

---

---

CITY OF SANTA FE, NEW MEXICO  
and  
EL CASTILLO RETIREMENT RESIDENCES

---

LEASE AND PURCHASE AGREEMENT

---

DATED AS OF OCTOBER 1, 2019

---

CITY OF SANTA FE, NEW MEXICO  
RETIREMENT FACILITY REVENUE BONDS  
(EL CASTILLO RETIREMENT RESIDENCES PROJECT)  
SERIES 2019A AND SERIES 2019B

---

---

---

3789.007\6-20-2019\Lease and Purchase Agreement

Exhibit

A

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS .....	1
Section 1.1.    Definitions.....	1
ARTICLE II REPRESENTATIONS .....	8
Section 2.1.    Representations by the Issuer.....	8
Section 2.2.    Representations by the Obligor.....	8
ARTICLE III THE SERIES 2019 PROJECT .....	10
Section 3.1.    Acquisition and Construction.....	10
Section 3.2.    Assignment of Title and Lease of Series 2019 Project .....	10
Section 3.3.    Operation.....	11
Section 3.4.    Insurance .....	11
Section 3.5.    Maintenance and Repair.....	11
Section 3.6.    Term of this Agreement .....	11
Section 3.7.    Purchase of Series 2019 Project.....	11
Section 3.8.    Conveyance.....	11
Section 3.9.    Property Tax Exemption .....	12
Section 3.10.   Payment in Lieu of Taxes .....	12
Section 3.11.   Claw back Provisions.....	12
ARTICLE IV ISSUANCE OF THE BONDS; CONSTRUCTION OF PROJETS; DISBURSEMENTS	13
Section 4.1.    Agreement to Issue Bonds, Application of Bond Proceeds .....	13
Section 4.2.    Agreement to Construct Project; Completion Certificate .....	13
Section 4.3.    Cost of Construction .....	13
Section 4.4.    Plans; Modifications of Projects .....	13
Section 4.5.    Compliance with Regulatory Requirements .....	13
Section 4.6.    Requests for Disbursements.....	14
Section 4.7.    Cost of Issuance Fund.....	14
Section 4.8.    Modification of Disbursements.....	14
Section 4.9.    Covenants Regarding Tax Exemption .....	15
Section 4.10.   Allocation of, and Limitation on, Expenditures for the Project .....	17
Section 4.11.   Representations and Warranties as to Tax Exempt Status of Obligor .....	17
Section 4.12.   Disposition of Series 2019 Project.....	18
Section 4.13.   (Reserved).....	18
Section 4.14.   Written Procedures.....	18
ARTICLE V OBLIGOR PAYMENTS; NOTES; PROVISION FOR PAYMENT .....	20
Section 5.1.    Obligor Payments.....	20
Section 5.2.    Lease Payments.....	20
Section 5.3.    Credits .....	21
Section 5.4.    Notes .....	22
Section 5.5.    Payment of Bond Trustee's and Paying Agent's Fees and Expenses.....	22
Section 5.6.    Reserve Fund.....	22
Section 5.7.    Payment of Administration Expenses.....	22

Section 5.8.	Payees of Payments.....	22
Section 5.9.	Obligations of Obligor Hereunder Unconditional.....	23
ARTICLE VI (Reserved).....		24
ARTICLE VII SPECIAL COVENANTS.....		25
Section 7.1.	No Warranty of Merchantability, Condition or Suitability by the Issuer.....	25
Section 7.2.	Right of Access to the Series 2019 Project.....	25
Section 7.3.	Nonsectarian Use.....	25
Section 7.4.	Further Assurances.....	25
<b>Section 7.5.</b>	<b>INDEMNIFICATION</b> .....	25
Section 7.6.	Authority of Obligor.....	27
Section 7.7.	Authority of Issuer Representative.....	28
Section 7.8.	No Personal Liability.....	28
Section 7.9.	Fees and Expenses.....	28
ARTICLE VIII ASSIGNMENT AND SUBLEASE.....		29
Section 8.1.	Assignment and Sublease by Obligor.....	29
Section 8.2.	Assignment and Pledge by Issuer.....	29
ARTICLE IX FAILURE TO PERFORM COVENANTS AND REMEDIES THEREFOR.....		30
Section 9.1.	Failure to Perform Covenants.....	30
Section 9.2.	Remedies for Failure to Perform.....	30
Section 9.3.	Discontinuance of Proceedings.....	30
Section 9.4.	No Remedy Exclusive.....	30
Section 9.5.	Agreement to Pay Attorneys' Fees and Expenses.....	31
Section 9.6.	Waivers.....	31
ARTICLE X PREPAYMENT OF NOTES.....		32
Section 10.1.	General Option to Prepay Notes.....	32
ARTICLE XI MISCELLANEOUS.....		33
Section 11.1.	Notices.....	33
Section 11.2.	Binding Effect.....	34
Section 11.3.	Severability.....	34
Section 11.4.	Amounts Remaining in Funds.....	34
Section 11.5.	Amendments, Changes, and Modifications.....	34
Section 11.6.	Execution in Counterparts.....	34
Section 11.7.	Payment.....	35
Section 11.8.	Governing Law.....	35
Section 11.9.	No Pecuniary Liability of Issuer.....	35
Section 11.10.	Payments Due on Holidays.....	35
Section 11.11.	No Individual Liability.....	35
Section 11.12.	Survival of Covenants.....	35
Exhibit A	Series 2019 Project Description.....	A-1
Exhibit B	Form of Cost of Issuance Disbursement.....	B-1

## LEASE AND PURCHASE AGREEMENT

THIS LEASE AND PURCHASE AGREEMENT dated as of October 1, 2019, between CITY OF SANTA FE, NEW MEXICO, a municipal corporation and political subdivision of the State of New Mexico (the "Issuer"), and EL CASTILLO RETIREMENT RESIDENCES, a nonprofit corporation duly organized and existing under the laws of the State of New Mexico (the "Obligor"),

### WITNESSETH:

WHEREAS, the Issuer is a legally and regularly created, established, organized and existing municipality under the general laws of the State of New Mexico; and

WHEREAS, the Issuer is authorized by the New Mexico Industrial Revenue Bond Act, Chapter 3, Article 32 NMSA 1978, as amended (the "Act") to issue industrial revenue bonds for the purposes set forth in the Act and to permit the expenditure of the proceeds thereof to pay, among other things, the cost of acquisition, construction and installation of certain facilities constituting a 501(c)(3) corporation project (as defined under the Act) and for the purposes of refinancing a 501(c)(3) corporation project in accordance with Section 3-32-6 NMSA 1978; and

WHEREAS, the Issuer is further authorized by the Act to acquire, whether by construction, purchase, gift or lease, projects (as defined in the Act) and to sell or lease or otherwise dispose of any of its projects upon such terms and conditions as the governing body of the Issuer may deem advisable; and

WHEREAS, the Obligor has requested the Issuer to issue its bonds in an amount sufficient to (a) finance certain capital costs, including acquiring, constructing and equipping a new adult residential retirement facility to be located in Santa Fe, New Mexico at 401 Old Taos Highway (the "Series 2019 Project"); (b) establish a debt service reserve fund, (c) fund capitalized interest and (d) pay for certain costs of issuance; and

WHEREAS, the Issuer has determined to issue its bonds for such purpose and to provide for the lease of the Series 2019 Project and the payment of lease payments in connection therewith; and

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto formally covenant, agree and bind themselves as follows:

### ARTICLE I

#### DEFINITIONS

Section 1.1. Definitions. Except as otherwise provided herein, the terms used in this Agreement shall have the meanings given such terms in the Master Indenture. In addition to such terms defined in the Master Indenture, the following terms, except where the context indicates otherwise, shall have the respective meanings set forth below.

"Account" means any account established within a Fund.

"Act" means the New Mexico Industrial Revenue Bond Act, Chapter 3, Article 32 NMSA 1978, as amended.

"Administration Expenses" means the reasonable and necessary fees and expenses incurred by the Issuer pursuant to this Agreement and the Bond Indenture.

"Affiliate" means, with respect to any Person, any Person that directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such first Person. A Person shall be deemed to control another Person for the purposes of this definition if such Person possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the second Person, whether through the ownership of voting securities, common directors, trustees or officers, by contract or otherwise.

"Agreement" or "Lease and Purchase Agreement" means this Lease and Purchase Agreement and any amendments and supplements hereto made in conformity herewith and with the Bond Indenture.

"Authorized Denominations" means the denomination of \$5,000 or any integral multiple thereof.

"Bond Counsel" means McCall, Parkhurst & Horton L.L.P., and its successors or such other nationally recognized bond counsel as may be selected by the Obligor with the approval of the Issuer, which approval may not be unreasonably withheld.

"Bond Fund" means the Bond Fund created in Section 3.02 of the Bond Indenture.

"Bond Indenture" means the Indenture of Trust of even date herewith relating to the Bonds between the Issuer and the Bond Trustee, including any indentures supplemental thereto made in conformity therewith.

"Bondholder" or "owner" of the Bonds mean the registered owner of any fully registered Bond.

"Bonds" means the Series 2019A Bonds and the Series 2019B Bonds.

"Bond Trustee" means The Bank of New York Mellon Trust Company, National Association, being the registrar, a paying agent and the trustee under the Bond Indenture, or any successor corporate trustee.

"Certified Ordinance" means an ordinance or resolution duly adopted by the City Council, certified by the City Clerk.

"City Council" means the governing body of the Issuer.

"Code" means the Internal Revenue Code of 1986, as amended.

"Completion Certificate" means a certificate of the Obligor delivered pursuant to Section 4.2(b) hereof.

"Construction Fund" means the construction fund created under Section 3.06 of the Bond Indenture.

"Cost" or "Costs" as applied to the Series 2019 Project means and includes any and all reasonable or necessary costs of financing and refinancing of the Series 2019 Project.

