

# **MASTER TRUST INDENTURE**

by and between

**SUMMIT UTILITIES, INC.,**  
a Colorado Corporation,  
as Issuer

and

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,**  
as Trustee

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DATED AS OF AUGUST 7, 2008

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## TABLE OF CONTENTS

[This Table of Contents is included for convenience of reference only]

	<u>Page</u>
RECITALS .....	1
GRANTING CLAUSES .....	1
ARTICLE I DEFINITIONS; APPLICABLE TIME	
Section 1.01 Definitions .....	3
Section 1.02 Interpretation .....	18
Section 1.03 Captions and Headings .....	18
Section 1.04 Colorado Time .....	18
ARTICLE II AUTHORIZATION AND ISSUANCE OF BONDS	
Section 2.01 Series and Amount of Bonds .....	19
Section 2.02 Purpose and Terms of Bonds .....	19
Section 2.03 Conditions Precedent to Delivery of Bonds .....	19
Section 2.04 Form of Bonds .....	21
Section 2.05 Execution and Authentication of Bonds .....	22
Section 2.06 Series Credit Facilities .....	22
Section 2.07 Series Confirmations .....	24
Section 2.08 Supplemental Series Credit Facilities .....	24
ARTICLE III GENERAL PROVISIONS OF THE BONDS	
Section 3.01 Source of Payment of Bonds; Limited Obligations .....	24
Section 3.02 Interest .....	25
Section 3.03 Payment and Ownership of Bonds .....	27
Section 3.04 Transfer and Exchange of Bonds .....	28
Section 3.05 Mutilated, Lost, Wrongfully Taken, Undelivered or Destroyed Bonds .....	29
Section 3.06 Cancellation of Bonds .....	30
Section 3.07 Book-Entry System; Use of Depository .....	31
ARTICLE IV TENDERS	
Section 4.01 Optional Tenders for Purchase .....	32
Section 4.02 Mandatory Tenders for Purchase .....	34
Section 4.03 Maturity or Redemption of Bonds Subject to Tender .....	37
Section 4.04 Remarketing of Tendered Bonds .....	37
Section 4.05 Delivery of Purchased Bonds and Remarketing of Pledged Bonds .....	38

ARTICLE V  
REDEMPTION OF BONDS

Section 5.01	Terms of Redemption of Bonds.....	40
Section 5.02	Partial Redemption.....	41
Section 5.03	Election to Redeem.....	41
Section 5.04	Notice of Redemption.....	42
Section 5.05	Payment of Redeemed Bonds.....	43

ARTICLE VI  
REVENUES AND FUNDS

Section 6.01	Application of Original Proceeds.....	44
Section 6.02	The Project Fund.....	44
Section 6.03	The Bond Fund .....	45
Section 6.04	The Remarketing Reimbursement Fund .....	47
Section 6.05	Investments .....	48
Section 6.06	Moneys to be Held in Eligible Accounts and in Trust.....	49
Section 6.07	Nonpresentment of Bonds.....	49
Section 6.08	Disposition of Excess Moneys.....	50
Section 6.09	Drawings on Series Credit Facilities and Series Confirmations.....	50

ARTICLE VII  
FIDUCIARIES AND AGENTS

Section 7.01	Trustee's Acceptance and Responsibilities.....	53
Section 7.02	Certain Rights and Obligations of the Trustee.....	54
Section 7.03	Fees, Charges and Expenses of Fiduciaries and Agents .....	58
Section 7.04	Intervention by Trustee .....	59
Section 7.05	Successor Trustee.....	59
Section 7.06	Appointment of Co-Trustee .....	59
Section 7.07	Resignation of the Trustee .....	60
Section 7.08	Removal of the Trustee .....	61
Section 7.09	Appointment of Successor Trustee .....	61
Section 7.10	Adoption of Authentication .....	62
Section 7.11	Additional Registrars .....	62
Section 7.12	Additional Paying Agents .....	64
Section 7.13	The Remarketing Agent.....	65
Section 7.14	Resignation or Removal of Remarketing Agent; Successor.....	66
Section 7.15	Dealing in Bonds.....	66
Section 7.16	Notices to Rating Services .....	67

ARTICLE VIII  
DEFAULTS AND REMEDIES

Section 8.01	Defaults; Events of Default.....	67
Section 8.02	Notice of Default.....	69
Section 8.03	Acceleration .....	69

Section 8.04	Other Remedies; Rights of Owners .....	70
Section 8.05	Right of Owners to Direct Proceedings .....	71
Section 8.06	Application of Moneys .....	72
Section 8.07	Remedies Vested in the Trustee.....	74
Section 8.08	Rights and Remedies of Owners.....	74
Section 8.09	Termination of Proceedings.....	75
Section 8.10	Waivers of Events of Default.....	75
Section 8.11	Subrogation Rights.....	76

## ARTICLE IX SUPPLEMENTAL INDENTURES

Section 9.01	Supplemental Indentures Generally .....	76
Section 9.02	Supplemental Indentures Not Requiring Consent of Owners.....	76
Section 9.03	Supplemental Indentures Requiring Consent of Owners.....	77
Section 9.04	Consent of Other Parties .....	79
Section 9.05	Conditions to Effectiveness of Supplemental Indenture.....	79
Section 9.06	Authorization to Trustee; Effect of Supplemental Indenture.....	79
Section 9.07	Modification by Unanimous Consent .....	80

## ARTICLE X AMENDMENTS TO THE SERIES LOAN AGREEMENTS, SERIES PROMISSORY NOTES, SERIES CREDIT FACILITIES AND SERIES CONFIRMATIONS

Section 10.01	Amendments Not Requiring Consent of Owners .....	80
Section 10.02	Amendments Requiring Consent of Owners .....	81

## ARTICLE XI DEFEASANCE

Section 11.01	Release of Indenture .....	82
Section 11.02	Payment and Discharge of Bonds .....	82
Section 11.03	Survival of Certain Provisions.....	84

## ARTICLE XII REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS

Section 12.01	Representations and Warranties of the Company .....	84
Section 12.02	Covenants and Agreements of the Company.....	85
Section 12.03	Representations, Agreements and Covenants of the Trustee.....	86

## ARTICLE XIII MISCELLANEOUS

Section 13.01	Limitation of Rights.....	86
Section 13.02	Notices .....	87
Section 13.03	Suspension of Mail .....	89
Section 13.04	Payments Due on Saturdays, Sundays and Holidays.....	89
Section 13.05	Instruments of Owners.....	89

Section 13.06	Priority of this Indenture .....	90
Section 13.07	Limitation of Liability.....	90
Section 13.08	Rating Categories.....	91
Section 13.09	Binding Effect.....	91
Section 13.10	Severability .....	91
Section 13.11	Governing Law .....	91
Section 13.12	Venue .....	91
Section 13.13	Counterparts .....	92

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## **MASTER TRUST INDENTURE**

**THIS MASTER TRUST INDENTURE** (this “Indenture”), dated as of August 7, 2008, is entered into by and between **SUMMIT UTILITIES, INC.** (the “Company”), a corporation organized and existing under the laws of the State of Colorado (the “State”), and **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, a national banking association duly authorized to exercise corporate trust powers in the State, as trustee hereunder (the “Trustee”), under the circumstances summarized in the following recitals (capitalized terms not defined above or in the recitals and Granting Clauses being used herein are defined in Article I hereof);

### **RECITALS**

WHEREAS, the Company is authorized by law, deems it necessary and desirable and has requested the Trustee to enter into this Indenture in order to provide for the issuance of variable rate demand revenue bonds, in one or more Series, not limited as to number, in order to obtain financing for its lawful and proper organizational purposes, including the making of loans to its subsidiaries; and

WHEREAS, all acts and things necessary to constitute this Indenture a valid indenture and agreement according to its terms have been done and performed, the Company has duly authorized the execution and delivery of this Indenture and the Company, in the exercise of the legal right and power vested in it, has executed this Indenture and proposes to make, execute, issue and deliver one or more Series of Bonds pursuant to supplements to this Indenture; and

WHEREAS, at the time a Series of Bonds is issued by the Company, and authenticated and delivered by the Trustee, in accordance with the provisions of this Indenture and the Series Supplement creating such Series of Bonds, all acts and things necessary to authorize such Series of Bonds and to constitute the Bonds of such Series the valid, binding and legal obligations of the Company will have been done and performed; and

WHEREAS, the Trustee has agreed to accept the trusts herein created upon the terms herein set forth;

### **GRANTING CLAUSES AND AGREEMENTS**

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that to secure the payment of the Debt Service Requirements with respect to the Bonds according to their true intent and meaning, the performance and observance of all of the covenants, agreements, obligations and conditions contained therein and herein and the obligations to the Series Credit Facility Providers and Series Confirmation Providers and to declare the terms and conditions upon and subject to which the Bonds are and are intended to be issued, held, secured and enforced, and in consideration of the premises and the acceptance by the Trustee of the trusts created herein and of the purchase and acceptance of the Bonds by the Owners, and for other good and valuable consideration, the receipt of which is acknowledged, the Company has executed and delivered this Indenture and absolutely assigns hereby to the Trustee, and to its successors in trust, and its and their assigns:

(1) all right, title and interest of the Company in and to any funds, accounts or property, including all moneys and securities, from time to time held by the Trustee under the terms of this Indenture and the Series Supplements;

(2) all right, title and interest of the Company in and to all Series Pledged Revenues, including, without limitation, amounts receivable by or on behalf of the Company under the Series Loan Agreements in respect of payment of the Series Loans;

(3) the Series Loan Agreements (except for the Unassigned Company Rights);

(4) the Series Promissory Notes; and

(5) any and all property, rights and interests of every kind or description which, from time to time hereafter, are sold, transferred, conveyed, assigned, pledged, mortgaged or delivered to the Trustee as additional security hereunder (except Pledged Bonds and amounts held by the Trustee in the Remarketing Reimbursement Fund);

provided, however, that the security described in the Granting Clauses hereof with respect to each Series of Bonds shall secure only that Series of Bonds and no other Series of Bonds;

TO HAVE AND TO HOLD all and singular the Trust Estate, whether now owned or hereafter acquired, irrevocably unto the Trustee and its successors in trust and assigns forever;

IN TRUST, NEVERTHELESS, upon the terms and trusts herein and in each Series Supplement set forth for the equal and ratable benefit, security and protection of all present and future Owners of each Series of Bonds issued under and secured by this Indenture and the related Series Supplement, without privilege, priority or distinction as to lien or otherwise of any Bond of a Series over any other Bond of the same Series, except as expressly provided herein, and, so long as the related Series Credit Facility Provider or related Series Confirmation Provider is not in default under the related Series Credit Facility Agreement or related Series Confirmation Agreement, for the equal and ratable benefit, security and protection of such related Series Credit Facility Provider and Series Confirmation Provider to the extent of amounts owed by the Company to such Series Credit Facility Provider and Series Confirmation Provider under the related Series Credit Facility Agreement and Series Confirmation Agreement;

PROVIDED, HOWEVER, that if the Company, its successors or assigns, shall well and truly pay, or cause to be paid, the Debt Service Requirements with respect to the Bonds of a Series due or to become due thereon at the times and in the manner provided in the Bonds of such Series according to the true intent and meaning thereof, and shall cause the payments to be made into the Bond Fund as required under Article VI hereof, or shall provide, as permitted by Article X hereof, for the payment thereof, and shall well and truly keep, perform and observe all of the covenants and conditions pursuant to the terms of this Indenture and the related Series Supplement to be kept, performed and observed by it, and shall pay or cause to be paid to the Trustee all sums of money due or to become due in accordance with the terms and provisions hereof, and if the Trustee shall have paid all amounts payable to the related Series Credit Facility Provider and Series Confirmation Provider pursuant to Section 6.08 hereof and the related Series Credit Facility and Series Confirmation shall have been returned to the related Series Credit Facility Provider and Series Confirmation Provider for cancellation pursuant to Section 12.02

hereof, then this Indenture and the related Series Supplement and the rights hereby and thereby granted shall cease and terminate with respect to such Series of Bonds. Otherwise, this Indenture and such Series Supplement shall remain in full force and effect with respect to such Series of Bonds.

THIS INDENTURE FURTHER WITNESSETH, and it is expressly declared, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered, and all such property, rights and interests, including, without limitation, the amounts hereby assigned, are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes hereinafter expressed, and that the Company has agreed and covenanted, and hereby does agree and covenant, with the Trustee and the Owners, from time to time, of the Bonds, the Series Credit Facility Providers and the Series Confirmation Providers as follows:

## **ARTICLE I DEFINITIONS; APPLICABLE TIME**

**Section 1.01 Definitions.** In addition to the words and terms defined elsewhere in this Indenture, the words and terms defined in this Section shall have the meanings herein specified unless the context or use clearly indicates another or different meaning or intent:

*“Adjustable Rate”* means, with respect to each Series of Bonds, any interest rate to be borne by such Series of Bonds other than the Fixed Interest Rate.

*“Alternate Rate”* means, on any Interest Rate Determination Date, the rate per annum specified in the index (the “Index”) published by the Indexing Agent and in effect on such Interest Rate Determination Date, not to exceed the Maximum Rate. The Index shall be based upon yield evaluations at par of bonds, the interest on which is included in gross income for purposes of federal income taxation, of not less than five “high grade” component issuers on bonds selected by the Indexing Agent. The specific issuers included among the component issuers may be changed from time to time by the Indexing Agent in its discretion. With respect to a Series of Bonds in the Weekly Interest Rate Mode or the One Month Interest Rate Mode, the yield evaluation period for the Index shall be 30-day yield evaluations. With respect to a Series of Bonds in the Three Month Interest Rate Mode or the Six Month Interest Rate Mode, the yield evaluation period for the Index shall be 180-day yield evaluations. With respect to Bonds in the One Year Interest Rate Mode, the Five Year Interest Rate Mode the Ten Year Interest Rate Mode or the Fixed Interest Rate Mode, the yield evaluation period for the Index shall be one-year yield evaluations. If at any particular time no Indexing Agent publishes an Index satisfying the foregoing requirements, the Alternate Rate for an Interest Rate Period shall be the rate per annum specified in the most recently published Index for a comparable Interest Rate Period.

*“Authorized Borrower Representative”* means a person at the time designated to act on behalf of a Series Borrower for purposes of this Indenture by a certificate furnished to the Company and the Trustee containing the specimen signature of such person and signed on behalf of such Series Borrower by any of its officers. The certificate may designate an alternate or alternates.



*“Authorized Company Representative”* means a person at the time designated to act on behalf of the Company for purposes of this Indenture by a certificate furnished to the Trustee containing the specimen signature of such person and signed on behalf of the Company by any of its officers. The certificate may designate an alternate or alternates.

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

*“Beneficial Owner”* means a Person owning a Beneficial Interest in the Bonds, as evidenced to the satisfaction of the Trustee.

*“Beneficial Interest”* means the beneficial right to receive payments and notices with respect to the Bonds which are held by the Depository under a Book-Entry System.

*“Bond”* or *“Bonds”* means any of the Bonds issued pursuant this Indenture.

*“Bond Fund”* means the Bond Fund created in Section 6.03 hereof, including therein the applicable Series Accounts.

*“Bond Register”* means, with respect to a Series of Bonds, the books kept and maintained by the related Registrar for registration and transfer of such Series of Bonds pursuant to Section 3.04 hereof.

*“Book-Entry Form”* or *“Book-Entry System”* means a form or system, as applicable, under which (a) the Beneficial Interests may be transferred only through a book-entry only system and (b) physical Bond certificates in fully registered form are registered only in the name of a Depository or its nominee as Owner, with the physical Bond certificates “immobilized” in the custody of the Depository or its nominee.

*“Business Day”* means, with respect to a Series of Bonds, a day of the year other than (a) a Saturday or Sunday, (b) a day on which commercial banks located in the city or cities in which the corporate trust office of the Trustee in Denver, Colorado, the Remarketing Agent or the related Paying Agent, Series Credit Facility Provider or Series Confirmation Provider are located are required or authorized to remain closed or (c) a day on which the New York Stock Exchange is closed.

*“Closing Date”* means, with respect to a Series of Bonds, the date of initial delivery of and payment for such Series of Bonds.

*“Company”* means Summit Utilities, Inc., a Colorado corporation, and its successors and assigns.

*“Debt Service Requirements”* means the principal of, premium, if any, and interest on the applicable Bonds for any period or payable at any time, whether due on an Interest Payment Date, at maturity or upon redemption or acceleration.

*“Depository”* means any securities depository that is a clearing agency or corporation under federal and state law operating and maintaining, with its participants or otherwise, a Book-Entry System to record ownership of book-entry interests in bonds, and to effect transfers of

book-entry interests in bonds in Book-Entry Form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

*“Direct Participants”* means Participants in the DTC System.

*“Electronic Means”* means telecopy, facsimile transmission, email transmission or other similar electronic means of communication providing evidence of transmission and receipt.

*“Eligible Account”* means an account that is either: (a) maintained with a federal or state-chartered depository institution or trust company that has a Standard & Poor’s short-term debt rating of at least “A-2” (or, if no short-term debt rating, a long-term debt rating of “BBB+”); or (b) maintained with the corporate trust department of a federal depository institution or state-chartered depository institution subject to regulations regarding fiduciary funds on deposit similar to Title 12 of the U.S. Code of Federal Regulations Section 9.10(b), which, in either case, has corporate trust powers and is acting in its fiduciary capacity. In the event that an account required to be an “Eligible Account” no longer complies with such requirement, the Trustee shall promptly (and in no event within 30 calendar days) move such account to another financial institution such that the Eligible Account requirement shall again be satisfied.

*“Eligible Funds”* means, with respect to each Series of Bonds, moneys which are (a) continuously on deposit with the Trustee in trust for the benefit of the Owners of such Series of Bonds in a separate and segregated subaccount of the related Series Debt Service Account in which only Eligible Funds are held, and (b) proceeds of (i) such Series of Bonds received contemporaneously with the issuance and sale of such Bonds, (ii) a drawing under the related Series Credit Facility or Series Confirmation, (iii) proceeds of the remarketing by the Remarketing Agent of the Bonds of such Series tendered for purchase pursuant to Sections 4.01 or 4.02(a) or 4.02(b) hereof, (iv) any other moneys as to which the Trustee has received a written Opinion of Bankruptcy Counsel, which opinion is acceptable to each Rating Service then rating such Series of Bonds, if any, or (v) the investment of funds qualifying as Eligible Funds under the foregoing clauses.

*“Eligible Investments”* means, with respect to each Series of Bonds, any of the following investments, so long as such investments at the time of investment are legal investments for the moneys proposed to be invested therein: (a) Government Obligations; (b) shares of a money market mutual fund or other collective investment fund registered under the federal Investment Company Act of 1940 whose shares are registered under the Securities Act, has assets of at least \$100,000,000 and has a rating “AAAm” or “AAAm-G” by a Rating Service, including money market mutual funds including, without limitation, any mutual fund for which the Trustee or an affiliate of the Trustee serves as investment manager, administrator, shareholder servicing agent and/or custodian or subcustodian, notwithstanding that (i) the Trustee or an affiliate of the Trustee receives fees from funds for services rendered, (ii) the Trustee collects fees for services rendered pursuant to this Indenture, which fees are separate from the fees received from such funds, and (iii) services performed for such funds and pursuant to this Indenture may at times duplicate those provided to such funds by the Trustee or an affiliate of the Trustee; (c) commercial paper having, at the time of investment or contractual commitment to invest therein, a rating from Standard & Poor’s and Moody’s in the highest investment category granted thereby; (d) repurchase and reverse repurchase agreements collateralized with securities described in (a) above, including those of the Trustee or any of its affiliates; (e) demand deposits,

including interest bearing money market accounts, time deposits, trust funds, trust accounts, overnight bank deposits, interest-bearing deposits and certificates of deposit or bankers acceptances of depository institutions, including the Trustee or any of its affiliates, rated in the “AA” long-term ratings category or higher by Standard & Poor’s or Moody’s; and (f) any other investments approved in writing by the related Series Credit Facility Provider.

“*Event of Default*” means, with respect to each Series of Bonds, any event specified in Section 8.01 hereof.

“*Exchange Act*” means the federal Securities Exchange Act of 1934, as amended.

“*Extraordinary Services*” and “*Extraordinary Expenses*” means all services rendered and all reasonable expenses properly incurred by the Trustee under this Indenture, other than Ordinary Services and Ordinary Expenses. Such Extraordinary Services and Extraordinary Expenses include, but are not limited to, services rendered and expenses incurred in connection with an Event of Default.

“*First Optional Redemption Date*” means, with respect to a Series of Bonds, the July 1 occurring on or after the 5<sup>th</sup> anniversary of the Fixed Interest Rate Commencement Date for such Series of Bonds.

“*Five Year Interest Rate*” means, with respect to a Series of Bonds: (a) the rate of interest per annum determined by the Remarketing Agent on the Interest Rate Determination Date immediately preceding the applicable Interest Rate Adjustment Date to be the lowest interest rate for the Interest Rate Period commencing on the applicable Interest Rate Adjustment Date and ending on the June 30 or December 31 nearest to but not later than the date which is five years from the Interest Rate Adjustment Date, in the judgment of the Remarketing Agent (taking into consideration current transactions and comparable securities with which the Remarketing Agent is involved or of which it is aware and prevailing financial market conditions), at which, as of such Interest Rate Determination Date, such Series of Bonds could be remarketed at par plus accrued interest (if any) on the Interest Rate Adjustment Date for that Interest Rate Period; or (b) in the event that the Remarketing Agent has been removed or has resigned and no successor has been appointed or the Remarketing Agent has failed to determine the Five Year Interest Rate for whatever reason, or the Five Year Interest Rate cannot be determined pursuant to clause (a) for whatever reason, the Alternate Rate; provided that in no event shall the Five Year Interest Rate exceed the Maximum Rate.

“*Fixed Interest Rate*” means, with respect to a Series of Bonds: (a) the fixed rate of interest per annum determined by the Remarketing Agent on the Interest Rate Determination Date immediately preceding the applicable Interest Period Reset Date to be the lowest interest rate for the period from the Interest Period Reset Date to the final maturity date of such Series of Bonds, in the judgment of the Remarketing Agent (taking into consideration current transactions and comparable securities with which the Remarketing Agent is involved or of which it is aware and prevailing financial market conditions), at which, as of such Interest Rate Determination Date, such Series of Bonds could be remarketed at par plus accrued interest (if any) on the Interest Period Reset Date; or (b) in the event that the Remarketing Agent has been removed or has resigned and no successor has been appointed or the Remarketing Agent has failed to determine the Fixed Interest Rate for whatever reason, or the Fixed Interest Rate cannot be

determined pursuant to clause (a) for whatever reason, the Alternate Rate; provided that in no event shall the Fixed Interest Rate exceed the Maximum Rate.

*“Fixed Interest Rate Commencement Date”* means, with respect to a Series of Bonds, the Interest Period Reset Date from and after which such Series of Bonds shall bear interest at the Fixed Interest Rate, as that date shall be established as provided in Section 3.02 hereof.

*“Government Obligations”* means: (a) direct obligations of the United States of America for the timely payment of which is fully and unconditionally guaranteed by the United States government; (b) obligations issued by a person controlled or supervised by and acting as an agency, establishment or instrumentality of the United States of America the payment of the principal of, premium, if any, and interest on which is fully guaranteed as a full faith and credit obligation of the United States of America (including any securities described in (a) or (b) issued or held in book-entry form on the books of the Department of the Treasury of the United States of America or a Federal Reserve Bank); and (c) securities which represent an interest in the obligations described in clauses (a) and (b) above.

*“Indenture”* means this Master Trust Indenture, together with all amendments and supplements hereto from time to time, including the Series Supplements.

*“Indexing Agent”* means Kenny Information Systems, 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 publish the indices referred to in the definition of Alternate Rate, then the term “Indexing Agent” shall be deemed to refer to any other entity publishing similar indices selected by the Company and approved by the related Series Credit Facility Provider and the Remarketing Agent (neither of whom shall be under any liability by reason of such approval).

*“Indirect Participant”* means a Person utilizing the Book-Entry System of the Depository by, directly or indirectly, clearing through or maintaining a custodial relationship with a Direct Participant.

*“Interest Payment Date”* means, with respect to a Series of Bonds: (i) during such time as such Series of Bonds bears interest at the Weekly Interest Rate or the One Month Interest Rate, the first Business Day of each month; (ii) during such time as such Series of Bonds bears interest at the Three Month Interest Rate, the first Business Day of each January, April, July and October; and (iii) during such time as such Series of Bonds bears interest at the Six Month Interest Rate, the One Year Interest Rate, the Five Year Interest Rate, the Ten Year Interest Rate or the Fixed Interest Rate, the first day of each January and July.

*“Interest Period Reset Date”* means, with respect to a Series of Bonds, the date on which the interest rate on such Series of Bonds converts from the Interest Rate Mode applicable to such Series of Bonds prior to such date to a new Interest Rate Mode. An Interest Period Reset Date shall be the first Business Day of a month; provided, however, that upon conversion from a Six Month Interest Rate, One Year Interest Rate, Five Year Interest Rate or Ten Year Interest Rate Mode, an Interest Period Reset Date shall be the first day of a month; and provided further, however, that except when converting from a Weekly Interest Rate Mode, an Interest Period

Reset Date may not occur prior to the end of the preceding Interest Rate Period and shall be the first day or Business Day after the end of such preceding Interest Rate Period.

*“Interest Rate Adjustment Date”* means, with respect to a Series of Bonds, any date on which the interest rate on such Series of Bonds may be adjusted, either as the result of the conversion of the interest rate on such Series of Bonds to a different Interest Rate Mode or by adjustment of the interest rate on such Series of Bonds within the applicable Interest Rate Mode. Except as otherwise provided with respect to an Interest Rate Adjustment Date which is also an Interest Period Reset Date, the Interest Rate Adjustment Date shall be Thursday of each week if such Series of Bonds bears interest at the Weekly Interest Rate, the Interest Rate Adjustment Date shall be the first Business Day of a month if such Series of Bonds bears interest at the One Month Interest Rate and the Interest Rate Adjustment Date shall be the first day of the first month of the Interest Rate Period if such Series of Bonds bears interest at the Three Month Interest Rate, the Six Month Interest Rate, the One Year Interest Rate, the Five Year Interest Rate or the Ten Year Interest Rate.

*“Interest Rate Determination Date”* means: (a) with respect to the Weekly Interest Rate, not later than 2:00 p.m. on Wednesday of each week, or the next preceding Business Day if such Wednesday is not a Business Day; (b) with respect to the One Month Interest Rate, the 7<sup>th</sup> Business Day preceding an Interest Rate Adjustment Date; and (c) with respect to the Three Month Interest Rate, the Six Month Interest Rate, the One Year Interest Rate, the Five Year Interest Rate, the Ten Year Interest Rate and the Fixed Interest Rate, the 10<sup>th</sup> Business Day preceding an Interest Rate Adjustment Date; provided, however, that upon any conversion to the Weekly Interest Rate from a different Interest Rate Mode, the first Interest Rate Determination Date shall mean not later than 2:00 p.m. on the Business Day preceding the Interest Period Reset Date.

*“Interest Rate Mode”* or *“Mode”* means any of those modes of interest with respect to the Bonds authorized by this Indenture, specifically the Weekly Interest Rate, the One Month Interest Rate, the Three Month Interest Rate, the Six Month Interest Rate, the One Year Interest Rate, the Five Year Interest Rate, the Ten Year Interest Rate and the Fixed Interest Rate.

*“Interest Rate Period”* means that period of time for which the interest rate with respect a Series of Bonds has been determined by the Remarketing Agent, or otherwise as provided in the definition of the applicable Interest Rate Mode, commencing on the applicable Interest Rate Adjustment Date and terminating on the day immediately preceding the following Interest Rate Adjustment Date.

*“Letter of Representations”* means, with respect to each Series of Bonds, the Blanket Issuer Letter of Representations filed by the Company with the Depository and the Operational Arrangements Letter of Representations filed by the Trustee with the Depository.

*“Maximum Rate”* means, unless otherwise provided in the Series Supplement with respect to a particular Series of Bonds, 10.00% per annum.

*“Moody’s”* means Moody’s Investors Service, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and its successors and assigns, except that if such division 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 Company and approved by the related Series Credit Facility Provider (which shall not be under any liability by reason of such approval).

“*Notice Address*” means the addresses set forth in Section 13.02 hereof.

“*Offering Agent*” means, with respect to a Series of Bonds, each investment banking firm entering into a Series Offering Agreement with the Company relating to such Series of Bonds.

“*One Month Interest Rate*” means, with respect to a Series of Bonds: (a) the rate of interest per annum determined by the Remarketing Agent on the Interest Rate Determination Date immediately preceding the applicable Interest Rate Adjustment Date to be the lowest interest rate for the Interest Rate Period commencing on the applicable Interest Rate Adjustment Date to and including the day preceding the first Business Day of the next month, in the judgment of the Remarketing Agent (taking into consideration current transactions and comparable securities with which the Remarketing Agent is involved or of which it is aware and prevailing financial market conditions), at which, as of such Interest Rate Determination Date, such Series of Bonds could be remarketed at par plus accrued interest (if any) on the Interest Rate Adjustment Date for that Interest Rate Period; or (b) in the event that the Remarketing Agent has been removed or has resigned and no successor has been appointed or the Remarketing Agent has failed to determine the One Month Interest Rate for whatever reason, or the One Month Interest Rate cannot be determined pursuant to clause (a) for whatever reason, the Alternate Rate; provided that in no event shall the One Month Interest Rate exceed the Maximum Rate.

