at its sole discretion at the time of issuance of any Series of Bonds or at any time thereafter by Supplemental Indenture provide for the establishment of a Bond Reserve Fund as additional security for a Series of Bonds. Any Bond Reserve Fund so established by the Commission shall be available to secure one or more Series of Bonds as the Commission shall determine and shall specify in the Supplemental Indenture establishing such Bond Reserve Fund. Any Bond Reserve Fund established by the Commission shall be held by the Trustee and shall comply with the requirements set forth in this Section 5.05.

(A) In lieu of making the Bond Reserve Requirement deposit applicable to one or more Series of Bonds in cash or in replacement of moneys then on deposit in any Bond Reserve Fund (which shall be transferred by the Trustee to the Commission), or in substitution of any Reserve Facility comprising part of the Bond Reserve Requirement relating to one or more Series of Bonds, the Commission may, at any time and from time to time, deliver to the Trustee an irrevocable letter of credit issued by a financial institution having unsecured debt obligations rated at the time of delivery of such letter of credit in one of the two highest Rating Categories of both Moody's and Standard & Poor's, in an amount, which, together with cash, Investment Securities or other Reserve Facilities, as described in Section 5.05(B), then on deposit in such Bond Reserve Fund, will equal the Bond Reserve Requirement relating to the Bonds to which such Bond Reserve Fund relates. Such letter of credit shall have a term no less than three (3) years or, if less, the final maturity of the Bonds in connection with which such letter of credit was obtained and shall provide by its terms that it may be drawn upon as provided in this Section 5.05. At least one (1) year prior to the stated expiration of such letter of credit, the Commission shall either (i) deliver a replacement letter of credit, (ii) deliver an extension of the letter of credit for at least one (1) additional year or, if less, the final maturity of the Bonds in connection with which such letter of credit was obtained, or (iii) deliver to the Trustee a Reserve Facility satisfying the requirements of Section 5.05(B). Upon delivery of such replacement Reserve Facility, the Trustee shall deliver the then-effective letter of credit to or upon the order of the Commission. If the Commission shall fail to deposit a replacement Reserve Facility with the Trustee, the Commission shall immediately commence to make monthly deposits with the Trustee so that an amount equal to the Bond Reserve Requirement relating to the Bonds to which such Bond Reserve Fund relates will be on deposit in such Bond Reserve Fund no later than the

stated expiration date of the letter of credit. If an amount equal to the Bond Reserve Requirement relating to the Bonds to which such Bond Reserve Fund relates as of the date following the expiration of the letter of credit is not on deposit in such Bond Reserve Fund one (1) week prior to the expiration date of the letter of credit (excluding from such determination the letter of credit), the Trustee shall draw on the letter of credit to fund the deficiency resulting therefrom in such Bond Reserve Fund.

(B) In lieu of making a Bond Reserve Requirement deposit in cash or in replacement of moneys then on deposit in a Bond Reserve Fund (which shall be transferred by the Trustee to the Commission) or in substitution of any Reserve Facility comprising part of a Bond Reserve Requirement for any Bonds, the Commission may, at any time and from time to time, deliver to the Trustee a surety bond or an insurance policy securing an amount which, together with moneys, Investment Securities, or other Reserve Facilities then on deposit in a Bond Reserve Fund, is no less than the Bond Reserve Requirement relating to the Bonds to which such Bond Reserve Fund relates. Such surety bond or insurance policy shall be issued by an insurance company whose unsecured debt obligations (or for which obligations secured by such insurance company's insurance policies) are rated at the time of delivery in one of the two highest Rating Categories of both Moody's and Standard & Poor's. Such surety bond or insurance policy shall have a term of no less than the final maturity of the Bonds in connection with which such surety bond or insurance policy is obtained. In the event that such surety bond or insurance policy for any reason lapses or expires, the Commission shall immediately implement (i) or (iii) of the preceding paragraph or make twelve equal monthly deposits to such Bond Reserve Fund so that the Bond Reserve Fund is replenished to the required level after a year.

(C) Subject to Section 5.05(E), all amounts in any Bond Reserve Fund (including all amounts which may be obtained from a Reserve Facility on deposit in such Bond Reserve Fund) shall be used and withdrawn by the Trustee, as hereinafter provided: (i) for the purpose of making up any deficiency in the Interest Fund or the Principal Fund relating to the Bonds of the Series to which such Bond Reserve Fund relates; or (ii) together with any other moneys available therefor, (x) for the payment or redemption of all Bonds then Outstanding of the Series to which such Bond Reserve Fund relates, (y) for the defeasance or redemption of all or a portion of the Bonds then Outstanding of the Series to which such Bond Reserve Fund relates, provided, however, that if funds on deposit in any Bond Reserve Fund are applied to the defeasance or redemption of a portion of the Series of Bonds to which such Bond Reserve Fund relates, the amount on deposit in the Bond Reserve Fund immediately subsequent to such partial defeasance or redemption shall equal the Bond Reserve Requirement applicable to all Bonds of such Series Outstanding immediately subsequent to such partial defeasance or redemption, or (z) for the payment of the final principal and interest payment of the Bonds of such Series. Unless otherwise directed in a Supplemental Indenture establishing the terms and provisions of a Series of Bonds, the Trustee shall apply amounts held in cash or Investment Securities in any Bond Reserve Fund prior to applying amounts held in the form of Reserve Facilities in any Bond Reserve Fund, and if there is more than one Reserve Facility being held on deposit in any Bond Reserve Fund, shall, on a pro rata basis with respect to the portion of a Bond Reserve Fund held in the form of a Reserve Facility (calculated by reference to the maximum amount of such Reserve Facility), draw under each Reserve Facility issued with respect to such Bond Reserve Fund, in a timely manner and pursuant to the terms of such Reserve Facility to the extent necessary in order to obtain sufficient funds on or prior to the date such funds are needed to pay

the Bond Obligation of, Mandatory Sinking Account Payments with respect to, and interest on the Bonds of the Series to which such Bond Reserve Fund relates when due. In the event that the Trustee has notice that any payment of principal of or interest on a Bond has been recovered from a Holder pursuant to the United States Bankruptcy Code by a trustee in bankruptcy in accordance with the final, nonappealable order of a court having competent jurisdiction, the Trustee, pursuant to the terms of, and if so provided by, the terms of the Reserve Facility, if any, securing the Bonds of such Series, shall so notify the issuer thereof and draw on such Reserve Facility to the lesser of the extent required or the maximum amount of such Reserve Facility in order to pay to such Holders the principal and interest so recovered.

(D) The Trustee shall notify the Commission of any deficiency in any Bond Reserve Fund (i) due to a withdrawal from such Bond Reserve Fund for purposes of making up any deficiency in the Interest Fund or the Principal Fund relating to the Bonds of the Series to which such Bond Reserve Fund relates or (ii) resulting from a valuation of Investment Securities held on deposit in such Bond Reserve Fund pursuant to Section 5.11 and shall request that the Commission replenish such deficiency or repay any and all obligations due and payable under the terms of any Reserve Facility comprising part of any Bond Reserve Requirement. Upon receipt of such notification from the Trustee, the Commission shall instruct the Trustee to commence setting aside in each month following receipt of Sales Tax Revenues for deposit in the applicable Bond Reserve Fund an amount equal to one-twelfth (1/12th) of the aggregate amount of each unreplenished prior withdrawal from such Bond Reserve Fund or decrease resulting from a valuation pursuant to Section 5.11 and shall further instruct the Trustee to transfer to each Reserve Facility Provider providing a Reserve Facility satisfying a portion of the Bond Reserve Requirement relating to the Bonds of the Series to which such Bond Reserve Fund relates, an amount equal to one-twelfth (1/12th) of the aggregate amount of any unreplenished prior withdrawal on such Reserve Facility, such amount to be transferred by the Trustee as promptly as possible after receipt of the Sales Tax Revenues each month, commencing with the month following the Commission's receipt of notification from the Trustee of withdrawal or decrease resulting from a valuation, as applicable, until the balance on deposit in such Bond Reserve Fund is at least equal to the Bond Reserve Requirement relating to the Bonds of the Series to which such Bond Reserve Fund relates.

(E) Unless the Commission shall otherwise direct in writing, any amounts in any Bond Reserve Fund in excess of the Bond Reserve Requirement relating to the Bonds of the Series to which such Bond Reserve Fund relates shall be transferred by the Trustee to the Commission on the Business Day following October 1 of each year; provided that such amounts shall be transferred only from the portion of such Bond Reserve Fund held in the form of cash or Investment Securities. In addition, amounts on deposit in any Bond Reserve Fund shall be transferred by the Trustee to the Commission upon the defeasance, retirement or refunding of Bonds of the Series to which such Bond Reserve Fund relates or upon the replacement of cash on deposit in such Bond Reserve Fund with one or more Reserve Facilities in accordance with Section 5.05(A) or Section 5.05(B). The Bond Reserve Requirement shall be calculated upon the issuance or retirement of a Series of Bonds or upon the defeasance of all or a portion of a Series of Bonds.