"Cost of Issuance" means all costs and expenses incurred by the Issuer or the Obligor in connection with the issuance and sale of the Bonds, including without limitation (i) reasonable fees and expenses of

accountants, attorneys, engineers, and financial advisors, (ii) materials, supplies, and printing and engraving costs, (iii) recording and filing fees and (iv) rating agency fees.

"Cost of Issuance Fund" means the cost of issuance fund created under Section 3.18 of the Bond Indenture.

"Delivery Date" means the date on which the Bonds are delivered to the purchaser or purchasers thereof and payment is received by the Bond Trustee.

"Disbursement Agreement" means the Construction Disbursement and Monitoring Agreement dated as of October 1, 2019 among the Obligor, zumBrunnen, Inc. and the Bond Trustee.

"Entrance Fee Redemption Account" means the account of such name in the Bond Fund created in Section 3.02 of the Bond Indenture.

"Entrance Fee Redemption Date" means the fifteenth day of each month.

"Entrance Fee Transfer Date" means the first Business Day of each month prior to the termination of the Entrance Fee Fund pursuant to Section \_\_\_ of Supplemental Indenture Number 2.

"Event of Default" means those defaults specified in Section 8.01 of the Bond Indenture.

"Fitch" means Fitch Ratings, Inc. or any successor thereto.

"Funded Interest Account" means the account of such name in the Construction Fund created in Section 3.06 of the Bond Indenture.

"Funds" means the Bond Fund, the Reserve Fund and the Construction Fund.

"Government Obligations" means direct obligations of, or obligations the principal of and interest on which are fully and unconditionally guaranteed as to timely payment of principal and interest by, the United States of America, including (in the case of direct obligations of the United States of America) evidences of direct ownership of proportionate interests in future interest or principal payments of such obligations. Investments in such proportionate interests must be limited to circumstances wherein (a) a bank or trust company acts as custodian and holds the underlying Government Obligations; (b) the owner of the investment is the real party in interest and has the right to proceed directly and individually against the Obligor of the underlying Government Obligations; and (c) the underlying Government Obligations are held in a special account, segregated from the custodian's general assets, and are not available to satisfy any claim of the custodian, any person claiming through the custodian, or any person to whom the custodian may be obligated.

"Interest Account" means the account of such name in the Bond Fund created in Section 3.02 of the Bond Indenture.

"Interest Payment Date" means each [May 15] and [November 15], commencing \_\_\_\_\_, 20\_\_, or, if such day is not a business day, the immediately succeeding business day in the years during which the Bonds are Outstanding under the provisions of the Bond Indenture.

"Issuer" means City of Santa Fe, New Mexico, or any municipal corporation succeeding to its rights and obligations under this Agreement.

"Issuer Representative" means the Mayor of the Issuer or such other person at the time, and from time to time, designated by written certificate of the Issuer furnished to the Obligor and the Bond Trustee containing the specimen signature of such person and signed on behalf of the Issuer by its Mayor. Such certificate shall designate an alternate or alternates, any of whom may act at any time as Issuer Representative.

"Lease Payments" means each payment to be made by the Obligor required to pay the amounts due and owing on the Bonds, as defined in Section 5.1 of the Agreement.

"Master Indenture" means the Master Trust Indenture and Security Agreement dated as of December 1, 2012, between the Obligor and the Master Trustee, including any supplements or amendments thereto and modifications thereof.

"Master Trustee" means The Bank of New York Mellon Trust Company, National Association, as trustee under the Master Indenture, and its successors as trustee thereunder.

"Maximum Annual Debt Service" for any series of Bonds means an amount equal to the maximum principal and interest requirements (taking into account all mandatory sinking fund payments) due in any calendar year on such series of the Bonds; provided, however, that principal of a series of the Bonds in its final year shall be excluded from the determination of Maximum Annual Debt Service to the extent moneys are on deposit as of the date of calculation in the Reserve Fund.

"Maximum Annual Debt Service on the Outstanding Series 2012 Bonds and the Bonds" means for any calendar year, as of any particular date of computation, the greatest amount required in the then-current or any future calendar year to pay the aggregate principal and interest due on the Series 2012 Bonds and the Bonds (including any mandatory sinking fund redemption installments); however, for the purposes of determining the amount of principal due on either the Series 2012 Bonds or the Bonds, the principal on the Series 2012 Bonds or the Bonds, as applicable, due on the final Stated Maturity Date thereof shall be excluded.

"Maximum Rate" means the maximum interest rate permitted by applicable New Mexico law.

"Moody's" shall mean Moody's Investors Service or any successor thereto.

"Notes" means the Series 2019A Note and the Series 2019B Note.

"Obligated Group Members" has the meaning given such term in the Master Indenture.

"Obligated Group Representative" or "Obligor" means (i) El Castillo Retirement Residences, a nonprofit corporation incorporated under the laws of the State of New Mexico, and (ii) any surviving, resulting or transferee corporation.

"Opinion of Bond Counsel" shall mean an opinion in writing signed by legal counsel selected by the Obligor and reasonably acceptable to the Issuer and the Bond Trustee who shall be nationally recognized in matters pertaining to the validity of obligations of governmental issuers and the exemption from federal income taxation of interest on such obligations.

"Opinion of Counsel" means an opinion in writing signed by an attorney or firm of attorneys, acceptable to the Bond Trustee, who may be counsel to the Obligor or other counsel.

"Outstanding" means, as of any particular time, all Bonds which have been duly authenticated and delivered by the Bond Trustee under the Bond Indenture, except:

(a) Bonds theretofore cancelled by the Bond Trustee or delivered to the Bond Trustee for cancellation after purchase in the open market or because of payment at or redemption prior to maturity;

(b) Bonds for the payment or redemption of which cash funds (or Government Obligations to the extent permitted in Section 7.01 of the Bond Indenture) shall have been theretofore deposited with the Bond Trustee (whether upon or prior to the maturity or redemption date of any such Bonds); provided that if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given or arrangements satisfactory to the Bond Trustee shall have been made therefor, or waiver of such notice satisfactory in form to the Bond Trustee, shall have been filed with the Bond Trustee and provided further that prior to such payment or redemption, the Bonds to be paid or redeemed shall be deemed to be Outstanding for the purpose of transfers and exchanges under Section 2.05 of the Bond Indenture; and

(c) Bonds in lieu of which other Bonds have been authenticated under Section 2.06 of the Bond Indenture.

"Paying Agent" means any bank or trust company, including the Bond Trustee, designated pursuant to the Bond Indenture to serve as a paying agency or place of payment for the Bonds, and any successor designated pursuant to the Bond Indenture.

"Payment Office" with respect to the Bond Trustee or other Paying Agent means the office maintained by the Bond Trustee or any affiliate of the Bond Trustee or of another Paying Agent for the payment of interest and principal on the Bonds.

"Permitted Encumbrances" has the meaning assigned to such term in the Master Indenture.

"Permitted Investments" has the meaning assigned to such term in the Master Indenture.

"Person" means an individual, association, unincorporated organization, corporation, limited liability company, partnership, joint venture, business trust or a government or an agency or a political subdivision thereof, or any other entity.

"Premium Security" means any Permitted Investment purchased or to be purchased at a premium from funds in the Project Account.

"Principal Account" means the account of such name in the Bond Fund created in Section 3.02 of the Bond Indenture.

"Project Account" means the account of such name in the Construction Fund created in Section 3.06 of the Bond Indenture.

"Rating Agency" means Fitch, Moody's or Standard & Poor's, and any successor thereto.

"Rebate Fund" means that special fund established in the name of the Issuer with the Bond Trustee pursuant to Section 3.16 of the Bond Indenture.



"Registered Owner" or "Owners" means the person or persons in whose name or names a Bond shall be registered on books of the Issuer kept by the Bond Trustee for that purpose in accordance with the terms of the Bond Indenture.

"Regular Record Date" means the last day of the month preceding each regularly scheduled Interest Payment Date therefor.

"Regulations" means the applicable proposed, temporary or final Income Tax Regulations promulgated under the Code or, to the extent applicable to the Code, under the Internal Revenue Code of 1954, as such regulations may be amended or supplemented from time to time.

"Reserve Account" means an account established within the Reserve Fund relating to a specific series of Bonds issued under the Bond Indenture.

"Reserve Fund" means the Reserve Fund created in Section 3.08 of the Bond Indenture.

"Reserve Fund Obligations" means cash and Permitted Investments.

"Reserve Fund Requirement" means an amount equal to (i) Maximum Annual Debt Service on the Outstanding Series 2012 Bonds and the Bonds less (ii) the Series 2012 Reserve Fund Requirement, which initially will be \$\_\_\_\_\_.

"Responsible Officer" when used with respect to the Bond Trustee means the president, any vice president, any assistant vice president, the secretary, any assistant secretary, the treasurer, any assistant treasurer, any senior associate, any associate or any other officer of the Bond Trustee within the corporate trust office described in Section 11.1 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 administration of the Bond Indenture.

"Securities Depository" means The Depository Trust Company, New York, New York, and any successor thereto as permitted by the Bond Indenture.

"Series 2012 Bonds" means the City of Santa Fe, New Mexico Retirement Facility Revenue Bonds (El Castillo Retirement Residences Project) Series 2012.

"Series 2012 Maximum Annual Debt Service" means an amount equal to the maximum principal and interest requirements (taking into account all mandatory sinking fund payments) due in any calendar year on the Series 2012 Bonds calculated in accordance with the provisions of the Master Indenture; provided, however, that principal of the Series 2012 Bonds in its final year shall be excluded from the determination of the Series 2012 Maximum Annual Debt Service to the extent moneys are deposited as of the date of calculation in the related reserve fund for the Series 2012 Bonds.

"Series 2012 Reserve Fund Requirement" means, as of any particular date of computation, an amount equal to the Series 2012 Maximum Annual Debt Service.

"Series 2019 Project" means the project described in Exhibit A hereto.

"Series 2019A Bonds" means the City of Santa Fe, New Mexico Retirement Facility Revenue Bonds (El Castillo Retirement Residences Project) Series 2019A issued pursuant to the Bond Indenture.