“*One Year Interest Rate*” means, with respect to a Series of Bonds: (a) the rate of interest per annum determined by the Remarketing Agent on the Interest Rate Determination Date immediately preceding the applicable Interest Rate Adjustment Date to be the lowest interest rate for the Interest Rate Period commencing on the applicable Interest Rate Adjustment Date and ending on the June 30 or December 31 nearest to but not later than the date which is one year from the Interest Rate Adjustment Date, in the judgment of the Remarketing Agent (taking into consideration current transactions and comparable securities with which the Remarketing Agent is involved or of which it is aware and prevailing financial market conditions), at which, as of such Interest Rate Determination Date, such Series of Bonds could be remarketed at par plus accrued interest (if any) on the Interest Rate Adjustment Date for that Interest Rate Period; or (b) in the event that the Remarketing Agent has been removed or has resigned and no successor has been appointed, or the Remarketing Agent has failed to determine the One Year Interest Rate for whatever reason, or the One Year Interest Rate cannot be determined pursuant to clause (a) for whatever reason, the Alternate Rate; provided that in no event shall the One Year Interest Rate exceed the Maximum Rate.

“*Opinion of Bankruptcy Counsel*” means the written opinion of nationally recognized counsel experienced in bankruptcy law matters and acceptable to the Trustee that the deposit and use of certain moneys will not constitute an avoidable preferential payment pursuant to Section 547 of the Bankruptcy Code or an avoidable post-petition transfer pursuant to Section 549 of the Bankruptcy Code, recoverable from the Owners of a Series of Bonds pursuant to Section 550 of the Bankruptcy Code in the event of an act of bankruptcy by or in respect of the Company or any

related Series Borrower, or any guarantor or obligor of the Company or the related Series Borrower or any general partner of any obligor of the Company or the related Series Borrower were to become a debtor under the Bankruptcy Code.

“*Opinion of Counsel*” means a written opinion of an attorney-at-law or firm of attorneys satisfactory to the Trustee and licensed to practice law in the State who shall be engaged by the Company to deliver the opinions which may be required hereunder.

“*Ordinary Services*” and “*Ordinary Expenses*” means those standard and customary services normally rendered, and those reasonable expenses normally incurred, by a trustee under instruments similar to this Indenture, and shall in no event include services rendered and expenses incurred in connection with an Event of Default.

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

(a) Bonds canceled upon surrender, exchange or transfer, or canceled because of payment or redemption on or prior to that date;

(b) Bonds, or the portion thereof, the payment, redemption or purchase for cancellation of which sufficient money has been deposited and credited with the Trustee or any Paying Agent pursuant to this Indenture on or prior to that date for that purpose (whether upon or prior to the maturity or redemption date of those Bonds); provided, however, that if any of those Bonds are to be redeemed prior to their maturity, notice of that redemption shall have been given or arrangements satisfactory to the Trustee shall have been made for giving notice of that redemption, or waiver by the affected Owners of that notice satisfactory in form to the Trustee shall have been filed with the Trustee;

(c) Bonds, or the portion thereof, which are deemed to have been paid and discharged, or caused to have been paid and discharged, pursuant to the provisions of this Indenture; and

(d) Bonds in lieu of which others have been authenticated under Section 3.05 of this Indenture;

provided, however, that in determining whether the Owners of the requisite percentage of Bonds have concurred in any demand, direction, request, notice, consent, waiver or other action under this Indenture, Bonds (other than Pledged Bonds) that are owned by a Series Borrower or any Person directly or indirectly controlling or controlled by or under direct or indirect common control with a Series Borrower shall be disregarded and deemed not to be outstanding for the purpose of any such determination; provided, however, that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent or waiver, only such Bonds that a Responsible Officer of the Trustee actually knows are so owned shall be disregarded. Bonds so owned that have been pledged in good faith may be regarded as outstanding for such purpose 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 controlling or controlled by or under direct or indirect common control with the Series Borrower.

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.

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

“*Paying Agent*” means, with respect to a Series of Bonds, the Trustee or any bank or trust company designated as a Paying Agent for such Series of Bonds by or in accordance with Section 7.12 of this Indenture.

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

“*Pledged Bonds*” means, with respect to a Series of Bonds, Bonds of such Series or Beneficial Interests therein registered or recorded in the name of the related Series Credit Facility Provider or its designee (if purchased with funds drawn under the related Series Credit Facility) or the related Series Confirmation Provider or its designee (if purchased with funds drawn under the related Series Confirmation), as applicable, as pledgee, and securing obligations under the related Series Credit Facility Agreement or related Series Confirmation Agreement, as applicable, as provided in Section 4.05 hereof.

“*Predecessor Bond*” of any particular Bond means every previous Bond evidencing all or a portion of the same debt as that evidenced by the particular Bond. For the purposes of this definition, any Bond authenticated and delivered under Section 3.05 of this Indenture in lieu of a lost, stolen or destroyed Bond shall, except as otherwise provided in Section 3.05 hereof, be deemed to evidence the same debt as the lost, stolen or destroyed Bond.

“*Project Fund*” means the Project Fund created pursuant to Section 6.01 hereof, including therein the applicable Series Accounts.

“*Purchase Date*” means any date upon which Bonds or Beneficial Interests are required to be purchased by the Trustee pursuant to Sections 4.01 or 4.02 hereof.

“*Rating Service*” means, with respect to each Series of Bonds, Standard & Poor’s and/or Moody’s, according to which of such rating agencies then rates such Series of Bonds; provided, however, that if neither of such rating agencies then rates such Series of Bonds, the term “Rating Service” shall mean any other nationally recognized rating service from which a rating on such Series of Bonds has been sought and which is then rating such Series of Bonds, and its successors and assigns. All references to the Rating Service in this Indenture and the Series Loan Agreements shall be inapplicable and of no effect if such Series of Bonds is not then rated by a Rating Service.

“*Registrar*” means, with respect to a Series of Bonds, the Trustee or any bank or trust company designated as the Registrar for such Series of Bonds by or in accordance with Section 7.11 of this Indenture.



“*Regular Record Date*” means, with respect to any Bond, the 5<sup>th</sup> Business Day next preceding an Interest Payment Date applicable to that Bond.

“*Remarketing Agent*” means the Remarketing Agent appointed in accordance with Section 7.13 hereof. Unless and until another Remarketing Agent shall be so appointed, Gates Capital Corporation, the principal office of which, for purposes of this Indenture, is located in Bridgewater, New Jersey, shall serve as Remarketing Agent for the Bonds.

“*Remarketing Reimbursement Fund*” means the Remarketing Reimbursement Fund created in Section 6.04 hereof, including therein the applicable Series Accounts.

“*Replacement Date*” means the date on which a Substitute Series Credit Facility and/or a Substitute Series Confirmation is to take effect.

“*Responsible Officer*” means, when used with respect to the Trustee, the president, any vice president, any assistant vice president, the secretary, any assistant secretary, the treasurer, any assistant treasurer or any other officer of the Trustee within the corporate trust office of the Trustee designated in Section 13.02 hereof (the “Corporate Trust Office”) (or any successor corporate trust office) customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred at the Corporate Trust Office because of such person’s knowledge of and familiarity with the particular subject and having direct responsibility for the administration of this Indenture.

“*Securities Act*” means the federal Securities Act of 1933, as amended.

“*Series*” or “*Series of Bonds*” means a series of Bonds issued pursuant to this Indenture and the related Series Supplement.

“*Series Accounts*” means, with respect to each Series of Bonds, the accounts established in the Project Fund, the Bond Fund and the Remarketing Reimbursement Fund by the Trustee pursuant to Sections 6.02, 6.03 and 6.04 hereof with respect to such Series.

“*Series Borrower*” means, with respect to a Series of Bonds, the borrower under the related Series Loan Agreement.

“*Series Confirmation*” means, if required: (a) an irrevocable confirming letter of credit issued by a Series Confirmation Provider and delivered to the Trustee pursuant to Section 2.07 hereof and the related Series Supplement, as the same may be transferred, reissued, extended, amended to change the interest coverage period as contemplated in Sections 3.02 and 2.07 hereof and the related Series Supplement or replaced in accordance with this Indenture, the Series Confirmation Agreement and such Series Confirmation; and (b) upon the issuance and effectiveness thereof, any Substitute Series Confirmation.

“*Series Confirmation Account*” means, with respect to Series of Bonds requiring a Series Confirmation, the Confirmation Account established in the Bond Fund by the Trustee pursuant to Section 6.03 hereof with respect to such Series.

*“Series Confirmation Agreement”* means, with respect to each Series of Bonds requiring a Series Confirmation, the agreement pursuant to which the Series Confirmation is issued, as amended and supplemented from time to time. Upon the issuance of any Substitute Series Confirmation, *“Series Confirmation Agreement”* shall mean the agreement pursuant to which such Substitute Series Confirmation is issued, as amended and supplemented from time to time.

*“Series Confirmation Provider”* means, with respect to each Series of Bonds requiring a Series Confirmation, the issuer of the related Series Confirmation or Substitute Series Confirmation, which shall be either a bank within the meaning of Section 3(a)(2) of the Securities Act or a savings and loan association or similar institution within the meaning of Section 3(a)(5) of the Securities Act.

*“Series Confirmation Providers”* means, collectively, the Series Confirmation Provider with respect to each Series Confirmation for the outstanding Bonds.

*“Series Confirmation Purchase Account”* means, with respect to each Series of Bonds requiring a Series Confirmation, the Confirmation Purchase Account established in the Remarketing Reimbursement Fund by the Trustee pursuant to Section 6.04 hereof with respect to such Series.

*“Series Confirmation Release Date”* means, with respect to a Series Confirmation, the date upon which such Series Confirmation is surrendered to the Series Confirmation Provider for cancellation when the Series Confirmation is no longer required to be provided in the related Series Supplement, which date shall not be less than 30 days following the notice required by Section 4.02(d) hereof.

*“Series Confirmations”* means, collectively, the Series Confirmation with respect to each Series of outstanding Bonds.

*“Series Credit Facilities”* means, collectively, the Series Credit Facility with respect to each Series of outstanding Bonds.

*“Series Credit Facility”* means, with respect to each Series of Bonds: (a) the irrevocable, direct pay letter of credit to be issued by a Series Credit Facility Provider and delivered to the Trustee on the Closing Date in accordance with Section 2.06 hereof, as the same may be transferred, reissued, extended, amended to change the interest coverage period as contemplated in Section 3.02 and Section 2.06 hereof or replaced in accordance with this Indenture, the Series Credit Facility Agreement and such Series Credit Facility, and (b) upon the issuance and effectiveness of a Substitute Series Credit Facility meeting the requirements of Section 2.06 hereof.

*“Series Credit Facility Account”* means, with respect to each Series of Bonds, the Credit Facility Account established in the Bond Fund by the Trustee pursuant to Section 6.03 hereof with respect to such Series.

*“Series Credit Facility Agreement”* means, with respect to each Series of Bonds, the agreement pursuant to which the related Series Credit Facility is issued, as amended and supplemented from time to time. Upon the issuance of any Substitute Series Credit Facility,

“Series Credit Facility Agreement” shall mean the agreement pursuant to which such Substitute Series Credit Facility is issued as amended and supplemented from time to time.

“*Series Credit Facility Provider*” means, with respect to each Series of Bonds, the issuer of the related Series Credit Facility or Substitute Series Credit Facility, which shall be either a bank within the meaning of Section 3(a)(2) of the Securities Act or a savings and loan association or similar institution within the meaning of Section 3(a)(5) of the Securities Act.

“*Series Credit Facility Providers*” means, collectively, the Series Credit Facility Provider with respect to each Series Credit Facility for the outstanding Bonds.

“*Series Credit Facility Purchase Account*” means, with respect to each Series of Bonds, the Credit Facility Purchase Account established in the Remarketing Reimbursement Fund by the Trustee pursuant to Section 6.04 hereof with respect to such Series.

“*Series Debt Service Account*” means, with respect to each Series of Bonds, the Debt Service Account established in the Bond Fund by the Trustee pursuant to Section 6.03 hereof with respect to such Series.

“*Series Designation*” means the year and letter designating a particular Series of Bonds.

“*Series Documents*” means, with respect to each Series of Bonds, the related Series Supplement, Series Loan Agreement, Series Promissory Note, Series Credit Facility Agreement, Series Confirmation Agreement, Series Remarketing Agreement, Series Offering Agreement and such the other documents executed and delivered in connection with the issuance, sale and delivery of such Series of Bonds.

“*Series Loan*” means, with respect to a Series of Bonds, the loan made by the Company to the Series Borrower of the proceeds received from the sale of such Series of Bonds pursuant to the related Series Loan Agreement to finance the related Series Project.

“*Series Loan Agreement*” means, with respect to a Series of Bonds, the Loan Agreement entered into by and between the Company and the related Series Borrower in connection with the related Series Loan, as amended or supplemented from time to time.

“*Series Loan Payments*” means, with respect to a Series of Bonds, the amounts required to be paid by the related Series Borrower in repayment of the related Series Loan pursuant to the provisions of the related Series Loan Agreement and Series Promissory Note.

“*Series Offering Agreement*” means, with respect to a Series of Bonds, the agreement by and between the Company and one or more Offering Agents, and approved by the related Series Borrower, with regard to the offering, underwriting, placement and/or sale of such Series of Bonds.

“*Series Promissory Note*” means, with respect to a Series of Bonds, the promissory note of the related Series Borrower evidencing the obligation of such Series Borrower to make the Series Loan Payments under the related Series Loan Agreement.

“*Series Pledged Revenues*” means, with respect to each Series of Bonds, (a) the related Series Loan Payments, (b) all of the moneys received or to be received by the Company or the Trustee in respect of repayment of the related Series Loan, (c) all moneys and investments in the related Series Accounts of the Bond Fund, including, without limitation, moneys received by the Trustee under or pursuant to the related Series Credit Facility or Series Confirmation, (d) any moneys and investments in the related Series Account of the Project Fund, (e) any other moneys or assets pledged in the related Series Supplement to the payment of such Series of Bonds, the related Series Credit Facility Provider and the Series Confirmation Provider, and (f) all income and profit from the investment of the foregoing.

“*Series Project*” means, with respect to a Series of Bonds, the purposes for which such Series of Bonds is issued as described in the related Series Supplement.

“*Series Project Account*” means, with respect to each Series of Bonds, the Project Account established in the Project Fund by the Trustee pursuant to Section 6.02 hereof with respect to such Series.

“*Series Project Costs*” means all lawful costs attributable to a Series Project, including the costs of issuing such Series of Bonds.

“*Series Remarketing Agreement*” means, with respect to each Series of Bonds, the Remarketing Agreement entered into by and between the Company and the Remarketing Agent in connection with such Series of Bonds.

“*Series Remarketing Proceeds Account*” means, with respect to each Series of Bonds, the Remarketing Proceeds Account established in the Remarketing Reimbursement Fund by the Trustee pursuant to Section 6.04 hereof with respect to such Series.

“*Series Supplement*” means the Supplemental Indenture authorized and executed pursuant to the terms of this Indenture for the purpose of creating a Series of Bonds.

“*Six Month Interest Rate*” means, with respect to a Series of Bonds: (a) the rate of interest per annum determined by the Remarketing Agent on the Interest Rate Determination Date immediately preceding the applicable Interest Rate Adjustment Date to be the lowest interest rate for the Interest Rate Period commencing on the applicable Interest Rate Adjustment Date and ending on the June 30 or December 31 nearest to but not later than the date which is 6 months from the Interest Rate Adjustment Date, in the judgment of the Remarketing Agent (taking into consideration current transactions and comparable securities with which the Remarketing Agent is involved or of which it is aware and prevailing financial market conditions), at which, as of such Interest Rate Determination Date, such Series of Bonds could be remarketed at par plus accrued interest (if any) on the Interest Rate Adjustment Date for that Interest Rate Period: or (b) in the event that the Remarketing Agent has been removed or has resigned and no successor has been appointed, or the Remarketing Agent has failed to determine the Six Month Interest Rate for whatever reason, or the Six Month Interest Rate cannot be determined pursuant to clause (a) for whatever reason, the Alternate Rate; provided that in no event shall the Six Month Interest Rate exceed the Maximum Rate.

“*Special Record Date*” means, with respect to any Bond, the date established by the Trustee in connection with the payment of overdue interest on that Bond pursuant to Section 3.03 hereof.

“*Standard & Poor’s*” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, 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 division 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 Company and approved by the Series Credit Facility Providers (which shall not be under any liability by reason of such approval).

“*State*” means the State of Colorado.

“*Stated Expiration Date*” means the stated expiration date of a Series Credit Facility or the stated expiration date of a Series Confirmation, in either case as such date may be extended from time to time pursuant to its terms, or of any Substitute Series Credit Facility or Substitute Series Confirmation.

“*Substitute Series Confirmation*” means, with respect to each Series of Bonds requiring a Series Confirmation, an irrevocable confirming letter of credit issued in replacement of the then-existing Series Confirmation and meeting the requirements of the related Series Supplement.

“*Substitute Series Credit Facility*” means, with respect to each Series of Bonds, an irrevocable direct pay letter of credit issued in replacement of the then-existing Series Credit Facility and meeting the requirements of Section 2.06 hereof.

“*Supplemental Indenture*” means any amendment, supplement or other modification to this Indenture or the Series Supplements entered into by and between the Company and the Trustee in accordance with Article IX hereof, including, without limitation, the Series Supplements.

“*Supplemental Series Credit Facility*” means a credit facility, agreement or arrangement in addition to a Series Credit Facility and/or Series Confirmation, including, without limitation, a bond insurance policy, collateral arrangement, surety bond, standby bond purchase agreement or similar arrangement the purpose of which is to enhance the credit of a Series of Bonds in order to obtain or maintain a rating on such Series of Bonds.

“*Ten Year Interest Rate*” means, with respect to a Series of Bonds: (a) the rate of interest per annum determined by the Remarketing Agent on the Interest Rate Determination Date immediately preceding the applicable Interest Rate Adjustment Date to be the lowest interest rate for the Interest Rate Period commencing on the applicable Interest Rate Adjustment Date and ending on the June 30 or December 31 nearest to but not later than the date which is 10 years from the Interest Rate Adjustment Date, in the judgment of the Remarketing Agent (taking into consideration current transactions and comparable securities with which the Remarketing Agent is involved or of which it is aware and prevailing financial market conditions), at which, as of such Interest Rate Determination Date, such Series of Bonds could be remarketed at par plus accrued interest (if any) on the Interest Rate Adjustment Date for that Interest Rate Period; or

(b) in the event that the Remarketing Agent has been removed or has resigned and no successor has been appointed or the Remarketing Agent has failed to determine the Ten Year Interest Rate for whatever reason, or the Ten Year Interest Rate cannot be determined pursuant to clause (a) for whatever reason, the Alternate Rate; provided that in no event shall the Ten Year Interest Rate exceed the Maximum Rate.

*“Three Month Interest Rate”* means, with respect to a Series of Bonds: (a) the rate of interest per annum determined by the Remarketing Agent on the Interest Rate Determination Date immediately preceding the applicable Interest Rate Adjustment Date to be the lowest interest rate for the Interest Rate Period commencing on the applicable Interest Rate Adjustment Date to and including the day preceding the first Business Day of the January, April, July or October nearest to but not later than the date which is three months from the Interest Rate Adjustment Date, in the judgment of the Remarketing Agent (taking into consideration current transactions and comparable securities with which the Remarketing Agent is involved or of which it is aware and prevailing financial market conditions), at which, as of such Interest Rate Determination Date, such Series of Bonds could be remarketed at par plus accrued interest (if any) on the Interest Rate Adjustment Date for that Interest Rate Period, or (b) in the event that the Remarketing Agent has been removed or has resigned and no successor has been appointed or the Remarketing Agent has failed to determine the Three Month Interest Rate for whatever reason, or the Three Month Interest Rate cannot be determined pursuant to clause (a) for whatever reason, the Alternate Rate; provided that in no event shall the Three Month Interest Rate exceed the Maximum Rate.

*“Trustee”* means the trustee at the time acting as such under this Indenture, originally The Bank of New York Mellon Trust Company, N.A., a national banking association, the office of which, for purposes of this Indenture, is located in Denver, Colorado, and any successor Trustee as determined or designated under or pursuant to this Indenture.

*“Trust Estate”* means, with respect to each Series of Bonds, the property conveyed to the Trustee pursuant to the Granting Clauses of this Indenture to secure such Series of Bonds and the related Series Credit Facility Provider and Confirmation Provider.

*“Trust Indenture Act”* means the federal Trust Indenture Act of 1939, as amended.

*“Unassigned Company Rights”* means, with respect to each Series of Bonds, the Unassigned Company Rights as defined in the related Series Loan Agreement.

*“Weekly Interest Rate”* means, with respect to a Series of Bonds: (a) the rate of interest per annum determined by the Remarketing Agent on the Interest Rate Determination Date immediately preceding the applicable Interest Rate Adjustment Date to be the lowest interest rate for the Interest Rate Period of one week (or less in the case of any such Interest Rate Period commencing on an Interest Period Reset Date which is not a Thursday or ending on the day preceding an Interest Period Reset Date) commencing on the applicable Interest Rate Adjustment Date, in the judgment of the Remarketing Agent (taking into consideration current transactions and comparable securities with which the Remarketing Agent is involved or of which it is aware and prevailing financial market conditions), at which, as of such Interest Rate Determination Date, such Series of Bonds could be remarketed at par plus accrued interest (if any) on the Interest Rate Adjustment Date for that Interest Rate Period; or (b) in the event that the

Remarketing Agent has been removed or has resigned and no successor has been appointed or the Remarketing Agent has failed to determine the Weekly Interest Rate for whatever reason, or the Weekly Interest Rate cannot be determined pursuant to clause (a) for whatever reason, the Alternate Rate; provided that in no event shall the Weekly Interest Rate exceed the Maximum Rate.

**Section 1.02 Interpretation.** Any reference herein to the Company or to any officer, employee or official thereof includes entities, officers, employees or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or who are lawfully performing their functions.

Any reference to a section, provision or chapter of the constitution or statutes of a state or of the United States of America shall include that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this paragraph if it constitutes in any way an impairment of rights or obligations of the Company, the Owners, the Trustee, a Registrar, a Paying Agent, a Series Credit Facility Provider, a Series Confirmation Provider, a Series Borrower or the Remarketing Agent under this Indenture, the Bonds, the Series Credit Facilities, the Series Confirmations, the Series Credit Facility Agreements, the Series Remarketing Agreements, the Series Loan Agreements, the Series Promissory Notes or any other instrument or document entered into in connection with any of the foregoing, including, without limitation, any alteration of the obligation to pay Debt Service Requirements in the amount and manner, at the times, and from the sources provided in this Indenture, except as permitted herein.

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

Unless the context indicates otherwise, any reference herein to the Indenture shall be deemed to include the Series Supplements and any other Supplemental Indentures.

The appending to any defined term hereunder of the phrase “[Series Designation]” shall mean and refer to the substance of such defined term as it relates to a particular Series of Bonds and no other Series of Bonds.

**Section 1.03 Captions and Headings.** The captions and headings in this Indenture are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

**Section 1.04 Colorado Time.** Unless otherwise expressly stated, all times referred to in this Indenture shall mean prevailing Denver, Colorado (Mountain) time.

## **ARTICLE II AUTHORIZATION AND ISSUANCE OF BONDS**

**Section 2.01 Series and Amount of Bonds.** Bonds issuable under this Indenture shall be issued in such Series and principal amounts as may from time to time be created by Series Supplements permitted by this Indenture. Subject to any limitations contained in any Series Supplement, Series Credit Facility Agreement or Series Confirmation Agreement, the number of Series of Bonds that may be created under this Indenture or the aggregate principal amount of Bonds of each Series that may be issued, authenticated and delivered under this Indenture is not limited. No Bonds may be issued pursuant to this Indenture in addition to those authorized by this Section, except Bonds issued upon transfer or exchange pursuant to Section 3.04 hereof, temporary Bonds issued pursuant to Section 2.04 hereof, replacement Bonds issued pursuant to Section 3.05 hereof and Bonds issued pursuant to Section 5.02 hereof.

**Section 2.02 Purpose and Terms of Bonds.** Each Series of Bonds shall be issued for such lawful and proper purposes of the Company as shall be recited in the related Series Supplement, and shall have such terms as are provided in this Indenture and the related Series Supplement.

Each Series of Bonds shall be designated “Summit Utilities, Inc. Variable Rate Demand Revenue Bonds, Series [Series Designation],” and shall bear a Series Designation so as to differentiate the Bonds of such Series from the Bonds of all other Series.

The Bonds of each Series (i) shall be issued in the aggregate principal amount and in such denominations as are authorized in the related Series Supplement, (ii) shall be dated and bear interest from the related Closing Date, (iii) shall bear interest as set forth in Section 3.02 hereof, (iv) shall be issued in the Interest Rate Mode set forth in the related Series Supplement and (v) shall mature as set forth in the related Series Supplement.

Anything in this Indenture to the contrary notwithstanding, subject to compliance with Section 2.03(c) hereof, any provision of this Indenture may be varied as to a particular Series of Bonds as provided in the related Series Supplement; provided, however, that any provision of this Indenture affecting a Series Credit Facility Provider or a Confirmation Provider may be varied only with the prior written consent of such Series Credit Facility Provider or Confirmation Provider.

### **Section 2.03 Conditions Precedent to Delivery of Bonds.**

(a) The Company shall execute and deliver the Bonds of any Series to the Trustee, and the Trustee shall, upon receipt by the Trustee of the purchase price for the Bonds of such Series, authenticate the Bonds of such Series and deliver them to the initial purchasers thereof. Bonds may be issued for any lawful and proper purposes of the Company.

(b) A Series of Bonds may be issued without notice to or the consent of the Owners of the outstanding Series of Bonds.



(c) Except for the issuance of the initial Series of Bonds hereunder, notice of the proposed issuance of a Series of Bonds, and copies of the related Series Documents, shall be provided to the Credit Facility Providers and Series Confirmation Providers for all the then-outstanding Series of Bonds, not less than 30 days prior to the issuance of such Series of Bonds.

(d) Prior to and as a condition precedent to the authentication and delivery of a Series of Bonds, there shall be filed with and delivered to the Trustee:

(i) copies, duly certified by an authorized representative of the Company, of the resolutions adopted by the board of directors of the Company authorizing the execution and delivery of this Indenture, the related Series Documents, the related offering document and the issuance of such Series of Bonds;

(ii) original executed counterparts of the related Series Documents, Series Credit Facility and Series Confirmation;

(iii) a written order of the Company, directed to the Trustee, instructing the Trustee to authenticate such Series of Bonds and to make them available for delivery to the initial purchasers thereof upon payment to the Trustee for the account of the Company of the sum specified in such written order;

(iv) an Opinion of Counsel, who may be counsel for the Company, reasonably satisfactory to the Trustee, to the effect that: (A) the documents submitted to the Trustee in connection with the request then being made comply with the requirements of this Indenture; (B) the issuance of such Series of Bonds has been duly authorized; and (C) all conditions precedent to the delivery of such Series of Bonds have been fulfilled;

(v) an Opinion of Counsel, who may be counsel to the Company, to the effect that: (A) when executed for and in the name and on behalf of the Company and when authenticated and delivered by the Trustee, such Series of Bonds will be legal and valid general obligations of the Company in accordance with their terms, subject to exceptions reasonably satisfactory to the Trustee for bankruptcy, insolvency and similar laws and the application of equitable principles, ranking *pari passu* with all other senior unsecured debt of the Company (subject to the provisions of the Indenture and the related Series Supplement pledging particular moneys, assets or revenues to the payment of such Series of Bonds); (B) that such Series of Bonds is not subject to registration under or has been registered pursuant to the Securities Act; and (C) that this Indenture and the related Series Supplement are not subject to qualification under or have been qualified pursuant to the Trust Indenture Act;

(vi) such other Opinions of Counsel to the Company and opinions of counsel to the related Series Credit Facility Provider and Series Confirmation Provider as may be required by the related Series Supplement and/or Series Offering Agreement;

(vii) such certificates of the Company, the related Series Credit Facility Provider, the related Series Confirmation Provider, the Trustee and other Persons as may be required by the related Series Supplement and/or Series Offering Agreement;

(viii) if any other Series of Bonds is then Outstanding, evidence that the issuance of such Series of Bonds will not result, by itself, in a reduction or withdrawal of the then current rating (if any) on such other Outstanding Series of Bonds;

(ix) evidence that the notice required by paragraph (c) of this Section 2.03 has been duly given to the Credit Facility Providers and Confirmation Providers; and

(x) any consent or other documents as may be required by the Series Documents for any then-Outstanding Series of Bonds.

**Section 2.04 Form of Bonds.** The form, certificate of authentication, form of assignment and Instructions to Sell with respect to each Series of Bonds shall be substantially in the forms thereof set forth in the related Series Supplement, and may have such letters, numbers or other marks of identification and such legends and endorsements placed thereon as may be required to comply with any applicable laws or rules or regulations, or as may, consistently herewith, be determined by the officers executing such Bonds, as evidenced by their execution of the Bonds. In the preparation of definitive forms of Bonds relative to the periods before and after an Interest Period Reset Date, pertinent provisions of the forms of Bonds may be omitted, as appropriate.

During such time as the Bonds are held by the Depository, the Bonds shall be issued in compliance with the requirements of the Depository. All Bonds, unless a Supplemental Indenture shall have been executed and delivered pursuant to Section 9.02(h) hereof, shall be in fully registered form, and, except as provided in Section 3.03 hereof and as provided in Sections 3.07, 4.01, 4.02, 4.04 and 4.05 hereof with respect to Beneficial Interests, the Owner of a Bond shall be regarded as the absolute owner thereof for all purposes of this Indenture.

The Bonds shall be negotiable instruments and shall express the purpose for which they are issued and any other statements or legends which may be required by law.