**SECTION 5.06**      **Application of Subordinate Obligations Fund.** All moneys in the Subordinate Obligations Fund shall be applied to the payment of principal of and interest on Subordinate Obligations in accordance with Section 5.02(A)(4).

**SECTION 5.07**      **Application of Fees and Expenses Fund.** All amounts in the Fees and Expenses Fund shall be used and withdrawn by the Trustee solely for the purpose of paying fees, expenses and similar charges owed by the Commission in connection with the Bonds or any Parity Obligations or Subordinate Obligations as such amounts shall become due and payable.

**SECTION 5.08**      **Application of Redemption Fund.** The Trustee shall establish, maintain and hold in trust a special fund designated as the "Redemption Fund." All moneys deposited by the Commission with the Trustee for the purpose of optionally redeeming Bonds of any Series shall, unless otherwise directed by the Commission, be deposited in the Redemption Fund. All amounts deposited in the Redemption Fund shall be used and withdrawn by the Trustee solely for the purpose of redeeming Bonds of such Series and maturity as shall be specified by the Commission in a Request to the Trustee, in the manner, at the times and upon the terms and conditions specified in the Supplemental Indenture pursuant to which the Series of Bonds was created; provided that, at any time prior to giving such notice of redemption, the Trustee shall, upon receipt of a Request of the Commission, apply such amounts to the purchase of Bonds at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding, in the case of Current Interest Bonds, accrued interest, which is payable from the Interest Fund) as is directed by the Commission, except that the purchase price (exclusive of any accrued interest) may not exceed the Redemption Price or Accreted Value then applicable to such Bonds. All Term Bonds purchased or redeemed from the Redemption Fund shall be allocated to Mandatory Sinking Account Payments applicable to such Series and maturity of Term Bonds as may be specified in a Request of the Commission.

**SECTION 5.09**      **Rebate Fund.**

(A) Upon receipt of funds to be applied to the Rebate Requirement, the Trustee shall establish and maintain a fund separate from any other fund established and maintained hereunder designated as the Rebate Fund. Within the Rebate Fund, the Trustee shall maintain such accounts as shall be necessary in order to comply with the terms and requirements of each Tax Certificate as directed in writing by the Commission. Subject to the transfer provisions provided in paragraph (C) below, all money at any time deposited in the Rebate Fund shall be held by the Trustee in trust, to the extent required to satisfy the Rebate Requirement, for payment to the federal government of the United States of America, and neither the Trustee nor any Holder nor any other Person shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Indenture and by the applicable Tax Certificates. The Commission hereby covenants to comply with the directions contained in each Tax Certificate and the Trustee hereby covenants to comply with all written instructions of the Commission delivered to the Trustee pursuant to each Tax Certificate (which instructions shall state the actual amounts to be deposited in or withdrawn from the Rebate Fund and shall not require the Trustee to make any calculations with respect thereto). The Trustee shall be deemed conclusively to have complied with the provisions of this Section 5.09(A) if it follows such instructions of the Commission, and the Trustee shall have no liability or responsibility to

enforce compliance by the Commission with the terms of any Tax Certificate nor to make computations in connection therewith.

(B) Pursuant to each Tax Certificate, an amount shall be deposited in the Rebate Fund by the Commission so that the balance of the amount on deposit thereto shall be equal to the Rebate Requirement applicable to the Series of Bonds to which such Tax Certificate relates. Computations of each Rebate Requirement shall be furnished by or on behalf of the Commission to the Trustee in accordance with the applicable Tax Certificate.

(C) The Trustee shall invest all amounts held in the Rebate Fund, pursuant to written instructions of the Commission, in Investment Securities, subject to the restrictions set forth in the applicable Tax Certificate. Money shall not be transferred from the Rebate Fund except as provided in paragraph (D) below.

(D) Upon receipt of Rebate Instructions, the Trustee shall remit part or all of the balances in the Rebate Fund to the United States of America, as so directed. In addition, if the Rebate Instructions so direct, the Trustee will deposit moneys into or transfer moneys out of the Rebate Fund from or into such accounts or funds as directed by the Rebate Instructions. Any funds remaining in the Rebate Fund after redemption and payment of all of a Series of Bonds and payment and satisfaction of any Rebate Requirement applicable to such Series of Bonds, shall be withdrawn and remitted to the Commission in accordance with a Request of the Commission.

(E) Notwithstanding any other provision of the Indenture, including in particular Article X thereof, the obligation to remit the Rebate Requirement applicable to each Series of Bonds to the federal government of the United States of America and to comply with all other requirements of this Section and each Tax Certificate shall survive the defeasance or payment in full of the Bonds.

**SECTION 5.10 Payment Provisions Applicable to Interest Rate Swap Agreements.** The Commission and the Trustee hereby acknowledge that the Initial Swaps have been entered into by the Commission with respect to the 2008 Bonds and that the obligation of the Commission to make payments required under the Initial Swaps (excluding fees and expenses and termination payments under the Initial Swaps) constitutes a Parity Obligation hereunder and shall be payable from the Interest Fund. In the event the Commission shall enter into an Interest Rate Swap Agreement in connection with a Series of Bonds other than the Initial Swaps, the amounts received by the Commission, if any, pursuant to such Interest Rate Swap Agreement may be applied to the deposits required hereunder. If the Commission so designates in a Supplemental Indenture establishing the terms and provisions of such Series of Bonds (or if such Interest Rate Swap Agreement is entered into subsequent to the issuance of such Series of Bonds, if the Commission so designates in a Certificate of the Commission delivered to the Trustee concurrently with the execution of such Interest Rate Swap Agreement), amounts payable under such Interest Rate Swap Agreement (excluding termination payments and payments of fees and expenses incurred in connection with Interest Rate Swap Agreements which shall in all cases be payable from, and secured by, Sales Tax Revenues on a subordinate basis to Bonds, Parity Obligations and payment of principal of and interest on Subordinate Obligations) shall constitute Parity Obligations under this Indenture, and, in such event, the



Commission shall pay or cause to be paid to the Trustee for deposit in the Interest Fund, at the times and in the manner provided by Section 5.02, the amounts to be paid pursuant to such Interest Rate Swap Agreement, as if such amounts were additional interest due on the Series of Bonds to which such Interest Rate Swap Agreement relates, and the Trustee shall pay to the Counterparty to such Interest Rate Swap Agreement, to the extent required thereunder, from amounts deposited in the Interest Fund for the payment of interest on the Series of Bonds with respect to which such Interest Rate Swap Agreement was entered into.

**SECTION 5.11 Investment in Funds and Accounts.** All moneys in any of the funds and accounts held by the Trustee and established pursuant to this Indenture shall be invested, as directed by the Commission, solely in Investment Securities. All Investment Securities shall, as directed by the Commission in writing or by telephone, promptly confirmed in writing, be acquired subject to the limitations set forth in Section 6.08, the limitations as to maturities hereinafter in this Section set forth and such additional limitations or requirements consistent with the foregoing as may be established by Request of the Commission. If and to the extent the Trustee does not receive investment instructions from the Commission with respect to the moneys in the funds and accounts held by the Trustee pursuant to this Indenture, such moneys shall be invested in Investment Securities described in clause (12) of the definition thereof and the Trustee shall thereupon request investment instructions from the Commission for such moneys.

Moneys in any Bond Reserve Fund shall be invested in Investment Securities available on demand for the purpose of payment of the Bonds to which such Bond Reserve Fund relates as provided herein. Moneys in the remaining funds and accounts shall be invested in Investment Securities maturing or available on demand not later than the date on which it is estimated that such moneys will be required by the Trustee.

Unless otherwise provided in a Supplemental Indenture establishing the terms and provisions of a Series of Bonds: (i) all interest, profits and other income received from the investment of moneys in the Interest Fund representing accrued interest or capitalized interest shall be retained in the Interest Fund; (ii) all interest, profits and other income received from the investment of moneys in a Bond Reserve Fund shall be retained in such Bond Reserve Fund to the extent of any deficiency therein, and otherwise shall be transferred to the Revenue Fund; (iii) all interest, profits and other income received from the investment of moneys in a Costs of Issuance Fund shall be transferred to the Revenue Fund; (iv) all interest, profits and other income received from the investment of moneys in a Project Fund shall be retained in such Project Fund, unless the Commission shall direct that such earnings be transferred to the Rebate Fund; (v) all interest, profits and other income received from the investment of moneys in the Rebate Fund shall be retained in the Rebate Fund, except as otherwise provided in Section 5.09, (vi) all interest, profits and other income received from the investment of moneys in any Purchase Fund shall be retained in such Purchase Fund; and (vii) all interest, profits and other income received from the investment of moneys in any other fund or account shall be transferred to the Revenue Fund. Notwithstanding anything to the contrary contained in this paragraph, an amount of interest received with respect to any Investment Security equal to the amount of accrued interest, if any, paid as part of the purchase price of such Investment Security shall be credited to the fund or account from which such accrued interest was paid.