"Series 2019A Note" means the Note issued by the Obligor pursuant to the Supplemental Indenture Number 2 relating to the Series 2019A Bonds.

"Series 2019B Bonds" means the City of Santa Fe, New Mexico Retirement Facility Revenue Bonds (El Castillo Retirement Residences Project) Series 2019B issued pursuant to the Bond Indenture.

"Series 2019B Note" means the Note issued by the Obligor pursuant to the Supplemental Indenture Number 2 relating to the Series 2019B Bonds.

"Short term" means, as to any investment, maturing within one year from the date of such investment and not renewable by the Obligor for a term greater than one year beyond the date of original issuance.

"Special Record Date" means a special date fixed to determine the names and addresses of owners of Bonds for purposes of paying interest on a special interest payment date for the payment of defaulted interest, all as further provided in Section 2.03 of the Bond Indenture.

"Standard & Poor's" shall mean S&P Global Ratings, a division of S&P Global Inc., or any successor thereto.

"Supplemental Indenture Number 2" means the Supplemental Indenture Number 2, dated as of October 1, 2019, by the Obligor executed and delivered to the Master Trustee, supplemental to the Master Indenture, providing for the issuance of the Notes.

"Surplus Construction Fund Moneys" means all moneys (including moneys earned pursuant to the provisions of Article VI of the Bond Indenture) remaining in the Construction Fund after completion or termination of the Series 2019 Project (as evidenced by a Completion Certificate) and payment of all other costs then due and payable from the Construction Fund.

"Trust Estate" means the property pledged and assigned to the Bond Trustee pursuant to the granting clauses of the Bond Indenture.

Certain additional terms are defined in Section 4.9 and Section 7.5 hereof.

ARTICLE II  
REPRESENTATIONS

Section 2.1. Representations by the Issuer. The Issuer represents that:

(a) The Issuer is a municipal corporation and political subdivision of the State of New Mexico, legally and regularly created, established, organized and existing under the laws of the State of New Mexico and has full power and authority under the laws of the State of New Mexico (including, in particular, the Act) to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper action the Issuer has duly authorized the execution and delivery of this Agreement and the Bond Indenture and the performance of its obligations under this Agreement and the Bond Indenture.

(b) To the best of the Issuer's knowledge, neither the execution and delivery of the Bonds, the Bond Indenture or this Agreement, the consummation of the transactions contemplated thereby and hereby nor the fulfillment of or compliance with the terms and conditions or provisions of the Bonds, the Bond Indenture or this Agreement conflict with or result in the breach of any of the terms, conditions or provisions of any constitutional provision or statute of the State of New Mexico or of any agreement or instrument or judgment, order or decree of which the Issuer has notice that it is a party or constitute a default under any of the foregoing or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature upon any property or assets of the Issuer under the terms of any instrument or agreement.

(c) To finance and refinance a portion of the Cost of the Series 2019 Project, to fund a debt service reserve fund, to fund capitalized interest and to pay a portion of the Cost of Issuance, the Issuer proposes to issue the Bonds. The Bonds shall be in the principal amount, mature, bear interest, be subject to redemption prior to maturity, be secured, and have such other terms and conditions as are set forth in the Bond Indenture.

(d) The Bonds are to be issued under and secured by the Bond Indenture pursuant to which the Issuer's interest in this Agreement and in the Notes, and the revenues and receipts derived by the Issuer from the Notes, will be pledged and assigned to the Bond Trustee as security for payment of the principal of, premium, if any, and interest on the Bonds.

(e) The Obligor has represented to the Issuer that the Series 2019 Project is a "project" as defined in the Act and the Obligor is a "501(c)(3) corporation" as defined in the Act.

(f) The issuance of the Bonds and the execution of this Agreement and the Bond Indenture have been approved by the Issuer at a duly constituted meeting.

(g) Except as otherwise permitted by this Agreement, the Issuer covenants that it has not and will not pledge the income and revenues derived from this Agreement other than to secure the Bonds.

Section 2.2. Representations by the Obligor. The Obligor represents that:

(a) The Obligor is a nonprofit corporation duly incorporated and in good standing under the laws of the State of New Mexico, has power to enter into this Agreement, the Master Indenture, Supplemental Indenture Number 2 and the Notes, and by proper corporate action has duly authorized the execution and delivery of this Agreement, the Master Indenture, Supplemental Indenture Number 2 and the Notes.

(b) Neither the execution and delivery of this Agreement, the Master Indenture, Supplemental Indenture Number 2 and the Notes, the consummation of the transactions contemplated hereby and thereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, the Master Indenture, Supplemental Indenture Number 2 or the Notes, conflict with or result in a breach of any of the terms, conditions or provisions of any corporate restriction or any agreement or instrument to which the Obligor is now a party or by which it is bound or constitute a default under any of the foregoing.

(c) The Obligor intends to operate or to cause the Series 2019 Project to be operated as a "project" within the meaning of the Act to the expiration or sooner termination of this Agreement.

(d) No event of default or any event which, with the giving of notice or the lapse of time, or both, would constitute an event of default under the Master Indenture, has occurred.

(e) To the best of the Obligor's knowledge, information and belief, all of the documents, instruments and written information supplied by or on behalf of the Obligor, which have been reasonably relied upon by Bond Counsel in rendering their opinion with respect to the exclusion from gross income of the interest on the Bonds for federal income tax purposes or counsel to the Obligor in rendering its opinion with respect to the status of the Obligor under Section 501(c)(3) of the Code, are true and correct in all material respects, do not contain any untrue statement of a material fact and do not omit to state any material fact necessary to be stated therein to make the information provided therein, in light of the circumstances under which such information was provided, not misleading.

(f) The Obligor hereby accepts and agrees to the terms of the Bond Indenture applicable to it, including, without limitation, the terms of Sections 6.01 and 9.01 thereunder.

## ARTICLE III

### THE SERIES 2019 PROJECT

Section 3.1. Acquisition and Construction. (a) The Series 2019 Project shall be acquired, constructed and improved with all reasonable dispatch, and the Obligor and the Issuer will diligently pursue such acquisition, construction, and improvement, in order that the Series 2019 Project may be completed as soon as practicable; subject only to (i) delays incident to strikes, riots, acts of God, or the public enemy, or other causes beyond the reasonable control of the parties or (ii) the unanticipated failure of the Obligor to secure the permits required for such construction, completion, or operation of the Series 2019 Project; but if for any reason there should be delays in such acquisition, construction, and improvement there shall be no diminution in or postponement of the Lease Payments to be made by the Obligor hereunder, and no resulting liability on the part of the Issuer.

(b) The Obligor, on behalf of the Issuer, shall acquire, construct, and improve the Series 2019 Project or cause the Series 2019 Project to be acquired, constructed, and improved in the manner provided in the Act and this Agreement. The Obligor hereby agrees that it will undertake the obligations of the Issuer set forth in the foregoing sentence and the Issuer will have no liability with respect thereto. It is agreed and understood that the Obligor will, on behalf of the Issuer, perform all of the obligations of the Issuer under this subsection (b) to acquire, construct and improve the Series 2019 Project and that it has entered into and executed or will enter into and execute all agreements and contracts necessary to assure and cause the acquisition, construction, and improvement of the Series 2019 Project in accordance with this Agreement (and that the Issuer shall not execute any such agreements or contracts other than this Agreement), and that the Obligor will carry out, pay, supervise, and enforce all such agreements and contracts, and will provide for such insurance on and in connection with the Series 2019 Project as it deems necessary or advisable or as is required by law. The Issuer shall pay, solely from proceeds from the sale and delivery of the Bonds, or from any available income or earnings derived therefrom, or from any funds which otherwise might be made available to the Issuer for such purpose by the Obligor, the Costs of the Series 2019 Project, to the full extent provided in this Agreement and permitted by the Act. The Issuer shall pay such Costs of the Series 2019 Project, or cause such Costs of the Series 2019 Project to be paid, at such time or times after delivery of the Bonds, and when and as requested by the Obligor, in accordance with procedures to be established in Section 4.6 hereof and in the Bond Indenture.

Section 3.2. Assignment of Title and Lease of Series 2019 Project. (a) The Obligor hereby, and by conveyance of even date herewith, assigns, conveys, and transfers to the Issuer all of its right, title, and interest in and to the portion of the Series 2019 Project to which the Obligor has title as of the Delivery Date. The Obligor will, on behalf of and as agent for the Issuer, acquire and construct the Series 2019 Project in accordance with the Act and this Agreement. Except for paying the Costs of the Series 2019 Project solely from the sources and in the manner provided in this Agreement, the Issuer shall not be responsible or liable in any manner for any claims, losses, damages, penalties, costs, taxes, or fines with respect to the acquisition, construction, improvement, installation, operation, maintenance, or ownership of the Series 2019 Project or any portion thereof. The Obligor hereby waives, releases, relinquishes, and renounces any and all liens which it may have on the Series 2019 Project arising as a result of the conveyance of the Series 2019 Project or any portion thereof to the Issuer, including, without limitation, any vendor's lien and/or privilege thereon. The Issuer hereby waives, releases, relinquishes, and renounces any and all liens which it may have in the Series 2019 Project arising as a result of the conveyance of the Series 2019 Project or any portion thereof to the Obligor, including, without limitation, any vendor's lien and/or privilege thereon.

(b) The Issuer hereby demises and leases to the Obligor, and the Obligor hereby leases from the Issuer, the Series 2019 Project. The Issuer will not take any action, so long as the Obligor is not in default under this Agreement, to prevent the Obligor from having quiet and peaceable possession and enjoyment of the Series 2019 Project during the term of this Agreement.

Section 3.3. Operation. The Obligor shall pay all costs and expenses of operation and maintenance of the Series 2019 Project. It is understood and agreed that the Issuer shall have no duties or responsibilities whatsoever with respect to the operation or maintenance of the Series 2019 Project, or the performance of the Series 2019 Project for its designed purposes.