Bonds may be initially issued in temporary form exchangeable for definitive Bonds when ready for delivery. The temporary Bonds shall be of such denomination or denominations as may be determined by the Company, and may contain such reference to any of the provisions of this Indenture as may be appropriate. Every temporary Bond shall be executed by the Company and be authenticated by the Trustee upon the same conditions and in substantially the same manner as the definitive Bonds. If the Company issues temporary Bonds, it shall execute and furnish definitive Bonds at the Company's expense (and without cost to the Owners of such temporary Bonds), and thereupon the temporary Bonds shall be surrendered for cancellation in exchange therefor at the principal office of the Trustee, and the Trustee shall authenticate and deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive registered Bonds of authorized denominations. Until so exchanged, the temporary Bonds shall

be entitled to the same benefits under this Indenture as definitive Bonds authenticated and delivered hereunder.

**Section 2.05 Execution and Authentication of Bonds.** The Bonds shall be signed by manual or facsimile signature by the President of the Company and the Secretary of the Company. All authorized facsimile signatures shall have the same force and effect as manual signatures. In case any officer whose signature or a facsimile of whose signature appears on any Bond shall cease to be that officer before the issuance of the Bond, the officer's signature or the facsimile thereof nevertheless shall be valid and sufficient for all purposes, the same as if he or she had remained in office until that time. Any Bond may be executed on behalf of the Company by an officer who, on the date of execution is the proper officer, although on the date of the Bond that person was not the proper officer.

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

**Section 2.06 Series Credit Facilities.** At all times with respect to each Series of Bonds, there shall be continuously available to the Trustee, as beneficiary, a Series Credit Facility meeting the following requirements:

(a) The Series Credit Facility shall be an irrevocable obligation of the related Credit Facility Provider to make payment to the Trustee of up to the amounts therein specified with respect to: (i) the principal amount of the Bonds of such Series outstanding so as to enable the Trustee to pay (A) the principal amount of the Bonds of such Series when due at maturity or upon redemption or acceleration, and (B) an amount equal to the principal portion of the purchase price of any Bonds of such Series and Beneficial Interests therein tendered for purchase by the Owners or Beneficial Owners thereof; plus (ii) the amount of interest due on the Bonds of such Series but not less than 45 days' accrued interest (105 days' accrued interest if such Series of Bonds bears interest at the Three Month Interest Rate, or 195 days' accrued interest if such Series of Bonds bears interest at the Six Month Interest Rate, the One Year Interest Rate, the Five Year Interest Rate, the Ten Year Interest Rate or the Fixed Interest Rate), in each case at the Maximum Rate, so as to enable the Trustee to pay (A) interest on the Bonds of such Series when due, and (B) an amount equal to the interest portion, if any, of the purchase price of any Bonds of such Series and Beneficial Interests therein tendered for purchase by the Owners or Beneficial Owners thereof.

(b) Each Series Credit Facility shall secure only a single Series of Bonds unless approved by each Rating Service that is then rating the related Series of Bonds.

(c) With respect to each Series of Bonds, the related Series Borrower may, at its option and pursuant to any requirements contained in the related Series Documents, provide for the delivery to the Trustee of a Substitute Series Credit Facility to take effect on the applicable Replacement Date. If such Series of Bonds is bearing interest at the Weekly Interest Rate or the Fixed Interest Rate, the Replacement Date may be any date selected by the related Series Borrower; provided, however, that such date allows the Trustee reasonable time to comply with the notice provisions of Section 4.02(b) hereof. If such Series of Bonds is bearing interest at the One Month Interest Rate, the Three Month Interest Rate, the Six Month Interest Rate, the One Year Interest Rate, the Five Year Interest Rate or the Ten Year Interest Rate, the Replacement Date shall be (i) an Interest Rate Adjustment Date selected by the related Series Borrower, or (ii) the Fixed Interest Rate Commencement Date if such Series of Bonds is to bear interest at the Fixed Interest Rate; provided, however, that such date allows the Trustee reasonable time to comply with the notice provisions of Section 4.02(b) hereof. The Substitute Series Credit Facility shall have a term of not less than one year (or until the maturity date of such Series of Bonds if less than one year from the Replacement Date).

Prior to the replacement of a Series Credit Facility with a Substitute Series Credit Facility, the Trustee (i) shall give notice of such event to the Owners of the related Series of Bonds, the Credit Facility Providers and Confirmation Providers with respect to all then-outstanding Series of Bonds, and, if such Series of Bonds is then rated by a Rating Service, to each Rating Service which then has a rating on such Series of Bonds, and (ii) shall have received the following on or prior to the Replacement Date; provided, however, that the Trustee must receive the items in paragraph (D) below prior to the date that it is required to give notice of mandatory tender pursuant to Section 4.02(b) hereof:

(A) an Opinion of Counsel addressed to the Trustee and the Company to the effect that: (1) delivery of such Substitute Series Credit Facility complies with the provisions of this Indenture and the related Series Documents; and (2) such Substitute Series Credit Facility is a legal and binding obligation of the related Series Credit Facility Provider, enforceable against such Series Credit Facility Provider in accordance with its terms, except as limited by applicable reorganization, insolvency, liquidation, readjustment of debt, moratorium or other similar laws affecting the enforcement of the rights of creditors generally as such laws may be applied in the event of a reorganization, insolvency, liquidation, readjustment of debt or other similar proceeding of or moratorium applicable to such Series Credit Facility Provider and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law);

(B) the Substitute Series Credit Facility;

(C) a certificate from the Series Credit Facility Provider of the Series Credit Facility being replaced to the effect that the Series Credit Facility Provider of the Substitute Series Credit Facility has either purchased from the existing Series Credit Facility Provider, or satisfactory provision has been made for the purchase from the existing Series Credit Facility Provider, all Pledged Bonds, if any, registered (or recorded through the Depository) in the name of the existing

Series Credit Facility Provider or its designee; and that all obligations owing to the existing Series Credit Facility Provider under the Series Credit Facility Agreement have been paid or duly provided for; and

(D) written evidence from each Rating Service that is then rating the related Series of Bonds of the rating to be assigned to such Series of Bonds upon replacement of the existing Series Credit Facility with the Substitute Series Credit Facility.

**Section 2.07 Series Confirmations.** With respect to each Series of Bonds, if required by the related Series Supplement, there shall be continuously available to the Trustee, as beneficiary, a Series Confirmation or Substitute Series Confirmation satisfying the requirements provided in such Series Supplement.

**Section 2.08 Supplemental Series Credit Facilities.** Upon the request of the related Series Borrower, the Trustee shall accept a Supplemental Series Credit Facility presented by such Series Borrower in order to obtain or maintain a rating on a Series of Bonds, provided the Trustee is provided with the following:

(a) written evidence, reasonably satisfactory to the Trustee, that upon issuance and delivery of the Supplemental Series Credit Facility, the Bonds of such Series will be rated by a Rating Service in one of its three highest rating categories (subject to Section 13.07 hereof); and

(b) the written consent of the related Series Credit Facility Provider and related Series Confirmation Provider.

### **ARTICLE III GENERAL PROVISIONS OF THE BONDS**

**Section 3.01 Source of Payment of Bonds; Limited Obligations.** The Bonds of each Series shall constitute special, limited obligations of the Company payable solely, equally and ratably from the related Series Pledged Revenues, which are hereby pledged to the payment of such Series of Bonds. The Bonds of each Series are secured and entitled equally and ratably to the protection given by this Indenture and the related Series Supplement. Each Series of Bonds shall also be secured by the assignment of the related Series Pledged Revenues by this Indenture and the related Series Supplement, as well as by the related Series Loan Agreement, Series Promissory Note, Series Credit Facility and, if required, Series Confirmation.

The Bonds of each Series shall also constitute a valid claim of the Owners thereof against the related Series Accounts established pursuant to, and the moneys held by the Trustee in the related Series Accounts under, this Indenture and the related Series Supplement, which accounts and moneys are pledged and assigned for the equal and proportionate benefit of the Owners of the Bonds of such Series and, so long as the related Series Credit Facility Provider or related Series Confirmation Provider is not in default under its related Series Credit Facility Agreement or related Series Confirmation Agreement, for the repayment of all amounts due and owing to such related Series Credit Facility Provider and Series Confirmation Provider under the related

Series Credit Facility Agreement and Series Confirmation Agreement, and may be used for no purpose other than payment of the Bonds of such Series and payment to such related Series Credit Facility Provider and Series Confirmation Provider.

The obligations of the Company to make the payments required under the Bonds from and to the extent of the Series Pledged Revenues shall be absolute and unconditional, and the Company shall make such payments without abatement, diminution or deduction regardless of any cause or circumstances whatsoever, including, without limitation, any defense or right of set-off, counterclaim or recoupment arising out of any breach by the Trustee, the Series Borrowers, the Series Credit Facility Providers or the Series Confirmation Providers of any obligation to the Company or otherwise with respect to the Bonds, or out of any indebtedness or liability at any time owing to the Company by the Trustee, the Series Borrowers, the Series Credit Facility Providers or the Series Confirmation Providers; provided that the Company may contest or dispute the amount of any such obligation so long as such contest or dispute does not result in an Event of Default hereunder. Until such time as all of the Bonds shall have been fully paid or redeemed, the Company shall not suspend or discontinue any payments provided for herein with respect to the Bonds.

**Section 3.02 Interest.** Each Series of Bonds shall bear interest at an Adjustable Rate or the Fixed Interest Rate, all as more specifically set forth hereinafter; provided, however, that all Bonds of a Series shall bear interest in the same Interest Rate Mode. The Bonds shall bear interest from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or provided for, from their Closing Date, payable on each Interest Payment Date.

A Series of Bonds may be converted on any Interest Period Reset Date to a different Interest Rate Mode upon receipt by the Trustee and the Remarketing Agent of a written direction from the related Series Borrower, approved in writing by the related Series Credit Facility Provider, given on behalf of the Company, not less than 45 days prior to such Interest Period Reset Date, to convert all, but not less than all, Bonds of such Series to an Interest Rate Mode other than the Interest Rate Mode then in effect. Except when converting from the Weekly Interest Rate Mode and the One Month Interest Rate Mode, no Interest Period Reset Date shall be earlier than the day after the end of the last Interest Rate Period for the Interest Rate Mode in effect on the date of such direction from the related Series Borrower, the end of such Interest Rate Period to be determined as if such direction had not been given.

The direction to convert a Series of Bonds to a different Interest Rate Mode shall be accompanied by the following:

- (a) an Opinion of Counsel delivered to the Company, the Trustee, the related Series Credit Facility Provider, the related Series Confirmation Provider, if any, and the Remarketing Agent stating that such conversion is authorized by this Indenture and complies with its terms; and

- (b) a written certificate of the Remarketing Agent stating that (i) it has determined that the interest coverage period provided by the related Series Credit Facility and Series Confirmation, if any, is appropriate for the Interest Rate Mode directed to be in effect, and (ii) that it has received certifications, opinions or other evidence satisfactory

to it that there has been or will be compliance with any applicable state or federal securities law requirements.

If the Series of Bonds bears interest at the Weekly Interest Rate or the One Month Interest Rate, the interest coverage period for the related Series Credit Facility and Series Confirmation shall be not less than 45 days of interest at the Maximum Rate. If the Series of Bonds bears interest at the Three Month Interest Rate, the interest coverage period for the related Series Credit Facility and Series Confirmation shall be not less than 105 days of interest at the Maximum Rate. If the Series of Bonds bears interest at the Six Month Interest Rate, the One Year Interest Rate, the Five Year Interest Rate, the Ten Year Interest Rate or the Fixed Interest Rate, then the interest coverage period for the related Series Credit Facility and Series Confirmation shall be at least 195 days of interest at the Maximum Rate. With respect to each Series of Bonds, as provided in Sections 2.06 and 2.07 hereof and the related Series Supplement, the related Series Borrower shall be required to provide a Series Credit Facility, and, except as otherwise provided in the related Series Supplement, a Series Confirmation, that will provide the appropriate interest coverage (evidenced by a written determination from the Remarketing Agent).

Notwithstanding any provision of this paragraph, no conversion shall be effective if the proposed conversion is to the One Year Interest Rate, the Five Year Interest Rate, the Ten Year Interest Rate or the Fixed Interest Rate and (i) the related Series Borrower makes an election, in writing, to the Trustee and the Remarketing Agent, on or prior to the day immediately succeeding any Interest Rate Determination Date, not to proceed with the proposed conversion, (ii) the Trustee has not received on the effective date of such conversion the items required in clauses (a) and (b) above, or (iii) the Trustee has not received on the effective date of such conversion a Series Credit Facility (and, if required, a Series Confirmation) meeting the requirements of this Indenture and appropriate for the Interest Rate Mode directed to be in effect. In any such event, the Interest Rate Mode for such Series of Bonds shall remain as the Interest Rate Mode then in effect for such Series of Bonds without regard to any proposed conversion. Such Series of Bonds shall continue to be subject to tender for purchase on the scheduled effective date of the proposed conversion without regard to the failure of such proposed conversion. If the Trustee shall have sent any notice to the Owners of such Series of Bonds regarding the proposed conversion, then in the event of a failure of such conversion, as specified above, the Trustee shall promptly notify all such Owners of the failure and the reason for the failure, and of the continuation of the Interest Rate Mode then in effect.

If a Series of Bonds is converted to a different Interest Rate Mode, the Bonds of such Series and Beneficial Interests therein shall be subject to mandatory tender as provided in Section 4.02(a) hereof.

On each Interest Rate Determination Date for a Series of Bonds, the Remarketing Agent shall give the Trustee, the related Paying Agent, the related Series Borrower and the Company notice by Electronic Means of the interest rate to be borne by such Series of Bonds for the following Interest Rate Period; provided, however, that if the interest rate is determined as provided in the following paragraph, on the Interest Rate Determination Date the Trustee shall give notice to the related Series Borrower, the Company, the related Paying Agent, the related Series Credit Facility Provider and the related Series Confirmation Provider as above provided.

In the event that (i) the Remarketing Agent fails to determine the interest rate for a Series of Bonds, or (ii) the method of determining the interest rate shall be held to be unenforceable by a court of law of competent jurisdiction, the Bonds of such Series shall thereupon, until such time as the Remarketing Agent again makes such determination or until there is delivered an Opinion of Counsel to the effect that the method of determining such rate is enforceable, bear interest from the last date on which interest was legally paid, at the Alternate Rate for the Interest Rate Mode in effect.

With respect to each Series of Bonds, interest shall be calculated on the basis of a year of 365 or 366 days, as applicable, for the number of days actually elapsed so long as interest is payable at the Weekly Interest Rate, the One Month Interest Rate or the Three Month Interest Rate, and interest shall be calculated on the basis of a 360-day year of twelve 30-day months so long as interest is payable at the Six Month Interest Rate, the One Year Interest Rate, the Five Year Interest Rate, the Ten Year Interest Rate or the Fixed Interest Rate. Interest shall be payable on each Interest Payment Date for the period commencing on the immediately preceding Interest Payment Date to and including the day immediately preceding such payment date. Any calculation of the interest rate to be borne by the Bonds shall be rounded to the nearest 0.01%. The computation of the interest rates on the Bonds by the Remarketing Agent or the Trustee, as applicable, shall be binding and conclusive upon the Trustee, the Paying Agents, the Company, the Series Borrowers, the Series Credit Facility Providers, the Series Confirmation Providers and the Owners of the Bonds, except for manifest error.

Notwithstanding anything to the contrary in this Indenture, nothing in this Indenture shall require any Series Credit Facility Provider to extend the Stated Expiration Date of a Series Credit Facility or to increase the interest coverage required by a conversion to a different Interest Rate Mode, or shall require any Series Confirmation Provider to extend the Stated Expiration Date of a Series Confirmation or to increase the interest coverage required by a conversion to a different Interest Rate Mode.

**Section 3.03 Payment and Ownership of Bonds.** Debt Service Requirements shall be payable in lawful money of the United States of America without deduction for the services of the Trustee or any Paying Agent.

The principal of and any premium on any Bond shall be payable when due to the Owner thereof upon presentation and surrender of such Bond at the designated office of the related Paying Agent, or if no Paying Agent has been designated, by the Trustee at the designated office of the Trustee. Interest on any Bond shall be paid on each applicable Interest Payment Date as follows: (a) while a Series of Bonds is held by a Depository, interest on such Bonds shall be paid by wire transfer in immediately available funds to the bank account number and address filed with the Trustee by such Depository, as the Owner of such Bonds; or (b) if a Series of Bonds is not held by a Depository, by check or draft, which the Trustee shall cause to be mailed on that date to the person in whose name such Bond (or one or more Predecessor Bonds) is registered on the related Bond Register at the close of business on the Regular Record Date applicable to that Interest Payment Date and mailed to the address appearing in such Bond Register. Notwithstanding the foregoing, the Trustee may make payments of interest on any Bond by such alternative means as may be mutually agreed to between the Owner of such Bond and the Trustee.



If and to the extent that the Company shall fail to make payment or provision for payment of interest on any Bond on any Interest Payment Date, that interest shall cease to be payable to the Person who was the Owner of such Bond (or of one or more Predecessor Bonds) as of the applicable Regular Record Date, and when moneys become available for payment of such interest, (a) the Trustee shall, pursuant to Section 8.06(d) hereof, establish a Special Record Date for the payment of such interest, which date shall be not more than 15 days nor fewer than 10 days prior to the date of the proposed payment, and (b) the Trustee shall cause notice of the proposed payment and of the Special Record Date to be mailed by first class mail, postage prepaid, to such Owner at the address appearing on the related Bond Register no fewer than 10 days prior to the Special Record Date. The interest on such Bond shall thereupon be payable to the Person who is the Owner of such Bond (or of the related Predecessor Bonds) at the close of business on the Special Record Date.

Notwithstanding anything herein to the contrary, when any Bond is registered in the name of a Depository or its nominee, the principal and redemption price of and interest on such Bond shall be payable in next day or federal funds delivered or transmitted to the Depository or its nominee or as otherwise provided in the Letter of Representations.

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

Except as provided in (a) Sections 3.07, 4.01, 4.02, 4.03, 4.04 and 4.05 hereof with respect to Beneficial Interests, and (b) this Section 3.03 and the first paragraph of Section 3.05 hereof, (i) the Owner of any Bond shall be deemed and regarded as the absolute owner thereof for all purposes of this Indenture, (ii) payment of or on account of the Debt Service Requirements with respect to any Bond shall be made only to or upon the order of that Owner or its duly authorized attorney in the manner permitted by this Indenture and (iii) none of the Company, the Trustee or the related Registrar or Paying Agent shall, to the extent permitted by law, be affected by notice to the contrary. All of those payments shall be valid and effective to satisfy and discharge the liability upon that Bond, including, without limitation, the interest thereon, to the extent of the amount or amounts so paid.

**Section 3.04 Transfer and Exchange of Bonds.** So long as any of the Bonds remain outstanding, the Company shall cause books for the registration and transfer of each Series of Bonds, as provided in this Indenture, to be maintained and kept at the designated office of the Trustee or related Registrar, if any. The Trustee and each Registrar shall be a transfer agent registered in accordance with Section 17(A) of the Exchange Act.

Subject to the provisions of Section 3.07 hereof, Bonds may be exchanged, at the option of their Owner, for Bonds of the same Series of any authorized denomination or denominations in an aggregate principal amount equal to the unmatured and unredeemed principal amount of, and bearing interest at the same rate and maturing on the same date or dates as, the Bonds being exchanged. The exchange shall be made upon presentation and surrender of the Bonds being exchanged at the designated office of the Trustee or the related Registrar, as the case may be, together with an assignment duly executed by the Owner or its duly authorized attorney in any form which shall be satisfactory to the Trustee or such Registrar, as the case may be.

Subject to the provisions of Section 3.07 hereof, any Bond may be transferred upon the related Bond Register, upon presentation and surrender of the Bond at the designated office of the Trustee or of the related Registrar, as the case may be, together with an assignment duly executed by the Owner of such Bond or its duly authorized attorney in any form which shall be satisfactory to the Trustee or such Registrar. Upon transfer of any Bond and on request of the Trustee or of the related Registrar, the Company shall execute in the name of the transferee, and the Trustee or such Registrar shall authenticate and deliver, a new Bond or Bonds of the same Series and of any authorized denomination or denominations in an aggregate principal amount equal to the unmatured and unredeemed principal amount of, and bearing interest at the same rate and maturing on the same date as, the Bond presented and surrendered for transfer.

In all cases in which a Bond shall be exchanged or transferred hereunder, the Trustee or the related Registrar, as the case may be, shall authenticate and deliver one or more new Bonds therefor in accordance with the provisions of this Indenture. The Trustee of such Registrar may charge a reasonable fee in connection with such exchange or transfer, and the Company, the Trustee and such Registrar may make a charge for every exchange or transfer of a Bond sufficient to reimburse them for any tax or excise required to be paid with respect to the exchange or transfer. The charge shall be paid before a new Bond is delivered.

All Bonds issued upon any transfer or exchange shall be the valid obligations of the Company, evidencing the same obligation, and entitled to the same benefits under this Indenture, as the Bonds surrendered upon transfer or exchange. None of the Company, the Trustee or any Registrar shall be required to make any exchange or transfer of a Bond during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of Bonds of such Series and ending at the close of business on the day of such mailing, or to transfer or exchange any Bonds selected for redemption, in whole or in part; provided, however, the foregoing provisions shall not preclude an exchange or transfer of a Bond in the case of an optional or mandatory tender under Sections 4.01 or 4.02 hereof.

In case any Bond is redeemed in part only, on or after the redemption date and upon presentation and surrender of such Bond, the Company shall cause execution of, and the Trustee or related Registrar shall authenticate and deliver, a new Bond or Bonds of the same Series and in authorized denominations in an aggregate principal amount equal to the unmatured and unredeemed portion of, and bearing interest at the same rate and maturing on the same date as, the Bond redeemed in part. Notwithstanding the foregoing, however, if a Depository is the sole Owner of a Series of Bonds, delivery of a notation of partial redemption of the Bonds of such Series shall be made in such manner as is mutually agreed upon by the Trustee and the Depository.

For purposes of this Section, the Trustee shall establish the designated office of the Registrar, if any, for each Series of Bonds. Such office shall be that designated by the Trustee if the Trustee is the sole Registrar hereunder for such Series of Bonds.

**Section 3.05 Mutilated, Lost, Wrongfully Taken, Undelivered or Destroyed Bonds.** If any Bond is mutilated, lost, wrongfully taken or destroyed, or any tendered Bond or Bond deemed to have been tendered is not delivered pursuant to the terms of this Indenture, in the absence of written notice to the Company, the Trustee or the related Registrar that a lost, wrongfully taken or destroyed or undelivered Bond has been acquired by a bona fide purchaser,

the Trustee or such Registrar shall authenticate and deliver a new Bond of like Series, date, maturity and denomination as the Bond mutilated, lost, wrongfully taken, destroyed or undelivered; provided, however, that (a) in the case of any mutilated Bond, the mutilated Bond first shall be surrendered to the Trustee or the related Registrar, (b) in the case of any lost, wrongfully taken or destroyed Bond, there first shall be furnished to the Company and Trustee or related Registrar evidence of the loss, wrongful taking or destruction satisfactory to the Company and the Trustee or related Registrar, together with indemnity to the Company, the Trustee and related Registrar, Series Borrower, Series Credit Facility Provider and Series Confirmation Provider satisfactory to each of them, and payment of any expenses of the Company and (c) in the case of any tendered Bond which is undelivered, there shall be satisfactory loss indemnity furnished to the Company, the Trustee and related Registrar, Series Borrower, Series Credit Facility Provider and Series Confirmation Provider by the non-delivering Owner.

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

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

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

**Section 3.06 Cancellation of Bonds.** Except as provided in Section 3.04 hereof, any Bonds surrendered pursuant to this Article for the purpose of payment or retirement, or for exchange, replacement or transfer, shall be canceled upon presentation and surrender thereof to the Trustee or the related Registrar or Paying Agent. Any Bond canceled by the Trustee or the related Paying Agent shall be transmitted promptly to the related Registrar by the Trustee or such Paying Agent.

The Company, or the Series Borrower on behalf of the Company, may deliver at any time to the Trustee or the Registrar for the related Series of Bonds for cancellation any Bonds of such Series previously authenticated and delivered hereunder which the Company or the related Series Borrower may have acquired in any manner whatsoever. All Bonds so delivered shall be canceled and destroyed by the Trustee or related Registrar in accordance with its standard procedures. Certification of the surrender, cancellation and destruction of Bonds of a Series shall be made to the Company, the Trustee (if the Trustee is not then serving as the Registrar) and the

related Series Borrower, Series Credit Facility Provider and Series Confirmation Provider by the Trustee or related Registrar upon request.

**Section 3.07 Book-Entry System; Use of Depository.** Each Series of Bonds shall be originally issued only to a Depository to be held in a Book-Entry System. Each Series of Bonds shall be registered in the name of the Depository or its nominee, as Owner, and immobilized in the custody of the Depository. Unless otherwise requested by the Depository, there shall be a single Bond certificate for each Series of Bonds, and the Bonds shall not be transferable or exchangeable, except for transfer to another Depository or another nominee of a Depository, without further action by the Company as set forth in the next succeeding paragraph of this Section. While Bonds are in Book-Entry Form, Bonds in the form of physical certificates shall be delivered only to the Depository.

So long as a Book-Entry System is in effect for a Series of Bonds, except as hereinafter provided with respect to Beneficial Interests, the Company, the Trustee and the related Registrar and Paying Agent shall recognize and treat the Depository, or its nominee, as the Owner of the Bonds of such Series for all purposes, including payment of Debt Service Requirements, giving of notices and enforcement of remedies. The crediting of payments of Debt Service Requirements and the transmittal of notices and other communications by the Depository to the Direct Participants in whose Depository account such Bonds are recorded, and such crediting and transmittal by Direct Participants to Indirect Participants or Beneficial Owners and by Indirect Participants to Beneficial Owners, are the respective responsibilities of the Depository, the Direct Participants and the Indirect Participants and are not the responsibility of the Company, the Trustee or the related Registrar or Paying Agent; provided, however, that the Company and the Trustee understand that neither the Depository or its nominee shall provide any consent requested of Owners of Bonds under this Indenture, and that the Depository will mail an omnibus proxy (including a list identifying the Direct Participants) to the Company which assigns the voting rights of the Depository, or its nominee, to the Direct Participants to whose accounts at the Depository the Bonds are credited as of the record date for mailing of requests for such consents. Upon receipt of such omnibus proxy, the Company shall promptly provide such omnibus proxy (including the list identifying the Direct Participants attached thereto) to the Trustee, who shall then treat such Direct Participants as Owners of the Bonds for purposes of obtaining any consents under the terms of this Indenture.

As long as Bonds are registered in the name of a Depository or its nominee, the Company and the Trustee agree to comply with the terms and provisions of the related Letter of Representations, including the provisions of such Letter of Representations with respect to any delivery of the Bonds to the Trustee, which provisions shall supersede the provisions of this Indenture with respect thereto.

If any Depository determines not to continue to act as a Depository for a Series of Bonds held in a Book-Entry System, the Company may attempt to have established a securities depository/Book-Entry System relationship with another Depository under this Indenture. If the Company does not or is unable to do so, the Company and the Trustee, after the Trustee has made provision for notification of the related Beneficial Owners by appropriate notice to the then Depository, shall permit withdrawal of the Bonds of such Series from the Depository and shall authenticate and deliver Bond certificates in fully registered form to the assignees of the Depository or its nominee or to the related Beneficial Owners. Such withdrawal, authentication

and delivery shall be at the cost and expense (including costs of printing or otherwise preparing and delivering such replacement Bonds) of the related Series Borrower. Such replacement Bonds shall be in the denominations specified in the related Series Supplement.

## **ARTICLE IV TENDERS**

**Section 4.01 Optional Tenders for Purchase.** All outstanding Bonds and Beneficial Interests are subject to tender for purchase prior to stated maturity at the option of the Owners and Beneficial Owners thereof, as applicable, as follows:

(a) ***Bonds in Weekly Interest Rate Mode.*** Bonds bearing interest at the Weekly Interest Rate, or Beneficial Interests therein (in either case in denominations of \$5,000 and integral multiples thereof), may be tendered at the option of the Owners or Beneficial Owners thereof, as applicable, for purchase at a price of 100% of the principal amount thereof plus accrued interest to the Purchase Date, in accordance with the terms, conditions and limitations hereafter set forth. The purchase price for each such Bond or Beneficial Interest, or portion thereof, shall be payable in lawful money of the United States of America by check or draft, shall equal the principal amount, or such portion thereof, to be purchased plus accrued interest thereon and shall be paid in full on the applicable Purchase Date.

To exercise such option, the Owner or Beneficial Owner, as applicable, shall:

(i) give notice to the Trustee either by Electronic Means or in writing which states (A) the name and address of the Owner or Beneficial Owner, as applicable, (B) the principal amount, CUSIP number and identifying numbers of the Bonds or Beneficial Interests to be purchased, (C) the date on which such Bonds or Beneficial Interests are to be purchased, which shall be a Business Day not prior to the 7<sup>th</sup> day next succeeding the date of giving of such notice to the Trustee and, if the interest rate on the Bonds to be purchased (or Beneficial Interests therein) is to be converted from the Weekly Interest Rate to a new Interest Rate Mode, is a date prior to the Interest Period Reset Date with respect to the new Interest Rate Mode and (D) that such notice is irrevocable;

(ii) in the case of a Beneficial Owner, provide the Trustee with evidence satisfactory to the Trustee of the Beneficial Interests to be purchased;

(iii) in the case of an Owner, no later than 10:00 a.m. on the Business Day immediately preceding the applicable Purchase Date, deliver to the designated office of the Trustee the Bonds to be purchased in proper form, accompanied by fully completed and executed Instructions to Sell, the form of which shall be printed on the Bonds; and

(iv) in the case of a Beneficial Owner, no later than 10:00 a.m. on the Purchase Date, cause the transfer of the Beneficial Interests to be purchased on the records of the Depository in accordance with the instructions of the Trustee.