All Investment Securities credited to any Bond Reserve Fund shall be valued (at market value) as of April 1 and October 1 of each year (or the next succeeding Business Day if such day is not a Business Day), such market value to be determined by the Trustee in the manner then currently employed by the Trustee or in any other manner consistent with corporate trust industry standards. Notwithstanding anything to the contrary herein, in making any valuations of investments hereunder, the Trustee may utilize and rely on computerized securities pricing services that may be available to it, including those available through its regular accounting system.

The Trustee may commingle any of the funds or accounts established pursuant to this Indenture (except the Rebate Fund and any Purchase Fund) into a separate fund or funds for investment purposes only, provided that all funds or accounts held by the Trustee hereunder shall be accounted for separately as required by this Indenture. The Trustee may act as principal or agent in the making or disposing of any investment and, with the prior written consent of the Commission may impose its customary charge therefor. The Trustee may sell at the best price obtainable, or present for redemption, any Investment Securities so purchased whenever it shall be necessary to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund or account to which such Investment Security is credited. The Trustee shall not be liable or responsible for any loss resulting from any investment made in accordance herewith. The Commission acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Commission the right to receive brokerage confirmations of security transactions as they occur, the Commission specifically waives receipt of such confirmations to the extent permitted by law. The Trustee will furnish the Commission periodic cash transaction statements which shall include detail for all investment transactions made by the Trustee hereunder.

## ARTICLE VI COVENANTS OF THE COMMISSION

**SECTION 6.01**      **Punctual Payments.** The Commission will punctually pay or cause to be paid the principal or Redemption Price of and interest on all the Bonds, in strict conformity with the terms of the Bonds and of this Indenture, according to the true intent and meaning thereof, and shall punctually pay or cause to be paid all Mandatory Sinking Account Payments, but in each case only out of Revenues as provided in this Indenture.

**SECTION 6.02**      **Extension of Payment of Bonds.** The Commission will not directly or indirectly extend or assent to the extension of the maturity of any of the Bonds or the time of payment of any Bonds or claims for interest by the purchase or funding of such Bonds or claims for interest or by any other arrangement and in case the maturity of any of the Bonds or the time of payment of any such claims for interest shall be extended, such Bonds or claims for interest shall not be entitled, in case of any default hereunder, to the benefits of this Indenture, except subject to the prior payment in full of the principal of all of the Bonds then Outstanding and of all claims for interest thereon which shall not have been so extended. Nothing in this Section shall be deemed to limit the right of the Commission to issue bonds for the purpose of refunding any Outstanding Bonds, and such issuance shall not be deemed to constitute an extension of maturity of Bonds.

**SECTION 6.03**      **Waiver of Laws.** The Commission will not at any time insist upon or plead in any manner whatsoever, or claim or take the benefit or advantage of, any stay or extension of law now or at any time hereafter in force that may affect the covenants and agreements contained in this Indenture or in the Bonds, and all benefit or advantage of any such law or laws is hereby expressly waived by the Commission to the extent permitted by law.

**SECTION 6.04**      **Further Assurances.** The Commission will make, execute and deliver any and all such instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Indenture and for the better assuring and confirming unto the Holders of the Bonds of the rights and benefits provided in this Indenture.

**SECTION 6.05**      **Against Encumbrances.** The Commission will not create or permit to exist any pledge, lien or charge upon any of the Sales Tax Revenues having priority over or having parity with the lien of the Bonds except only as permitted in Section 3.05.

**SECTION 6.06**      **Accounting Records and Financial Statements.**

(A) The Commission will at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with generally accepted accounting principles, in which complete and accurate entries shall be made of all transactions relating to the Revenues. Such books of record and account shall be available for inspection by the Trustee at reasonable hours and under reasonable circumstances.

(B) The Commission will furnish the Trustee, with copies to each Credit Provider and each Liquidity Provider, within two hundred ten (210) days after the end of each Fiscal Year, or as soon thereafter as they can practically be furnished, the financial statements of the Commission for such Fiscal Year, together with the report and opinion of an independent certified public accountant stating that the financial statements have been prepared in accordance with generally accepted accounting principles and that such accountant's examination of the financial statements was performed in accordance with generally accepted auditing standards and a Certificate of an Authorized Representative stating that no event which constitutes an Event of Default or which with the giving of notice or the passage of time or both would constitute an Event of Default has occurred and is continuing as of the end of such Fiscal Year, or specifying the nature of such event and the actions taken and proposed to be taken by the Commission to cure such default. Thereafter, a copy of such financial statements will be furnished to any Holder upon written request to the Commission, which copy of the financial statements may, at the sole discretion of the Commission, be provided by means of posting such financial statements on an internet site that provides access to the Holders.

**SECTION 6.07**      **Collection of Sales Tax Revenues.**

(A) The Commission covenants and agrees that it has duly levied a retail transactions and use tax in accordance with the Act, pursuant to and in accordance with the Ordinance, duly passed and adopted by the Commission. Said Ordinance has not and will not be amended, modified or altered so long as any of the Bonds are Outstanding in any manner which would reduce the amount of or timing of receipt of Sales Tax Revenues, and the Commission will

continue to levy and collect such retail transactions and use tax to the full amount permitted by law. The Commission further covenants that it has entered into an agreement with the State Board of Equalization under and pursuant to which the State Board of Equalization will process and supervise collection of said retail transactions and use tax and will transmit Sales Tax Revenues directly to the Trustee. Said agreement will be continued in effect so long as any Bonds are Outstanding and shall not be amended, modified or altered without the written consent of the Trustee so long as any of the Bonds are Outstanding. The Commission will receive and hold in trust for (and remit immediately to) the Trustee any Sales Tax Revenues paid to the Commission by the State Board of Equalization.

(B) Sales Tax Revenues received by the Trustee shall be transmitted to the Commission pursuant to Section 5.02; provided that, during the continuance of an Event of Default, any Sales Tax Revenues received by the Trustee shall be applied as set forth in Section 7.02.

(C) The Commission covenants and agrees to separately account for all Revenues and to provide to the Trustee access to such accounting records at reasonable hours and under reasonable circumstances.

(D) The Commission covenants that so long as the Bonds are Outstanding, it will not, to the best of its ability, suffer or permit any change, modification or alteration to be made to the Act which would materially and adversely affect the rights of Bondholders.

**SECTION 6.08**      **Tax Covenants.** The Commission covenants that it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the Bonds under Section 103 of the Code; provided that, prior to the issuance of any Series of Bonds, the Commission may exclude the application of the covenants contained in this Section 6.08 and Section 5.09 to such Series of Bonds. The Commission will not directly or indirectly use or permit the use of any proceeds of the Bonds or any other funds of the Commission, or take or omit to take any action that would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code. To that end, the Commission will comply with all requirements of the Tax Certificate relating to each Series of the Bonds. In the event that at any time the Commission is of the opinion that for purposes of this Section 6.08 it is necessary to restrict or limit the yield on the investment of any moneys held by the Trustee under this Indenture, the Commission shall so instruct the Trustee in writing, and the Trustee shall take such action as may be necessary in accordance with such instructions.

Without limiting the generality of the foregoing, the Commission agrees that there shall be paid from time to time all amounts required to be rebated to the federal government of the United States of America pursuant to Section 148(f) of the Code and any temporary, proposed or final Treasury Regulations as may be applicable to the Bonds from time to time. The Commission specifically covenants to pay or cause to be paid to the federal government of the United States of America the Rebate Requirement with respect to each Series of Bonds at the times and in the amounts determined under and as described in the Tax Certificate executed and delivered in connection with such Series of Bonds.

Notwithstanding any provision of this Section 6.08, Section 5.09 and any Tax Certificate, if the Commission shall receive an Opinion of Bond Counsel to the effect that any action required under this Section 6.08, Section 5.09 or any Tax Certificate is no longer required, or to the effect that some further action is required, to maintain the exclusion from gross income of the interest on the Bonds pursuant to Section 103 of the Code, the Commission and the Trustee may rely conclusively on such opinion in complying with the provisions hereof, and the covenants hereunder shall be deemed to be modified to that extent.

Notwithstanding any provisions of this Indenture, including particularly Article X, the covenants and obligations set forth in this Section 6.08 shall survive the defeasance of the Bonds or any Series thereof.

**SECTION 6.09**      **Continuing Disclosure.** Upon the issuance of any Series of Bonds requiring an undertaking regarding continuing disclosure under Rule 15c2-12, the Commission hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement executed and delivered in connection with such Series of Bonds. Notwithstanding any other provision of the Indenture, failure of the Commission to comply with the provisions of any Continuing Disclosure Agreement shall not be considered an Event of Default; however, the Trustee shall, at the written request of any Participating Underwriter or of the Holders of at least twenty-five (25%) aggregate principal amount of any Series of Bonds then Outstanding (but only to the extent funds in an amount satisfactory to the Trustee have been provided to it or it has been otherwise indemnified to its satisfaction from any cost, liability, expense or additional charges and fees of the Trustee whatsoever, including, without limitation, reasonable fees and expenses of its attorneys), or any Holder or beneficial owner may, take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Commission to comply with its obligations under this Section 6.09.