Section 3.4. Insurance. The Obligor agrees to maintain, or cause to be maintained, all necessary insurance with respect to the Series 2019 Project in accordance with its customary insurance practices applicable to corporations engaged in the same or similar activities and similarly situated and adequate to protect the Series 2019 Project, which may include self-insurance. All costs of maintaining insurance with respect to the Series 2019 Project shall be paid by the Obligor, and the Issuer shall have no obligation or liability in this regard.

Section 3.5. Maintenance and Repair. The Obligor agrees that it will (i) maintain, or cause to be maintained, the Series 2019 Project in as reasonably safe condition as its operations shall permit and (ii) maintain, or cause to be maintained, the Series 2019 Project in good repair and in good operating condition, ordinary wear and tear excepted, making from time to time all necessary repairs thereto and renewals and replacements thereof. All costs of operating and maintaining the Series 2019 Project shall be paid by the Obligor, and the Issuer shall have no obligation or liability in this regard. It is understood and agreed that the Issuer shall have no duties or responsibilities whatsoever with respect to the operation or maintenance of the Series 2019 Project, or the performance of the Series 2019 Project for its designed purposes.

Section 3.6. Term of this Agreement. Subject to Section 11.12 herein, this Agreement shall remain in full force and effect from the date of delivery hereof until such time as all of the Bonds shall have been fully paid or provision made for such payment pursuant to the Bond Indenture and all reasonable and necessary fees and expenses of the Bond Trustee and the Issuer accrued and to accrue through final payment of the Bonds and all liabilities of the Obligor with respect to the Bonds accrued and to accrue through final payment of the Bonds have been paid.

Section 3.7. Purchase of Series 2019 Project. Upon payment in full of the Bonds, the Obligor shall purchase the Series 2019 Project from the Issuer at a purchase price of \$1.00. The Obligor shall give notice to the Issuer specifying the date of closing of such purchase, which will be not less than 15 nor more than 90 days from the date of such notice. At the closing of such purchase, upon payment of the amount due by the Obligor, the Issuer will, at the expense of the Obligor, convey the Series 2019 Project to the Obligor subject to the provisions of Section 3.8 hereof.

Section 3.8. Conveyance. At the closing of a purchase pursuant to Section 3.7 hereof, the Issuer will, upon receipt of the purchase price and at the sole expense of the Obligor, deliver to the Obligor documents, including, but not limited to a quitclaim deed and any other appropriate transfer or conveyance documents, conveying to the Obligor the Issuer's interest in the Series 2019 Project being purchased, as such Series 2019 Project then exists subject only to: (i) those liens and encumbrances (if any) to which title to the Series 2019 Project was subject when conveyed to the Issuer; (ii) those liens and encumbrances created by the Obligor or any party other than the Issuer or to the creation or suffering of which the Obligor consented; (iii) those liens and encumbrances resulting from the failure of the Obligor to perform any of its obligations under this Agreement; (iv) Permitted Encumbrances other than the Bond Indenture and this Agreement; and (v) any other lien arising as a matter of law.

Section 3.9. Property Tax Exemption. The Issuer agrees to cooperate with the Obligor, at the sole expense of the Obligor, in the Obligor's efforts to take all necessary steps to cause the records of the Office of the Santa Fe County Assessor to reflect on or before January 1, 2020, the acquisition and ownership by the Issuer of such of the Series 2019 Project as has been acquired prior to such date in order to permit the Series 2019 Project to be exempt from property taxation pursuant to Section 7-36-3 NMSA 1978.

Section 3.10. Payment in Lieu of Taxes. [**Confirm**][The Issuer and the Obligor acknowledge that during at least a portion of the term of this Agreement, the Series 2019 Project will be exempt from property taxation pursuant to Section 7-36-3 of NMSA 1978. Notwithstanding the foregoing, the Obligor will pay to the Issuer annual payments in lieu of property taxes (the "PILOTs") equal to \_\_\_% of the property tax abated for each of calendar years 20\_\_ through 20\_\_. Each PILOT will be due on the dates the property taxes for the pertinent tax year would have been payable if the Bonds had not been issued and the Series 2019 Project had not been exempt from ad valorem taxation. The PILOT will be calculated based on the actual mill levy rates for business personal property and for real property in the pertinent tax year, and the taxable value of the relevant Series 2019 Project property calculated as provided in the Property Tax Code, Sections 7-35-1 through 7-38-93 NMSA 1978, as amended. The PILOTs shall be payable regardless of whether this Agreement remains in effect through 20\_\_.]

Section 3.11. Claw back Provisions.

**[Both the PILOT and Claw back Provisions, which are being negotiated are to be placed in this Section]**

## ARTICLE IV

### ISSUANCE OF THE BONDS; CONSTRUCTION OF PROJETS; DISBURSEMENTS

Section 4.1. Agreement to Issue Bonds, Application of Bond Proceeds. The Issuer will sell and cause to be delivered to the initial purchasers thereof the Bonds and will deliver the proceeds thereof to the Bond Trustee for application as described in Section 3.01 of the Bond Indenture.

Section 4.2. Agreement to Construct Project; Completion Certificate. (a) The Obligor shall cause the Series 2019 Project to be acquired, constructed, and improved with due diligence and pursuant to the requirements of the applicable laws of the State of New Mexico in all material respects.

(b) The Obligor shall deliver to the Bond Trustee within 90 days after the final completion or termination of the Series 2019 Project a certificate (the "Completion Certificate") of an Obligor to the effect that:

(i) the Series 2019 Project has been completed substantially in accordance with the plans and specifications, as then amended, and the date of completion;

(ii) the Cost of the Series 2019 Project has been fully paid for and no claim or claims exist against the Obligor or against the Series 2019 Project out of which a lien based on furnishing labor or material exists or might ripen; provided, however, there may be excepted from the foregoing statement any claim or claims out of which a lien exists or might ripen in the event that the Obligor intends to contest such claim or claims in accordance with this Agreement, in which event such claim or claims shall be described; provided, further, that it shall be stated that moneys are on deposit in the Construction Fund sufficient to make payment of the full amount that might in any event be payable in order to satisfy such claim or claims; provided, further, that there may also be excepted from the foregoing statement any claim that has been insured over pursuant to an endorsement to any title insurance; and

(iii) all permits, certificates and licenses necessary for the occupancy and use of the Series 2019 Project have been obtained and are in full force and effect.

Section 4.3. Cost of Construction. The Obligor represents and warrants that it will use its best efforts to construct or cause the construction of the Series 2019 Project at a price which will permit completion of the Series 2019 Project within the amount of the funds to be deposited in the Construction Fund and within the amount of other available funds of the Obligor.

Section 4.4. Plans; Modifications of Projects. The Obligor hereby covenants and agrees that no changes or modifications, or substitutions, deletions, or additions shall be made with respect to the Series 2019 Project if such change disqualifies the Series 2019 Project under the Act.

Section 4.5. Compliance with Regulatory Requirements. The Obligor agrees that the Series 2019 Project shall be constructed strictly in accordance with all applicable ordinances and statutes, and in accordance with the requirements of all regulatory authorities in all material respects, and any rating or inspection organization, bureau, association, or office having jurisdiction, and it will furnish to the Issuer all information necessary for the Issuer to comply with all of the foregoing and all laws, regulations, orders and other governmental requirements.



Section 4.6. Requests for Disbursements. (a) The Obligor shall be entitled to disbursements of moneys in the Construction Fund to pay the Costs related to the Series 2019 Project. Requests for disbursements by the Obligor for Costs of the Series 2019 Project are to be made to the Bond Trustee in accordance with the Disbursement Agreement.

(b) Notwithstanding the foregoing, the Obligor shall make no request for disbursement of moneys from the Construction Fund for payment of Cost of Issuance.

Section 4.7. Cost of Issuance Fund. The Obligor shall be entitled to disbursement of moneys in the Cost of Issuance Fund to pay the Cost of Issuance. The Obligor shall request disbursements from the Cost of Issuance Fund on the form attached hereto as Exhibit B to pay Cost of Issuance, and to reimburse itself for Cost of Issuance paid by the Obligor, upon presentation to the Bond Trustee of a request for disbursement signed by the Obligor, on which the Bond Trustee may conclusively rely, but in no event more often than four times a month.

Section 4.8. Modification of Disbursements. The making of any disbursement or any part of a disbursement shall not be deemed an approval or acceptance by the Bond Trustee of the work theretofore done. Upon prior notice to the Obligor and in order to satisfy requirements specified in the Master Indenture, the Bond Trustee may deduct from any disbursement to be made under this Agreement any amount necessary for the payment of fees and expenses required to be paid under this Agreement and any insurance premiums, taxes, assessments, water rates, sewer rents and other charges, liens and encumbrances upon the facilities, whether before or after the making of this Agreement, and any amounts necessary for the discharge of mechanic's liens, and apply such amounts in payment of such fees, expenses, premiums, taxes, assessments, charges, liens and encumbrances. All such sums so applied shall be deemed disbursements under this Agreement.

Section 4.9. Covenants Regarding Tax Exemption.