(b) ***Bonds in Non-Weekly Interest Rate Mode.*** Bonds bearing interest at the One Month Interest Rate, the Three Month Interest Rate, the Six Month Interest Rate, the One Year Interest Rate, the Five Year Interest Rate or the Ten Year Interest Rate, or Beneficial Interests therein (in either case in denominations of \$5,000 and integral multiples thereof), may be tendered at the option of the Owners or Beneficial Owners thereof, as applicable, on each Interest Rate Adjustment Date for purchase at a price of 100% of the principal amount thereof plus accrued interest thereon, in accordance with the terms, conditions and limitations hereinafter set forth. The purchase price for each such Bond or Beneficial Interest, or portion thereof, shall be payable in lawful money of the United States of America by check or draft, shall equal the principal amount, or such portion thereof, to be purchased plus accrued interest thereon and shall be paid in full on the applicable Purchase Date.

To exercise such option, the Owner or Beneficial Owner, as applicable, shall:

(i) no later than the 15<sup>th</sup> Business Day prior to the Purchase Date (or in the event such Bonds bear interest at the One Month Interest Rate, the 7<sup>th</sup> Business Day prior to the Purchase Date) give notice to the Trustee either by Electronic Means or in writing which states (A) the name and address of the Owner or Beneficial Owner, as applicable, (B) the principal amount, CUSIP number and identifying numbers of the Bonds or Beneficial Interests therein to be purchased, (C) that such Bonds or Beneficial Interests are to be purchased on such Purchase Date pursuant to the terms hereof and (D) that such notice is irrevocable;

(ii) in the case of a Beneficial Owner, provide the Trustee with evidence satisfactory to the Trustee of the Beneficial Interests to be purchased;

(iii) in the case of an Owner, no later than 10:00 a.m. on the 14<sup>th</sup> day preceding such Purchase Date (or the next preceding Business Day if such day is not a Business Day), or in the event the Bonds to be purchased bear interest at the One Month Interest Rate, the 6<sup>th</sup> day preceding such Purchase Date (or the next preceding Business Day if such day is not a Business Day), deliver to the designated office of the Trustee the Bonds to be purchased in proper form, accompanied by fully completed and executed Instructions to Sell, the form of which shall be printed on the Bonds; and

(iv) in the case of a Beneficial Owner, no later than 10:00 a.m. on the Purchase Date, cause the transfer of the Beneficial Interests to be purchased on the records of the Depository, in accordance with the instructions of the Trustee.

(c) Any Bonds for which a notice of tender has been given by the Owner shall be deemed to be tendered for remarketing notwithstanding any failure of delivery of such Bonds to the Trustee. Subject to the right of such Owners to receive the purchase price of tendered Bonds and interest accrued thereon to the day preceding the applicable Purchase Date (and subject to the conditions set forth in Section 3.05 hereof), such Bonds shall be null and void and the Trustee shall authenticate and deliver new Bonds in replacement thereof pursuant to the remarketing of such Bonds or the pledge of such Bonds to the

related Series Credit Facility Provider or Series Confirmation Provider, as the case may be, in lieu of remarketing such Bonds as described in Section 4.05 hereof. Any Beneficial Owners who have elected to tender Beneficial Interests shall be obligated to transfer such Beneficial Interests on the records of the Depository.

(d) Upon the giving of the notice pursuant to Section 4.01(a) or (b) hereof with respect to Bonds or Beneficial Interests, or portions of either, the Owner's or Beneficial Owner's tender of Bonds or Beneficial Interests, as applicable, or portions thereof, shall be irrevocable. Upon receipt of the Bonds, the Trustee shall determine whether Instructions to Sell have been properly submitted, and its determination shall be binding. If less than all of a Bond so delivered or deemed tendered is to be purchased, the Trustee shall, pursuant to this Indenture, authenticate one or more Bonds of the same Series in exchange therefor, registered in the name of such Owner and having the aggregate principal amount being retained by such Owner, and shall deliver such authenticated Bond or Bonds to such Owner.

(e) While tendered Bonds are in the custody of the Trustee pending purchase pursuant hereto, the tendering Owners thereof shall be deemed the owners thereof for all purposes, and interest accruing on tendered Bonds through the day preceding the applicable Purchase Date is to be paid from the Bond Fund as if such Bonds had not been tendered for purchase.

**Section 4.02 Mandatory Tenders for Purchase.** Bonds and Beneficial Interests are subject to mandatory tender for purchase prior to stated maturity as follows:

(a) ***Mandatory Tender Upon Conversion to a New Interest Rate Mode.*** If at any time the Company, at the direction of the related Series Borrower, shall convert the interest rate on a Series of Bonds to a different Interest Rate Mode in accordance with the provisions of Section 3.02 hereof, on the Interest Period Reset Date upon which such conversion is effective, all Bonds of such Series and Beneficial Interests therein shall be subject to mandatory tender by the Owners and Beneficial Owners thereof for purchase on such Interest Period Reset Date (a "Purchase Date") at a price of 100% of the principal amount thereof plus accrued interest to the Purchase Date.

At least 30 days prior to the Interest Period Reset Date, the Trustee shall notify the Owners of all outstanding Bonds of such Series by Electronic Means (provided that applicable contact information with which to do so has been provided in writing to the Trustee), promptly confirmed by first class mail to all such Owners, that upon the Interest Period Reset Date such Series of Bonds shall be converted to a different specified Interest Rate Mode and that all Bonds of such Series and Beneficial Interests therein are subject to mandatory tender, subject to the right of the Owners and Beneficial Owners thereof to affirmatively elect to waive the mandatory tender and retain such Bonds or Beneficial Interests as provided in Subsection (f) of this Section 4.02.

(b) ***Mandatory Tender Upon Delivery of a Substitute Series Credit Facility or Substitute Series Confirmation.*** If at any time a Series Borrower provides for the delivery to the Trustee of a Substitute Series Credit Facility in accordance with the provisions of Section 2.06 hereof, or a Substitute Series Confirmation in accordance with

the provisions of the related Series Supplement, on the Replacement Date all Bonds of the related Series and Beneficial Interests therein shall be subject to mandatory tender by the Owners or Beneficial Owners thereof for purchase on such Replacement Date (a “Purchase Date”) at a price of 100% of the principal amount thereof plus accrued interest to the Purchase Date.

At least 30 days prior to the Purchase Date, the Trustee shall notify the Owners of all outstanding Bonds of such Series by Electronic Means (provided that applicable contact information with which to do so has been provided in writing to the Trustee), promptly confirmed by first class mail to all such Owners, that a Substitute Series Credit Facility or a Substitute Series Confirmation, as applicable, is to be delivered to the Trustee. Such notice shall advise such Owners of the Purchase Date, that the requirements of the Indenture, the related Series Supplement and the Bonds of such Series relating to a Substitute Series Credit Facility or a Substitute Series Confirmation have been met, the name of the new Series Credit Facility Provider or Series Confirmation Provider, as applicable, the rating, if any, on such Series of Bonds upon the provision of the Substitute Series Credit Facility or Substitute Series Confirmation, and that all Bonds of such Series and Beneficial Interests therein shall be subject to mandatory tender, subject to the right of the Owners and Beneficial Owners thereof to affirmatively elect to waive the mandatory tender and retain such Bonds or Beneficial Interests as provided in Subsection (f) of this Section 4.02.

(c) ***Mandatory Tender Upon Expiration or Certain Events of Termination of a Series Credit Facility or Series Confirmation.*** The Bonds of a Series and Beneficial Interests therein shall be subject to mandatory tender for purchase 15 days preceding either (i) the Stated Expiration Date of the related Series Credit Facility or related Series Confirmation, or (ii) unless Subsections (a), (b) or (d) of this Section 4.02 apply, the date of termination of a Series Confirmation for reasons that do not constitute an Event of Default under Section 8.01(h) hereof (a “Purchase Date”), at a price of 100% of the principal amount thereof plus accrued interest to the Purchase Date, unless, at least 30 days prior to such Stated Expiration Date, the related Series Credit Facility Provider or Series Confirmation Provider, as applicable, has extended the applicable Stated Expiration Date to a date not earlier than one year from the Stated Expiration Date being extended (or until the maturity date of the Bonds of such Series if less than one year from the Stated Expiration Date). The mandatory tender of Bonds of such Series or Beneficial Interests therein pursuant to this Section 4.02(c) may not be waived by the Owners or Beneficial Owners thereof.

At least 15 days prior to the Purchase Date pursuant to this Section 4.02(c), the Trustee shall notify the Owners of all outstanding Bonds of such Series by Electronic Means (provided that applicable contact information with which to do so has been provided in writing to the Trustee), promptly confirmed by first class mail to all such Owners, of the Purchase Date of the Bonds of such Series and advise such Owners that all Bonds of such Series and Beneficial Interests therein shall be subject to mandatory tender on such Purchase Date and that such mandatory tender may not be waived. Not less than 90 days prior to any Stated Expiration Date, the Trustee shall provide written notice to the Company, the related Series Borrower, the related Series Credit Facility



Provider, the related Series Confirmation Provider and the Remarketing Agent of the Stated Expiration Date.

(d) ***Mandatory Tender Upon Termination of the Obligation to Provide a Series Confirmation.*** Upon termination of the obligation of a Series Borrower to provide the Trustee with a Series Confirmation with respect to the related Series of Bonds as provided in the related Series Supplement, on the Series Confirmation Release Date, all Bonds of such Series and Beneficial Interests therein shall be subject to mandatory tender by the Owners and Beneficial Owners thereof for purchase on such Series Confirmation Release Date (a “Purchase Date”) at a price of 100% of the principal amount thereof plus accrued interest to the Purchase Date.

At least 30 days prior to the Purchase Date, the Trustee shall notify the Owners of all outstanding Bonds of such Series by Electronic Means (provided that applicable contact information with which to do so has been provided in writing to the Trustee), promptly confirmed by first class mail to all such Owners, that a Series Confirmation is no longer be required by the Indenture with respect to such Series of Bonds. The notice shall advise such Owners and Beneficial Owners of the Series Confirmation Release Date, that the requirements of the Indenture, the related Series Supplement and the Bonds of such Series for release of the Series Confirmation have been satisfied, the rating on such Series of Bonds following the release of the Series Confirmation, and that all Bonds of such Series and Beneficial Interests therein shall be subject to mandatory tender, subject to the right of the Owners and Beneficial Owners thereof to affirmatively elect to waive the mandatory tender and retain such Bonds and Beneficial Interests as provided in Subsection (f) of this Section 4.02.

(e) ***Bonds and Beneficial Interests Deemed Tendered.*** Bonds and Beneficial Interests therein shall be deemed to have been tendered for purposes of this Section 4.02 whether or not the Owners shall have delivered such Bonds to the Trustee and without further action by the Beneficial Owners with regard to Beneficial Interests. Subject to the right of the Owners or Beneficial Owners of Bonds or Beneficial Interests therein to receive the purchase price of such Bonds or Beneficial Interests and interest accrued thereon to the Purchase Date (and subject to the conditions set forth in Section 3.05 hereof), such Bonds or Beneficial Interests shall be null and void and, in the case of mandatory tenders pursuant to Subsections (a), (b) or (d) of this Section 4.02, the Trustee shall authenticate and deliver new Bonds of the same Series in replacement of the Bonds tendered or deemed tendered, or new Beneficial Interests shall be recorded on the records of the Depository, pursuant to the remarketing of such Bonds or Beneficial Interests or the pledge of such Bonds or Beneficial Interests to the related Series Credit Facility Provider or Series Confirmation Provider in lieu of remarketing such Bonds or Beneficial Interests as provided in Section 4.05 hereof.

(f) ***Written Acknowledgment by Owners and Beneficial Owners.*** The affirmative election of Owners or Beneficial Owners of Bonds to waive the mandatory tender of and retain their Bonds and Beneficial Interests, as applicable, pursuant to Subsections (a), (b) or (d) of this Section 4.02 shall include the written acknowledgment by such Owners and/or Beneficial Owners that the rating, if any on such Series of Bonds could be reduced or withdrawn after the applicable Purchase Date.

**Section 4.03 Maturity or Redemption of Bonds Subject to Tender.** Notwithstanding anything herein to the contrary, any Bond or Beneficial Interest or portion thereof tendered under Sections 4.01 or 4.02 hereof shall not be purchased if such Bond or portion thereof matures or is redeemed on or prior to the applicable Purchase Date.

**Section 4.04 Remarketing of Tendered Bonds.** No later than 3:00 p.m. (a) on the 6<sup>th</sup> Business Day prior to each Purchase Date with respect to Bonds bearing interest at the Weekly Interest Rate or the One Month Interest Rate, or (b) on the 14<sup>th</sup> Business Day prior to each Purchase Date with respect to Bonds bearing interest at the Three Month Interest Rate, the Six Month Interest Rate, the One Year Interest Rate, the Five Year Interest Rate or the Ten Year Interest Rate, the Trustee shall give notice to the related Series Credit Facility Provider and the Remarketing Agent by Electronic Means, confirmed on the same day in writing, which states (i) the name and address of each Owner or Beneficial Owner who has given notice of exercise of an option with respect to such Purchase Date as provided in Section 4.01 hereof, and the principal amount of the Bonds of the related Series or Beneficial Interests therein to be tendered by such Owner or Beneficial Owner or deemed tendered by such Owner, (ii) the aggregate principal amount of Bonds of such Series or Beneficial Interests therein that are deemed to be tendered pursuant to Sections 4.02(a), 4.02(b) or 4.02(d) hereof, and (iii) the applicable Purchase Date.

Based upon such notices from the Trustee, the Remarketing Agent shall use its best efforts to sell all Bonds or Beneficial Interests tendered pursuant to Sections 4.01, 4.02(a), 4.02(b) or 4.02(d) hereof for settlement on the applicable Purchase Date.

The Remarketing Agent shall have the right to remarket any Bonds or Beneficial Interests (or portion thereof) tendered pursuant to Sections 4.01, 4.02(a), 4.02(b) or 4.02(d) hereof; provided, however, that no such Bond or Beneficial Interest shall be remarketed at a price less than 100% of the principal amount thereof plus accrued interest (if any). The Remarketing Agent shall have the right to purchase any Bond or Beneficial Interest tendered or deemed tendered pursuant to Sections 4.01, 4.02(a), 4.02(b) or 4.02(d) hereof at 100% of the principal amount thereof, and to thereafter sell such Bond or Beneficial Interest. Any such purchase shall constitute a remarketing hereunder.

The Remarketing Agent shall not remarket any Bond or Beneficial Interest to the Company, the related Series Borrower, any guarantor of that Series of Bonds (excluding the related Series Credit Facility Provider and Series Confirmation Provider) or any person who is an “insider” of the Company or any such guarantor within the meaning of the Bankruptcy Code.

No later than 10:00 a.m. on each Purchase Date, the Remarketing Agent shall pay to the Trustee, in immediately available funds, the proceeds theretofore received by the Remarketing Agent from the remarketing of Bonds and Beneficial Interests tendered for purchase on such Purchase Date; provided, however, that the Remarketing Agent may use its best efforts to cause the purchasers of the remarketed Bonds and the Beneficial Interests to pay the purchase price plus accrued interest (if any) to the Trustee in immediately available funds. The proceeds from the remarketing of the Bonds and Beneficial Interests shall be segregated from any funds of the Company or the related Series Borrower and shall in no case be considered to be or be assets of the Company or such related Series Borrower.

There shall be deposited in the applicable Series Accounts of the Remarketing Reimbursement Fund, on each Purchase Date, (a) the remarketing proceeds received by the Trustee pursuant to this Section 4.04 and (b) any moneys from draws on a Series Credit Facility or, if the Series Credit Facility Provider fails to honor a properly presented and conforming drawing under such Series Credit Facility, the related Series Confirmation, to be used to pay the purchase price of tendered Bonds of the related Series and Beneficial Interests therein, as provided in Section 6.04 hereof. Remarketing proceeds shall be used to pay the purchase price of tendered Bonds and Beneficial Interests prior to the application of moneys received from a draw on the related Series Credit Facility or Series Confirmation.

The Trustee shall use the amounts deposited in the applicable Series Accounts of the Remarketing Reimbursement Fund to pay the purchase price of tendered Bonds and Beneficial Interests. If (a) remarketing proceeds shall be insufficient to pay the purchase price of all tendered Bonds of a Series and Beneficial Interests therein and (b) both the related Series Credit Facility Provider and Series Confirmation Provider fail to fully honor properly presented and conforming draws properly made on the related Series Credit Facility and Series Confirmation to pay the balance of the purchase price of tendered Bonds of such Series and Beneficial Interests therein: (i) an Event of Default with respect to such Series of Bonds pursuant to Section 8.01(h) or (h), as applicable, shall be deemed to have occurred; (ii) any amount paid by the related Series Credit Facility Provider and Series Confirmation Provider on such draws shall be deposited in the related Series Credit Facility Account or related Series Confirmation Account of the Bond Fund, as applicable; and (iii) the Trustee shall declare the Bonds of such Series to be due and payable pursuant to Section 8.03 hereof.

#### **Section 4.05 Delivery of Purchased Bonds and Remarketing of Pledged Bonds.**

Prior to 2:00 p.m. on the Business Day next preceding each Purchase Date, the Remarketing Agent, by Electronic Means, shall notify the Trustee and the related Series Credit Facility Provider and Series Confirmation Provider of (a) the principal amount of Bonds of such Series or Beneficial Interests therein to be sold by the Remarketing Agent pursuant to Section 4.04 hereof and the purchase price, names, addresses and social security numbers or other tax identification numbers of the proposed purchasers thereof, (b) the principal amount of Bonds of such Series and Beneficial Interests therein tendered for purchase on such Purchase Date which will not be sold by the Remarketing Agent pursuant to Section 4.04 hereof and (c) the amount of remarketing proceeds received by the Remarketing Agent from the remarketing of the tendered Bonds of such Series and Beneficial Interests therein.

Bonds and Beneficial Interests purchased by the Trustee on a Purchase Date shall be delivered as follows:

(a) Bonds sold by the Remarketing Agent pursuant to Section 4.04 hereof shall be delivered to the purchasers thereof. With respect to Beneficial Interests sold by the Remarketing Agent pursuant to Section 4.04 hereof, the Remarketing Agent and the Trustee shall take such actions as may be necessary to reflect the transfer of such Beneficial Interests to the purchasers thereof in the Book-Entry System maintained by the Depository.

(b) Bonds and Beneficial Interests not sold by the Remarketing Agent pursuant to Section 4.04 hereof shall be held as Pledged Bonds by the Trustee, as agent

for the related Series Credit Facility Provider, Series Confirmation Provider or their respective designees, as the case may be (provided that if the Bonds are then held in Book-Entry Form, the interest of the Trustee in the Pledged Bonds, as agent for the related Series Credit Facility Provider, Series Confirmation Provider or their respective designees, as the case may be, shall be recorded through the Depository and no physical delivery of the Pledged Bonds shall be required), subject to any instructions from the related Series Credit Facility Provider, Series Confirmation Provider or their respective designees, as the case may be, to deliver the Pledged Bonds to such Series Credit Facility Provider, Series Confirmation Provider or their respective designees (or to record evidence of such Series Credit Facility Provider's, Series Confirmation Provider's or designee's book-entry interest therein) and to the pledge in favor of such Series Credit Facility Provider, Series Confirmation Provider or their respective designees, as the case may be, created pursuant to the provisions of the related Series Credit Facility Agreement or Series Confirmation Agreement. Any Pledged Bonds held by the Trustee shall not be released or transferred except to the related Series Credit Facility Provider, Series Confirmation Provider or their respective designees or to the Remarketing Agent at the written direction of such Series Credit Facility Provider, Series Confirmation Provider or designees, as the case may be, as provided in the last paragraph of this Section.

Bonds or Beneficial Interests therein (other than Pledged Bonds) delivered as provided in this Section shall be registered (or recorded through the Depository) in the manner directed by the recipient thereof. Pledged Bonds purchased with funds provided from draws on a Series Credit Facility shall be registered (or recorded through the Depository) in the name of the related Series Credit Facility Provider or its designee, as requested by such Series Credit Facility Provider; and Pledged Bonds purchased with funds provided from draws on a Series Confirmation shall be registered (or recorded through the Depository) in the name of the related Series Confirmation Provider or its designee, as requested by such Series Confirmation Provider.

The Remarketing Agent shall use its best efforts to remarket Pledged Bonds; provided, however, that the Remarketing Agent shall not remarket Pledged Bonds tendered as a result of a mandatory tender pursuant to Sections 4.02(b) or 4.02(c) hereof prior to receiving written notice from the Trustee that the related Series Credit Facility or Series Confirmation, as applicable, has been replaced with a Substitute Series Credit Facility or Substitute Series Confirmation, as applicable. Upon the remarketing of the Pledged Bonds, the Remarketing Agent shall notify the related Series Credit Facility Provider, the related Series Confirmation Provider, the Trustee, the Company and the related Series Borrower of such remarketing, the name, address and social security or other tax identification number of the purchaser and the date (the "Pledged Bonds Purchase Date") that the purchaser shall deliver the purchase price to the Trustee or the Remarketing Agent by 10:00 a.m. The Pledged Bonds Purchase Date shall be at least two Business Days after the date the notice of the purchase is given by the Remarketing Agent.

Notwithstanding anything contained herein to the contrary, the Remarketing Agent shall not remarket Pledged Bonds purchased with funds provided from draws on a Series Credit Facility, nor shall the Trustee release such Pledged Bonds, until the Remarketing Agent and the Trustee have confirmed in writing with the related Series Credit Facility Provider that such Series Credit Facility has been fully reinstated pursuant to its terms; and the Remarketing Agent shall not remarket Pledged Bonds purchased with funds provided from draws on a Series Confirmation, nor shall the Trustee release such Pledged Bonds, until the Remarketing Agent

and the Trustee have confirmed in writing with the related Series Confirmation Provider that such Series Confirmation has been fully reinstated pursuant to its terms.

No later than 10:00 a.m. on each Purchase Date, the Remarketing Agent shall pay to the Trustee, in immediately available funds, the proceeds theretofore received by the Remarketing Agent from the remarketing of Pledged Bonds on such Pledged Bonds Purchase Date; provided, however, that the Remarketing Agent may use its best efforts to cause the purchasers of the remarketed Pledged Bonds to pay the purchase price plus accrued interest (if any) to the Trustee in immediately available funds. The proceeds from the remarketing of the Pledged Bonds shall be segregated from any funds of the Company or the related Series Borrower and shall in no case be (or be considered to be) assets of the Company or such related Series Borrower.

The Trustee shall deposit the proceeds from the remarketing of the Pledged Bonds purchased with funds provided by draws on a Series Credit Facility in the related Series Remarketing Proceeds Account of the Remarketing Reimbursement Fund and shall pay the related Series Credit Facility Provider such funds by wire transfer on the Pledged Bonds Purchase Date. The Trustee shall deposit the proceeds from the remarketing of the Pledged Bonds purchased with funds provided by draws on a Series Confirmation in the related Series Remarketing Proceeds Account of the Remarketing Reimbursement Fund and shall pay the related Series Confirmation Provider such funds by wire transfer on the Pledged Bonds Purchase Date.

The Series Credit Facility Provider or Series Confirmation Provider, as applicable, shall deliver any Pledged Bonds held by such Series Credit Facility Provider or Series Confirmation Provider (or evidence of book-entry interests in such Pledged Bonds) that have been so remarketed to the Trustee against payment on the Pledged Bonds Purchase Date. With respect to any Pledged Bonds not so held by the related Series Credit Facility Provider or Series Confirmation Provider, such Series Credit Facility Provider or Series Confirmation Provider, as applicable, shall direct the Trustee to release such Pledged Bonds which have been so remarketed to the Remarketing Agent against payment therefor on the Pledged Bonds Purchase Date. On the Pledged Bonds Purchase Date, the Trustee shall authenticate and deliver, if applicable, new Bonds in replacement of the remarketed Pledged Bonds to the purchasers thereof.

## **ARTICLE V**

### **REDEMPTION OF BONDS**

**Section 5.01 Terms of Redemption of Bonds.** Except as otherwise provided in a Series Supplement, a related Series Credit Facility Agreement or a related Series Confirmation Agreement with respect to a Series of Bonds, the Bonds are subject to redemption prior to stated maturity as follows:

(a) ***Optional Redemption.*** The Bonds of a Series are subject to optional redemption, upon the direction of the related Series Borrower and with the prior written consent of the related Series Credit Facility Provider (subject to compliance with Section 5.03 hereof), in whole or in part in integral multiples of \$5,000: (i) if such Series of Bonds bears interest at an Adjustable Rate, on any Interest Rate Adjustment Date at the

redemption price of 100% of the principal amount redeemed plus accrued interest thereon to the redemption date; and (ii) if such Series of Bonds bears interest in the Fixed Interest Rate Mode, at any time on or after the First Optional Redemption Date with respect to such Series of Bonds at a redemption price of 100% of the principal amount redeemed plus accrued interest thereon to the redemption date.

(b) *Use of Certain Funds to Redeem Bonds.* Except as provided in Section 11.02 hereof, the Trustee shall pay the redemption price on all Bonds of a Series redeemed under this Section 5.01 in the same manner and from the same sources as provided in Section 6.03 hereof for the payment of Debt Service Requirements with respect to such Series of Bonds; provided that the Trustee shall utilize only Eligible Funds to redeem such Bonds.

**Section 5.02 Partial Redemption.** Bonds shall be redeemed only in principal amounts equal to \$5,000 or any integral multiple thereof. If fewer than all of the outstanding Bonds of a Series are to be redeemed, the selection of the Bonds of such Series to be redeemed shall be made by lot by the Trustee in any manner which the Trustee may determine; provided, however, that Pledged Bonds of such Series shall be redeemed prior to (or simultaneously with) the redemption of any other Bonds of such Series pursuant to Section 5.01(a) hereof; and provided further, that if less than all of an outstanding Bond in a Book-Entry System is to be called for redemption, the Trustee shall give notice to the Depository or the nominee of the Depository that is the Owner of such Bond, and the selection of the Beneficial Interests in that Bond to be redeemed shall be at the sole discretion of the Depository and its participants. In the case of a partial redemption of Bonds of a Series by lot, each unit of face value of principal thereof equal to \$5,000 (each such \$5,000 unit is hereinafter referred to as a "Unit") shall be treated as though it were a separate Bond in the amount of such Unit. If it is determined that one or more, but not all, of the Units represented by a Bond are to be called for redemption, then upon notice of redemption of a Unit or Units of Bonds, the Owner of that Bond shall surrender the Bond to the Trustee (a) for payment of the redemption price of the Unit or Units of Bonds called for redemption (including, without limitation, the interest accrued to the date fixed for redemption and any premium), and (b) for issuance, without charge to the Owner thereof, of one or more new Bonds of such Series, in denominations of \$5,000 or integral multiples thereof, aggregating a principal amount equal to the unmatured and unredeemed portion of, and bearing interest at the same rate and maturing on the same date as the Bond surrendered.

**Section 5.03 Election to Redeem.** The Bonds of a Series shall be redeemed only by written notice from the related Series Borrower, on behalf of the Company, to the Trustee and the related Series Credit Facility Provider and Series Confirmation Provider. Such notice shall specify the redemption date and the Series and principal amount of the Bonds to be redeemed, and shall be given at least 35 days prior to the redemption date or such shorter period as shall be acceptable to the Trustee. Prior to the giving of the notice required by Section 5.04 hereof, (a) there shall be Eligible Funds on deposit with the Trustee in an amount which will be sufficient to redeem, at the redemption price thereof and interest accrued to the redemption date, all of the Bonds for which notice of redemption is to be given, or (b) the Trustee shall have received written notice from the related Series Credit Facility Provider specifying (i) the principal amount of Bonds of such Series to be redeemed, and (ii) the accrued interest to the redemption date to be paid, all with moneys to be drawn under the related Series Credit Facility.

**Section 5.04 Notice of Redemption.** Unless waived by any Owner of Bonds to be redeemed, official notice of any such redemption of Bonds of a Series shall be given by the Trustee or the related Registrar on behalf of the Company by mailing a copy of an official redemption notice by first class mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Owner of each Bond of such Series to be redeemed at the address shown on the related Bond Register or at such other address as is furnished in writing by such Owner to the related Registrar. Such notice of redemption shall also be provided to the related Series Credit Facility Provider and Series Confirmation Provider.

All official notices of redemption shall be dated and shall state:

- (a) the redemption date,
- (b) the redemption price,
- (c) if less than all outstanding Bonds of such Series are to be redeemed, the identification by letters, numbers or other distinguishing marks (and, in the case of partial redemption, the respective principal amounts) of the Bonds of such Series to be redeemed,
- (d) that on the redemption date the redemption price will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date, and
- (e) the place where such Bonds are to be surrendered for payment of the redemption price, which place of payment shall be the designated office of the Trustee or the related Registrar.

Failure to receive notice by mailing or any defect in that notice regarding any Bond shall not affect the validity of the proceedings for the redemption of any other Bond.

In addition to the foregoing official notice of redemption, except with respect to Bonds held under a Book-Entry System, further notice of redemption shall be given by the Trustee as set out below, but no defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as above prescribed.

(a) Each further notice of redemption given hereunder shall contain the information required above for an official notice of redemption plus (i) the CUSIP numbers of the Bonds being redeemed, (ii) the date of issue of the Bonds being redeemed as originally issued, (iii) the rate of interest borne by each Bond being redeemed, (iv) the maturity date of each Bond being redeemed and (v) any other descriptive information needed to identify accurately the Bonds being redeemed.

(b) Each further notice of redemption shall be sent at least 30 days before the redemption date by registered or certified mail or overnight delivery service to all registered securities depositories then in the business of holding substantial amounts of obligations of the types comprising the Series of Bonds being redeemed (such depositories now being The Depository Trust Company, New York, New York, Midwest

Securities Trust Company, Chicago, Illinois, and Philadelphia Depository Trust Company, Philadelphia, Pennsylvania) and to one or more national information services that disseminate notices of redemption of obligations such as the Bonds being redeemed.