## ARTICLE VII EVENTS OF DEFAULT AND REMEDIES

**SECTION 7.01**      **Events of Default.** The following events shall be Events of Default:

(A) default in the due and punctual payment of the principal or Redemption Price of any Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by proceedings for redemption, by declaration or otherwise, or default in the redemption from any Sinking Account of any Bonds in the amounts and at the times provided therefor;

(B) default in the due and punctual payment of any installment of interest on any Bond when and as such interest installment shall become due and payable;

(C) if the Commission shall fail to observe or perform any covenant, condition, agreement or provision in this Indenture on its part to be observed or performed, other than as referred to in subsection (A) or (B) of this Section, for a period of sixty (60) days after written notice, specifying such failure and requesting that it be remedied, has been given to the

Commission by the Trustee or by any Credit Provider; except that, if such failure can be remedied but not within such sixty (60) day period and if the Commission has taken all action reasonably possible to remedy such failure within such sixty (60) day period, such failure shall not become an Event of Default for so long as the Commission shall diligently proceed to remedy the same in accordance with and subject to any directions or limitations of time established by the Trustee;

(D) if any payment default shall exist under any agreement governing any Parity Obligations and such default shall continue beyond the grace period, if any, provided for with respect to such default;

(E) if the Commission files a petition in voluntary bankruptcy for the composition of its affairs or for its corporate reorganization under any state or federal bankruptcy or insolvency law, or makes an assignment for the benefit of creditors, or admits in writing to its insolvency or inability to pay debts as they mature, or consents in writing to the appointment of a trustee or receiver for itself;

(F) if a court of competent jurisdiction shall enter an order, judgment or decree declaring the Commission insolvent, or adjudging it bankrupt, or appointing a trustee or receiver of the Commission, or approving a petition filed against the Commission seeking reorganization of the Commission under any applicable law or statute of the United States of America or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within sixty (60) days from the date of the entry thereof;

(G) if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Commission or of the Revenues, and such custody or control shall not be terminated within sixty (60) days from the date of assumption of such custody or control; or

(H) if the Legislature of the State shall repeal or amend all or any portion of the provisions of the Act relating to the retail transactions and use tax, being Sections 132301 to 132308, inclusive, of the Public Utilities Code of the State unless the Commission has reasonably determined that said repeal or amendment does not materially and adversely affect the rights of Bondholders.

**SECTION 7.02      Application of the Revenues and Other Funds After Default;**  
**No Acceleration.** If an Event of Default shall occur and be continuing, the Commission shall immediately transfer to the Trustee all Revenues held by it and the Trustee shall apply all Revenues and any other funds then held or thereafter received by the Trustee under any of the provisions of this Indenture (excluding the Rebate Fund and any Purchase Fund and except as otherwise provided in this Indenture) as follows and in the following order:

(1) to the payment of any expenses necessary in the opinion of the Trustee to protect the interests of the Holders of the Bonds and Parity Obligations, including the costs and expenses of the Trustee and the Bondholders in declaring such Event of Default, and payment of reasonable fees and expenses of the Trustee (including

reasonable fees and disbursements of its counsel and other agents) incurred in and about the performance of its powers and duties under this Indenture;

(2) to the payment of the whole amount of Bond Obligation then due on the Bonds and Parity Obligations (upon presentation of the Bonds and Parity Obligations to be paid, and stamping thereon of the payment if only partially paid, or surrender thereof if fully paid) subject to the provisions of this Indenture (including Section 9.02), with interest on such Bond Obligation, at the rate or rates of interest borne by the respective Bonds and on Parity Obligations, to the payment to the persons entitled thereto of all installments of interest then due and the unpaid principal or Redemption Price of any Bonds and Parity Obligations which shall have become due, whether at maturity, by call for redemption or otherwise, in the order of their due dates, with interest on the overdue Bond Obligation and Parity Obligations at the rate borne by the respective Bonds and Parity Obligations, and, if the amount available shall not be sufficient to pay in full all the Bonds and Parity Obligations due on any date, together with such interest, then to the payment thereof ratably, according to the amounts of principal or Accreted Value (plus accrued interest) due on such date to the persons entitled thereto, without any discrimination or preference;

(3) to the extent Revenues are available therefor, to be transferred to the trustee for the Subordinate Obligations in the amount necessary for payment of Subordinate Obligations; and

(4) to the payment of all other obligations payable hereunder.

Notwithstanding anything in this Indenture to the contrary, in no event are the Bonds subject to acceleration if an Event of Default occurs and is continuing.

**SECTION 7.03 Trustee to Represent Bondholders.** The Trustee is hereby irrevocably appointed (and the successive respective Holders of the Bonds, by taking and holding the same, shall be conclusively deemed to have so appointed the Trustee) as trustee and true and lawful attorney-in-fact of the Holders of the Bonds for the purpose of exercising and prosecuting on their behalf such rights and remedies as may be available to such Holders under the provisions of the Bonds, this Indenture, the Law and applicable provisions of any other law. Upon the occurrence and continuance of an Event of Default or other occasion giving rise to a right in the Trustee to represent the Bondholders, the Trustee in its discretion may, and, with respect to any Series of Bonds for which a Credit Enhancement has been provided, upon the written request of the Credit Provider providing such Credit Enhancement, or if such Credit Provider is then failing to make a payment required pursuant to such Credit Enhancement, upon the written request of the Holders of not less than a majority in aggregate amount of Bond Obligation of the Bonds then Outstanding, and upon being indemnified to its satisfaction therefor, shall proceed to protect or enforce its rights or the rights of such Holders by such appropriate action, suit, mandamus or other proceedings as it shall deem most effectual to protect and enforce any such right, at law or in equity, either for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the enforcement of any other appropriate legal or equitable right or remedy vested in the Trustee or in such Holders under this Indenture, the Law or any other law; and upon instituting

such proceeding, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver of the Sales Tax Revenues and other assets pledged under this Indenture, pending such proceedings; provided, however, that, with respect to any Series of Bonds for which a Credit Enhancement has been provided, the Trustee may only act with the consent of the Credit Provider providing such Credit Enhancement. All rights of action under this Indenture or the Bonds or otherwise may be prosecuted and enforced by the Trustee without the possession of any of the Bonds or the production thereof in any proceeding relating thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in the name of the Trustee for the benefit and protection of all the Holders of such Bonds, subject to the provisions of this Indenture (including Section 7.05).

**SECTION 7.04 Bondholders' Direction of Proceedings.** Anything in this Indenture to the contrary (except provisions relating to the rights of a Credit Provider to direct proceedings as set forth in Section 7.10) notwithstanding, the Holders of a majority in aggregate amount of Bond Obligation of the Bonds then Outstanding shall have the right, by an instrument or concurrent instruments in writing executed and delivered to the Trustee and upon furnishing the Trustee with indemnification satisfactory to it, to direct the method of conducting all remedial proceedings taken by the Trustee hereunder, provided that such direction shall not be otherwise than in accordance with law and the provisions of this Indenture, that the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction, and that the Trustee shall have the right to decline to follow any such direction which in the opinion of the Trustee would be unjustly prejudicial to Bondholders or holders of Parity Obligations not parties to such direction.

**SECTION 7.05 Limitation on Bondholders' Right to Sue.** No Holder of any Bond shall have the right to institute any suit, action or proceeding at law or in equity, for the protection or enforcement of any right or remedy under this Indenture, the Law or any other applicable law with respect to such Bond, unless: (1) such Holder shall have given to the Trustee written notice of the occurrence of an Event of Default; (2) the Holders of not less than a majority in aggregate amount of Bond Obligation of the Bonds then Outstanding shall have made written request upon the Trustee to exercise the powers hereinbefore granted or to institute such suit, action or proceeding in its own name; (3) such Holder or said Holders shall have tendered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request; and (4) the Trustee shall have refused or omitted to comply with such request for a period of sixty (60) days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Trustee; provided, however, that the written consent of a Credit Provider providing a Credit Enhancement with respect to a Series of Bonds shall be required if the Credit Enhancement with respect to such Series of Bonds is in full force and effect and if the Credit Provider providing such Credit Enhancement is not then failing to make a payment as required in connection therewith.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Holder of Bonds of any remedy hereunder or under law; it being understood and intended that no one or more Holders of Bonds shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Indenture or the rights of any other Holders of Bonds, or to enforce any right under this Indenture, the Law or other applicable law with respect to the Bonds, except



in the manner herein provided, and that all proceedings at law or in equity to enforce any such right shall be instituted, had and maintained in the manner herein provided and for the benefit and protection of all Holders of the Outstanding Bonds, subject to the provisions of this Indenture.

**SECTION 7.06**     **Absolute Obligation of the Commission.** Nothing in Section 7.05 or in any other provision of this Indenture, or in the Bonds, contained shall affect or impair the obligation of the Commission, which is absolute and unconditional, to pay the principal or Redemption Price of and interest on the Bonds to the respective Holders of the Bonds at their respective dates of maturity, or upon call for redemption, as herein provided, but only out of the Revenues and other assets herein pledged therefor, or affect or impair the right of such Holders, which is also absolute and unconditional, to enforce such payment by virtue of the contract embodied in the Bonds.