(a) The Obligor hereby represents and covenants as follows:

(i) the Obligor will, at the expense of the Obligor, comply with, and make all filings required by, all effective rules, rulings or Regulations promulgated by the Department of the Treasury or the Internal Revenue Service with respect to the obligations such as the Bonds, if any;

(ii) the Obligor will continue to conduct its operations in a manner that will result in its continuing to qualify as an organization described in Section 501(c)(3) of the Code including but not limited to the timely filing of all returns, reports and requests for determination with the Internal Revenue Service and the timely notification of the Internal Revenue Service of all changes in its organization and purposes from the organization and purposes previously disclosed to the Internal Revenue Service;

(iii) the Obligor will not divert any substantial part of its corpus or income for a purpose or purposes other than those for which it is organized and operated as described in Section 4.11 hereof;

(iv) the proceeds of the Bonds and any investment earnings thereon will be expended for the purposes set forth in this Agreement and in the Bond Indenture;

(v) the Obligor will not use or invest the proceeds of the Bonds or any other amounts held by the Bond Trustee under the Bond Indenture or any investment earnings thereon in a manner that will result in the Bonds becoming private activity bonds (other than qualified 501(c)(3) bonds) within the meaning of Sections 141 and 145 of the Code;

(vi) the Obligor will not use or permit to be used more than 5% of the proceeds of the Bonds, including all investment income earned on such proceeds prior to the date of completion of the Series 2019 Project, directly or indirectly, in any trade or business carried on by any person who is not a governmental unit or an organization described in Section 501(c)(3) of the Code. For purposes of the preceding sentence, use of the proceeds by an organization described in Section 501(c)(3) of the Code with respect to an "unrelated trade or business", determined in accordance with Section 513(a) of the Code, does not constitute a use by a tax-exempt organization; further any use of proceeds of the Bonds or any investment earnings thereon in any manner contrary to the guidelines set forth in Revenue Procedure 2017-13, including any revisions or amendments thereto, shall constitute the use of such proceeds in the trade or business of a nonexempt person;

(vii) the Obligor will not use or permit the use of any portion of the proceeds of the Bonds, including all investment income earned on such proceeds prior to the date of completion of the Series 2019 Project, directly or indirectly, to make or finance loans to persons, who are not a governmental unit or an organization described in Section 501(c)(3) of the Code. For purposes of the preceding sentence, a loan to an organization described in Section 501(c)(3) of the Code for use with respect to an "unrelated trade or business", does not constitute a loan to such a unit or organization;

(viii) the Obligor will refrain from taking any action that would result in the Bonds being "federally guaranteed" within the meaning of Section 149(b) of the Code;

(ix) the Obligor will refrain from using any portion of the proceeds of the Bonds, directly or indirectly, to acquire or to replace funds which were used, directly or indirectly, to acquire investment property (as defined in Section 148(b)(2) of the Code) which produces a materially higher yield over the term of the Bonds, other than investment property acquired with -

(1) proceeds of the Bonds invested for a reasonable temporary period equal to the lesser of 3 years or until such proceeds are needed for the purpose for which such bonds are issued,

(2) amounts invested in a bona fide debt service fund, within the meaning of Section 1.148-1 (b) of the Treasury Regulations, and

(3) amounts deposited in any reasonable required reserve or replacement fund to the extent such amounts do not exceed 10 percent of the stated principal amount (or, in the case of a discount, the issue price) of the Bonds;

(x) the Obligor will otherwise restrict the use of the proceeds of the Bonds or amounts treated as proceeds of the Bonds, as may be necessary, to satisfy the requirements of Section 148 of the Code (relating to arbitrage);

(xi) the Obligor will refrain from using the proceeds of the Bonds to pay debt service on another issue more than 90 days after the date of issue of the Bonds in contravention of the requirements of section 149(d) of the Code (relating to advance refundings);

(xii) the Obligor will use no more than two percent of the proceeds from the sale of the Bonds for the payment of costs of issuance (including underwriter's discount, if any);

(xiii) the Obligor will use no portion of the proceeds of the Bonds to provide any airplane, sky-box or other private luxury box, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises;

(xiv) the Obligor shall immediately remit to the Bond Trustee for deposit in the Rebate Fund any Excess Earnings as required by Section 3.16 of the Bond Indenture; and

(xv) the Obligor agrees to provide to the Bond Trustee, at such time as required by the Bond Trustee (the Bond Trustee having no duty to require or request such information), all information required by the Bond Trustee with respect to Nonpurpose Investments (as defined in Section 148 of the Code) not held in any fund under the Bond Indenture.

(b) The Issuer hereby represents and covenants as follows:

(i) the Issuer will, at the expense of the Obligor, comply with, and make all filings required by, all effective rules, rulings or Regulations promulgated by the Department of the Treasury or the Internal Revenue Service with respect to the obligations such as the Bonds, if any; and

(ii) the Issuer will not take any action related to the Series 2019 Project, the Bonds or the proceeds of the Bonds that is not provided for in this Agreement or the Bond Indenture without the written consent of the Obligor and an opinion of Bond Counsel.

(c) No person, or any related party, as defined in section 1.150-1 of the Treasury Regulations, from whom the Issuer or the Obligor may acquire obligations, shall, pursuant to an arrangement, formal or informal, purchase the Bonds in an amount related to the amount of the obligations to be acquired from such person by the Issuer of the Obligor.

For purposes of the foregoing, the Issuer and the Obligor understand that the term "proceeds" includes "disposition proceeds" as defined in the Treasury Regulations and, in the case of refunding bonds, transferred proceeds (if any) and proceeds of the refunded bonds expended prior to the date of issuance of the Bonds. It is the understanding of the Issuer, the Obligor and the Bond Trustee that the covenants contained in this Section are intended to assure compliance with the Code and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto. In the event that regulations or rulings are hereafter promulgated which modify or expand provisions of the Code, as applicable to the Bonds, the Issuer and the Obligor will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally-recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the Bonds under Section 103 of the Code. In the event that regulations or rulings are hereafter promulgated which impose additional requirements which are applicable to the Bonds, the Issuer and the Obligor agree to comply with the additional requirements to the extent necessary, in the opinion of nationally-recognized bond counsel, to preserve the exemption from federal income taxation of interest on the Bonds under Section 103 of the Code. In furtherance of such intention, the Issuer hereby authorizes and directs the Issuer Representative to execute any documents, certificates or reports required by the Code and to make such elections, on behalf of the Issuer, which may be permitted by the Code as are consistent with the purpose for the issuance of the Bonds.

Section 4.10. Allocation of, and Limitation on, Expenditures for the Project. The Obligor covenants to account for the expenditure of sale proceeds and investment earnings to be used for the Cost of the Series 2019 Project on its books and records by allocating proceeds to expenditures within 18 months of the later of the date that (1) the expenditure is made, or (2) the Series 2019 Project is completed. The foregoing notwithstanding, the Obligor shall not expend sale proceeds or investment earnings thereon more than 60 days after the earlier of (1) the fifth anniversary of the delivery of the Bonds, or (2) the date the Bonds are retired, unless the Obligor obtains an opinion of Bond Counsel that such expenditure will not adversely affect the tax-exempt status of the Bonds. For purposes hereof, the Obligor shall not be obligated to comply with this covenant if it obtains an opinion that such failure to comply will not adversely affect the excludability for federal income tax purposes from gross income of the interest.

Section 4.11. Representations and Warranties as to Tax Exempt Status of Obligor.

The Obligor hereby represents and warrants as follows:

(a) the Obligor is an organization exempt from federal income taxation under Section 501(a) of the Code by virtue of being described in Section 501(c)(3) of the Code;

(b) the purposes, character, activities and methods of operation of the Obligor have not changed materially since its organization and are not materially different from the purposes, character, activities and methods of operation at the time of its receipt of a determination by the Internal Revenue Service that it is an organization described in Section 501(c)(3) of the Code (the "Determination");

(c) the Obligor has not diverted a substantial part of its corpus or income for a purpose or purposes other than the purpose or purposes for which it is organized or disclosed to the Internal Revenue Service in connection with its Determination;

(d) the Obligor has not operated since its organization in a manner that would result in it being classified as an "action" organization within the meaning of section 1.501(c)(3)-1(c)(3) of the Regulations including, but not limited to, promoting or attempting to influence legislation by propaganda or otherwise as a substantial part of its activities;

(e) with the exception of the payment of compensation (and the payment or reimbursement of expenses) which is not excessive and is for personal services which are reasonable and necessary to carrying out the purposes of the Obligor, no person controlled by any such individual or individuals nor any person having a personal or private interest in the activities of the Obligor has acquired or received, directly or indirectly, any income or assets, regardless of form, of the Obligor during the current Fiscal Year and the period, if any, preceding the current Fiscal Year, other than as reported to the Internal Revenue Service by the Obligor;

(f) the Obligor is not a "private foundation" within the meaning of Section 509(a) of the Code;

(g) the Obligor has not received any indication or notice whatsoever to the effect that its exemption under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code has been revoked or modified, or that the Internal Revenue Service is considering revoking or modifying such exemption, and such exemption is still in full force and effect;

(h) the Obligor has filed with the Internal Revenue Service all requests for determination, reports and returns required to be filed by it and such requests for determination, reports and returns have not omitted or misstated any material fact and has notified the Internal Revenue Service of any changes in its organization and operation since the date of its Determination;

(i) the Obligor has not devoted more than an insubstantial part of its activities in furtherance of a purpose other than an exempt purpose within the meaning of Section 501(c)(3) of the Code; and

(j) the Obligor has not taken any action, nor does it know of any action that any other person has taken, nor does it know of the existence of any condition, which would cause the Obligor to lose its exemption from taxation under Section 501(a) of the Code or cause the interest on the Bonds to become taxable to the recipient thereof because such interest is not excludable from the gross income of such recipient for federal income tax purposes under Section 103(a) of the Code.

Section 4.12. Disposition of Series 2019 Project. The Obligor covenants that the property constituting the Series 2019 Project or any portion thereof will not be sold or otherwise disposed in a transaction resulting in the receipt by the Obligor of cash or other compensation, unless the Obligor obtains an Opinion of Bond Counsel that such sale or other disposition will not adversely affect the tax-exempt status of the Bonds.

Section 4.13. (Reserved).

Section 4.14. Written Procedures.

(a) The Obligor (i) has designated the Executive Director as the person who will contact the Issuer and its counsel in the event of any change of use of any portion of the Series 2019 Project within 15 days of such change in use event, and (ii) will provide, within 60 days of such date, a rebate report or a letter (prepared by a CPA, nationally recognized rebate consultant or bond counsel) stating that a rebate report is not required.

(b) The Issuer has designated the City Attorney as the person who (i) will receive notice by the person described in the preceding paragraph of any change of use of the Series 2019 Project and who will determine, upon consultation with nationally recognized bond counsel, whether to take any remedial action or any other remedy available at law to ensure that the tax-exempt status of the Bonds is preserved following such change of use, and (ii) will receive the aforementioned rebate report or letter stating that such report is not required.