Such redemption notices may state that no representation is made as to the accuracy or correctness of the CUSIP numbers printed therein or on the Bonds.

Official notice of redemption hereunder with respect to Bonds held under a Book-Entry System shall be given by the related Registrar or the Trustee only to the Depository or its nominee as the Owner of such Bonds. Selection of book-entry interests in Bonds called for redemption is the responsibility of the Depository, and any failure of any Direct Participant, Indirect Participant or Beneficial Owner to receive such notice and its contents or effect will not affect the validity of such notice or any proceedings for the redemption of such Bonds.

Notwithstanding the foregoing, any notice of redemption of Bonds may provide that the redemption of such Bonds is contingent or subject to such conditions as may be specified in the notice.

**Section 5.05 Payment of Redeemed Bonds.** Notice having been mailed to the Owners of the Bonds to be redeemed in the manner provided in Section 5.04 hereof, and upon Eligible Funds being deposited with the Trustee as and if required by Section 5.03 hereof, the Bonds and portions thereof called for redemption shall become due and payable on the redemption date, and upon presentation and surrender thereof at the place or places specified in that notice, shall be paid at the redemption price, including interest accrued to the redemption date. The Trustee shall make a drawing under the related Series Credit Facility and, if necessary, under the related Series Confirmation, to pay the redemption price of and accrued interest on the Bonds being redeemed if and to the extent sufficient Eligible Funds are not on deposit with the Trustee and available therefor. Any moneys received by the Trustee from the related Series Borrower to pay the redemption price of and accrued interest on the Bonds being redeemed and not applied for such purpose shall be paid to the related Series Credit Facility Provider to reimburse such Series Credit Facility Provider for any drawing made under the related Series Credit Facility, or to the related Series Confirmation Provider to reimburse such Series Confirmation Provider for any drawing made under the related Series Confirmation, as the case may be, to pay such redemption price and accrued interest.

Subject to the provisions of Section 13.04 hereof, if money for the redemption of all of the Bonds of a Series and portions thereof to be redeemed, together with interest accrued thereon to the redemption date, is held by the Trustee or the related Paying Agent on the redemption date so as to be available therefor on that date, and if notice of redemption has been deposited in the mail to the Owners of the Bonds of such Series to be redeemed as aforesaid, then from and after the redemption date those Bonds and portions thereof called for redemption shall cease to bear interest and no longer shall be considered to be Outstanding hereunder. If those moneys shall not be so available on the redemption date, or that notice shall not have been deposited in the mail as aforesaid, those Bonds and portions thereof shall continue to bear interest until they are paid at the same rate or rates as they would have borne had they not been called for redemption.

All moneys deposited in the Bond Fund and held by the Trustee or a Paying Agent for the redemption of particular Bonds shall be held in trust for the account of the Owners thereof and



shall be paid to them, respectively, upon presentation and surrender of those Bonds, except as provided in Section 3.04 hereof.

Upon the payment of the redemption price of Bonds being redeemed, each check or other transfer of funds issued for such purpose shall bear the CUSIP number (if any) identifying the Bonds being redeemed with the proceeds of such check or other transfer.

## **ARTICLE VI REVENUES AND FUNDS**

**Section 6.01 Application of Original Proceeds.** The proceeds of the sale of the Bonds of each Series shall be deposited with the Trustee on the Closing Date pursuant to Sections 6.02 and 6.03 hereof and applied as provided in the related Series Supplement.

**Section 6.02 The Project Fund.** There is hereby created as a separate deposit account (except when invested as provided hereinafter) in the custody of the Trustee a trust fund designated the “Project Fund.” Upon the issuance of a Series of Bonds, the Trustee shall establish within the Project Fund, with respect to such Series of Bonds, a separate and segregated trust account to be designated the “[Series Designation] Project Account.” Pending disbursement pursuant to a Loan Agreement, the moneys and Eligible Investments to the credit of the related Series Account of the Project Fund shall constitute a part of the Trust Estate assigned to the Trustee as security for the payment of the Debt Service Requirements with respect to the related Series of Bonds and amounts owed to the related Series Credit Facility Provider and Series Confirmation Provider under the related Series Credit Facility Agreement and Series Confirmation Agreement.

So long as no Event of Default shall have occurred and be continuing with respect to a Series of Bonds, all moneys credited to the related Series Account of the Project Fund shall be applied solely to the payment of the related Series Project Costs or to redeem Bonds of such Series under the circumstances described herein, the related Series Supplement and the related Series Loan Agreement. The Trustee shall, at the written direction of the Series Borrower, disburse moneys from the related Series Account of the Project Fund in payment of the related Series Project Costs, such disbursements to be made upon receipt by the Trustee of a requisition signed by a related Authorized Borrower Representative (on which the Trustee is entitled to conclusively rely, without investigation) stating, with respect to each payment to be made, that such requisition is for the payment of related Series Project Costs, is a proper charge against the related Series Account of the Project Fund and has not been the basis of any previous withdrawal, and including such other information and documents as may be required by the related Series Documents. Upon receipt of a certificate signed by an Authorized Borrower Representative that all related Series Project Costs have been paid or reimbursed, the Trustee shall transfer any amounts remaining in the related Series Account of the Project Fund to the related Series Debt Service Account of the Bond Fund to be used to redeem Bonds of such Series on the earliest possible date.

The Trustee shall keep and maintain adequate records pertaining to the Project Fund, the Series Accounts thereof and all disbursements therefrom. If requested by the Company, the Trustee shall file copies of the records pertaining to the Project Fund and all disbursements

therefrom with the Company. If requested by a Series Borrower or related Series Credit Facility Provider or Series Confirmation Provider, the Trustee shall file copies of the records pertaining to the related Series Account of the Project Fund and all disbursements from such Series Account with such Series Borrower, Series Credit Facility Provider or Series Confirmation Provider.

Upon the occurrence and continuance of an Event of Default hereunder with respect to a Series of Bonds which results in the principal amount of such Series of Bonds being declared to be due and payable immediately pursuant to Section 8.03 hereof, any moneys remaining in the related Series Account of the Project Fund shall be promptly transferred by the Trustee to the related Series Debt Service Account of the Bond Fund to be used as provided in Section 6.03 hereof.

**Section 6.03 The Bond Fund.** There is hereby created as a separate deposit account (except when invested as hereinafter set forth) in the custody of the Trustee a trust fund to be designated the “Bond Fund.” Upon the issuance of a Series of Bonds, the Trustee shall establish within the Bond Fund, with respect to such Series of Bonds, as applicable, separate and segregated trust accounts to be designated the “[Series Designation] Debt Service Account,” the “[Series Designation] Credit Facility Account” and the “[Series Designation] Confirmation Account.”

Except as otherwise provided herein, the Trustee shall deposit in the Bond Fund upon receipt all Series Revenues other than Bond proceeds deposited in the Project Fund, including all moneys received upon drawings made under Series Credit Facilities or Series Confirmations (except as otherwise provided in Section 4.05 hereof) and any other amounts that under the terms of this Indenture, the Series Supplements, the Series Loan Agreements, the Series Promissory Notes, the Series Credit Facility Agreements, the Series Credit Facilities or the Series Confirmations are to be applied to the payment of Debt Service Requirements. Except as provided herein, the Bond Fund (and accounts therein for which provision is made herein or in the Series Loan Agreements) and the moneys and Eligible Investments therein shall be used solely and exclusively for the payment of Debt Service Requirements when due at stated maturity or upon prior redemption or acceleration, or to reimburse the Series Credit Facility Providers or Series Confirmation Providers for draws on the Series Credit Facilities or Series Confirmations, all as provided herein and in the Series Loan Agreements.

The Trustee shall deposit in the Series Debt Service Accounts from time to time upon receipt all amounts received from the Company or otherwise for payment of principal of, premium, if any, on and interest on the related Series of Bonds as provided in Section 3.01 hereof, which moneys shall not be commingled with other moneys in the Bond Fund. Amounts in each Series Debt Service Account shall be applied to the payment when due of principal of, premium, if any, on and interest on the related Series of Bonds in accordance herewith, or to reimburse the related Series Credit Facility Provider or Series Confirmation Provider, as applicable, for draws on the related Series Credit Facility or Series Confirmation.

The Trustee shall establish separate subaccounts within each Series Debt Service Account for each source of deposit (including any investment income thereon) made into such Series Debt Service Account so that the Trustee may at all times ascertain the date of deposit, the

amounts and the source of the funds in each subaccount, and whether the funds constitute Eligible Funds.

All moneys (and only those moneys) received by the Trustee from drawings under a Series Credit Facility to pay principal of and interest on the related Series of Bonds shall be deposited to the related Series Credit Facility Account and shall not be commingled with other moneys in the Bond Fund. Moneys in a Series Credit Facility Account shall be applied to the payment when due of principal of and interest on the related Series of Bonds (other than related Pledged Bonds or as otherwise provided in Section 6.09 hereof and the related Series Supplement). Moneys in a Series Credit Facility Account shall not be applied to pay premiums on the related Series of Bonds.

All moneys (and only those moneys) received by the Trustee from drawings under a Series Confirmation to pay principal of and interest on the related Series of Bonds shall be deposited to the related Series Confirmation Account and shall not be commingled with other moneys in the Bond Fund. Moneys in a Series Confirmation Account shall be applied to the payment when due of principal of and interest on the related Series of Bonds (other than related Pledged Bonds or as otherwise provided in Section 6.09 hereof and the related Series Supplement). Moneys in a Series Confirmation Account shall be applied to pay premiums on the related Series of Bonds only if expressly provided for in the related Series Confirmation.

Moneys in the Series Accounts of the Bond Fund shall be used to pay Debt Service Requirements and for the redemption of a Series of Bonds prior to maturity and as otherwise provided in this Indenture only in the following order:

FIRST, amounts drawn by the Trustee under the related Series Credit Facility and deposited into the related Series Credit Facility Account of the Bond Fund;

SECOND, amounts drawn by the Trustee under the related Series Confirmation and deposited into the related Series Confirmation Account of the Bond Fund;

THIRD, any Eligible Funds on deposit in the related Debt Service Account of the Bond Fund; or

FOURTH, any other amounts available in the Bond Fund.

Any time that this Indenture requires or permits the Trustee to use Eligible Funds, the Trustee shall have the right to require that there be delivered to the Trustee, prior to making such use or application, an Opinion of Counsel stating in substance that such moneys constitute Eligible Funds as defined herein, and the Trustee shall be completely protected in relying upon such opinion.

Except with respect to moneys constituting the proceeds of draws on a Series Credit Facility or a Series Confirmation or the proceeds from the remarketing of the Bonds of the related Series or Beneficial Interests therein, notwithstanding anything in this Indenture to the contrary, upon request of the Series Borrower and with the written consent of the related Series

Credit Facility Provider, the Trustee shall pay to such Series Borrower any amounts on deposit in the related Debt Service Account of the Bond Fund on September 30<sup>th</sup> of each year during the term of such Series of Bonds.

**Section 6.04 The Remarketing Reimbursement Fund.** There is hereby created as a separate deposit account in the custody of the Trustee a trust fund to be designated the “Remarketing Reimbursement Fund.” Upon the issuance of a Series of Bonds, the Trustee shall establish within the Remarketing Reimbursement Fund, with respect to such Series of Bonds, as applicable, separate and segregated trust accounts to be designated the “[Series Designation] Remarketing Proceeds Account,” the “[Series Designation] Credit Facility Purchase Account.” and the “[Series Designation] Confirmation Purchase Account.” The Series Accounts of the Remarketing Reimbursement Fund shall be used solely in connection with the remarketing of Bonds of the related Series and Beneficial Interests therein as set forth in Section 4.04 hereof. Certain provisions regarding the Remarketing Reimbursement Fund are set forth in Section 6.09 hereof.

Upon receipt of the proceeds of a remarketing of Bonds or Beneficial Interests on a Purchase Date, the Trustee shall deposit such proceeds in the related Series Remarketing Proceeds Account for application to the purchase price of tendered Bonds of such Series and Beneficial Interests therein in accordance with Section 4.04 hereof. Such proceeds shall not be commingled with other moneys in the Remarketing Reimbursement Fund. Notwithstanding the foregoing, upon the receipt of the proceeds of a remarketing of Pledged Bonds, the Trustee shall immediately pay such proceeds to the related Series Credit Facility Provider or Series Confirmation Provider to the extent of any amount owing to such Series Credit Facility Provider or Series Confirmation Provider.

All moneys (and only those moneys) received by the Trustee from drawings under a Series Credit Facility to pay the purchase price of tendered Bonds of the related Series and Beneficial Interests therein shall be deposited in the related Series Credit Facility Purchase Account and shall not be commingled with other moneys in the Remarketing Reimbursement Fund. Moneys in a Series Credit Facility Purchase Account shall be applied to the purchase price of the tendered Bonds of the related Series and Beneficial Interests therein to the extent that moneys on deposit in the related Remarketing Proceeds Account shall not be sufficient for such purpose. Any amounts deposited in a Series Credit Facility Purchase Account and not needed with respect to any Purchase Date for the payment of the purchase price of any tendered Bonds of the related Series and Beneficial Interests therein shall be immediately returned to the related Series Credit Facility Provider.

All moneys (and only those moneys) received by the Trustee from drawings under a Series Confirmation to pay the purchase price of tendered Bonds of the related Series and Beneficial Interests therein shall be deposited in the related Series Confirmation Purchase Account and shall not be commingled with other moneys in the Remarketing Reimbursement Fund. Moneys in a Series Confirmation Purchase Account shall be applied to the purchase price of tendered Bonds of the related Series and Beneficial Interests therein to the extent that moneys on deposit in the related Remarketing Proceeds Account shall not be sufficient for such purpose. Any amounts deposited in a Series Confirmation Purchase Account and not needed with respect to any Purchase Date for the payment of the purchase price of any tendered Bonds of the related

Series and Beneficial Interests therein shall be immediately returned to the related Series Confirmation Provider.

**Section 6.05 Investments.** Except as hereinafter provided, moneys in the Bond Fund and the Project Fund shall be invested and reinvested by the Trustee in Eligible Investments at the written direction of the Authorized Company Representative. Investment of moneys in the Series Accounts of the Bond Fund shall mature or be redeemable without penalty at the option of the Trustee at the times and in the amounts necessary to provide moneys to pay Debt Service Requirements with respect to the related Series of Bonds as they become due at stated maturity or upon prior redemption. Each investment of moneys in the Series Accounts of the Bond Fund and the Project Fund shall mature or be redeemable without penalty at such time as may be necessary to make payments when necessary from such Series Accounts.

Subject to any directions from the Authorized Company Representative with respect thereto, from time to time the Trustee may sell Bond Fund and Project Fund investments and reinvest the proceeds therefrom in Eligible Investments maturing or redeemable as aforesaid. Any of those investments may be purchased from or sold to the Trustee, a Registrar, a Paying Agent, the Remarketing Agent or any bank, trust company or savings and loan association affiliated with any of the foregoing.

The Trustee shall sell or redeem investments credited to the Bond Fund at the price reasonably obtainable at the times required for the purposes of paying Debt Service Requirements when due as aforesaid, and shall do so without necessity for any order on behalf of the Company and without restriction by reason of any order.

An investment made from moneys credited to any Fund or Series Account hereunder shall constitute part of such Fund or Series Account, and each respective Fund or Series Account shall be credited with all proceeds of sale and income from investment of moneys credited thereto.

Moneys drawn on a Series Credit Facility or a Series Confirmation and deposited in the related Series Accounts of the Bond Fund or the Remarketing Reimbursement Fund shall be held in cash and not invested and shall be held in such Series Accounts pending application pursuant to the terms of Section 6.03 or Section 4.04 hereof. Notwithstanding any inconsistent or contrary provision hereof, such funds shall be applied only to the satisfaction of the specific Debt Service Requirements for which they were drawn, and any funds not so applied shall be returned to the related Series Credit Facility Provider or Series Confirmation Provider, as applicable, subject to the provisions of Section 6.08 hereof.

Moneys in the Remarketing Reimbursement Fund shall be held uninvested.

The Trustee shall have no obligation to invest and reinvest any cash held by it hereunder in the absence of timely and specific written direction from the Authorized Company Representative. In no event shall the Trustee be liable for the selection of investments or for investment losses incurred thereon. The Trustee may purchase or sell to itself or any affiliate, as principal or agent, investments authorized by this Indenture. The Trustee may conclusively rely upon such written direction from the Authorized Company Representative as to both the suitability and legality of the directed investments. The Company acknowledges that regulations

of the Comptroller of the Currency grant the Company the right to receive brokerage confirmations of the security transactions as they occur, at no additional cost. To the extent permitted by law, the Company specifically waives compliance with 12 C.F.R. 12 and hereby notifies the Trustee that no brokerage confirmations need be sent relating to the security transactions as they occur.

**Section 6.06 Moneys to be Held in Eligible Accounts and in Trust.** Except where moneys have been deposited with or paid to the Trustee pursuant to an instrument restricting their application to particular Bonds, all moneys required or permitted to be deposited with or paid to the Trustee or any Paying Agent under any provision of this Indenture, the Series Loan Agreements, the Series Credit Facilities or the Series Confirmations and to be used to pay Debt Service Requirements or the Series Promissory Notes, and any investments thereof, shall be held by the Trustee or that Paying Agent in Eligible Accounts and in trust for the benefit of the Owners of Beneficial Owners of the Bonds and the applicable Series Credit Facility Providers and Series Confirmation Providers. Except for (a) moneys deposited with or paid to the Trustee or any Paying Agent for the redemption of Bonds, notice of the redemption of which shall have been duly given, (b) moneys held by the Trustee pursuant to Section 6.07 hereof or (c) moneys in the Remarketing Reimbursement Fund, all moneys described in the preceding sentence held by the Trustee or any Paying Agent shall be subject to the lien hereof while so held.

In the event funds transfer instructions are given (other than in writing at the Closing Date), whether in writing, by telecopier or otherwise, the Trustee is authorized to seek confirmation of such instructions by telephone call-back to the person or persons designated by the Company, the Series Credit Facility Provider, the Series Confirmation Provider or the Remarketing Agent, and the Trustee may rely upon the confirmations of anyone purporting to be the person or persons so designated. The persons and telephone numbers for call-backs may be changed only in writing actually received and acknowledged by the Trustee. The parties acknowledge that such security procedure is commercially reasonable. It is understood that the Trustee and the beneficiary's bank in any funds transfer may rely solely upon any account numbers or similar identifying number provided by any party hereto to identify (i) the beneficiary, (ii) the beneficiary's bank or (iii) an intermediary bank. The Trustee may apply funds for any payment order it executes using any such identifying number, even where its use may result in a person other than the beneficiary being paid, or the transfer of funds to a bank other than the beneficiary's bank, or an intermediary bank, designated.

**Section 6.07 Nonpresentment of Bonds.** In the event that any Bond shall not be presented for payment when the principal thereof becomes due in whole or in part, either at stated maturity or upon prior redemption, or a check or draft for interest is uncashed, if moneys sufficient to pay the principal and premium, if any, then due on that Bond or to pay such check or draft shall have been made available to the Trustee for the benefit of its Owner, all liability of the Company to that Owner for such payment of the principal and premium, if any, then due on the Bond or interest on such Bond represented by such check or draft thereupon shall cease and be discharged completely. Thereupon, it shall be the duty of the Trustee to hold those moneys, without liability for interest thereon, in a separate account in the Bond Fund for the exclusive benefit of the Owner, who shall be restricted thereafter exclusively to those moneys for any claim of whatever nature on its part under this Indenture or on, or with respect to, the principal and premium, if any, then due on that Bond or interest on such Bond represented by such check or draft.

Any of those moneys which shall be so held by the Trustee, and which remain unclaimed by the Owner of a Bond not presented for payment or check or draft not cashed for a period of three years after the due date thereof (subject to applicable escheat law), shall be paid (i) to the Trustee to the extent of any fees, charges and expenses, including Ordinary Services, Ordinary Expenses, Extraordinary Services and Extraordinary Expenses, of the Trustee and its agents under this Indenture then due, (ii) to the related Series Credit Facility Provider or Series Confirmation Provider, as applicable, free of any trust or lien, to the extent of any amounts then due to such Series Credit Facility Provider under the related Series Credit Facility Agreement or the Series Confirmation Provider under the related Series Confirmation Agreement and (iii) if such Series Credit Facility and Series Confirmation have been surrendered to the related Series Credit Facility Provider and Series Confirmation Provider, respectively, then to the related Series Borrower. Thereafter, the Owner of that Bond shall look only to the related Series Borrower for payment and then only to the amounts so received by such Series Borrower or paid to or on behalf of such Series Borrower, without any interest thereon, and the Trustee shall not have any responsibility with respect to those moneys.

**Section 6.08 Disposition of Excess Moneys.** Except as provided in Section 6.07 hereof, any amounts remaining in the Series Accounts of the Bond Fund with respect to a particular Series of Bonds (a) after all of the outstanding Bonds of such Series shall be deemed paid and discharged under the provision of this Indenture, (b) after payment of all fees, charges and expenses of the Trustee and the related Registrar and Paying Agent, and of all other amounts required to be paid under this Indenture and the related Series Loan Agreement and Series Promissory Note and (c) after the related Series Credit Facility and the Series Confirmation have been surrendered to the related Series Credit Facility Provider and Series Confirmation Provider, respectively, shall be paid first to such Series Credit Facility Provider or Series Confirmation Provider to the extent of any amounts then due to such Series Credit Facility Provider under the related Series Credit Facility Agreement or the Series Confirmation Provider under the related Series Confirmation Agreement, and thereafter to the related Series Borrower, to the extent that those amounts are in excess of those necessary to effect the payment and discharge of the outstanding Bonds of such Series.

**Section 6.09 Drawings on Series Credit Facilities and Series Confirmations.**

(a) The Trustee shall draw on a Series Credit Facility and, if a related Series Confirmation is in effect and either (i) such Series Credit Facility Provider fails to honor a properly presented and conforming drawing under such Series Credit Facility, or (ii) the Federal Deposit Insurance Corporation shall have repudiated the Series Credit Facility Provider's obligations under such Series Credit Facility, the Trustee shall draw on the related Series Confirmation, pursuant to their respective terms, in the amounts and at the times necessary to pay when due Debt Service Requirements (excluding any premium) on the related Series of Bonds.

(b) Except as otherwise provided in the related Series Supplement, the Trustee shall draw upon a Series Credit Facility in accordance with the terms thereof under the following circumstances:

(i) No later than 3:00 p.m. on the Business Day prior to any Interest Payment Date for the related Series of Bonds (or prior to the maturity date or any

date set for a redemption of such Bonds which is not an Interest Payment Date), or Purchase Date, the Trustee shall determine the amount necessary to make all required payments of principal and interest on such Bonds or purchase price payments on the next succeeding Interest Payment Date, maturity date, other redemption date or such Purchase Date, and shall present a sight draft to the Series Credit Facility Provider (together with the required certificates under the Series Credit Facility) in such amount as hereinafter provided, so as to permit the timely transfer of funds from the Series Credit Facility Provider to the Trustee for payment of interest on the Bonds of such Series on each Interest Payment Date, for payment of the principal of and interest on such Bonds when due, whether at maturity or upon prior redemption, or the payment of the purchase price of the Bonds of such Series or Beneficial Interests therein when due on the applicable Purchase Date.

(ii) Upon acceleration of a Series of Bonds upon the occurrence of an Event of Default hereunder, the Trustee, no later than 3:00 p.m. on the Business Day prior to the day on which principal and interest shall be due and payable pursuant to the declaration of the acceleration of such Bonds pursuant to Section 8.03 hereof, shall present a sight draft to the related Series Credit Facility Provider (together with required certificates under the related Series Credit Facility) for payment of the entire amount due pursuant to Section 8.03 hereof with respect to such Bonds.

(c) Except as otherwise provided in the related Series Supplement, if (i) the Series Credit Facility Provider fails to honor a properly presented and conforming draw under the related Series Credit Facility by 9:00 a.m. on the Interest Payment Date (or prior to the maturity date or any date set for a redemption of the Bonds of the related Series which is not an Interest Payment Date), Purchase Date or day on which principal and interest shall be due and payable pursuant to the declaration of the acceleration of such Bonds pursuant to Section 8.03 hereof, or (ii) the Federal Deposit Insurance Corporation shall have repudiated the Series Credit Facility Provider's obligations under the related Series Credit Facility, the Trustee shall draw on the related Series Confirmation in accordance with the terms thereof on or before 11:00 a.m. on such day.

In the event the Series Confirmation is drawn upon, until such time as the related Credit Facility Provider and Series Confirmation Provider shall have given written notice to the Company, the Trustee, the Remarketing Agent, the related Series Borrower and any related Registrar and Paying Agent that the related Series Credit Facility has been reinstated and the Series Confirmation Provider has been reimbursed for the amount of any draws upon the Series Confirmation, such Series Confirmation Provider shall be entitled to (i) exercise all rights of the related Series Credit Facility Provider under this Indenture, including all rights of consent and to direct remedies hereunder, in lieu of such Series Credit Facility Provider, and (ii) receive all notices required to be delivered to the Series Credit Facility Provider under this Indenture.

(d) In calculating the amount to be drawn on a Series Credit Facility or a Series Confirmation for the payment of the purchase price of Bonds of a Series or Beneficial Interests therein on a Purchase Date pursuant to Section 4.02(c) hereof, or for



the payment of principal of and interest on such Bonds, whether on an Interest Payment Date, at maturity or upon redemption or acceleration, subject to Section 5.05 hereof, the Trustee shall not take into account the receipt or potential receipt of funds, from the related Series Borrower under the related Series Loan Agreement, or the existence of any other moneys in the related Series Accounts of the Project Fund or the Bond Fund, but shall draw on the related Series Credit Facility or, if the Series Credit Facility Provider fails to honor a properly presented and conforming draw under such Series Credit Facility, the related Series Confirmation, for the full amount of such purchase price or the full amount of the principal and interest coming due on such Series of Bonds.

(e) In calculating the amount, if any, to be drawn on a Series Credit Facility or a Series Confirmation for the payment of the purchase price of Bonds of a Series or Beneficial Interests therein on a Purchase Date pursuant to Sections 4.01, 4.02(a), 4.02(b) or 4.02(d) hereof, the Trustee shall take into account funds received from the purchasers of such tendered Bonds and Beneficial Interests or from the Remarketing Agent by 2:00 p.m. on such Business Day prior to such Purchase Date with respect to the remarketing of such Bonds and Beneficial Interests or otherwise, and shall thereupon draw on such Series Credit Facility or, if the Series Credit Facility Provider fails to honor a properly presented and conforming draw under such Series Credit Facility, the related Series Confirmation, the amounts necessary to purchase such Bonds or Beneficial Interests on the Purchase Date after taking into account all such funds which are attributable to the remarketing of such Bonds and Beneficial Interests. Upon receipt of such moneys from the Series Credit Facility Provider or the Series Confirmation Provider, as the case may be, the Trustee (i) shall deposit the amount representing a draw on the Series Credit Facility or the Series Confirmation for the payment of principal and interest on such Bonds in the Series Credit Facility Account or the Series Confirmation Account of the Bond Fund, as applicable, and apply the same only to the payment of such principal and interest when due on such Bonds, (ii) shall deposit the amount representing a draw on the Series Credit Facility or the Series Confirmation for the purchase of such Bonds and Beneficial Interests in the Series Credit Facility Purchase Account or the Series Confirmation Account of the Remarketing Reimbursement Fund, as applicable, and disburse such amount only to the tendering Owners and Beneficial Owners of the related Bonds and Beneficial Interests being purchased and (iii) so long as there does not exist an Event of Default described in Section 8.01(h) or (i) hereof with respect to such Series of Bonds, and subject to the prior satisfaction of all Debt Service Requirements and purchase price payments with respect to such Series of Bonds then due or on account of which funds shall have been paid to the Trustee by the related Series Borrower or shall have been obtained by the Trustee by a drawing or drawings on the related Series Credit Facility or Series Confirmation, by wire transfer shall pay, on behalf of the related Series Borrower, but only from and to the extent of related Series Loan Payments or any moneys available in the related Series Accounts of the Project Fund, the Bond Fund or the Remarketing Reimbursement Fund, amounts due and payable to such Series Credit Facility Provider under the related Series Credit Facility Agreement for any drawing made on the related Series Credit Facility, or to the Series Confirmation Provider under the Series Confirmation Agreement for any drawing made on the related Series Confirmation.

(f) Under no circumstances shall the Trustee use moneys drawn on a Series Credit Facility or a Series Confirmation to pay Debt Service Requirements with respect to any Pledged Bonds, or to pay premium, if any, on the related Series of Bonds. Such Debt Service Requirements with respect to Pledged Bonds shall be deemed made and correlative amounts withdrawn in satisfaction thereof from the payments made by the related Series Borrower to the related Series Credit Facility Provider under the related Series Credit Facility Agreement or to the related Series Confirmation Provider under the related Series Confirmation Agreement and as provided in the related Series Loan Agreement, and, to the extent of such payments, the related Series Borrower shall receive a credit against its obligations to make Series Loan Payments under the related Series Loan Agreement and Series Promissory Note.

(g) The Trustee shall promptly notify the related Series Borrower and the related Paying Agent, if any, by Electronic Means or oral or telephonic communication, confirmed in writing, if a Series Credit Facility Provider or Series Confirmation Provider has not transferred funds in accordance with the related Series Credit Facility or Series Confirmation upon the presentment of any draft.

(h) The provisions of this Section are subject to the provisions of Section 11.02 hereof.