**SECTION 7.07**     **Termination of Proceedings.** In case any proceedings taken by the Trustee, any Credit Provider or any one or more Bondholders on account of any Event of Default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee, any Credit Provider or the Bondholders, then in every such case the Commission, the Trustee, each Credit Provider and the Bondholders, subject to any determination in such proceedings, shall be restored to their former positions and rights hereunder, severally and respectively, and all rights, remedies, powers and duties of the Commission, the Trustee, each Credit Provider and the Bondholders shall continue as though no such proceedings had been taken.

**SECTION 7.08**     **Remedies Not Exclusive.** No remedy herein conferred upon or reserved to the Trustee, to any Credit Provider or to the Holders of the Bonds is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

**SECTION 7.09**     **No Waiver of Default.** No delay or omission of the Trustee, any Credit Provider or of any Holder of the Bonds to exercise any right or power arising upon the occurrence of any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Indenture to the Trustee, to any Credit Provider or to the Holders of the Bonds may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default hereunder, whether by Trustee or by any Credit Provider or by the Bondholders, shall extend to or shall affect any subsequent Event of Default or shall impair any rights or remedies consequent thereon.

**SECTION 7.10**     **Credit Provider Directs Remedies Upon Event of Default.** Anything in the Indenture to the contrary notwithstanding, upon the occurrence and continuance of an Event of Default as defined herein, the Credit Provider then providing Credit Enhancement for any Series of Bonds shall be entitled to control and direct the enforcement of all rights and remedies granted to the Holders of the Bonds secured by such Credit Enhancement or granted to the Trustee for the benefit of the Holders of the Bonds secured by such Credit Enhancement, provided that the Credit Provider's consent shall not be required as otherwise provided herein if

such Credit Provider is in default of any of its payment obligations as set forth in the Credit Enhancement provided by such Credit Provider.

## **ARTICLE VIII THE TRUSTEE**

### **SECTION 8.01     Appointment, Duties Immunities and Liabilities of Trustee.**

(A) U.S. Bank National Association is hereby appointed as Trustee under this Indenture and hereby accepts the trust imposed upon it as Trustee hereunder and to perform all the functions and duties of the Trustee hereunder, subject to the terms and conditions set forth in this Indenture. The Trustee shall, prior to an Event of Default, and after the curing of all Events of Default which may have occurred, perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants shall be read into this Indenture against the Trustee. The Trustee shall, during the existence of any Event of Default (which has not been cured), exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(B) The Commission may remove the Trustee at any time unless an Event of Default shall have occurred and then be continuing, and shall remove the Trustee if at any time requested to do so by an instrument or concurrent instruments in writing signed by the Holders of not less than a majority in aggregate amount of Bond Obligation of the Bonds then Outstanding (or their attorneys duly authorized in writing) or if at any time the Trustee shall cease to be eligible in accordance with subsection (E) of this Section, or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or its property shall be appointed, or any public officer shall take control or charge of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, in each case by giving written notice of such removal to the Trustee and each Credit Provider then providing a Credit Enhancement for any Series of Bonds, and thereupon shall appoint a successor Trustee by an instrument in writing.

(C) The Trustee may at any time resign by giving written notice of such resignation to the Commission and each Credit Provider then insuring any Series of Bonds and by giving the Bondholders notice of such resignation by mail at the addresses shown on the registration books maintained by the Trustee. Upon receiving such notice of resignation, the Commission shall promptly appoint a successor Trustee by an instrument in writing.

(D) Any removal or resignation of the Trustee and appointment of a successor Trustee shall become effective upon acceptance of appointment by the successor Trustee. If no successor Trustee shall have been appointed and have accepted appointment within forty-five (45) days of giving notice of removal or notice of resignation as aforesaid, the resigning Trustee or any Bondholder (on behalf of himself and all other Bondholders) may petition any court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Trustee. Any successor Trustee appointed under this Indenture, shall signify its acceptance of such appointment by executing and delivering to the Commission, each Credit Provider then insuring

any Series of Bonds and to its predecessor Trustee a written acceptance thereof, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Trustee, with like effect as if originally named Trustee herein; but, nevertheless at the Request of the Commission or the request of the successor Trustee, such predecessor Trustee shall execute and deliver any and all instruments of conveyance or further assurance and do such other things as may reasonably be required for more fully and certainly vesting in and confirming to such successor Trustee all the right, title and interest of such predecessor Trustee in and to any property held by it under this Indenture and shall pay over, transfer, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Upon request of the successor Trustee, the Commission shall execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Trustee all such moneys, estates, properties, rights, powers, trusts, duties and obligations. Upon acceptance of appointment by a successor Trustee as provided in this subsection, the Commission shall give notice of the succession of such Trustee to the trusts hereunder by mail to the Bondholders at the addresses shown on the registration books maintained by the Trustee. If the Commission fails to mail such notice within fifteen (15) days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause such notice to be mailed at the expense of the Commission.

(E) Any Trustee appointed under the provisions of this Section in succession to the Trustee shall be a trust company or bank having the powers of a trust company having (or, if such trust company or bank is a member of a bank holding company system, the related bank holding company shall have) a combined capital and surplus of at least one hundred million dollars (\$100,000,000), and subject to supervision or examination by federal or state authority. If such bank or trust company or bank holding company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this subsection the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this subsection (E), the Trustee shall resign immediately in the manner and with the effect specified in this Section.

**SECTION 8.02      Accounting Records and Monthly Statements.** The Trustee shall keep proper books of record and accounts containing complete and correct entries of all transactions relating to the receipt, investment, disbursement, allocation and application of the moneys related to the Bonds, including proceeds of each Series of Bonds and moneys derived from, pledged to, or to be used to make payments on each Series of Bonds. Such records shall specify the account or fund to which each deposit and each investment (or portion thereof) held by the Trustee is allocated and shall set forth, in the case of each investment security, (a) its purchase price, (b) identifying information, including par amount, coupon rate, and payment dates, (c) the amount received at maturity or its sale price, as the case may be, including accrued interest, (d) the amounts and dates of any payments made with respect thereto, and (e) the dates of acquisition and disposition or maturity. The Trustee shall furnish the Commission with a monthly statement which shall include a summary of all deposits and all investment transactions related to each Series of Bonds then Outstanding, such statement to be provided to the Commission no later than the fifth (5th) Business Day of the month following the month to

which such statement relates, the first such monthly statement to be provided by the fifth (5th) Business Day of the month immediately following the month in which the 2008 Bonds are delivered by the Trustee pursuant to the provisions of this Indenture.

**SECTION 8.03**      **Merger or Consolidation.** Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible under subsection (E) of Section 8.01, shall be the successor to such Trustee without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

**SECTION 8.04**      **Liability of Trustee.**

(A) The recitals of facts herein and in the Bonds contained shall be taken as statements of the Commission, and the Trustee assumes no responsibility for the correctness of the same (other than the certificate of authentication of the Trustee on each Bond), and makes no representations as to the validity or sufficiency of this Indenture, or of the Bonds, as to the sufficiency of the Revenues or the priority of the lien of this Indenture thereon, or as to the financial or technical feasibility of any portion of the Project and shall not incur any responsibility in respect of any such matter, other than in connection with the duties or obligations expressly herein or in the Bonds assigned to or imposed upon it. The Trustee shall, however, be responsible for its representations contained in its certificate of authentication on the Bonds. The Trustee shall not be liable in connection with the performance of its duties hereunder, except for its own negligence, willful misconduct or breach of the express terms and conditions hereof. The Trustee and its directors, officers, employees or agents may in good faith buy, sell, own, hold and deal in any of the Bonds and may join in any action which any Holder of a Bond may be entitled to take, with like effect as if the Trustee was not the Trustee under this Indenture. The Trustee may in good faith hold any other form of indebtedness of the Commission, own, accept or negotiate any drafts, bills of exchange, acceptances or obligations of the Commission and make disbursements for the Commission and enter into any commercial or business arrangement therewith, without limitation.

(B) The Trustee shall not be liable for any error of judgment made in good faith by a responsible officer unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts. The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, or receivers, and shall be entitled to advice of counsel concerning all matters of trust and its duty hereunder.

(C) 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 aggregate principal amount of the Bonds at the time 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.

(D) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any Credit Provider or any of

the Bondholders pursuant to the provisions of this Indenture, including, without limitation, the provisions of Article VII hereof, unless such Credit Provider or such Bondholders shall have offered to the Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities which may be incurred therein or thereby; provided, however, that no security or indemnity shall be requested or required for the Trustee to deliver a notice to obtain funds under the Credit Enhancement delivered in connection with any Series of Bonds in order to pay principal of and interest on such Series of Bonds.

(E) 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 or exercise of any of its duties hereunder or in the exercise of its rights or powers.