ARTICLE V

OBLIGOR PAYMENTS; NOTES; PROVISION FOR PAYMENT

Section 5.1. Obligor Payments. (a) In consideration of the covenants and agreements set forth in this Agreement, and to enable the Issuer to issue the Bonds to carry out the intents and purposes hereof, this Agreement is executed to assure the issuance of such Bonds, and to provide for the due and punctual payment by the Obligor to the Issuer, or to the Bond Trustee under the Bond Indenture, of amounts not less than those required to pay, as and when due (whether at stated maturity, upon redemption, acceleration of maturity, or otherwise), all of the principal of, redemption premium, if any, and interest on the Bonds, and all other payments required in connection with such Bonds, the Agreement or the Bond Indenture. Each such payment is hereby designated as a "Lease Payment", and collectively such payments are hereby designated as "Lease Payments". The Obligor hereby agrees to make, or cause to be made, each Lease Payment, as and when due, for the benefit of the owners of the Bonds into the Bond Fund, all as provided in the Bond Indenture.

(b) By execution and delivery of this Agreement, the Obligor hereby approves the Bond Indenture. It is hereby agreed that the foregoing approval of the Bond Indenture constitutes the acknowledgement and agreement of the Obligor that the Bonds, when issued, sold, and delivered as provided in the Bond Indenture, will be issued in accordance with and in compliance with this Agreement, notwithstanding any other provisions of this Agreement or any other contract or agreement to the contrary. Any Bondholder is entitled to rely fully and unconditionally on the foregoing approval. Notwithstanding any provisions of this Agreement or any other contract or agreement to the contrary, the Obligor's approval of the Bond Indenture shall be the Obligor's agreement that all covenants and provisions in this Agreement and the Bond Indenture affecting the Obligor shall, upon the delivery of the Bonds and the Bond Indenture, become unconditional, valid, and binding covenants and obligations of the Obligor so long as the Bonds and the interest thereon are outstanding and unpaid. Particularly, the obligation of the Obligor to make, promptly when due, all Lease Payments specified in this Agreement and the Bond Indenture shall be absolute and unconditional, and said obligation may be enforced as provided in this Agreement and the Bond Indenture.

Section 5.2. Lease Payments. (a) Anything to the contrary in this Agreement notwithstanding, the Obligor shall make Lease Payments with respect to the Series 2019A Bonds in accordance with the Bond Indenture and this Agreement directly to the Bond Trustee for deposit in the appropriate account of the Bond Fund:

(i) (A) beginning on \_\_\_\_\_, 20\_\_, and through \_\_\_\_\_, 20\_\_, on the first day of each month, one-\_\_\_\_ of the interest due on \_\_\_\_\_, 20\_\_, and (B) on the first day of each month thereafter, one-sixth of the interest on the Outstanding Series 2019A Bonds due on the next Interest Payment Date; and

(ii) beginning on \_\_\_\_\_, 20\_\_, and on the first day of each month thereafter, one-twelfth of the principal on the Outstanding Series 2019A Bonds due on the next \_\_\_\_\_, and

(iii) on the date on which any principal of, premium, if any or interest on any Series 2019A Bond is payable, an amount sufficient to cause the amount available in the Bond Fund for payment of such amounts to equal the amount due with respect to such Series 2019A Bond on such date.

(b) Anything to the contrary in this Agreement notwithstanding, the Obligor shall make Lease Payments with respect to the Series 2019B Bonds in accordance with the Bond Indenture and this Agreement directly to the Bond Trustee for deposit in the appropriate account of the Bond Fund:

(i) (A) beginning on \_\_\_\_\_, 20\_\_, and through \_\_\_\_\_, 20\_\_, on the first day of each month, one-\_\_\_\_ of the interest due on \_\_\_\_\_, 20\_\_, and (B) on the first day of each month thereafter, one-sixth of the interest on the Outstanding Series 2019B Bonds due on the next Interest Payment Date; and

(ii) beginning on \_\_\_\_\_, 20\_\_, and on the first day of each month thereafter, one-twelfth of the principal on the Outstanding Series 2019B Bonds due on the next \_\_\_\_\_, and

(iii) on the date on which any principal of, premium, if any or interest on any Series 2019B Bond is payable, an amount sufficient to cause the amount available in the Bond Fund for payment of such amounts to equal the amount due with respect to such Series 2019B Bond on such date.

(c) Payment of all Lease Payments shall be made and deposited so as to fund payment on the Bonds as required by the Bond Indenture, including all such payments which may come due because of the acceleration of the maturity or maturities of the Bonds upon default, call for redemption, or otherwise, under the provisions of the Bond Indenture. If any available funds in excess of current requirements are held on deposit in the Bond Fund at the time payment of any Lease Payment is due, such Lease Payment shall be reduced by the amount of the available funds so held on deposit, to the benefit of the Obligor. The Lease Payments, together with available funds held on deposit in the Bond Fund, except funds held therein for payment of matured installments of principal on the Bonds or interest payable thereon, shall be sufficient to pay when due all principal of, redemption premium, if any, and interest on the Bonds. The Obligor shall have the right to prepay or cause to be prepaid all or a portion of each Lease Payment at any time, and shall be obligated to do so in a timely manner if and to the extent the Obligor requests redemption or prepayment of the Bonds. Any such prepayment by the Obligor shall not relieve it of liability for each remaining Lease Payment with respect to the Outstanding Bonds except as provided in this Agreement and the Bond Indenture. In the event the Obligor should fail to make any of the payments required in this Section 5.2, the amount so in default shall continue as an obligation of the Obligor until such amount in default shall have been fully paid, and the Obligor agrees to pay the same with interest thereon to the extent permitted by law at the rate of interest borne by the Bonds at the time of such failure from the due date thereof until paid.

Section 5.3. Credits. Any amount in either account of the Bond Fund at the close of business of the Bond Trustee on the day immediately preceding any payment date on the Notes in excess of the aggregate amount then required to be contained in such account of the Bond Fund pursuant to Section 5.2 hereof shall be credited pro rata against the payments due by the Obligor on such next succeeding principal or interest payment date on the Notes.

In the event that all of the Bonds then Outstanding are called for redemption, any amounts contained in the Reserve Fund and the Bond Fund at the close of business of the Bond Trustee on the day immediately preceding such redemption date shall be credited against the payments due by the Obligor on the Notes, as provided below.

The principal amount of any Series 2019A Bonds to be applied by the Bond Trustee as a credit against any sinking fund payment pursuant to Section 5.02 of the Bond Indenture shall be credited against the obligation of the Obligor with respect to payment of installments of principal of the Series 2019A Note as described in Supplemental Indenture Number 2.



The cancellation by the Bond Trustee of any Series 2019A Bonds purchased by the Obligor or of any Series 2019A Bonds redeemed or purchased by the Issuer through funds other than funds received on the Series 2019A Note shall constitute payment of a principal amount of the Series 2019A Note equal to the principal amount of the Series 2019A Bonds so cancelled. Upon receipt of written notice from the Bond Trustee of such cancellation, the Master Trustee shall at the request of the Obligor endorse on the Series 2019A Note such payment of such principal amount thereof.

The cancellation by the Bond Trustee of any Series 2019B Bonds purchased by the Obligor or of any Series 2019B Bonds redeemed or purchased by the Issuer through funds other than funds received on the Series 2019B Note shall constitute payment of a principal amount of the Series 2019B Note equal to the principal amount of the Series 2019B Bonds so cancelled. Upon receipt of written notice from the Bond Trustee of such cancellation, the Master Trustee shall at the request of the Obligor endorse on the Series 2019B Note such payment of such principal amount thereof.

Section 5.4. Notes. Concurrently with the sale and delivery by the Issuer of the Bonds, the Obligor shall execute and deliver the Notes substantially in the forms set forth in Supplemental Indenture Number 2.

Section 5.5. Payment of Bond Trustee's and Paying Agent's Fees and Expenses. The Obligor agrees to pay the reasonable and necessary fees and expenses (including attorney's fees and expenses) of the Bond Trustee and any Paying Agent as and when the same become due, upon submission by the Bond Trustee or any Paying Agent of a statement therefor.

Section 5.6. Reserve Fund. (a) In the event any moneys in any Reserve Account of the Reserve Fund are transferred to the Bond Trustee for deposit to the Bond Fund pursuant to Section 3.10 or 3.11 of the Bond Indenture, except if such moneys are transferred due to the redemption of all Bonds of the related series, the Obligor agrees to deposit additional Reserve Fund Obligations into the Reserve Fund in an amount sufficient to satisfy the Reserve Fund Requirement for such Reserve Account, such amount to be deposited in accordance with Section 6.03(d) of the Bond Indenture.

(b) In the event the value of the Reserve Fund Obligations (as determined pursuant to the statement of the Bond Trustee furnished in accordance with Section 6.03(b) of the Bond Indenture) on deposit in the Reserve Fund is less than 90% of the Reserve Fund Requirement for such Reserve Account as a result of a decline in the market value of investments on deposit in the Reserve Fund, the Obligor agrees to deposit additional Reserve Fund Obligations into the Reserve Fund in an amount sufficient to satisfy the Reserve Fund Requirement for such Reserve Account, such amount to be deposited in accordance with Section 6.03(c) of the Bond Indenture.

Section 5.7. Payment of Administration Expenses. In consideration of the agreement of the Issuer to issue the Bonds to provide financing for the Series 2019 Project, the Obligor hereby agrees to pay any and all costs paid or incurred by the Issuer in connection with the financing or refinancing of the Series 2019 Project, whenever incurred, including out of pocket expenses and compensation in connection with the issuance of Bonds, including, without limitation, reasonable sums for reimbursement of the fees and expenses incurred by the Issuer's financial advisors, consultants and legal counsel in connection with the Series 2019 Project and the issuance of the Bonds.