## **ARTICLE VII FIDUCIARIES AND AGENTS**

**Section 7.01 Trustee's Acceptance and Responsibilities.** The Trustee accepts the trusts imposed upon it by this Indenture, and agrees to observe and perform those trusts, but only upon and subject to the terms and conditions set forth in this Article, to all of which the parties hereto, each Series Credit Facility Provider, each Series Confirmation Provider and the Owners agree:

(a) The Trustee undertakes to perform only those duties and obligations which are set forth specifically in this Indenture and the Series Supplements, and no duties or obligations shall be implied to the Trustee.

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

(c) In case an Event of Default has occurred and is continuing hereunder (of which the Trustee has been notified or is deemed to have notice under Section 7.02(f) hereof), the Trustee shall exercise those rights and powers vested in it by this Indenture and shall use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances.

(d) No provisions of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

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

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

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of a Series Credit Facility Provider, a Series Confirmation Provider or the Owners of at least a majority in aggregate principal amount of the Bonds of the applicable Series then Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture, as provided in Sections 8.04 and 8.05 hereof; and

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

(e) 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 Section 7.01.

**Section 7.02 Certain Rights and Obligations of the Trustee.** Except as otherwise provided in Section 7.01 hereof:

(a) The Trustee (i) may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents or receivers and shall not be responsible for the negligence or willful misconduct of such attorneys, agents or receivers appointed by it with due care, (ii) shall be entitled to the advice of counsel concerning all matters of trusts hereof and duties hereunder and (iii) may pay reasonable compensation in all cases to all of those attorneys, agents, receivers and employees reasonably employed by it in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorney (who may be the attorney or attorneys for the Company or a Series Borrower) approved by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action taken or omitted to be taken in good faith in reliance upon that opinion or advice or in reliance of any Opinion of Counsel.

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

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

except that in the event that the Trustee enters into possession of any property pursuant to any provision of any instrument or document, the Trustee shall use due diligence in preserving that property. The Trustee shall not be bound to ascertain or inquire as to the observance or performance of any covenants, agreements or obligations on the part of the Company or the Series Borrowers under the Series Loan Agreements except as set forth herein, but the Trustee may require of the Company or the Series Borrowers full information and advice as to the observance or performance of those covenants, agreements or obligations. The Trustee shall have no obligation to observe or perform any of the duties of the Company under the Series Loan Agreements.

(c) The Trustee shall not be accountable for the application by the Series Borrowers or any other Person of the proceeds of any Bonds authenticated or delivered hereunder. The Trustee shall have no responsibility with respect to any information in any offering memorandum or other disclosure material distributed with respect to the Bonds or for compliance with any securities laws in connection with the issuance, sale or remarketing of the Bonds. Notwithstanding any other provision of this Indenture, the Trustee shall not be obligated to perform any obligation hereunder and shall not incur any liability for the nonperformance or breach of any obligation hereunder to the extent that the Trustee is delayed in performing, unable to perform or breaches such obligation because of acts of God, war, terrorism, fire, floods, strikes, electrical outages, equipment or transmission failures or other causes reasonably beyond its control.

(d) The Trustee shall be protected, in the absence of bad faith on its part, in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document reasonably believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any Person who is the Owner of any Bonds at the time of making the request or giving the authority or consent shall be conclusive and binding upon all future Owners of the same Bond and of Bonds issued in exchange therefor or in place thereof.

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

(f) The Trustee shall not be required to take notice, and shall not be deemed to have notice, of any default or Event of Default described in Section 8.01(d), (e), (i), (j) or (k) hereof unless a Responsible Officer of the Trustee shall be notified specifically of the default or Event of Default in a written instrument or document delivered to it by the Company, a Series Borrower, a Series Credit Facility Provider, a Series Confirmation Provider or by the Owners of at least 10% of the aggregate principal amount of the Bonds then outstanding as to which such Event of Default shall apply. In the absence of delivery of a notice satisfying those requirements, the Trustee may assume conclusively that there is no default or Event of Default, except as noted above.

(g) At any reasonable time, the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives (i) may inspect and copy fully all books, papers and records of the Company pertaining to this Indenture, the Series Supplements, the Series Projects, the Series Loan Agreements, the Series Promissory Notes, the Series Credit Facilities, the Series Confirmations and the Bonds, and (ii) may take any memoranda from and in regard thereto as the Trustee may desire.

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

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

(j) Before taking action hereunder pursuant to Section 7.04 or Article VIII hereof (with the exception of any action required to be taken under Sections 8.02 or 8.03 (with respect to giving notices declaring the acceleration of the Bonds) hereof and except with respect to drawings made under a Series Credit Facility or a Series Confirmation and transferring amounts in accordance with the provisions hereof), the Trustee may require that a satisfactory indemnity bond be furnished to it for the reimbursement of all expenses which it may incur and to protect it against all liability by reason of any action so taken, except liability which is adjudicated to have resulted from its negligence or willful misconduct. The Trustee may take action without that indemnity, and in that case the Company or the related Series Borrower shall reimburse the Trustee for all of the Trustee's expenses pursuant to Section 7.03 hereof.

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

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

(m) The Trustee shall be entitled conclusively to rely upon the determination of the interest rates made and delivered to the Trustee by the Remarketing Agent.

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

(o) The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured email, facsimile transmission or other similar unsecured electronic methods; provided, however, that the Trustee shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which incumbency certificate shall be amended and replaced whenever a person is to be added

or deleted from the listing. If the Company elects to give the Trustee email or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding that such instructions conflict or are inconsistent with a subsequent written instruction. The Company agrees to assume all risks arising out of the use of such Electronic Methods to submit instructions and directions to the Trustee, including, without limitation, the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

(p) In acting or omitting to act pursuant to a Series Loan Agreement or any other document executed in connection herewith or therewith, the Trustee shall be entitled to all of the rights, immunities and indemnities accorded to it under this Indenture, including, but not limited to, this Article VII.

**Section 7.03 Fees, Charges and Expenses of Fiduciaries and Agents.** The Trustee and any Registrar and Paying Agent shall be entitled to payment or reimbursement by the Company or by the Series Borrowers, as provided in the Series Loan Agreements, for reasonable fees for their respective Ordinary Services rendered hereunder and for all advances, counsel fees and other Ordinary Expenses reasonably and necessarily paid or incurred by them in connection with the provision of Ordinary Services. For purposes hereof, fees for Ordinary Services provided for by their respective standard fee schedules shall be considered reasonable. In the event that it should become necessary for any of them to perform Extraordinary Services, they shall be entitled to reasonable extra compensation therefor and to reimbursement for reasonable and necessary Extraordinary Expenses incurred in connection therewith.

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

The Trustee or any Registrar or Paying Agent shall not be entitled to compensation or reimbursement for Extraordinary Services or Extraordinary Expenses occasioned by their neglect or willful misconduct. The payment to which the Trustee or any Registrar or Paying Agent are entitled hereunder shall be made only from (a) Additional Payments made by the Series Borrowers pursuant to the Series Loan Agreements, or (b) other moneys available therefor (which shall not include amounts drawn under the Series Credit Facilities or the Series Confirmations). Any amounts payable to the Trustee and any Registrar or Paying Agent pursuant to this Section 7.03 shall be payable upon demand and shall bear interest from the date of demand therefor at the prime interest rate quoted by *The Wall Street Journal* from time to time plus 4.0%.

The Company shall indemnify, defend and hold harmless the Trustee, its directors, officers, employees, agents, attorneys and affiliates (the "Indemnitees") from all loss, liability, claims, proceedings, suits, demands, penalties, costs and expenses, including without limitation the costs and expenses of outside and in house counsel and experts and their staffs and all expenses of document location, duplication and shipment and of preparation to defend any of the foregoing ("Losses"), that may be imposed on, incurred by or asserted against any Indemnitee in

respect of (a) this Indenture, any Series Supplement or any other transaction documents relating to the Bonds, (b) the Trustee's execution, delivery and performance of this Indenture, any Series Supplement or any other transaction documents relating to the Bonds, except in respect of any Indemnatee to the extent such Indemnatee's negligence or bad faith primarily caused the Loss, and (c) any instruction or other direction upon which the Trustee may rely under this Indenture, any Series Supplement or any other transaction documents relating to the Bonds. The Indemnitees shall have a lien (subordinate only to the lien of the Owners, Series Credit Facility Providers and Series Confirmation Providers) upon all property held or collected by the Trustee hereunder for the payment of all amounts due them in respect of the foregoing indemnity and any other fees or expenses at any time owing any Indemnatee. The provisions of this Section shall survive the resignation or removal of the Trustee and the termination of this Indenture, any Series Supplement or any other transaction documents relating to the Bonds. When the Trustee incurs expenses or renders services after the occurrence of an Event of Default, such expenses and the compensation for such services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law.

**Section 7.04 Intervention by Trustee.** In any judicial proceeding to which the Company, a Series Borrower, a Series Credit Facility Provider or a Series Confirmation Provider is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of the Owners of a particular Series of Bonds, the Trustee may intervene on behalf of the Owners of such Bonds, and shall intervene if requested to do so in writing by the Owners of at least 25% of the aggregate principal amount of the Bonds of each such Series then outstanding or the related Series Credit Facility Provider or Series Confirmation Provider. The rights and obligations of the Trustee under this Section are subject to the approval of that intervention by a court of competent jurisdiction. The Trustee may require that a satisfactory indemnity bond be provided to it in accordance with Sections 7.01 and 7.02 hereof before it takes action under this Section.

**Section 7.05 Successor Trustee.** Anything herein to the contrary notwithstanding: (a) any corporation or association (i) into which the Trustee may be converted or merged, (ii) with which the Trustee or any successor to it may be consolidated or (iii) to which it may sell or transfer its assets and trust business as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, merger, consolidation, sale or transfer, *ipso facto*, shall be and become successor Trustee hereunder and shall be vested with all of the title to the whole property or trust estate hereunder; and (b) such corporation or association shall be vested further, as was its predecessor, with each and every trust, property, remedy, power, right, duty, obligation, discretion, privilege, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by, vested in or conveyed to the Trustee, without the execution or filing of any instrument or document or any further act on the part of any of the parties hereto. Any such corporation or association shall be required to satisfy the requirements for a Successor Trustee specified in Section 7.09 hereof.

**Section 7.06 Appointment of Co-Trustee.** It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including, without limitation, the laws of the State) denying or restricting the right of banks or trust companies to transact business as trustees in that jurisdiction. It is recognized that (a) if there is litigation under this Indenture or other instruments or documents relating to the Bonds or a Series Project, and in particular, in case of



the enforcement hereof or thereof upon a default or an Event of Default, or (b) if the Trustee should deem that by reason of any present or future law of any jurisdiction it may not (i) exercise any of the powers, rights or remedies granted herein to the Trustee, (ii) hold title to the properties, in trust, as granted herein or (iii) take any action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an individual or additional institution as a co-Trustee. The following provisions of this Section are adopted to these ends.

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

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

**Section 7.07 Resignation of the Trustee.** The Trustee may resign at any time from the trusts created hereby by giving written notice of the resignation to the Company, the Remarketing Agent and all Series Borrowers, Series Credit Facility Providers, Series Confirmation Providers, Registrars, Paying Agents and Offering Agents for the Bonds then outstanding and by mailing written notice of the resignation to the Owners as their names and addresses appear on the Bond Registers at the close of business 15 days prior to the mailing. The resignation shall take effect only upon the appointment of and acceptance by a successor Trustee.

If a Series Credit Facility Provider or a Series Confirmation Provider fails to honor any properly presented and conforming draw on a Series Credit Facility or Series Confirmation, as the case may be, and in the event the Trustee and such Series Credit Facility Provider or Series Confirmation Provider, as the case may be, are the same institution or related institutions, then the Trustee shall immediately resign from the trusts created hereby by giving written notice of the resignation to the Company, the Remarketing Agent and all Series Borrowers, Series Credit Facility Providers, Series Confirmation Providers, Registrars, Paying Agents and Offering Agents and the successor Trustee, and by mailing written notice of such resignation to the Owners as their names and addresses appear in the Bond Registers at the close of business 15 days prior to such mailing.

**Section 7.08 Removal of the Trustee.** The Trustee may be removed at any time by an instrument or document or concurrent instruments or documents in writing delivered to the Trustee, with copies thereof mailed to the Company, the Remarketing Agent and all Series Borrowers, Series Credit Facility Providers, Series Confirmation Providers, Registrars, Paying Agents and Offering Agents for the Bonds then outstanding, and signed (a) by or on behalf of the Owners of at least a majority in aggregate principal amount of the Bonds then outstanding, or (b) so long as there is no Event of Default hereunder, by the Company and all Series Borrowers.

The Trustee also may be removed at any time for any breach of trust or for acting or proceeding in violation of, or for failing to act or proceed in accordance with, any provision of this Indenture with respect to the duties and obligations of the Trustee by any court of competent jurisdiction upon the application of the Company, a Series Credit Facility Provider, a Series Confirmation Provider or the Owners of at least a majority in aggregate principal amount of the Bonds then Outstanding.

Any removal of the Trustee shall take effect only upon the appointment of and acceptance by a successor Trustee.

**Section 7.09 Appointment of Successor Trustee.** If (a) the Trustee shall resign, be removed, be dissolved or become otherwise incapable of acting hereunder, (b) the Trustee shall be taken under the control of any public officer or officers or (c) a receiver shall be appointed for the Trustee by a court, then a successor Trustee shall be appointed by the Company, with the written consent of the Series Borrowers and Series Credit Facility Providers; provided, however, that if a successor Trustee is not so appointed by the Company within ten days after (i) a notice of resignation or an instrument or document of removal is received by the Company, as provided in Section 7.07 and 7.08 hereof, respectively, or (ii) the Trustee is dissolved, taken under control, becomes otherwise incapable of acting or a receiver is appointed, in each case, as provided above, then the Owners of at least a majority in aggregate principal amount of Bonds then Outstanding may designate a successor Trustee acceptable to the Series Borrowers and the Series Credit Facility Providers by an instrument or document or concurrent instrument or documents in writing signed by or on behalf of those Owners. If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Section within 30 days of the events described in clauses (i) or (ii) of the previous sentence, the Owner of any Bond Outstanding hereunder, the Series Credit Facility Providers or any retiring Trustee may apply to any court of competent jurisdiction to appoint a successor Trustee. Such court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Trustee.

Every successor Trustee appointed pursuant to this Section shall be a trust company or a bank having the powers of a trust company, shall have a reported capital and surplus of not less than \$25,000,000 and shall be willing to accept the trusteeship under the terms and conditions of this Indenture.

Every successor Trustee appointed hereunder shall execute and acknowledge, and shall deliver to its predecessor, the Company, the Series Borrowers, the Series Credit Facility Providers, the Series Confirmation Providers and the Remarketing Agent an instrument or document in writing accepting the appointment. Thereupon, without any further act, the successor shall become vested with all of the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles,

interests and liens of its predecessor. Upon the written request of its successor, the Company, any Series Borrower, any Series Credit Facility Provider or any Series Confirmation Provider, the predecessor Trustee (a) shall execute and deliver an instrument or document transferring to its successor all of the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens of the predecessor Trustee hereunder, and (b) shall take any other action necessary to duly assign, transfer and deliver to its successor all property (including, without limitation, all securities and moneys and after first deducting any fees and expenses owed to the Trustee) held by it as Trustee. Should any instrument or document in writing from the Company be requested by any successor Trustee for vesting and conveying more fully and certainly in and to that successor the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens vested or conveyed or intended to be vested or conveyed hereby in or to the predecessor Trustee, the Company shall execute, acknowledge and deliver that instrument or document.

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

**Section 7.10 Adoption of Authentication.** In case any of the Bonds shall have been authenticated but shall not have been delivered, any successor Trustee or Registrar may adopt the certificate of authentication of any predecessor Trustee or Registrar and may deliver those Bonds so authenticated as provided herein. In case any Bonds shall not have been authenticated, any successor Trustee or Registrar may authenticate those Bonds either in the name of any predecessor or in its own name. In all cases, the certificate of authentication shall have the same force and effect as provided in the Bonds or in this Indenture with respect to the certificate of authentication of the predecessor Trustee or Registrar.

**Section 7.11 Additional Registrars.** The Trustee shall be the Registrar for the Bonds. However, with the consent of the Company, the Trustee may appoint one or more additional Registrars with power to act on its behalf and subject to its direction in performing the duties of the Registrar hereunder with respect to any Series of Bonds. It is the responsibility of the Trustee to establish the duties and responsibilities of any Registrar for the purposes of this Indenture, to the extent not specified herein.

The following provisions shall apply to Registrars other than the Trustee.

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

A Registrar may resign at any time by giving written notice of its resignation to the Company, the Trustee, the Remarketing Agent, the Series Borrower, the Series Credit Facility Provider, the Series Confirmation Provider and the Paying Agent for the Series of Bonds for which it serves as Registrar, at least 30 days before the resignation is to take effect. The resignation shall take effect immediately, however, upon the appointment of a successor Registrar, if the successor Registrar is appointed and accepts that appointment before the time stated in the notice.

The Registrar for a Series of Bonds may be removed at any time (a) by the Trustee, (b) by an instrument or document or concurrent instruments or documents in writing delivered to such Registrar, with copies thereof mailed to the Company, the Trustee, the Remarketing Agent and the related Series Borrower, Series Credit Facility Provider, Series Confirmation Provider and Paying Agent and signed by or on behalf of the Owners of at least a majority in aggregate principal amount of such Series of Bonds then Outstanding, or (c) so long as there is no Event of Default hereunder with respect to such Series of Bonds, by the Company and the related Series Borrower.

If (i) a Registrar shall resign, be removed, be dissolved or become otherwise incapable of acting hereunder, (ii) a Registrar shall be taken under the control of any public officer or officers, (iii) a receiver shall be appointed for a Registrar by a court or (iv) a Registrar shall have an order for relief entered in any case commenced by or against it under the federal bankruptcy laws or commence a proceeding under any federal or state bankruptcy, insolvency, reorganization or similar law, or have such a proceeding commenced against it and either have an order of insolvency or reorganization entered against it or have the proceeding remain undismissed and unstayed for 90 days, then a successor Registrar may be appointed by the Company with the written consent of the related Series Borrower and the Trustee; provided, however, that if a successor Registrar is not so appointed within ten days after (A) a notice of resignation or an instrument or document of removal is received by the Company, as provided above, or (B) the Registrar is dissolved, taken under control, becomes incapable of acting or a receiver is appointed, in each case, as provided above, then, if the Company shall not have appointed a successor Registrar, the Trustee or the Owners of at least a majority in aggregate principal amount of the Bonds then Outstanding for which it is Registrar may designate a successor Registrar by an instrument or document or concurrent instruments or documents in writing signed by the Trustee, or in the case of the Owners, by or on behalf of those Owners. Upon receiving a notice of resignation or upon such termination, or in case at any time any Registrar shall cease to be eligible under this Section, the Trustee shall serve as Registrar for the related Series of Bonds until a successor Registrar, if any, is appointed hereunder.

Every successor Registrar appointed hereunder shall execute and acknowledge and shall deliver to its predecessor, the Company, the Trustee, the Remarketing Agent and the related Series Borrowers, Series Credit Facility Providers, Series Confirmation Providers and Paying Agents an instrument or document in writing accepting the appointment. Thereupon, without any further act, the successor shall become vested with all of the properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, titles and interests of its predecessor. Upon the written request of its successor, the Company or any related the Series Borrower, Series Credit Facility Provider or Series Confirmation Provider, a predecessor Registrar (a) shall execute and deliver an instrument or document transferring to its successor all of the properties, remedies, powers, rights, duties, obligations, provisions,

privileges, claims, demands, causes of action, immunities, titles and interests of it as predecessor Registrar hereunder, and (b) shall take any other action necessary to duly assign, transfer and deliver to its successor all property and records (including, without limitation, the related Bond Register and any canceled Bonds) held by it as Registrar. Should any instrument or document in writing from the Company be requested by any successor Registrar for vesting and conveying more fully and certainly in and to that successor the properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, titles and interests vested or conveyed or intended to be vested or conveyed hereby in or to a predecessor Registrar, the Company shall execute, acknowledge and deliver that instrument or document.

The Company shall pay to any Registrar from time to time reasonable compensation as authorized in Section 7.03 hereof for its services.

The provisions of Section 3.03 and Subsection 7.02(d) hereof shall be applicable to any Registrar.

**Section 7.12 Additional Paying Agents.** The Trustee shall be the Paying Agent for the Bonds. However, with the consent of the Company, the Trustee may appoint one or more additional Paying Agents with power to act on its behalf and subject to its direction in the payment of Debt Service Requirements with respect to any Series of Bonds. It is the responsibility of the Trustee to establish the duties and responsibilities of any Paying Agent for the purposes of this Indenture, to the extent not specified herein.

The following provisions shall apply to Paying Agents other than the Trustee.

The Trustee shall transmit to the Paying Agent for a Series of Bonds, from moneys in the related Series Accounts of the Bond Fund and the Remarketing Reimbursement Fund, as applicable, amounts sufficient to make timely payments of interest, principal of and any premium on such Series of Bonds to be made by such Paying Agent which are then due and payable (whether on an Interest Payment Date, at stated maturity or upon prior redemption), or to pay the purchase price of tendered Bonds of such Series or Beneficial Interests therein on the applicable Purchase Date.

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

A Paying Agent may at any time resign by giving 30 days' prior written notice of resignation to the Trustee, the Company, the Remarketing Agent and the related Registrars, Series Borrowers, Series Credit Facility Providers and Series Confirmation Providers. The Trustee may at any time terminate the agency of any Paying Agent by giving written notice of termination to such Paying Agent, the Company, the Remarketing Agent and the related Registrars, Series Borrowers, Series Credit Facility Providers and Series Confirmation Providers.

Upon receiving such a notice of resignation or upon such termination, or in case at any time any Paying Agent shall cease to be eligible under this Section, the Trustee may appoint a successor Paying Agent and shall serve as Paying Agent for the related Series of Bonds until a successor Paying Agent, if any, is appointed hereunder. The Trustee shall give written notice of appointment of a successor Paying Agent to the Company, the Remarketing Agent and the related Registrars, Series Borrowers, Series Credit Facility Providers and Series Confirmation Providers, and shall mail, within ten days after that appointment, notice thereof to the Owners of the Bonds for which such successor is Paying Agent as their names and addresses appear on the related Bond Registers on the date of that appointment.

The Company shall pay to any Paying Agent from time to time reasonable compensation as authorized in Section 7.03 hereof for its services.

The provisions of Section 3.03 and 3.04 and Section 7.02(d) hereof shall be applicable to any Paying Agent.

**Section 7.13 The Remarketing Agent.** A single entity shall serve as Remarketing Agent with respect to all Series of Bonds, and a Series Remarketing Agreement shall be entered into in connection with each Series of Bonds by and between the Remarketing Agent and the Company. Gates Capital Corporation has been appointed the initial Remarketing Agent. Any subsequent Remarketing Agent shall be appointed by the Company, with the consent of the Series Borrowers, the Trustee and the Series Credit Facility Providers, and shall meet the qualifications set forth in this Section and Section 7.14 hereof. The Remarketing Agent shall signify its acceptance of the duties and obligations imposed upon it hereunder by a written instrument of acceptance delivered to the Company, the Series Borrowers, the Series Credit Facility Providers, the Series Confirmation Providers and the Trustee. In addition, the Remarketing Agent shall agree particularly to:

(a) compute the Weekly Interest Rate, the One Month Interest Rate, the Three Month Interest Rate, the Six Month Interest Rate, the One Year Interest Rate, the Five Year Interest Rate, the Ten Year Interest Rate and the Fixed Interest Rate, as applicable, for each Series of Bonds, and give notices of such computations to the Trustee and the Paying Agents, if any, on each applicable Interest Rate Determination Date, all in accordance with this Indenture; and

(b) keep such records relating to its computations of interest rates for each Series of Bonds as shall be consistent with prudent industry practice and to make such records available for inspection by the Company, the Trustee and the related Series Borrower, Series Credit Facility Provider and Series Confirmation Provider at all reasonable times.

The Remarketing Agent shall be entitled to advice of legal counsel on any matter relating to the Remarketing Agent's obligations hereunder and shall be entitled to act upon the opinion of such counsel in the exercise of reasonable care in fulfilling such obligations.

The Remarketing Agent shall be entitled to appoint additional co-Remarketing Agents to assist in the performance of the Remarketing Agent's obligations under this Indenture, and any such appointment shall be effective without any action by the Company, the Series Borrowers,

the Trustee, the Series Credit Facility Providers or the Series Confirmation Providers being necessary; provided that any such co-Remarketing Agent shall have the qualifications of a successor Remarketing Agent as specified in Section 7.14 hereof.

**Section 7.14 Resignation or Removal of Remarketing Agent; Successor.** The Remarketing Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least 30 days' notice of such resignation to the Company, the Series Borrowers, the Series Credit Facility Providers, the Series Confirmation Providers and the Trustee. The Remarketing Agent also may be removed at any time by the Company, with the written consent of the Series Borrowers and the Trustee, the Series Credit Facility Providers and the Series Confirmation Providers. To effect such removal, the Company shall give at least 30 days' notice of such removal to the Remarketing Agent, the Series Borrowers, the Series Credit Facility Providers, the Series Confirmation Providers and the Trustee.

Upon any resignation, removal or dissolution of the Remarketing Agent, the departing Remarketing Agent shall pay over, assign and deliver any moneys, Bonds of such Series and Beneficial Interests therein held by it in such capacity to its successor or, if there be no successor, to the Trustee.

In the event that the Remarketing Agent shall resign, be removed or be dissolved, or if the property or affairs of the Remarketing Agent shall be taken under the control of any state or federal court or administrative body because of bankruptcy or insolvency, or for any other reason, a successor Remarketing Agent shall be appointed by the Company, with the written consent of the Series Borrowers and Series Credit Facility Providers. Notwithstanding the provisions of the first paragraph of this Section, the Trustee shall *ipso facto* be deemed to be the Remarketing Agent until the appointment of a successor Remarketing Agent; provided, however, that the Trustee shall not remarket Bonds or Beneficial Interests or fix the interest rates for the Bonds but shall be required only to implement the purchase of Bonds and Beneficial Interests pursuant to draws on the related Series Credit Facilities or Series Confirmations as provided for in Section 6.09 hereof and the related Series Supplement.

Within 30 days of the resignation or removal of the Remarketing Agent or the appointment of a successor Remarketing Agent, the Trustee shall give notice thereof by registered or certified mail to each applicable Rating Service (if the Bonds have been rated) and to the Owners of the Bonds.

Every successor Remarketing Agent shall be authorized by law to perform all the duties imposed upon it by this Indenture and be in compliance with all standards and requirements of the National Association of Securities Dealers, Inc. and the Securities and Exchange Commission.

**Section 7.15 Dealing in Bonds.** The Trustee, Series Credit Facility Providers, Series Confirmation Providers, Remarketing Agent, Registrars and Paying Agents, their affiliates and any directors, officers, partners, employees or agents thereof, in good faith, may become the Owners of Bonds secured hereby with the same rights which it or they would have hereunder if they did not serve in those capacities.

**Section 7.16 Notices to Rating Services.** The Trustee shall give each Rating Service, if any, prior written notice of (a) any expiration, termination, renewal or substitution of any Series Credit Facility or Series Confirmation, (b) any amendment, supplement or other modification to this Indenture, a Series Supplement, a Series Loan Agreement, a Series Promissory Note, a Series Credit Facility Agreement (to the extent that the Trustee has actual knowledge thereof), a Series Remarketing Agreement (to the extent that the Trustee has actual knowledge thereof), a Series Credit Facility or a Series Confirmation, (c) any redemption of Bonds or any payment of Adjustable Rate Bonds, (d) any successor Trustee, Remarketing Agent (to the extent that the Trustee has actual knowledge thereof) or Paying Agent, (e) any change in Interest Rate Mode of a Series of Bonds and (f) any defeasance of Bonds. Such notices shall be sent to each Rating Service at its respective Notice Address.

## **ARTICLE VIII DEFAULTS AND REMEDIES**

**Section 8.01 Defaults; Events of Default.** The occurrence of any of the following events is defined as and declared to be and to constitute an Event of Default hereunder with respect to each Series of Bonds:

- (a) failure to pay when due any interest on any Bond of such Series;
- (b) failure to pay the principal of or any premium on any Bond of such Series when and as that principal or premium shall become due and payable, whether at stated maturity, upon prior redemption, by acceleration or otherwise;
- (c) failure to pay on a Purchase Date amounts due to the Owner of any Bonds of such Series or the Beneficial Owner of any Beneficial Interests therein tendered or deemed tendered to the Trustee pursuant to Sections 4.01 or 4.02 hereof;
- (d) subject to any rights to contest, failure by the Company to observe or perform any other covenant, agreement or obligation on its part to be observed or performed contained in this Indenture, the related Series Supplement or in the Bonds of such Series, which failure shall have continued for a period of 30 days after written notice, either by registered or certified mail, is given to the Company and the related Series Borrower, Series Credit Facility Provider and Series Confirmation Provider specifying the failure and requiring that it be remedied, which notice may be given by the Trustee in its discretion and shall be given by the Trustee at the written request of the related Credit Series Facility Provider or Series Confirmation Provider;
- (e) the occurrence and continuation of an Event of Default under a Series Loan Agreement;
- (f) receipt by the Trustee of a written notice from the related Series Credit Facility Provider that an event of default or termination has occurred and is continuing under the related Series Credit Facility, Series Credit Facility Agreement or related documents and directing the Trustee to accelerate the maturity of such Series of Bonds;



(g) receipt by the Trustee of a written notice from the related Series Confirmation Provider that an event of default or termination has occurred and is continuing under the related Series Confirmation, Series Confirmation Agreement or related documents and directing the Trustee to accelerate the maturity of such Series of Bonds;

(h) if no Series Confirmation is in effect with respect to such Series of Bonds, failure of the related Credit Facility Provider to honor any drawing properly made in strict compliance with the terms of the related Series Credit Facility;

(i) if no Series Confirmation is in effect with respect to such Series of Bonds, the related Series Credit Facility Provider shall commence a proceeding under any federal or state insolvency, reorganization or similar law, or have such a proceeding commenced against it and either have an order of insolvency or reorganization entered against it or have the proceeding remain undismissed and unstayed for 90 days; or have a receiver, conservator, liquidator or trustee appointed for it or for the whole or any substantial part of its property; and

(j) if a Series Confirmation is in effect with respect to such Series of Bonds, failure of the Series Confirmation Provider to honor any drawing properly made in strict compliance with the terms of the related Series Confirmation;

(k) if a Series Confirmation is in effect with respect to such Series of Bonds, the related Series Confirmation Provider shall commence a proceeding under any federal or state insolvency, reorganization or similar law, or have such a proceeding commenced against it and either have an order of insolvency or reorganization entered against it or have the proceeding remain undismissed and unstayed for 90 days; or have a receiver, conservator, liquidator or trustee appointed for it or for the whole or any substantial part of its property; and

(l) receipt by the Trustee of written notice from the related Series Credit Facility Provider or Series Confirmation Provider by the 5<sup>th</sup> Business Day following an interest drawing under the related Series Credit Facility or Series Confirmation, as the case may be, that the amount drawn to pay interest on the Bonds of such Series will not be reinstated.