(F) The Trustee shall not be deemed to have knowledge of, and shall not be required to take any action with respect to, any Event of Default (other than an Event of Default described in subsections (A) or (B) of Section 7.01) or event that would, with the giving of notice, the passage of time or both, constitute an Event of Default, unless the Trustee shall have actual knowledge of such event or shall have been notified of such event by the Commission, any Credit Provider then providing a Credit Enhancement for a Series of Bonds or the Holders of twenty-five percent (25%) of the Bond Obligation Outstanding. Without limiting the generality of the foregoing, the Trustee shall not be required to ascertain, monitor or inquire as to the performance or observance by the Commission of the terms, conditions, covenants or agreements set forth in Article VI hereof (including, without limitation, the covenants of the Commission set forth in Section 5.09 and 6.08 hereof, other than the covenants of the Commission to make payments with respect to the Bonds when due as set forth in Section 6.01 and to file with the Trustee when due, such reports and certifications as the Commission is required to file with the Trustee hereunder.

(G) No permissive power, right or remedy conferred upon the Trustee hereunder shall be construed to impose a duty to exercise such power, right or remedy.

(H) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, requisition, bond, debenture, coupon or other paper or document but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Commission, personally or by agent or attorney.

(I) The Trustee shall not be responsible for:

(1) the application or handling by the Commission of any Revenues or other moneys transferred to or pursuant to any Requisition or Request of the Commission in accordance with the terms and conditions hereof;

(2) the application and handling by the Commission of any other fund or account designated to be held by the Commission hereunder;

(3) any error or omission by the Commission in making any computation or giving any instruction pursuant to Section 5.09 and Section 6.08 and may rely conclusively on the Rebate Instructions and any computations or instructions furnished to it by the Commission in connection with the requirements of Section 5.09, Section 6.08 and each Tax Certificate;

(4) the construction, operation or maintenance of any portion of the Project by the Commission.

(J) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Article VIII.

(K) The Trustee agrees to accept and act upon written instructions and/or directions provided by Electronic Means pursuant hereto, provided, however, that: (i) subsequent to such facsimile transmission of written instructions and/or directions the Trustee shall forthwith receive the originally executed instructions and/or directions, and (ii) such originally executed instructions and/or directions shall be signed on behalf of the Commission by an Authorized Representative and shall be signed on behalf of any other party by a person authorized to sign for the party delivering such instructions and/or directions, which person shall provide such documentation as the Trustee shall request in order to evidence such authorization.

**SECTION 8.05**      **Right of Trustee to Rely on Documents and Opinions.** The Trustee shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, note or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Trustee may consult with counsel, including, without limitation, counsel of or to the Commission, and may request an opinion of counsel, with regard to legal questions, including, without limitation, legal questions relating to proposed modifications or amendments of this Indenture, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts.

Whenever in the administration of the trusts imposed upon it by this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, including, without limitation, matters relating to proposed modifications or amendments of this Indenture, the Trustee may request a Certificate of the Commission and such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by such Certificate of the Commission, and such Certificate shall be full warrant to the Trustee for any action taken or suffered in good faith under the provisions of this Indenture in reliance upon such Certificate, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable. The Trustee may also rely conclusively on any report, statement, requisition, facsimile transmission, electronic mail or certification of any certified public accountant, investment banker, financial consultant, or other expert selected by the Commission or selected by the Trustee with due care in connection with

matters required to be proven or ascertained in connection with its administration of the trusts created hereby.

**SECTION 8.06      Compensation and Indemnification of Trustee.**      The Commission covenants to pay to the Trustee from time to time, and the Trustee shall be entitled to, reasonable compensation for all services rendered by it in the exercise and performance of any of the powers and duties hereunder of the Trustee, and the Commission will pay or reimburse the Trustee upon its request for all expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and of all persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its negligence, default or willful misconduct. The Commission, to the extent permitted by law, shall indemnify, defend and hold harmless the Trustee against any loss, damages, liability or expense incurred without negligence or bad faith on the part of the Trustee, arising out of or in connection with the acceptance or administration of the trusts created hereby, including costs and expenses (including attorneys' fees) of defending itself against any claim or liability in connection with the exercise or performance of any of its powers hereunder. The rights of the Trustee and the obligations of the Commission under this Section 8.06 shall survive the discharge of the Bonds and this Indenture and the resignation or removal of the Trustee.

**ARTICLE IX  
MODIFICATION OR AMENDMENT OF THIS INDENTURE**

**SECTION 9.01      Amendments Permitted.**

(A) (1) This Indenture and the rights and obligations of the Commission, the Holders of the Bonds and the Trustee may be modified or amended from time to time and at any time by a Supplemental Indenture, which the Commission and the Trustee may enter into when the written consent of the Holders of a majority in aggregate amount of Bond Obligation of the Bonds (or, if such Supplemental Indenture is only applicable to a Series of Bonds, such Series of Bonds) then Outstanding shall have been filed with the Trustee; provided that if such modification or amendment will, by its terms, not take effect so long as any Bonds of any particular maturity remain Outstanding, the consent of the Holders of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any calculation of Bonds Outstanding under this Section.

(2) No such modification or amendment shall (a) extend the maturity of any Bond, or reduce the amount of principal thereof, or extend the time of payment or reduce the amount of any Mandatory Sinking Account Payment provided for the payment of any Bond, or reduce the rate of interest thereon, or extend the time of payment of interest thereon, or reduce any premium payable upon the redemption thereof, without the consent of the Holder of each Bond so affected, or (b) reduce the aforesaid percentage of Bond Obligation the consent of the Holders of which is required to effect any such modification or amendment, or permit the creation of any lien on the Revenues and other assets pledged under this Indenture prior to or on a parity with the lien created by this Indenture, or deprive the Holders of the Bonds of the lien created by this Indenture on such Revenues and other assets (in each case, except as expressly provided in this Indenture), without the consent of the Holders of all of the Bonds then

Outstanding. It shall not be necessary for the consent of the Bondholders to approve the particular form of any Supplemental Indenture, but it shall be sufficient if such consent shall approve the substance thereof. Promptly after the execution and delivery by the Commission and the Trustee of any Supplemental Indenture pursuant to this Section 9.01(A), the Trustee shall mail a notice, setting forth in general terms the substance of such Supplemental Indenture to the Holders of the Bonds at the addresses shown on the registration books of the Trustee. Any failure to give such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such Supplemental Indenture.

(B) This Indenture and the rights and obligations of the Commission, of the Trustee and of the Holders of the Bonds may also be modified or amended from time to time and at any time by a Supplemental Indenture, which the Commission and the Trustee may enter into without the consent of any Bondholders, but with the written consent of each Credit Provider then providing a Credit Enhancement for any Series of Bonds which shall be materially and adversely affected by such amendment, which consent shall not be unreasonably withheld; provided, however, that such written consent shall be required only if the Credit Enhancement provided by such Credit Provider is in full force and effect and if the Credit Provider is not then failing to make a payment as required in connection therewith, but only to the extent permitted by law and only for any one or more of the following purposes:

(1) to add to the covenants and agreements of the Commission in this Indenture contained other covenants and agreements thereafter to be observed, to pledge or assign additional security for the Bonds (or any portion thereof), or to surrender any right or power herein reserved to or conferred upon the Commission;

(2) to make such provisions for the purpose of curing any ambiguity, inconsistency or omission, or of curing or correcting any defective provision, contained in this Indenture, or in regard to matters or questions arising under this Indenture, as the Commission may deem necessary or desirable, and which shall not materially and adversely affect the interests of the Holders of the Bonds;

(3) to modify, amend or supplement this Indenture in such manner as to permit the qualification hereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and to add such other terms, conditions and provisions as may be permitted by said act or similar federal statute, and which shall not materially and adversely affect the interests of the Holders of the Bonds;

(4) to provide for the issuance of an additional Series of Bonds pursuant to the provisions of Article III hereof;

(5) to make modifications or adjustments necessary, appropriate or desirable to provide for the issuance or incurrence, as applicable, of Capital Appreciation Bonds, Parity Obligations, Subordinate Obligations or Variable Rate Indebtedness, with such interest rate, payment, maturity and other terms as the Commission may deem desirable; subject to the provisions of Section 3.02, Section 3.03 and Section 3.05;



(6) to make modifications or adjustments necessary, appropriate or desirable to provide for change from one interest rate mode to another in connection with any Series of Bonds;

(7) to make modifications or adjustments necessary, appropriate or desirable to accommodate Credit Enhancements, Liquidity Facilities and Reserve Facilities;

(8) to make modifications or adjustments necessary, appropriate or desirable to provide for the appointment of an auction agent, a broker-dealer, a remarketing agent, a tender agent and/or a paying agent in connection with any Series of Bonds;

(9) to modify the auction provisions applicable to any Series of Bonds in accordance with the terms and provisions set forth in the Supplemental Indenture establishing the terms and provisions of such Series of Bonds;

(10) to provide for any additional covenants or agreements necessary to maintain the tax-exempt status of interest on any Series of Bonds;

(11) if the Commission agrees in a Supplemental Indenture to maintain the exclusion of interest on a Series of Bonds from gross income for purposes of federal income taxation, to make such provisions as are necessary or appropriate to ensure such exclusion;

(12) to provide for the issuance of Bonds in book-entry form or bearer form and/or to modify or eliminate the book-entry registration system for any Series of Bonds;

(13) to modify, alter, amend or supplement this Indenture in any other respect, including amendments that would otherwise be described in Section 9.01(A), if the effective date of such amendments is a date on which all Bonds affected thereby are subject to mandatory tender for purchase pursuant to the provisions of this Indenture or if notice of the proposed amendments is given to Holders of the affected Bonds at least thirty (30) days before the proposed effective date of such amendments and, on or before such effective date, such Holders have the right to demand purchase of their Bonds pursuant to the provisions of this Indenture or if all Bonds affected thereby are in an auction mode and a successful auction is held following notice of such amendment; and

(14) for any other purpose that does not materially and adversely affect the interests of the Holders of the Bonds.