Section 5.8. Payees of Payments. The payments on the Notes pursuant to Section 5.2 hereof shall be paid in funds immediately available at the Payment Office of the Bond Trustee, directly to the Bond Trustee for the account of the Issuer and shall be deposited into the appropriate account of the Bond Fund. The amounts provided for in Section 5.6 hereof shall be paid to the Bond Trustee for the account of the

Issuer and shall be deposited into the Reserve Fund. The payments to be made to the Bond Trustee and the Paying Agent under Section 5.5 hereof shall be paid directly to the Bond Trustee and the Paying Agent for their own use. The payments for Administration Expenses under Section 5.7 hereof shall be paid directly to the Issuer for its own use.

Section 5.9. Obligations of Obligor Hereunder Unconditional. The obligations of the Obligor to make the payments required in Section 5.2 hereof shall be absolute and unconditional. The Obligor will not suspend or discontinue, or permit the suspension or discontinuance of, any payments provided for in Section 5.2 hereof for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Series 2019 Project, commercial frustration of purpose, any change in the tax or other laws or administrative rulings of or administrative actions by the United States of America or the State of New Mexico or any political subdivision of either, or any failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Agreement, whether express or implied. Nothing contained in this Section shall be construed to release the Issuer from the performance of any agreements on its part herein contained; and in the event the Issuer shall fail to perform any such agreement, the Obligor may institute such action against the Issuer as the Obligor may deem necessary to compel performance, provided that no such action shall violate the agreements on the part of the Obligor contained herein and the Issuer shall not be required to pay any costs, expenses, damages or any amounts of whatever nature except for amounts received pursuant to this Agreement. Nothing herein shall be construed to impair the Obligor's right to institute an independent action for any claim that it may have against the Issuer, the Bond Trustee, any Bondholder or any other third party. The Obligor may, however, at its own cost and expense and in its own name or in the name of the Issuer, prosecute or defend any action or proceedings or take any other action involving third persons which the Obligor deems reasonably necessary in order to secure or protect this right of possession, occupancy, and use hereunder, and in such event the Issuer hereby agrees to cooperate fully with the Obligor.

ARTICLE VI

(Reserved)

## ARTICLE VII

### SPECIAL COVENANTS

Section 7.1. No Warranty of Merchantability, Condition or Suitability by the Issuer. The Issuer makes no warranty, either express or implied, as to the condition of the Series 2019 Project or that the Series 2019 Project will be suitable for the Obligor's purposes or needs. Without limiting the effect of the preceding sentence, it is expressly agreed that in connection with any conveyance pursuant to this Agreement (i) the Issuer makes NO WARRANTY OF MERCHANTABILITY and (ii) THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION CONTAINED HEREIN.

Section 7.2. Right of Access to the Series 2019 Project. The Obligor agrees that the Issuer, the Bond Trustee, and any of their duly authorized agents shall have the right at all reasonable times upon reasonable notice to the Obligor to examine and inspect the Series 2019 Project to determine that the Obligor is in compliance with the terms and conditions of this Agreement; provided that any such inspection will be conducted in a manner that will minimize any intrusion on the operations of the Series 2019 Project.

Section 7.3. Nonsectarian Use. The Obligor agrees that no proceeds of the Bonds will be used to construct, acquire or install any portion of the Series 2019 Project which is intended to be used or which is being used for sectarian purposes.

Section 7.4. Further Assurances. The Issuer and the Obligor agree that they will, from time to time, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the intention of or facilitating the performance of this Agreement.

**Section 7.5. INDEMNIFICATION. (a) THE OBLIGOR AGREES THAT IT WILL AT ALL TIMES INDEMNIFY AND HOLD HARMLESS EACH OF THE INDEMNIFIED PARTIES AGAINST ANY AND ALL LOSSES OR CLAIMS, INCLUDING LOSSES AS A RESULT OF THE NEGLIGENT ACTS OR OMISSIONS OF ANY INDEMNIFIED PARTY, OTHER THAN LOSSES RESULTING FROM FRAUD, WILLFUL MISCONDUCT OR THEFT ON THE PART OF THE INDEMNIFIED PARTY CLAIMING INDEMNIFICATION. THE OBLIGOR ALSO SHALL INDEMNIFY THE BOND TRUSTEE AND ITS OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES FOR, AND DEFEND AND HOLD IT AND THEM HARMLESS AGAINST, ANY LOSS, LIABILITY, CLAIMS, JUDGEMENTS, SUITS OR DEMANDS OR EXPENSES (INCLUDING ATTORNEYS FEES AND EXPENSES) INCURRED WITHOUT NEGLIGENCE OR BAD FAITH ON ITS PART, ARISING OUT OF OR IN CONNECTION WITH THE ACCEPTANCE OR ADMINISTRATION OF THE TRUST CREATED UNDER THE BOND INDENTURE OR THE PERFORMANCE OF ITS DUTIES UNDER THE BOND INDENTURE OR IN CONNECTION WITH THIS AGREEMENT OR ANY DOCUMENTS OR TRANSACTION CONTEMPLATED IN CONNECTION HEREWITH OR THEREWITH, INCLUDING THE COSTS AND EXPENSES OF DEFENDING ITSELF AGAINST ANY CLAIM OR LIABILITY IN CONNECTION WITH THE EXERCISE OR PERFORMANCE OF ANY OF ITS POWERS OR DUTIES UNDER THE BOND INDENTURE. THE BOND TRUSTEE MAY ENFORCE ITS RIGHTS UNDER THE PRECEDING SENTENCE AS A THIRD PARTY BENEFICIARY OF THIS AGREEMENT.**

**(b) NONE OF THE INDEMNIFIED PARTIES SHALL BE LIABLE TO THE OBLIGOR FOR, AND THE OBLIGOR HEREBY RELEASES EACH OF THEM FROM, ALL LIABILITY TO THE OBLIGOR FOR, ALL INJURIES, DAMAGES OR DESTRUCTION TO ALL**

**OR ANY PART OF ANY PROPERTY OWNED OR CLAIMED BY THE OBLIGOR THAT DIRECTLY OR INDIRECTLY RESULT FROM, ARISE OUT OF OR RELATE TO THE DESIGN, CONSTRUCTION, OPERATION, USE, OCCUPANCY, MAINTENANCE OR OWNERSHIP OF THE SERIES 2019 PROJECT OR ANY PART THEREOF, EVEN IF SUCH INJURIES, DAMAGES OR DESTRUCTION DIRECTLY OR INDIRECTLY RESULT FROM, ARISE OUT OF OR RELATE TO, IN WHOLE OR IN PART, ONE OR MORE ACTS OR OMISSIONS, INCLUDING ACTS OR OMISSIONS CONSTITUTING NEGLIGENCE ON THE PART OF ANY INDEMNIFIED PARTY (BUT NOT INCLUDING ACTS OR OMISSIONS CONSTITUTING FRAUD, WILLFUL MISCONDUCT OR THEFT ON THE PART OF THE INDEMNIFIED PARTY CLAIMING RELEASE) IN CONNECTION WITH THE ISSUANCE OF ANY SERIES OF THE BONDS OR IN CONNECTION WITH THE SERIES 2019 PROJECT.**

(c) Each Indemnified Person, as appropriate, shall reimburse the Obligor for payments made by the Obligor pursuant to this Section to the extent of any proceeds, net of all expenses of collection, actually received by it from any other source (but not from the proceeds of any claim against any other Indemnified Person) with respect to any Loss to the extent necessary to prevent a recovery of more than the Loss by such Indemnified Person with respect to such Loss. At the request and expense of the Obligor, each Indemnified Person shall claim or prosecute any such rights of recovery from other sources (other than any claim against another Indemnified Person) and such Indemnified Person shall assign its rights to such rights of recovery from other sources (other than any claim against another Indemnified Person), to the extent of such required reimbursement, to the Obligor.

(d) In case any Claim shall be brought or, to the knowledge of any Indemnified Person, threatened against any Indemnified Person in respect of which indemnity may be sought against the Obligor, such Indemnified Person promptly shall notify the Obligor in writing; provided, however, that any failure so to notify shall not relieve the Obligor of its obligations under this Section.

(e) The Obligor shall have the right to assume the investigation and defense of all Claims, including the employment of counsel and the payment of all expenses. Each Indemnified Person shall have the right to employ separate counsel in any such action and participate in the investigation and defense thereof, but the fees and expenses of such counsel shall be paid by such Indemnified Person unless (i) the employment of such counsel has been specifically authorized by the Obligor, in writing, (ii) the Obligor has failed after receipt of notice of such Claim to assume the defense and to employ counsel, or (iii) the named parties to any such action (including any impleaded parties) include both an Indemnified Person and the Obligor, and the Indemnified Person shall have been advised by counsel that there may be one or more legal defenses available to it which are different from or additional to those available to the Obligor (in which case, if such Indemnified Person notifies the Obligor in writing that it elects to employ separate counsel at the Obligor's expense, the Obligor shall not have the right to assume the defense of the action on behalf of such Indemnified Person; provided, however, that the Obligor shall not, in connection with any one action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegation or circumstances, be liable for the reasonable fees and expenses of more than one separate firm of attorneys for the Indemnified Parties, which firm shall be designated in writing by the Indemnified Parties).

(f) Each Indemnified Person shall cooperate with the Obligor, and the Obligor shall cooperate with each Indemnified Person, in the defense of any action or Claim. The Obligor shall not be liable for any settlement of any action or Claim without the Obligor's consent but, if any such action or Claim is settled with the consent of the Obligor or there be final judgment for the plaintiff in any such action or with respect to any such Claim, the Obligor shall indemnify and hold harmless the Indemnified Parties from and against any Loss by reason of such settlement or judgment to the extent provided in Subsection (a).