The term “default” or “failure” as used in this Article means (i) a default or failure by the Company in the observance or performance of any of the covenants, agreements or obligations on its part to be observed or performed contained in this Indenture, the Series Supplements or in the Bonds, or (ii) a default or failure by a Series Borrower under the related Series Loan Agreement, in either case exclusive of any period of grace or notice required for such default or failure to constitute an Event of Default, as provided above or in the related Series Loan Agreement.

The provisions of paragraphs (j) and (k) above are subject to the conditions that (i) none of the acts or circumstances specified therein shall constitute an Event of Default with respect to a Series of Bonds if, within 60 days thereafter, a Substitute Series Credit Facility or Substitute Series Confirmation, as the case may be, is provided with respect to such Series of Bonds

meeting the requirements of Section 2.06 hereof or the related Series Supplement, as applicable, and the Trustee shall have complied with the mandatory tender notice provisions of Section 4.02(b) hereof, and (ii) the declaration of an Event of Default due to any of the acts or circumstances specified therein, and the exercise of remedies upon any such declaration, shall be subject to any applicable limitations of bankruptcy, insolvency or receivership laws applicable to the related Series Credit Facility Provider or Series Confirmation Provider, as the case may be, affecting or precluding such declaration or exercise during the pendency of or immediately following any bankruptcy, insolvency, receivership, liquidation or reorganization proceedings.

Notwithstanding the foregoing, if, by reason of *Force Majeure*, the Company is unable to perform or observe any agreement, term or condition hereof which would give rise to an Event of Default under paragraph (d) hereof (provided that such failure is other than the payment of money), the Company shall not be deemed in default during the continuance of such inability. However, the Company shall promptly give notice to the Trustee and the related Series Credit Facility Provider, Series Confirmation Provider and Series Borrower of the existence of an event of *Force Majeure* and shall use its best efforts to remove the effects thereof; provided that the settlement of strikes or other industrial disturbances shall be entirely within the Company's discretion. The term *Force Majeure* shall mean, without limitation, the following: acts of God; strikes; lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; droughts; floods; arrests; restraint of government and people; explosions; breakage, malfunction or accident to facilities, machinery, transmission pipes or canals; partial or entire failure of utilities; shortages of labor, materials, supplies or transportation.

Except as may otherwise be provided in the Series Documents with respect to a Series of Bonds, a default or Event of Default under this Indenture with respect to any Series of Bonds shall not, in and of itself, constitute a default or Event of Default hereunder with respect to any other Series of Bonds, nor shall a default or event of default under any Series Loan Agreement, in and of itself, constitute a default or event of default under any other Series Loan Agreement entered into either by such Series Borrower or any other Series Borrower, it being the intent of the parties hereto that there shall be no cross default between Series Loan Agreements or Series of Bonds unless otherwise specifically provided in the Series Documents with respect to a Series of Bonds.

**Section 8.02 Notice of Default.** If an Event of Default shall occur with respect to a Series of Bonds, within five days of a Responsible Officer of the Trustee obtaining actual knowledge of such Event of Default, the Trustee shall give written notice of the Event of Default, by registered or certified mail, to the Company, the Remarketing Agent, the related Series Borrower, Series Credit Facility Provider, Series Confirmation Provider, Registrar and Paying Agent and the Owners of the Bonds of such Series.

**Section 8.03 Acceleration.** Subject to Section 8.10 hereof, upon the occurrence of an Event of Default, except for the occurrence of an Event of Default described in Section 8.01(d) or (e) hereof with respect to a Series of Bonds, the Trustee shall, by a notice in writing delivered to the Company and the related Series Borrower, declare the principal of all Bonds of such Series

then Outstanding (if not then due and payable), together with interest accrued thereon, to be due and payable immediately.

Subject to Section 8.10 hereof, upon the occurrence of an Event of Default described in Section 8.01(d) or (e) hereof with respect to a Series of Bonds, the Trustee, upon written direction of the related Series Credit Facility Provider, shall declare the principal of all Bonds of such Series then Outstanding (if not then due and payable), together with interest accrued thereon, to be due and payable immediately.

Any such declaration shall be by Electronic Means or telephonic notice, promptly confirmed by notice in writing, to the Company, the Owners of the Bonds of such Series (to the extent their electronic contact information have been provided in writing to the Trustee), the related Series Borrower, Series Credit Facility Provider and Series Confirmation Provider and the Remarketing Agent, and, upon such declaration, principal and interest on all Bonds of such Series shall become and be immediately due and payable. The Trustee promptly upon such declaration shall give notice thereof in the same manner as provided in Section 5.04 hereof with respect to the redemption of the Bonds of such Series. Such notice shall specify the date on which payment of principal and interest shall be tendered to the Owners of the Bonds of such Series. Interest shall accrue to the date of declaration of acceleration by the Trustee, and no interest shall accrue on the Bonds of such Series from and after the date of such declaration of acceleration. Upon any declaration of acceleration hereunder, the Trustee shall immediately exercise such rights as it may have under the related Series Loan Agreement and Promissory Note to declare all payments thereunder to be immediately due and payable, and, pursuant to Section 6.09 hereof and the related Series Supplement, shall draw upon the related Series Credit Facility and, if necessary, the related Series Confirmation, to the full extent permitted by the terms thereof.

**Section 8.04 Other Remedies; Rights of Owners.** Upon the occurrence and continuance of an Event of Default with respect to a Series of Bonds, the Trustee may, in addition to the remedy provided in Section 8.03 hereof, pursue any other available remedy to enforce the payment of Debt Service Requirements with respect to such Series of Bonds or the observance and performance of any other covenant, agreement or obligation under this Indenture and the related Series Loan Agreement and Promissory Note or any other instrument providing security, directly or indirectly, for such Series of Bonds; provided, however, that the Trustee shall pursue any such remedy only with the prior written consent of (a) the related Series Credit Facility Provider (if no Event of Default described in Section 8.01(h) or (i) hereof (hereafter a “Credit Facility Provider Default”) has occurred and is continuing with respect to such Series of Bonds), or (b) the related Series Confirmation Provider (if a Credit Facility Provider Event of Default has occurred and is continuing with respect to such Series of Bonds and no Event of Default described in Section 8.01(j) or (k) hereof (hereafter a “Confirmation Provider Default”) has occurred and is continuing with respect to such Series of Bonds).

If, upon the occurrence and continuance of an Event of Default with respect to a Series of Bonds, the Trustee is properly directed by: (a) the Owners of at least a majority in aggregate principal amount of Bonds of such Series Outstanding (with the consent of the related Series Credit Facility Provider if no Credit Facility Provider Default with respect to such Series of Bonds has occurred and is continuing, or with the consent of the related Series Confirmation Provider if a Credit Facility Provider Default with respect to such Series of Bonds has occurred

and is continuing and no Confirmation Provider Default with respect to such Series of Bonds has occurred and is continuing); (b) by the related Series Credit Facility Provider (if no Credit Facility Provider Default with respect to such Series of Bonds has occurred and is continuing); or (c) by the related Series Confirmation Provider (if a Credit Facility Provider Default with respect to such Series of Bonds has occurred and is continuing and no Confirmation Provider Default with respect to such Series of Bonds has occurred and is continuing), the Trustee (subject to the provisions of Sections 7.01 and 7.02 hereof and particularly Sections 7.01(c)(iv) and 7.02(j) hereof) shall exercise any rights and powers conferred by this Section and by Section 8.03 hereof. Anything in this or the next succeeding paragraph to the contrary notwithstanding, (a) so long as no Credit Facility Provider Default with respect to such Series of Bonds has occurred and is continuing, the related Series Credit Facility Provider shall have the exclusive right to give any such directions to the Trustee, and (b) if a Credit Facility Provider Default with respect to such Series of Bonds has occurred and is continuing and no Confirmation Provider Default with respect to such Series of Bonds has occurred and is continuing, the related Series Confirmation Provider shall have the exclusive right to give any such directions to the Trustee.

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

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

No waiver of any default or Event of Default hereunder with respect to a Series of Bonds, whether by the Trustee or by the Owners of the Bonds of such Series, shall extend to or shall affect any subsequent default or Event of Default with respect to such Series of Bonds or shall impair any remedy, right or power consequent thereon.

As the assignee of all right, title and interest of the Company in and to the Series Loan Agreements (except for the Unassigned Company Rights), the Trustee is empowered to enforce each remedy, right and power granted to Company under the Series Loan Agreements.

Notwithstanding the foregoing, if a Series of Bonds is then rated by a Rating Service, no remedy conferred upon or reserved to the Trustee or to the Owners by this Section 8.04 shall be exercised in lieu of the remedy provided in Section 8.03 hereof unless each such Rating Service shall have confirmed in writing that its rating of such Series of Bonds will not be reduced or withdrawn as the result of the exercise of such remedy.

**Section 8.05 Right of Owners to Direct Proceedings.** The Owners of at least a majority in aggregate principal amount of Bonds of a Series then Outstanding as to which an Event of Default shall have occurred shall have the right at any time to direct, by an instrument or document or instruments or documents in writing executed and delivered to the Trustee, the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture or any other proceedings hereunder; provided,

however, that (a) any direction shall not be other than in accordance with the provisions of law and of this Indenture, (b) the Trustee shall be indemnified as provided in Sections 7.01 and 7.02 hereof, (c) the Trustee may take any other action which it deems to be proper and which is not inconsistent with the direction and (d) anything in the foregoing to the contrary notwithstanding, (i) so long as no Credit Facility Provider Default with respect to such Series of Bonds has occurred and is continuing, the related Series Credit Facility Provider shall have the exclusive right to give any such directions to the Trustee, and (ii) if a Credit Facility Provider Default with respect to such Series of Bonds has occurred and is continuing and no Confirmation Provider Default with respect to such Series of Bonds has occurred and is continuing, the related Series Confirmation Provider shall have the exclusive right to give any such directions to the Trustee.

Nothing herein shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Owner of the Bonds any plan of reorganization, arrangement, adjustment or composition affecting the Bonds or the rights of any Owner of the Bonds thereof, or to authorize the Trustee to vote in respect of the claim of any Owner of the Bonds in any such proceeding without the approval of the Owner of the Bonds so affected.

**Section 8.06 Application of Moneys.** All moneys received by the Trustee after acceleration of the maturity of a Series of Bonds and derived from any drawing made upon the related Series Credit Facility or Series Confirmation shall be applied by the Trustee to and only to the payment of principal of and interest on the Bonds of such Series. Subject to the foregoing, after payment of or creation of a reserve satisfactory to the Trustee for any costs, expenses, liabilities and advances paid, incurred or made by the Trustee in the collection of moneys pursuant to any right given or action taken under the provisions of this Article and the related Series Loan Agreement and Promissory Note (including, without limitation, reasonable attorneys' fees and expenses, except as limited by law or judicial order or decision entered in any action taken under this Article VIII) and all fees owing to the Trustee for Ordinary Services, Ordinary Expenses, Extraordinary Services and Extraordinary Expenses, all moneys received by the Trustee shall be applied as follows, subject to any provision made pursuant to Sections 5.05, 6.06 or 6.07 hereof:

(a) Unless the principal of all of the Bonds of such Series shall have become, or shall have been declared to be, due and payable, all of those moneys shall be deposited in the related Series Accounts of the Bond Fund and shall be applied:

FIRST, to the payment to the Owners entitled thereto of all installments of interest then due on the Bonds of such Series, in the order of the dates of maturity of the installments of that interest, beginning with the earliest date of maturity and if the amount available is not sufficient to pay in full any particular installment, then to the payment thereof ratably, according to the amounts due on that installment, to the Owners entitled thereto, without any discrimination or privilege, except as to any difference in the respective rates of interest specified in the Bonds of such Series;

SECOND, to the payment to the Owners entitled thereto of the unpaid principal of any of the Bonds of such Series which shall have become due (other than Bonds previously called for redemption for the

payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates, beginning with the earliest due date, with interest on such Bonds from the respective dates upon which they become due at the rates specified in such Bonds, and if the amount available is not sufficient to pay in full all Bonds of such Series due on any particular date, together with that interest, then to the payment thereof ratably, according to the amounts of principal due on that date, to the Owners entitled thereto, without any discrimination or privilege;

THIRD, to the related Series Confirmation Provider in accordance herewith; and

FOURTH, to the related Series Credit Facility Provider, in accordance herewith.

(b) If the principal of all of the Bonds of such Series shall have become due or shall have been declared to be due and payable pursuant to this Article, all of those moneys shall be deposited into the related Series Accounts of the Bond Fund and shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds of such Series, without preference or priority of principal over interest, of interest over principal, of any installment of interest over any other installment of interest or of any Bond of such Series over any other Bond of such Series, ratably, according to the amounts due respectively for principal and interest, to the Owners entitled thereto, without any discrimination or privilege, except as to any difference in the respective rates of interest specified in the Bonds of such Series.

(c) If the principal of all of the Bonds of such Series shall have been declared to be due and payable pursuant to this Article, and if that declaration thereafter shall have been rescinded and annulled under the provisions of Section 8.10 hereof, subject to the provisions of paragraph (b) of this Section in the event that the principal of all of the Bonds of such Series shall become due and payable later, the moneys shall be deposited in the related Series Accounts of the Bond Fund and shall be applied in accordance with the provisions of Article VI hereof.

(d) Whenever moneys are to be applied pursuant to the provisions of this Section, those moneys shall be applied at such times, and from time to time, as the Trustee shall determine having due regard to the amount of moneys available for application and the likelihood of additional moneys becoming available for application in the future. Whenever the Trustee shall direct the application of those moneys, it shall fix the date upon which the application is to be made, and upon that date interest shall cease to accrue on the amounts of principal, if any, to be paid on that date, provided the moneys are available therefor. The Trustee shall give notice of the deposit with it of any moneys and of the fixing of that date, all consistent with the requirements of Section 3.03 hereof for the establishment of, and for giving notice with respect to, a Special Record Date for the payment of overdue interest. The Trustee shall not be required to make payment of principal of and any premium on a Bond of such Series to the Owner thereof until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if it is paid fully, subject to the provisions of Section 3.04 hereof.

**Section 8.07 Remedies Vested in the Trustee.** All rights of action (including, without limitation, the right to file proof of claims) under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceeding relating thereto. Any suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining any Owners as plaintiffs or defendants. Any recovery of judgment with respect to a particular Series of Bonds shall be for the benefit of the Owners of the outstanding Bonds of such Series, subject to the provisions of this Indenture.

**Section 8.08 Rights and Remedies of Owners.** No Owner shall have any right to institute any suit, action or proceeding for the enforcement of this Indenture, for the execution of any trust hereof, or for the exercise of any other remedy hereunder unless:

(a) there has occurred and shall be continuing an Event of Default with respect to a Series of Bonds of which the Trustee has been notified, as provided in Section 7.02(f) hereof, or of which it is deemed to have notice under that paragraph;

(b) the Owners of at least 25% in aggregate principal amount of Bonds of such Series of Bonds then Outstanding shall have made written request to the Trustee and shall have afforded the Trustee reasonable opportunity to proceed to exercise the remedies, rights and powers granted herein or to institute the suit, action or proceeding in its own name, and shall have offered indemnity to the Trustee as provided in Sections 7.01 and 7.02 hereof; and

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

At the option of the Trustee, the notification (or notice), request, opportunity and offer of indemnity are conditions precedent in every case to the institution of any suit, action or proceeding described above. Anything in the foregoing to the contrary notwithstanding, no Owner of any Bond shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of this Indenture or for the execution of any trust hereof or for the appointment of a receiver or any other remedy hereunder with respect to a Series of Bonds unless both a Credit Facility Provider Default and a Confirmation Provider Default with respect to such Series of Bonds shall have occurred and be continuing.

No one or more Owners of the Bonds shall have any right to affect, disturb or prejudice in any manner whatsoever the security or benefit of this Indenture by its or their action, or to enforce, except in the manner provided herein, any remedy, right or power hereunder. Any suit, action or proceedings shall be instituted, had and maintained in the manner provided herein for the benefit of the Owners of all Bonds of the Series of Bonds then outstanding as to which the Event of Default shall have occurred. Nothing in this Indenture shall affect or impair, however, the right of any Owner to enforce the payment of the Debt Service Requirements with respect to any Bond owned by that Owner at and after the maturity thereof, at the place, from the sources and in the manner expressed in that Bond.

**Section 8.09 Termination of Proceedings.** In case the Trustee shall have proceeded to enforce any remedy, right or power under this Indenture in any suit, action or proceedings, and the suit, action or proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, the Company, the Trustee, the related Series Credit Facility Provider, the related Series Confirmation Provider and the Owners of the Bonds of such Series shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Trustee shall continue as if no suit, action or proceedings had been taken.

**Section 8.10 Waivers of Events of Default.** The Trustee shall waive an Event of Default described in Section 8.01(d), (e) or (f) hereof with respect to a Series of Bonds and its consequences, and rescind and annul any declaration of maturity of principal of the Bonds of such Series, upon the written request of the related Series Credit Facility Provider, and shall waive an Event of Default described in Section 8.01(g) hereof with respect to a Series of Bonds and its consequences, and rescind and annul any declaration of maturity of principal of the Bonds of such Series, upon the written request of the related Series Confirmation Provider.

The Trustee also may, at any time, in its discretion, waive any Event of Default with respect to a Series of Bonds and its consequences, and rescind and annul any declaration of maturity of principal of Bonds of a Series; provided, however that:

- (a) the express written consent of the related Series Credit Facility Provider shall be required in order to waive an Event of Default described in Section 8.01(d), (e), or (f) hereof with respect to a Series of Bonds;
- (b) the express written consent of the related Series Confirmation Provider shall be required in order to waive an Event of Default described in Section 8.01(g) hereof with respect to a Series of Bonds; and
- (c) the express written consent of the Owners of all the Outstanding Bonds of a Series shall be required in order to waive an Event of Default described in Section 8.01(a), (b), (c), (h), (i), (j), (k) or (l) hereof with respect to such Series of Bonds.

Notwithstanding the foregoing: (a) prior to waiving any Event of Default described in Section 8.01(f) hereof with respect to a Series of Bonds, the Trustee shall have received written notice from the related Series Credit Facility Provider that it has rescinded the notice of an event of default or termination giving rise to such Event of Default and that the related Series Credit Facility has been reinstated to the amount required by Section 2.06(a) hereof; (b) prior to waiving any Event of Default described in Section 8.01(g) hereof with respect to a Series of Bonds, the Trustee shall have received written notice from the related Series Confirmation Provider that it has rescinded the event of default or termination giving rise to such Event of Default and that the related Series Confirmation has been fully reinstated; and (c) prior to waiving any Event of Default described in Section 8.01(l) hereof with respect to a Series of Bonds, the Trustee shall have received written confirmation from the related Series Credit Facility Provider that the related Series Credit Facility has been reinstated to the amount required by Section 2.06(a) hereof and, if applicable, written confirmation from the related Series Confirmation Provider that the related Series Confirmation has been fully reinstated.



In the case of the waiver or rescission and annulment, or in case any suit, action or proceedings taken by the Trustee on account of any Event of Default with respect to a Series of Bonds shall have been discontinued, abandoned or determined adversely to it, the Company, the Trustee, the related Series Credit Facility Provider, the related Series Confirmation Provider and the Owners of the Bonds of such Series shall be restored to their former positions and rights hereunder, respectively. No waiver or rescission shall extend to any subsequent or other Event of Default or impair any right consequent thereon.

**Section 8.11 Subrogation Rights.** In the event any Series Credit Facility Provider or Series Confirmation Provider shall pay, through a draw under a Series Credit Facility or Series Confirmation, as the case may be, the principal of any Bond, such Series Credit Facility Provider or Series Confirmation Provider, as the case may be, shall be subrogated to the rights of the Owner of such Bond.

## **ARTICLE IX SUPPLEMENTAL INDENTURES**

**Section 9.01 Supplemental Indentures Generally.** Subject to the terms and provisions contained in Section 9.04 hereof, the Company and the Trustee may enter into Supplemental Indentures, including, without limitation, Series Supplements, for the purposes of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any Series Supplement, only as provided in this Article and pursuant to the other provisions therefor in this Indenture.

**Section 9.02 Supplemental Indentures Not Requiring Consent of Owners.** Subject to the terms and provisions contained in Section 9.04 hereof, the Company and the Trustee, without the consent of, or notice to, any of the Owners or the Series Borrowers, Series Credit Facility Providers or Series Confirmation Providers, may enter into Supplemental Indentures which shall not, in the opinion of the Company, be inconsistent with the terms and provisions hereof for any one or more of the following purposes:

- (a) to cure any ambiguity, inconsistency or formal defect or omission in this Indenture or the Series Supplements;
- (b) to grant to or confer upon the Trustee for the benefit of the Owners any additional rights, remedies, powers or authority that lawfully may be granted to or conferred upon the Owners or the Trustee;
- (c) to provide for the issuance of a Series of Bonds in accordance with the terms hereof;
- (d) to subject to this Indenture additional revenues, property or collateral;
- (e) to add to the covenants, agreements and obligations of the Company under this Indenture or the Series Supplements other covenants, agreements and obligations to be observed for the protection of the Owners or to surrender or limit any right, power or authority reserved to or conferred upon the Company in this Indenture or the Series Supplements;

(f) to evidence any succession to the Company and the assumption by its successor of the covenants, agreements and obligations of the Company under this Indenture, the Series Supplements, the Series Loan Agreements, the Series Promissory Notes and the Bonds;

(g) to permit the Trustee to comply with any obligations imposed upon it by law;

(h) to specify further the duties and responsibilities of, and to define further the relationship among, the Trustee, the Remarketing Agent and any Registrars or Paying Agents;

(i) to achieve compliance of this Indenture with any applicable federal securities laws;

(j) to evidence the appointment of a new Remarketing Agent;

(k) to permit any other amendment which, in the judgment of the Trustee, is not to the prejudice of the Trustee or, as evidenced by the Opinion of Counsel delivered under Section 9.05 hereof, is not to the prejudice of the Owners, including, but not limited to, changes required in order to obtain or maintain a rating on a Series of Bonds from a Rating Service; and

(l) to accept a Supplemental Series Credit Facility as provided in Section 2.07 hereof.

The Trustee may also accept, without the consent of or notice to any of the Owners of a Series of Bonds, a Substitute Series Credit Facility for such Series of Bonds or any amendments to the related Series Credit Facility necessary to continue the effectiveness of such Series Credit Facility as originally intended or which, as evidenced by an Opinion of Counsel delivered to the Trustee, are not to the prejudice of the Owners of the Bonds of such Series; or a related Substitute Series Confirmation or any amendments to the related Series Confirmation necessary to continue the effectiveness of such Series Confirmation as originally intended or which, as evidenced by an Opinion of Counsel delivered to the Trustee, are not to the prejudice of the Owners of the Bonds of such Series.

The provisions of Subsections 9.02(g) and (i) hereof shall not be deemed to constitute a waiver by the Trustee, the Company, the related Registrar or any Owner of Bonds of such Series of any right which it may have in the absence of those provisions to contest the application of any change in law to this Indenture or the Bonds of such Series.

**Section 9.03 Supplemental Indentures Requiring Consent of Owners.** In addition to the Supplemental Indentures permitted by Section 9.02 hereof, and subject to the terms and provisions contained in Section 9.04 hereof, the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding of each Series shall have the right, from time to time, to approve the execution by the Company and the Trustee of any Supplemental Indenture as shall be deemed necessary and desirable by the Company for the purposes of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions

contained in this Indenture or in any Series Supplement; provided, however, that Supplemental Indentures that affect only a particular Series of Bonds need be consented to only by the Owners of not less than a majority in aggregate outstanding principal amount of the particular Series of Bonds affected.

Notwithstanding the foregoing, nothing in this Indenture shall permit, or be construed as permitting, without the consent and approval of the Owners of all of the Bonds then Outstanding, any of the following, provided that any Supplemental Indenture that affects less than all of the Bonds need be consented to only by the Owners of the Bonds of the affected Series:

- (a) an extension of the maturity of the principal of, or the time for payment of any redemption premium or interest on, any Bond, or a reduction in the principal amount of any Bond, or the rate of interest or redemption premium thereon, or a reduction in the amount of, or extension of the time of any payment required by, any Bond, or a material modification in the optional tender rights granted by Article IV hereof;
- (b) a privilege or priority of any Bond over any other Bond (except as herein provided);
- (c) a reduction in the aggregate principal amount of the Bonds required for consent to such a Supplemental Indenture;
- (d) the deprivation of the Owner of any Bond then Outstanding of the lien created by this Indenture;
- (e) except as provided in Article X hereof, an alteration of the obligations of the Series Credit Facility Providers under the Series Credit Facilities or of the Series Confirmation Providers under the Series Confirmations; or
- (f) the amendment of this Section.

If at any time the Company shall request the Trustee to enter into a Supplemental Indenture for any of the purposes of this Section, the Trustee shall, upon receipt of consent from the affected Series Borrowers, Series Credit Facility Providers and Series Confirmation Providers as provided in Section 9.04 hereof, and upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such Supplemental Indenture to be mailed by certified mail to the affected Owners. Each such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the designated corporate trust office of the Trustee for inspection by all affected Owners. If, within 60 days or such longer period as shall be prescribed by the Company following the mailing of such notice, the Owners of the requisite percentage in aggregate principal amount of Bonds shall have consented to and approved the execution of such Supplemental Indenture as herein provided, no Owner of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof; or in any manner to question the propriety of the execution thereof; or to enjoin or restrain the Trustee or the Company (subject to Section 9.04) from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such Supplemental Indenture as in this Section and Section 9.04

hereof permitted and provided, this Indenture and/or the Series Supplement shall be and be deemed to be modified and amended in accordance therewith.

**Section 9.04 Consent of Other Parties.** Anything herein to the contrary notwithstanding, an amendment or Supplemental Indenture under this Article IX shall not become effective unless and until the Series Borrowers and the Series Credit Facility Providers with respect to all Outstanding Bonds shall have consented in writing to the execution and delivery thereof; provided, however, that if a Credit Facility Provider Default with respect to a Series of Bonds has occurred and is continuing, the consent of the related Series Credit Facility Provider shall not be required with respect to such amendment, but in lieu thereof, so long as no Confirmation Provider Default with respect to such Series of Bonds has occurred and is continuing, the consent of the related Series Confirmation Provider, if any, shall be required to such amendment; and provided further, that the consent of a particular Series Borrower, Series Credit Facility Provider or Series Confirmation Provider shall not be required if such amendment or supplement does not affect the related Series of Bonds.

The Trustee shall inform the Remarketing Agent and any Registrar and Paying Agent of any amendment or supplement to this Indenture or the Series Supplements, and such amendment or supplement shall not become effective unless and until the Remarketing Agent and each such Registrar and Paying Agent shall have consented in writing to the provisions thereof which affect its rights and obligations.

**Section 9.05 Conditions to Effectiveness of Supplemental Indenture.** Except for the issuance of the initial Series of Bonds hereunder, no Supplemental Indenture may be entered into without the Trustee and the Company first receiving (a) an Opinion of Counsel (who may be counsel to the Company or a Series Borrower) to the effect that such Supplemental Indenture is authorized under this Indenture; and (b) written evidence from each Rating Agency then rating the Bonds of the affected Series (if the Bonds of such Series are then rated) to the effect that the appropriate Rating Agency has reviewed the Supplemental Indenture and that the effectiveness thereof will not, by itself, result in a reduction or withdrawal of such Rating Agency's then current rating on such Series of Bonds.

**Section 9.06 Authorization to Trustee; Effect of Supplemental Indenture.** The Trustee is authorized to join with the Company in the execution and delivery of any Supplemental Indenture in accordance with this Article, and to make the further agreements and stipulations which may be contained therein. Thereafter, (a) that Supplemental Indenture shall form a part of this Indenture; (b) all terms and conditions contained in that Supplemental Indenture as to any provision authorized to be contained therein shall be deemed to be a part of the terms and conditions of this Indenture for any and all purposes; (c) this Indenture shall be deemed to be modified and amended in accordance with the Supplemental Indenture; and (d) the respective rights, duties and obligations under this Indenture of the Company, the Trustee, the Series Borrowers, the Series Credit Facility Providers, the Series Confirmation Providers, the Registrars, the Paying Agents, the Remarketing Agent and the Owners of the Bonds then Outstanding shall be determined, exercised and enforced hereunder in a manner which is subject in all respects to those modifications and amendments made by the Supplemental Indenture.

Express reference to any executed and delivered Supplemental Indenture may be made in the text of any Bonds issued thereafter if that reference is deemed necessary or desirable by the

Trustee or the Company. A copy of any Supplemental Indenture for which provision is made in this Article shall be mailed by the Trustee to the Remarketing Agent and each Registrar and Paying Agent affected by such Supplemental Indenture. The Trustee shall not be required to execute any Supplemental Indenture containing provisions adverse to the Trustee.