Any Supplemental Indenture entered into pursuant to this Section shall be deemed not to materially adversely affect the interest of the Holders so long as (i) all Bonds are secured by a Credit Enhancement and (ii) each Credit Provider shall have given its written consent to such Supplemental Indenture as provided in Section 9.01(A).

**SECTION 9.02**      **Effect of Supplemental Indenture.** From and after the time any Supplemental Indenture becomes effective pursuant to this Article, this Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Commission, the Trustee and all Holders of Bonds

Outstanding shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

**SECTION 9.03**      **Endorsement of Bonds; Preparation of New Bonds.** Bonds delivered after any Supplemental Indenture becomes effective pursuant to this Article may, and if the Trustee so determines shall, bear a notation by endorsement or otherwise in form approved by the Commission and the Trustee as to any modification or amendment provided for in such Supplemental Indenture, and, in that case, upon demand of the Holder of any Bond Outstanding at the time of such execution and presentation of his Bond for such purpose at the Corporate Trust Office or at such additional offices as the Trustee may select and designate for that purpose, a suitable notation shall be made on such Bond. If the Supplemental Indenture shall so provide, new Bonds so modified as to conform, in the opinion of the Commission and the Trustee, to any modification or amendment contained in such Supplemental Indenture, shall be prepared and executed by the Commission and authenticated by the Trustee, and upon demand of the Holders of any Bonds then Outstanding shall be exchanged at the Corporate Trust Office, without cost to any Bondholder, for Bonds then Outstanding, upon surrender for cancellation of such Bonds, in equal aggregate principal amounts of the same Series, tenor and maturity.

**SECTION 9.04**      **Amendment of Particular Bonds.** The provisions of this Article shall not prevent any Bondholder from accepting any amendment as to the particular Bonds held by him, provided that due notation thereof is made on such Bonds.

## **ARTICLE X DEFEASANCE**

**SECTION 10.01**      **Discharge of Indenture.** Bonds of any Series or a portion thereof may be paid by the Commission in any of the following ways:

- (A) by paying or causing to be paid the Bond Obligations of and interest on such Outstanding Bonds, as and when they become due and payable;
- (B) by depositing with the Trustee, an escrow agent or other fiduciary, in trust, at or before maturity, money or securities in the necessary amount (as provided in Section 10.03) to pay or redeem such Outstanding Bonds; or
- (C) by delivering to the Trustee, for cancellation by it, such Outstanding Bonds.

If the Commission shall pay all Series for which any Bonds are Outstanding and also pay or cause to be paid all other sums payable hereunder by the Commission, then and in that case, at the election of the Commission (evidenced by a Certificate of the Commission, filed with the Trustee, signifying the intention of the Commission to discharge all such indebtedness and this Indenture), and notwithstanding that any Bonds shall not have been surrendered for payment, this Indenture and the pledge of Sales Tax Revenues and other assets made under this Indenture and all covenants, agreements and other obligations of the Commission under this Indenture shall cease, terminate, become void and be completely discharged and satisfied. In such event, upon Request of the Commission, the Trustee shall cause an accounting for such period or periods as

may be requested by the Commission to be prepared and filed with the Commission and shall execute and deliver to the Commission all such instruments as may be necessary or desirable to evidence such discharge and satisfaction, and the Trustee shall pay over, transfer, assign or deliver to the Commission all moneys or securities or other property held by it pursuant to this Indenture which, as evidenced by a verification report, upon which the Trustee may conclusively rely, from an independent certified public accountant, a firm of independent certified public accountants or other independent consulting firm, are not required for the payment or redemption of Bonds not theretofore surrendered for such payment or redemption.

**SECTION 10.02 Discharge of Liability on Bonds.** Upon the deposit with the Trustee, escrow agent or other fiduciary, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 10.03) to pay or redeem any Outstanding Bond (whether upon or prior to its maturity or the redemption date of such Bond), provided that, if such Bond is to be redeemed prior to maturity, notice of such redemption shall have been given as in Article IV provided or provision satisfactory to the Trustee shall have been made for the giving of such notice, then all liability of the Commission in respect of such Bond shall cease, terminate and be completely discharged, provided that the Holder thereof shall thereafter be entitled to the payment of the principal of and premium, if any, and interest on the Bonds, and the Commission shall remain liable for such payment, but only out of such money or securities deposited with the Trustee as aforesaid for their payment.

If the Bonds being discharged are Variable Rate Indebtedness, (i) the Bonds shall be redeemed at the first possible redemption date or purchase date applicable to such Bonds and to the extent the rate of interest payable on such Bonds prior to such redemption or purchase date is not known, such rate of interest shall be assumed to be the maximum rate payable thereon or (ii) the Trustee shall receive a confirmation from the Rating Agency then rating the Bonds that the defeasance will not result in the reduction or withdrawal of the then-current ratings on the Bonds.

The Commission may at any time surrender to the Trustee for cancellation by it any Bonds previously issued and delivered, which the Commission may have acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

Notwithstanding anything in this Section 10.02 to the contrary, if the principal of or interest on a Series of Bonds shall be paid by a Credit Provider pursuant to the Credit Enhancement issued in connection with such Series of Bonds, the obligations of the Commission shall not be deemed to be satisfied or considered paid by the Commission by virtue of such payments, and the right, title and interest of the Commission herein and the obligations of the Commission hereunder shall not be discharged and shall continue to exist and to run to the benefit of such Credit Provider, and such Credit Provider shall be subrogated to the rights of the Holders of the Bonds of such Series.

**SECTION 10.03 Deposit of Money or Securities.** Whenever in this Indenture it is provided or permitted that there be deposited with or held in trust money or securities in the necessary amount to pay or redeem any Bonds, the money or securities so to be deposited or held may include money or securities held by the Trustee in the funds and accounts established pursuant to this Indenture and shall be:

(A) lawful money of the United States of America in an amount equal to the principal amount of such Bonds and all unpaid interest thereon to maturity, except that, in the case of Bonds which are to be redeemed prior to maturity and in respect of which notice of such redemption shall have been given as in Article IV provided or provision satisfactory to the Trustee shall have been made for the giving of such notice, the amount to be deposited or held shall be the principal amount or Redemption Price of such Bonds and all unpaid interest thereon to the redemption date; or

(B) Defeasance Securities the principal of and interest on which when due will, in the opinion of an independent certified public accountant, a firm of independent certified public accountants or other independent consulting firm delivered to the Trustee (as confirmed by a verification report upon which verification report the Trustee may conclusively rely), provide money sufficient to pay the principal or Redemption Price of and all unpaid interest to maturity, or to the redemption date, as the case may be, on the Bonds to be paid or redeemed, as such principal or Redemption Price and interest become due, provided that, in the case of Bonds which are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as in Article IV provided or provision satisfactory to the Trustee shall have been made for the giving of such notice; provided, in each case, that the Trustee shall have been irrevocably instructed (by the terms of this Indenture or by Request of the Commission) to apply such money to the payment of such principal or Redemption Price and interest with respect to such Bonds.

**SECTION 10.04**     **Payment of Bonds After Discharge of Indenture.** Any moneys held by the Trustee in trust for the payment of the principal, Redemption Price, or interest on any Bond and remaining unclaimed for one (1) year after such principal, Redemption Price, or interest has become due and payable (whether at maturity or upon call for redemption as provided in this Indenture), if such moneys were so held at such date, or one (1) year after the date of deposit of such principal, Redemption Price or interest on any Bond if such moneys were deposited after the date when such Bond became due and payable, shall be repaid to the Commission free from the trusts created by this Indenture, and all liability of the Trustee with respect to such moneys shall thereupon cease; provided, however, that before the repayment of such moneys to the Commission as aforesaid, the Trustee may (at the cost of the Commission) first mail to the Holders of any Bonds remaining unpaid at the addresses shown on the registration books maintained by the Trustee a notice, in such form as may be deemed appropriate by the Trustee, with respect to the Bonds so payable and not presented and with respect to the provisions relating to the repayment to the Commission of the moneys held for the payment thereof. All moneys held by or on behalf of the Trustee for the payment of principal or Accreted Value of or interest or premium on Bonds, whether at redemption or maturity, shall be held in trust for the account of the Holders thereof and the Trustee shall not be required to pay Holders any interest on, or be liable to the Holders or any other person (other than the Commission) for interest earned on, moneys so held. Any interest earned thereon shall belong to the Commission and shall be deposited upon receipt by the Trustee into the Revenue Fund.