**Section 9.07 Modification by Unanimous Consent.** Notwithstanding anything contained elsewhere in this Indenture, the rights and obligations of the Company and of the Owners, and the terms and provisions of the Bonds and this Indenture or any Series Supplement, may be modified or altered in any respect with the consent of (a) the Company, (b) the Owners of all of the Bonds then Outstanding, (c) all the Series Borrowers, (d) all the Series Credit Facility Providers, (e) all the Series Confirmation Providers and (f) if such modifications or alterations contain provisions adverse to the Trustee, the Trustee.

## **ARTICLE X**

### **AMENDMENTS TO THE SERIES LOAN AGREEMENTS, SERIES PROMISSORY NOTES, SERIES CREDIT FACILITIES AND SERIES CONFIRMATIONS**

**Section 10.01 Amendments Not Requiring Consent of Owners.** Without the consent of or notice to the Owners of a Series of Bonds, but subject to the terms and provisions specified below, the related Series Loan Agreement, Series Promissory Note, Series Credit Facility or Series Confirmation may be amended, changed or modified as may be required (a) by the provisions of such Series Loan Agreement, Series Promissory Note, Series Credit Facility, Series Confirmation, the related Series Credit Facility Agreement, the related Series Confirmation, this Indenture or the related Series Supplement, (b) for the purpose of curing any ambiguity, inconsistency or formal defect or omission in such Series Loan Agreement, Series Promissory Note, Series Credit Facility, Series Confirmation, this Indenture or the related Series Supplement, (c) in connection with an amendment or to effect any purpose for which there could be an amendment of this Indenture pursuant to Section 9.02 hereof, (d) to extend the maturity of such Series Credit Facility or Series Confirmation or to transfer such Series Credit Facility or Series Confirmation to a successor Trustee or (e) in connection with any other change therein which is not to the prejudice of the Trustee or, as evidenced by an Opinion of Counsel delivered to the Trustee, not to the prejudice of the Owners of the Bonds of such Series; provided that if such Series of Bonds is then rated by a Rating Service, no amendment, change or modification of the related Series Credit Facility or Series Confirmation (other than an extension thereof) shall be made unless each such Rating Service shall have confirmed in writing that its rating of such Series of Bonds will not be reduced or withdrawn as the result of such amendment, change or modification.

An amendment, change or modification to a Series Loan Agreement or Series Promissory Note under this Section 10.01 shall not become effective unless and until the Trustee and the related Series Credit Facility Provider shall have consented in writing to the execution and delivery thereof; provided, however, that if a Credit Facility Provider Default with respect to such Series of Bonds has occurred and is continuing, the consent of the related Series Credit Facility Provider shall not be required with respect to such amendment, change or modification, but in lieu thereof, so long as no Confirmation Provider Default with respect to such Series of

Bonds has occurred and is continuing, the consent of the related Series Confirmation Provider, if any, shall be required to such amendment.

An amendment, change or modification to a Series Credit Facility under this Section 10.01 shall not become effective unless and until the Company, the Trustee and the related Series Borrower and Series Confirmation Provider shall have consented in writing to the execution and delivery thereof; and an amendment, change or modification to a Series Confirmation under this Section 10.01 shall not become effective unless and until the Company, the Trustee and the related Series Borrower shall have consented in writing to the execution and delivery thereof. The Trustee is entitled to receive an Opinion of Counsel (who may be counsel to the Company or a Series Borrower) to the effect that such amendment, change or modification to the Series Loan Agreement, Series Promissory Note, Series Credit Facility or Series Confirmation, as applicable, is authorized hereunder and thereunder.

**Section 10.02 Amendments Requiring Consent of Owners.** Except for the amendments, changes or modifications permitted by Section 10.01 hereof, neither the Company nor the Trustee shall consent to:

(a) any amendment, change or modification of a Series Loan Agreement, Series Promissory Note, Series Credit Facility or Series Confirmation that would change the amount or times as of which Series Loan Payments or drawings on such Series Credit Facility or Series Confirmation are required to be paid, without the giving of notice as provided in this Section of the proposed amendment, change or modification and receipt of the written consent thereto of the related Series Credit Facility Provider and Series Confirmation Provider and the Owners of all of the then Outstanding Bonds of the related Series affected by such amendment, change or modification; or

(b) any other amendment, change or modification of a Series Loan Agreement, Series Promissory Note, Series Credit Facility or Series Confirmation without the giving of notice as provided in this Section of the proposed amendment, change or modification and receipt or the written consent thereto of the related Series Credit Facility Provider and Series Confirmation Provider and the Owners of at least a majority in aggregate principal amount of Bonds of the related Series then Outstanding affected by such amendment, change or modification.

The consent of the applicable Owners shall be obtained as provided in Section 9.03 hereof with respect to Supplemental Indentures.

If the Company and a Series Borrower shall request at any time the consent of the Trustee to any proposed amendment, change or modification of a Series Loan Agreement, Series Promissory Note, Series Credit Facility or Series Confirmation contemplated in paragraph (a) or (b) of this Section 10.02, upon receipt of the written consent thereto from the applicable Series Credit Facility Provider and Series Confirmation Provider, and upon being indemnified satisfactorily with respect to fees and expenses, the Trustee shall cause notice of the proposed amendment, change or modification to be provided to the Owners of the Bonds of the related Series in the manner which is required by Section 9.03 hereof with respect to notice of Supplemental Indentures. This notice shall set forth briefly the nature of the proposed amendment, change or modification and shall state that copies of the instrument or document

embodying it are on file at the designated corporate trust office of the Trustee for inspection by all such Owners of the related Series of Bonds.

## **ARTICLE XI DEFEASANCE**

**Section 11.01 Release of Indenture.** If (a) the Company shall pay all of the Outstanding Bonds of a Series, or shall cause them to be paid and discharged, or if there otherwise shall be paid to the Owners of the Outstanding Bonds of such Series all Debt Service Requirements due or to become due thereon, and (b) provision also shall be made for the payment of all other sums payable hereunder or under the related Series Loan Agreement and Promissory Note with respect to such Series of Bonds, including all fees and expenses, including Ordinary Services, Ordinary Expenses, Extraordinary Services and Extraordinary Expenses, of the Trustee and any related Registrar and Paying Agent, and any amounts due to the related Series Credit Facility Provider under the related Series Credit Facility Agreement and to the Series Confirmation Provider under the related Series Confirmation Agreement and (c) the related Series Credit Facility and Series Confirmation have been surrendered to the Series Credit Facility Provider and Series Confirmation Provider, respectively, then these presents and the interests in the Trust Estate and rights hereby granted with respect to such Series of Bonds shall cease, determine and become null and void (except for those provisions surviving by reason of Sections 7.03 and 11.03 hereof in the event such Bonds are deemed paid and discharged pursuant to Section 11.02 hereof), and the covenants, agreements and obligations of the Company hereunder with respect to such Series of Bonds shall be released, discharged and satisfied.

Thereupon, and subject to the provisions of Section 11.03 hereof, if applicable: (a) the Trustee shall take such actions as may be necessary to evidence the cancellation and discharge of the lien of this Indenture with respect to such Series of Bonds (except for those provisions surviving by reason of Sections 7.03 and 11.03 hereof), and shall execute and deliver to the Company any instruments or documents in writing as shall be reasonably requested by the Company; and (b) the Trustee and any other Paying Agent with respect to such Series of Bonds shall assign and deliver to the Company any property subject at the time to the lien of this Indenture with respect to such Series of Bonds which then may be in their possession, except amounts in the related Series Accounts of the Bond Fund required (i) to be paid to the related Series Credit Facility Provider or Series Confirmation Provider under Section 6.08 hereof, or (ii) to be held by the Trustee and such Paying Agent under Section 6.07 hereof or otherwise for the payment of Debt Service Requirements with respect to such Series of Bonds.

**Section 11.02 Payment and Discharge of Bonds.** Bonds shall be deemed to have been paid and discharged within the meaning of this Indenture, including, without limitation, Section 11.01 hereof, if:

(a) the Trustee or any other Paying Agent with respect to such Bonds shall have received, in trust for and irrevocably committed thereto, sufficient moneys which are Eligible Funds or the proceeds of drawings under the related Series Credit Facility or Series Confirmation used to make such payment, or other moneys if accompanied by an Opinion of Bankruptcy Counsel in a form acceptable to the Trustee and each Rating Service (if any) for such Bonds; or

(b) the Trustee shall have received, in trust for and irrevocably committed thereto, noncallable Government Obligations (purchased with Eligible Funds or the proceeds of drawings under the related Series Credit Facility or Series Confirmation, or other moneys if accompanied by an Opinion of Bankruptcy Counsel in a form acceptable to the Trustee and each Rating Service (if any) for such Bonds) which are certified by an independent public accounting firm of national reputation to be of such maturities or redemption dates and interest payment dates, and to bear such interest, as will be sufficient, together with any moneys to which reference is made in subparagraph (a) above, without further investment or reinvestment of either the principal amount thereof or the interest earnings therefrom (which earnings are to be held likewise in trust and so committed, except as provided herein), for the payment of all Debt Service Requirements with respect to those Bonds on and to the next Interest Rate Adjustment Date or prior redemption date, as the case may be; provided, however, that if any of those Bonds are to be redeemed prior to the maturity thereof, notice of that redemption shall have been duly given or irrevocable provision satisfactory to the Trustee shall have been duly made for the giving of that notice; and provided further, however, that no Bonds, or any part thereof, shall be deemed to have been paid and discharged within the meaning of this Section 11.02: (i) if the Interest Rate Mode of such Bonds is other than the Fixed Interest Rate, unless such Bonds are to be redeemed on or prior to the next Interest Rate Adjustment Date for such Bonds and notice of that redemption shall have been duly given or irrevocable provision satisfactory to the Trustee shall have been duly made for the giving of that notice; or (ii) if the Interest Rate Mode of such Bonds is the Weekly Interest Rate; and

(c) the Trustee shall have received written confirmation from each Rating Agency then rating the Bonds of the Series being paid and discharged (if the Bonds of such Series are then rated) that the then-existing rating on the Bonds of such Series will not be lowered or withdrawn as a result of the action proposed to be taken pursuant to this Section.

Any moneys held by the Trustee in accordance with the provisions of this Section may be invested by the Trustee only in noncallable Government Obligations having maturity dates, or having redemption dates which, at the option of the owner of those obligations, shall be not later than the date or dates at which moneys will be required for the purposes described above. To the extent that any income or interest earned by, or increment to, the investments held under this Section is determined from time to time by the Trustee to be in excess of the amount required to be held by the Trustee for the purposes of this Section, that income, interest or increment shall be transferred at the time of that determination in the manner provided in Section 6.08 hereof for transfers of amounts remaining in the Bond Fund.

If any Bonds shall be deemed paid and discharged pursuant to this Section 11.02, then within 15 days after such Bonds are so deemed paid and discharged, the Trustee shall cause a written notice to be given to the Owners thereof as shown on the related Bond Register on the date on which such Bonds are deemed paid and discharged. Such notice shall state the numbers of the Bonds deemed paid and discharged or state that all the Bonds are deemed paid and discharged, set forth a description of the obligations held pursuant to subparagraph (b) of this Section 11.02 and specify any date or dates on which any of the Bonds are to be called for



redemption pursuant to notice of redemption given or irrevocable provisions made for such notice pursuant to the first paragraph of this Section 11.02.

**Section 11.03 Survival of Certain Provisions.** Notwithstanding the foregoing, any provisions of this Indenture which relate to the maturity of Bonds, interest payments and dates thereof, prior redemption provisions, exchange, transfer and registration of Bonds, replacement of mutilated, destroyed, lost or stolen Bonds, the safekeeping and cancellation of Bonds, non-presentment of Bonds, the holding of moneys in trust, repayments to Series Credit Facility Providers and Series Confirmation Providers from the Bond Fund, and the rights and duties of the Trustee, the Remarketing Agent and any Registrars and Paying Agents in connection with all of the foregoing shall remain in effect and be binding upon such parties and the Owners notwithstanding the release and discharge of this Indenture. The provisions of this Article and Section 7.03 hereof shall survive the release, discharge and satisfaction of this Indenture.

## **ARTICLE XII**

### **REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS**

**Section 12.01 Representations and Warranties of the Company.** The Company represents and warrants that:

- (a) It is a corporation validly organized and duly existing under the laws of the State and is authorized to conduct business in the State and every other state in which the nature of its business requires such authorization.
- (b) It has full power to execute and deliver this Indenture, the Remarketing Agreement, the Series Documents and the Bonds, is duly authorized and empowered to enter into the transactions and agreements contemplated by this Indenture and the Series Documents and to carry out its obligations hereunder and thereunder, and by proper action of its board of directors has been or will be duly authorized to execute and deliver this Indenture, the Series Documents and the Bonds.
- (c) All actions required on its part to be performed in connection with the execution and delivery of this Indenture, the Series Documents and the Bonds have been or will be taken duly and effectively.
- (d) The Bonds, upon issuance and authentication, and this Indenture and the Series Documents, upon execution and delivery, shall be valid obligations of the Company enforceable against the Company in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights and by general principles of equity.
- (e) The execution, delivery and performance of this Indenture and the Series Documents are not and will not be in contravention of law or any agreement, instrument, indenture or other undertaking to which the Company is a party or by which it is bound.
- (f) No litigation or administrative action of any nature has been served upon the Company for the purpose of restraining or enjoining the execution and delivery of this Indenture or any existing Series Documents, or in any manner questioning the

proceedings or authority under which they have occurred, or affecting their validity or its existence or authority of its present officers.

(g) The Company has not and will not pledge or assign its interest in any Series Documents or related Series Accounts other than to the Trustee under this Indenture to secure the related Series of Bonds.

**Section 12.02 Covenants and Agreements of the Company.** In addition to any other covenants and agreements of the Company contained in this Indenture, the Company further covenants and agrees with the Owners, the Series Borrowers, the Series Credit Facility Providers, the Series Confirmation Providers and the Trustee as follows:

(a) ***Maintenance of Existence.*** Throughout the term of this Indenture, the Company shall maintain its legal existence and domicile in the United States and shall be qualified to conduct business in the State; provided, however, that the Company may consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it, or dispose of all or substantially all of its assets, provided that any surviving, resulting or transferee entity or the entity purchasing all or substantially all of the assets of the Company shall be qualified to conduct business in the State and shall assume in writing or by operation of law all of the obligations of the Company under this Indenture and the Series Documents.

(b) ***Payment of Debt Service Requirements.*** The Company shall duly and punctually pay or cause to be paid all Debt Service Requirements with respect to all Bonds issued under this Indenture at the place, on the dates and in the manner provided herein, therein and in the Series Supplements according to the true intent and meaning hereof and thereof.

(c) ***Performance of Covenants; Company Warranties.*** The Company shall faithfully comply with the stipulations and provisions required to be performed by it and contained in this Indenture, the Bonds and the Series Documents, and under all proceedings of the Company pertaining thereto.

(d) ***Filings.*** The Company and Trustee agree that not more than once every five years, the Trustee may reasonably request, at the expense of the Company, an Opinion of Counsel addressed to the Company and the Trustee stating that based upon the law in effect on the date of such opinion, no filing, registration or recording and no re-filing, re-registration or re-recording of any agreement or instrument, including any financing statement or amendments thereto, or any continuation statements or instruments of a similar character relating to the pledges and assignments made by the Company or the Series Borrowers to secure the Bonds or the obligations of the Series Credit Facility Providers and the Series Confirmation Providers with respect to the Bonds, is required by law, in order to fully preserve and protect the security of the Trustee and the rights of the Trustee under the Indenture, or if such filing, registration, recording, re-filing, re-registration or re-recording is necessary, setting forth the requirements in respect thereto. The Company, with such cooperation and assistance from the Series Borrowers as the Company may reasonably request, shall take or cause to be taken all actions necessary to satisfy any such requirements. Promptly after any filing,

registration, recording, re-filing, re-registration or re-recording of any such agreement or instrument, the Trustee may request, at the expense of the Company, an Opinion of Counsel on behalf of the Company and the Trustee to the effect that such filing, registration, recording, re-filing, re-registration or re-recording has been duly accomplished and setting forth the particulars thereof. The Trustee shall be reimbursed by the Company or the Series Borrowers for the reasonable fees and expenses paid in connection with such Opinions of Counsel.

(e) ***Inspection of Books.*** All books, instruments and documents in the Company's possession relating to the Series Projects and the Bonds shall be open to inspection and copying (at the expense of the Person making such copies) at all times during the Company's regular business hours by any accountants or other agents of the Trustee, the Series Borrowers, the Series Credit Facility Providers or the Series Confirmation Providers which such entities may designate from time to time.

(f) ***Rights and Enforcement of the Series Loan Agreements.*** The Trustee may enforce, in its name or in the name of the Company, all rights for and on behalf of the Owners, except for Unassigned Company Rights, and may enforce all covenants, agreements and obligations of the Series Borrowers under and pursuant to the Series Loan Agreements and Series Promissory Notes, regardless of whether the Company is in default in the pursuit or enforcement of those rights, covenants, agreements or obligations.

(g) ***Further Assurances.*** The Company shall execute and deliver such Supplemental Indentures and such further instruments, and do such further acts, as the Trustee may reasonably require for the better assuring and confirming to the Trustee the amounts from the sources available under this Indenture for the payment of the Bonds, the amounts due to the Series Credit Facility Providers under the Series Credit Facility Agreements and the amounts due the Series Confirmation Providers under the Series Confirmation Agreements.

**Section 12.03 Representations, Agreements and Covenants of the Trustee.** The Trustee hereby represents that it is a national banking association duly organized and validly existing under the laws of the United States and duly authorized to exercise corporate trust powers in the State, and that it has an unimpaired reported capital and surplus of not less than \$25,000,000. The Trustee covenants that it will take such action, if any, as is necessary to remain duly authorized to exercise corporate trust powers and that it will maintain an unimpaired reported capital and surplus of not less than \$25,000,000. The Trustee accepts and agrees to observe and perform the duties and obligations of the Trustee hereunder.

## **ARTICLE XIII MISCELLANEOUS**

**Section 13.01 Limitation of Rights.** With the exception of rights conferred expressly in this Indenture, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any Person other than the parties hereto, the Remarketing Agent, any Registrars and Paying Agents, the Series Borrowers, the Series Credit

Facility Providers, the Series Confirmation Providers, the Beneficial Owners and the Owners of the Bonds any legal or equitable right, remedy, power or claim under or with respect to this Indenture or any covenants, agreements, conditions and provisions contained herein. This Indenture and all of those covenants, agreements, conditions and provisions are intended to be, and are, for the sole and exclusive benefit of the parties hereto, the Remarketing Agent, any Registrars and Paying Agents, the Series Borrowers, the Series Credit Facility Providers, the Series Confirmation Providers, the Beneficial Owners and the Owners of the Bonds, as provided herein.

Notwithstanding any provisions hereof to the contrary, a Series Credit Facility Provider shall have no rights hereunder, including, without any limitation, any right to give any direction or to give or withhold consent, unless (a) the related Series Credit Facility is in full force and effect and no Credit Facility Provider Default with respect to the related Series of Bonds has occurred and is continuing hereof, or (b) amounts are owed to such Series Credit Facility Provider for reimbursement of drawings under the related Series Credit Facility, but then only to the extent of such unreimbursed amounts; and a Series Confirmation Provider shall have no rights hereunder, including, without any limitation, any right to give any direction or to give or withhold consent, unless (a) the related Series Confirmation is in full force and effect and no Confirmation Provider Default with respect to the related Series of Bonds has occurred and is continuing, or (b) amounts are owed to such Series Confirmation Provider for reimbursement of drawings under the related Series Confirmation, but then only to the extent of such unreimbursed amounts.

**Section 13.02 Notices.** Except as provided in Section 8.02 hereof or elsewhere herein, it shall be sufficient service, or giving of any notice, request, complaint, demand or other instrument or document, if it is duly mailed by first class mail or delivered. Notices to the Trustee shall be sufficient only if actual receipt is confirmed. Notices to the Company, the Trustee, the Remarketing Agent, the initial Registrar and Paying Agent, the Series Borrowers, the Series Credit Facility Providers, the Series Confirmation Providers and the Rating Services, if any, shall be addressed as follows:

To the Company:

Summit Utilities, Inc.  
7810 Shaffer Parkway, Suite 120  
Littleton, CO 80127  
Attention: Michael P. Earnest, President  
Telephone: (303) 979-7680  
Facsimile: (303) 979-7892  
Email: mearnest@summitutilitiesinc.com

With a copy to:

Kenneth C. Wolfe, Esq.  
Summit Utilities, Inc.  
7810 Shaffer Parkway, Suite 120  
Littleton, CO 80127  
Telephone: (303) 979-7680  
Facsimile: (303) 979-7892  
Email: kcwolfe@summitutilitiesinc.com

To the Trustee:	<p>The Bank of New York Mellon Trust Company, N.A.  1775 Sherman Street, Suite 2775  Denver, CO 80203  Attention: Robert Dunn, Vice President  Telephone: (303) 764-3570  Facsimile: (303) 830-3147  Email: rdunn@bnymellon.com</p>
To the Remarketing Agent:	<p>Gates Capital Corporation  1031 U.S. Highway 22, Suite 205  Bridgewater, NJ 08807  Attention: Trading and Underwriting Department  Telephone: (908) 526-0900  Facsimile: (908) 526-3335  Email: arecio@gatescapital.com</p>
With a copy to:	<p>Gates Capital Corporation  520 E. Kettle Avenue  Littleton, CO 80122  Attention: Robert D. DeMonbrun  Telephone: (303) 794-9692  Facsimile: (303) 794-9698  Email: denvergates@prodigy.net</p>
To the Series Borrowers:	To the addresses specified in the applicable Series Supplements
To the Credit Facility Providers:	To the addresses specified in the applicable Series Supplements
To the Confirmation Providers:	To the addresses specified in the applicable Series Supplements
To Standard & Poor's:	<p>Standard &amp; Poor's  55 Water Street, 42<sup>nd</sup> Floor  New York, NY 10041  Attn: LOC Surveillance  Facsimile: (212) 438-7322  Email: nyloc@standardandpoors.com</p>
To Other Rating Services:	As directed in writing by the applicable Rating Service

Duplicate copies of each notice, request, complaint, demand or other instrument or document given hereunder to any of such parties also shall be given to the others. The foregoing parties may designate, by written notice given hereunder, any further or different addresses to which any subsequent notice, request, complaint, demand or other instrument or document shall be sent.

The Trustee shall designate, by notice to the Company, the Remarketing Agent, the Series Borrowers, the Series Credit Facility Providers and the Series Confirmation Providers, the addresses to which notices or copies thereof shall be sent to the Registrars and Paying Agents to the extent different from the address stated above.

In connection with any notice mailed pursuant to the provisions of this Indenture, a certificate of the Person(s) that mailed such notice that the notice was so mailed shall be conclusive evidence of the proper mailing of the notice.

**Section 13.03 Suspension of Mail.** If because of the suspension of delivery of first class mail, or for any other reason, the Trustee or any other Person shall be unable to mail by the required class of mail any notice required to be mailed by the provisions of this Indenture, the Trustee or any other Person shall give such notice in such other manner as in the judgment of the Trustee or such Person shall most effectively approximate mailing thereof, and the giving of the notice in that manner for all purposes of this Indenture shall be deemed to be in compliance with the requirement for the mailing thereof. Except as otherwise provided herein, the giving of any notice shall be deemed complete upon receipt of such notice by the intended recipient thereof.

**Section 13.04 Payments Due on Saturdays, Sundays and Holidays.** If any Interest Payment Date, Purchase Date, date of maturity of the principal of any Bonds or date fixed for the redemption of any Bonds is not a Business Day, then payment of interest, principal and any redemption premium or any purchase price payment need not be made by the Trustee or any Paying Agent on that date, but that payment may be made on the next succeeding Business Day with the same force and effect as if that payment were made on the Interest Payment Date, Purchase Date, date of maturity or date fixed for redemption, and no interest shall accrue for the period after that date; provided, however, if any Bonds bear interest at any of the Weekly Interest Rate, the One Month Interest Rate or the Three Month Interest Rate, interest shall accrue from the scheduled date of purchase of such Bonds or Beneficial Interests therein or from the scheduled date of any maturity or redemption due date of such Bonds until the Business Day on which such payment is made.

**Section 13.05 Instruments of Owners.** Any writing, including, without limitation, any consent, request, direction, approval, objection or other instrument or document required under this Indenture to be executed by any Owner may be in any number of concurrent writings of similar tenor and may be executed by that Owner in person or by an agent or attorney appointed in writing. Proof of (a) the execution of any writing including, without limitation, any consent, request, direction, approval, objection or other instrument or document, (b) the execution of any writing appointing any agent or attorney and (c) the ownership of Bonds shall be sufficient for any of the purposes of this Indenture if made on the following manner, and if so made, shall be conclusive in favor of the Trustee with regard to any action taken thereunder, namely:

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

(ii) the fact of ownership of Bonds shall be proved by the Bond Register maintained by the related Registrar with respect to such Series of Bonds.

Nothing contained herein shall be construed to limit the Trustee to the foregoing proof, and the Trustee may accept any other evidence of the matters stated therein which it deems to be sufficient. Any writing, including, without limitation, any consent, request, direction, approval, objection or other instrument or document, of the Owner of any Bond shall bind every further Owner of the same Bond with respect to anything done or suffered to be done by the Company, the Trustee, the Remarketing Agent and any related Series Borrower, Series Credit Facility Provider, Series Confirmation Provider, Registrar or Paying Agent pursuant to that writing.

**Section 13.06 Priority of this Indenture.** The lien of this Indenture on the Trust Estate shall be superior to any other liens that hereafter may be placed on the Trust Estate, or any portion thereof, by any party.

**Section 13.07 Limitation of Liability.** No covenant, agreement or obligation contained herein shall be deemed to be a covenant, agreement or obligation of any present or future member of the Company's Board of Directors or any officer, employee or agent of the Company in his or her individual capacity, and neither any officer of the Company executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof. No member of the Company's Board of Directors or any officer, employee or agent of the Company shall incur any personal liability with respect to any other action taken by him or her pursuant to any document executed by the Company in connection with the issuance, sale and delivery of the Bonds, provided that such person acts in good faith.

No agreements or provisions contained in this Indenture nor any agreement, covenant or undertaking by the Company contained in any document executed by the Company in connection with the issuance, sale and delivery of any Series of Bonds shall give rise to any pecuniary liability of the Company or a charge against its general credit or shall obligate the Company financially in any way except as may be payable from the related Series Pledged Revenues. No failure of the Company to comply with any term, condition, covenant or agreement herein or in any document executed by the Company in connection with the issuance and sale of any Series of Bonds shall subject the Company to liability for any claim for damages, costs or other financial or pecuniary charge except to the extent that the same can be paid or recovered from the related Series Pledged Revenues. Nothing herein shall preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Company for any failure to comply with any term, condition, covenant or agreement in any document executed by the Company in connection with the issuance, sale and delivery of a Series of Bonds; provided, however, that no costs, expenses or other monetary relief shall be recoverable from the Company except as may be payable from the related Series Pledged Revenues.

No recourse under or upon any obligation, covenant, acceptance or agreement contained in any document executed by the Company in connection with the issuance, sale and delivery of a Series of Bonds, or under any judgment obtained against the Company, the Company's Board of Directors or any officer, employee or agent of the Company, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, shall be permitted against any member of Company's

Board of Directors or any officer, employee or agent of the Company, as such, past, present or future, whether directly or through the Company or otherwise, for the payment for or to the Company or any receiver thereof, or for or to any Owner of any Bond, or otherwise, of any sum that may be due and unpaid by the Company upon any of the Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such member of the Company's Board of Directors or officer, employee or agent of the Company, as such, to respond by reason of any act or omission on his or her part, or otherwise, for, directly or indirectly, the payment for or to the Company or any receiver thereof, or for or to the Owner of any Bond, or otherwise, of any sum that may remain due and unpaid upon any Bond, shall be deemed to be and is hereby expressly waived and released as a condition of and consideration for the execution and delivery of the Indenture and the issuance of the Bonds.

The Company's rights to immunities and protection from liability hereunder and any related document shall survive final payment or defeasance of the Bonds.

**Section 13.08 Rating Categories.** Except as otherwise expressly provided herein, any reference herein to a rating category established by a Rating Service shall mean such category without regard to any modification thereof by the addition of a plus or minus sign or a number indicating relative standing within such category.

**Section 13.09 Binding Effect.** This Indenture shall inure to the benefit of and shall be binding upon the Company and the Trustee and their respective successors and assigns, subject, however, to the limitations contained herein. The Series Credit Facility Providers and the Series Confirmation Providers shall be third party beneficiaries of this Indenture.

**Section 13.10 Severability.** In case any section or provision of this Indenture, or any covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Indenture, or any application thereof, is held to be illegal or invalid for any reason, or is inoperable at any time, that illegality, invalidity or inoperability shall not affect the remainder thereof or any other section or provision of this Indenture or any other covenant, agreement stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Indenture, all of which shall be construed and enforced at the time as if the illegal, invalid or inoperable portion were not contained therein.

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

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

**Section 13.12 Venue.** Any suit, action or proceeding involving the rights and obligations of the Company under this Indenture and any related document shall be brought in the District Court of the County of Jefferson in the State of Colorado or the United States District Court for the District of Colorado.



**Section 13.13 Counterparts.** This Indenture may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, the Company and Trustee have caused this Indenture to be duly executed in their respective names, all as of the date first above written.

**SUMMIT UTILITIES, INC.**

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

Attest:

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

**THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Trustee**

By: \_\_\_\_\_  
Authorized Signatory

[Signature Page]