**ARTICLE XI  
MISCELLANEOUS**

**SECTION 11.01**     **Liability of Commission Limited to Sales Tax Revenues.** Notwithstanding anything in this Indenture or in the Bonds contained, the Commission shall not be required to advance any moneys derived from any source other than the Sales Tax Revenues and other assets pledged hereunder for any of the purposes in this Indenture mentioned, whether for the payment of the principal or Redemption Price of or interest on the Bonds or for any other purpose of this Indenture.

**SECTION 11.02**     **Successor Is Deemed Included in All References to Predecessor.** Whenever in this Indenture either the Commission or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the Commission or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

**SECTION 11.03**     **Limitation of Rights.** Nothing in this Indenture or in the Bonds expressed or implied is intended or shall be construed to give to any Person other than the Commission, the Trustee, each Credit Provider, each Liquidity Provider, each Reserve Facility Provider, the Holders of the Bonds and the holders of any Parity Obligations, including each Counterparty, any legal or equitable right, remedy or claim under or in respect of this Indenture or any covenant, condition or provision therein or herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the Commission, the Trustee, each Credit Provider, each Liquidity Provider, each Reserve Facility Provider, the Holders of the Bonds and the holders of any Parity Obligations, including each Counterparty. Each Credit Provider and each Liquidity Provider is an express third party beneficiary of this Indenture.

**SECTION 11.04**     **Waiver of Notice.** Whenever in this Indenture the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

**SECTION 11.05**     **Destruction or Delivery of Canceled Bonds.** Whenever in this Indenture provision is made for the cancellation by the Trustee and the delivery to the Commission of any Bonds, the Trustee may, in its sole discretion, in lieu of such cancellation and delivery, destroy such Bonds, and deliver a certificate of such destruction to the Commission.

**SECTION 11.06**     **Severability of Invalid Provisions.** If any one or more of the provisions contained in this Indenture or in the Bonds shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provisions or provisions shall be deemed severable from the remaining provisions contained in this Indenture and such invalidity, illegality or unenforceability shall not affect any other provision of this Indenture, and this Indenture shall be construed as if such invalid or illegal or unenforceable provision had never

been contained herein. The Commission hereby declares that it would have adopted this Indenture and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issuance of the Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this Indenture may be held illegal, invalid or unenforceable.

**SECTION 11.07 Notice to Commission and Trustee.** Any notice to or demand may be served or presented, and such demand may be made and shall be deemed to have been sufficiently given or served for all purposes by being deposited, first-class mail postage prepaid, in a post office letter box, addressed, as the case may be, to the parties as listed below. Any such communication may also be sent by Electronic Means, receipt of which shall be confirmed.

Trustee: U.S. Bank National Association  
633 West 5th Street, 24th Floor  
Los Angeles, California 90071  
Attention: Corporate Trust Division  
Telephone: (213) 615-6023  
Fax: (213) 615-6197

Commission: San Diego Association of Governments  
401 B Street, Suite 800  
San Diego, California 92101  
Attention: Director of Finance  
Telephone: (619) 699-1940  
Fax: (619) 699-4890

**SECTION 11.08 Evidence of Rights of Bondholders.** Any request, consent or other instrument required or permitted by this indenture to be signed and executed by Bondholders may be in any number of concurrent instruments of substantially similar tenor and shall be signed or executed by such Bondholders in person or by an agent or agents duly appointed in writing. Proof of the execution of any such request, consent or other instrument or of a writing appointing any such agent, or the holding by any Person of Bonds transferable by delivery, shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee and of the Commission if made in the manner provided in this Section.

The fact and date of the execution by any person of any such request, consent or other instrument or writing may be proved by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the person signing such request, consent or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution duly sworn to before such notary public or other officer.

The ownership of Bonds shall be proved by the bond registration books held by the Trustee. The Trustee may establish a record date as of which to measure consent of the Holders in order to determine whether the requisite consents are received.

Any request, consent, or other instrument or writing of the Holder of any Bond shall bind every future Holder of the same Bond and the Holder of every Bond issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the Commission in accordance therewith or reliance thereon.

**SECTION 11.09 Disqualified Bonds.** In determining whether the Holders of the requisite aggregate Bond Obligation of Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds that are owned or held by or for the account of the Commission, or by any other obligor on the Bonds, or by any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Commission or any other obligor on the Bonds, shall be disregarded and deemed not to be Outstanding for the purpose of any such determination. Bonds so owned which have been pledged in good faith may be regarded as Outstanding for the purposes of this Section if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Bonds and that the pledgee is not a person directly or indirectly controlled by, or under direct or indirect common control with, the Commission. In case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee.

**SECTION 11.10 Money Held for Particular Bonds.** The money held by the Trustee for the payment of the interest, principal, Redemption Price or purchase price due on any date with respect to particular Bonds (or portions of Bonds in the case of registered Bonds redeemed in part only) shall, on and after such date and pending such payment, be set aside on its books and held in trust by it for the Holders of the Bonds entitled thereto, subject, however, to the provisions of Section 10.04.

**SECTION 11.11 Funds and Accounts.** Any fund required by this Indenture to be established and maintained by the Trustee may be established and maintained in the accounting records of the Trustee, either as a fund or an account, and may, for the purposes or statements with respect thereto, be treated either as a fund or as an account; but all such records with respect to all such funds shall at all times be maintained in accordance with customary standards of the corporate trust industry, to the extent practicable, and with due regard for the protection of the security of the Bonds and the rights of every holder thereof.

**SECTION 11.12 Limitations on Rights of Credit Providers, Liquidity Providers, Reserve Facility Providers.** A Supplemental Indenture establishing the terms and provisions of a Series of Bonds may provide that any Credit Provider, Liquidity Provider or Reserve Facility Provider may exercise any right under this Indenture given to the Holders of the Bonds to which such Credit Enhancement, Liquidity Facility or Reserve Facility relates. All provisions under this Indenture authorizing the exercise of rights by a Credit Provider, a Liquidity Provider or a Reserve Facility Provider with respect to consents, approvals, directions, waivers, appointments, requests or other actions, shall be deemed not to require or permit such consents, approvals, directions, waivers, appointments, requests or other actions and shall be read as if the Credit Provider, Liquidity Provider or Reserve Facility Provider were not mentioned therein (i) during any period during which there is a default by such Credit Provider, Liquidity Provider or Reserve Facility Provider under the applicable Credit Enhancement, Liquidity Facility or Reserve Facility or (ii) after the applicable Credit Enhancement, Liquidity Facility or Reserve Facility shall at any time for any reason cease to be valid and binding on the provider thereof, or shall be declared to

be null and void by final, non-appealable judgment of a court of competent jurisdiction, or after the Credit Enhancement, Liquidity Facility or Reserve Facility has been rescinded, repudiated by the provider thereof or terminated, or after a receiver, conservator or liquidator has been appointed for the provider thereof. All provisions relating to the rights of a Credit Provider, Liquidity Provider or Reserve Facility Provider shall be of no further force and effect if all amounts owing to such Credit Provider, Liquidity Provider or Reserve Facility Provider shall have been paid pursuant to the terms of the applicable Credit Enhancement, Liquidity Facility or Reserve Facility and such Credit Enhancement, Liquidity Facility or Reserve Facility shall no longer be in effect.

**SECTION 11.13 Article and Section Headings and References.** The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Indenture.

All references herein to "Articles, "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof; and words of the masculine gender shall mean and include words of the feminine and neuter genders.

**SECTION 11.14 Waiver of Personal Liability.** No Board member, officer, agent or employee of the Commission or the Trustee shall be individually or personally liable for the payment of the principal or Redemption Price of or interest on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof; but nothing herein contained shall relieve any such Board member, officer, agent or employee of the Commission or the Trustee from the performance of any of any official duty provided by law or by this Indenture.

**SECTION 11.15 Governing Law.** This Indenture shall be construed and governed in accordance with the laws of the State of California.

**SECTION 11.16 Business Day.** Except as specifically set forth in this Indenture or a Supplemental Indenture, transfers which would otherwise become due on any day which is not a Business Day shall become due or shall be made on the next succeeding Business Day with the same effect as if made on such prior date.

**SECTION 11.17 Effective Date of Indenture.** This Indenture shall take effect upon its execution and delivery.

**SECTION 11.18 Execution in Counterparts.** This Indenture may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.



IN WITNESS WHEREOF, the parties hereto have executed this Indenture by their officers thereunto duly authorized as of the day and year first written above.

SAN DIEGO COUNTY REGIONAL  
TRANSPORTATION COMMISSION

By: *May L. Nease*  
Chair of the Board of Directors

(Seal)

ATTEST:

*Gary L. Gallegos*  
Secretary

APPROVED AS TO FORM:

By: *Jim D. Wang*  
General Counsel

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

By: \_\_\_\_\_  
Authorized Officer

IN WITNESS WHEREOF, the parties hereto have executed this Indenture by their officers thereunto duly authorized as of the day and year first written above.

SAN DIEGO COUNTY REGIONAL  
TRANSPORTATION COMMISSION

By: \_\_\_\_\_  
Chair of the Board of Directors

(Seal)

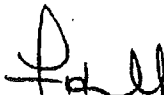
ATTEST:

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
General Counsel

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

By:  \_\_\_\_\_  
Authorized Officer