(g) The provisions of this Section shall survive the termination of this Agreement and the earlier removal or resignation of the Bond Trustee, and the obligations of the Obligor hereunder shall apply to Losses or Claims under Subsection (a) whether asserted prior to or after the termination of this Agreement. In the event of failure by the Obligor to observe the covenants, conditions and agreements contained in this Section, any Indemnified Person may take any action at law or in equity to collect amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Obligor under this Section. The obligations of the Obligor under this Section shall not be affected by any assignment or other transfer by the Issuer of its rights, titles or interests under this Agreement to the Bond Trustee pursuant to the Bond Indenture and will continue to inure to the benefit of the Indemnified Parties after any such transfer. The provisions of this Section shall be cumulative with and in addition to any other agreement by the Obligor to indemnify any Indemnified Person.

(h) The following terms have the meanings assigned to them below whenever they are used in this Agreement:

"Claims" shall mean all claims, lawsuits, causes of action and other legal actions and proceedings of whatever nature brought against (whether by way of direct action, counter claim, cross action or impleader) any Indemnified Party, even if groundless, false, or fraudulent, so long as the claim, lawsuit, cause of action or other legal action or proceeding is alleged or determined, directly or indirectly, to arise out of, to result from, to relate to or to be based upon, in whole or in part: (a) the issuance of the Bonds, (b) the duties, activities, acts or omissions (EVEN IF NEGLIGENT) of any Person in connection with the issuance of the Bonds, or the obligations of the various parties arising under the Bond Indenture, this Agreement or the Master Indenture, (c) the duties, activities, acts or omissions (EVEN IF NEGLIGENT) of any Person in connection with the design, construction, installation, operation, use, occupancy, maintenance or ownership of the Series 2019 Project or any part thereof or (d) any failure by the Obligor to comply with the tax covenants contained in Sections 4.9, 4.10, 4.11 or 4.12 hereof.

"Indemnified Party" shall mean one or more of the Issuer, and any of its respective officers, directors, councilpersons, officials, consultants, agents, servants and employees, and any successor to any of such Persons.

"Indemnified Persons" means the Indemnified Parties and the Bond Trustee.

"Losses" means losses, costs, damages, expenses, judgments, and liabilities of whatever nature (including, but not limited to, reasonable attorney's, accountant's and other professional's fees, litigation and court costs and expenses, amounts paid in settlement and amounts paid to discharge judgments and amounts payable by an Indemnified Person to any other Person under any arrangement providing for indemnification of that Person) directly or indirectly resulting from arising out of or relating to one or more Claims.

Section 7.6. Authority of Obligor. Whenever under the provisions of this Agreement the approval of the Obligor is required, or the Issuer or the Bond Trustee are required to take some action at the request of the Obligor, such approval or such request shall be made by the Obligor unless otherwise specified in this Agreement and the Issuer or the Bond Trustee shall be authorized to act on any such approval or request and the Obligor shall have no complaint against the Issuer or the Bond Trustee as a result of any action taken.

Section 7.7. Authority of Issuer Representative. Whenever under the provisions of this Agreement the approval of the Issuer or the Bond Trustee are required, or the Obligor is required to take some action at the request of the Issuer, such approval or such request shall be made by the Issuer Representative unless otherwise specified in this Agreement and the Obligor or the Bond Trustee shall be authorized to act on any such approval or request and the Issuer shall have no complaint against the Obligor or the Bond Trustee as a result of any such action taken.

Section 7.8. No Personal Liability. No obligations contained in the Bonds, the Bond Indenture or this Agreement shall be deemed to be the obligations of any officer, director, councilperson, trustee, agent or employee of the Issuer, the Bond Trustee or the Obligor, in his or her individual capacity, and neither the City Council, the governing body of the Obligor or the Bond Trustee, nor any official of the Issuer shall be liable personally thereon or be subject to any personal liability or accountability with respect thereto.

Section 7.9. Fees and Expenses. The Obligor agrees to pay promptly upon demand therefor all costs paid, incurred or charged by the Issuer in connection with the Bonds, including without limitation, (i) all fees required to be paid to the Issuer with respect to the Bonds, (ii) all out of pocket expenses and Cost of Issuance (including reasonable fees and expenses of attorneys employed by the Issuer) reasonably incurred by the Issuer in connection with the issuance of the Bonds and (iii) all out of pocket expenses (including reasonable fees and expenses of attorneys employed by the Issuer) reasonably incurred by the Issuer in connection with the enforcement of any of its rights or remedies or the performance of its duties under the Bond Indenture or this Agreement.

## ARTICLE VIII

### ASSIGNMENT AND SUBLEASE

Section 8.1. Assignment and Sublease by Obligor. This Agreement may be assigned, and all or any portion of the Series 2019 Project may be subleased by the Obligor without the consent of either the Issuer or the Bond Trustee, provided that each of the following conditions is complied with:

(a) No assignment or sublease shall relieve the Obligor from primary liability for any of its obligations hereunder, and in the event of any such assignment or sublease the Obligor shall continue to remain primarily liable for payment of the Lease Payments and other payments specified in Article V hereof and for performance and observance of the other covenants and agreements contained herein; provided that if (i) the Obligor withdraws from the Obligated Group (as defined in the Master Indenture) and is released from its obligations on the Notes by the Master Trustee pursuant to the Master Indenture and (ii) this Agreement has been assigned to a remaining member of the Obligated Group in accordance with this Section 8.1, the Obligor shall also be released from its liability for its obligations hereunder, including payment of the Lease Payments and other payments specified in Article V hereof and the performance and observance of the other covenants and agreements contained herein.

(b) The assignee or sublessee shall assume in writing the obligations of the Obligor hereunder to the extent of the interest assigned or subleased, provided that the provisions of this subsection shall not apply to a sublease of a portion of the Series 2019 Project or an operating contract for the performance by others of Obligor or medical services on or in connection with the Series 2019 Project, or any part thereof.

(c) The Obligor shall, within 30 days after the delivery thereof, furnish or cause to be furnished to the Issuer and the Bond Trustee a true and complete copy of each such assumption of obligations and assignment or sublease of the Series 2019 Project, as the case may be.

Section 8.2. Assignment and Pledge by Issuer. Solely pursuant to the Bond Indenture, the Issuer may assign its interest in and pledge any moneys receivable under the Notes and this Agreement (except in respect of certain rights to indemnification and for Administration Expenses, indemnification and payment of attorneys' fees and expenses pursuant to Sections 5.7, 7.5 and 9.5 hereof, and its rights to give consents and approvals hereunder) to the Bond Trustee as security for payment of the principal of, premium, if any, and interest on the Bonds. The Obligor consents to such assignment and pledge.



## ARTICLE IX

### FAILURE TO PERFORM COVENANTS AND REMEDIES THEREFOR

Section 9.1. Failure to Perform Covenants. Upon failure of the Obligor to pay when due any payment (other than failure to make any payment on any Note, which default shall have no grace period) required to be made under this Agreement or to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, and continuation of such failure for a period of 60 days after written notice, specifying such failure and requesting that it be remedied, is given to the Obligor by the Issuer or the Bond Trustee, the Issuer or the Bond Trustee shall have the remedies provided in Section 9.2 hereof.

Section 9.2. Remedies for Failure to Perform. Upon the occurrence of a failure of the Obligor to perform as provided in Section 9.1 hereof, the Issuer or the Bond Trustee, as assignee or successor of the Issuer, and subject to its rights and protections under the Bond Indenture, upon compliance with all applicable law, in its discretion may take any one or more of the following steps:

(a) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Issuer, and require the Obligor to carry out any agreements with or for the benefit of the Bondholders and to enforce performance and observance of any duty, obligation, agreement or covenant of the Obligor under the Act or this Agreement; or

(b) by action or suit in equity require the Obligor to account as if it were the trustee of an express trust for the Issuer; or

(c) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Issuer; or

(d) upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Bond Trustee and the Bondholders, have appointed a receiver or receivers of the Trust Estate upon a showing of good cause with such powers as the court making such appointment may confer.

Section 9.3. Discontinuance of Proceedings. In case any proceeding taken by the Issuer or the Bond Trustee on account of any failure to perform under Section 9.1 shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Issuer or the Bond Trustee, then and in every case the Issuer and the Bond Trustee shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Issuer and the Bond Trustee shall continue as though no such proceeding had been taken.

Section 9.4. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Issuer or the Bond Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Bond Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than notice required in Section 9.1 hereof. Such rights and remedies given the Issuer hereunder shall also extend to the Bond Trustee and the holders of the Bonds, subject to the Bond Indenture.

Section 9.5. Agreement to Pay Attorneys' Fees and Expenses. In the event the Issuer or the Bond Trustee should employ attorneys or incur other expenses for the enforcement of performance or observance of any obligation or agreement on the part of the Obligor herein or in the Bond Indenture contained, the Obligor agrees that it will on demand therefor pay to the Issuer or the Bond Trustee, as the case may be, the reasonable fees and expenses of such attorneys and such other reasonable expenses incurred by the Issuer or the Bond Trustee.

Section 9.6. Waivers. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach waived and shall not be deemed to waive any other breach hereunder. In view of the assignment of the Issuer's rights in and under this Agreement to the Bond Trustee under the Bond Indenture, the Issuer shall have no power to waive any failure to perform under Section 9.1 hereunder without the consent of the Bond Trustee (other than a failure to observe the covenants contained in Section 4.10 hereof, which may be waived by the Issuer without the consent of the Bond Trustee), it being understood and agreed that the Bond Trustee shall only give such consent at the written direction of the holders of a majority in aggregate principal amount of the Bonds.

## ARTICLE X

### PREPAYMENT OF NOTES

Section 10.1. General Option to Prepay Notes. The Obligor shall have and is hereby granted the option exercisable at any time to prepay all or any portion of the Lease Payments due or to become due on any or all of the Notes by depositing with the Bond Trustee for payment into the Bond Fund an amount of money or Government Obligations the principal and interest on which when due, will be equal to an amount sufficient to pay the principal of, premium, if any, and interest on any portion of the Bonds then Outstanding under the Bond Indenture, without penalty. The exercise of the option granted by this Section shall not be cause for redemption of Bonds unless such redemption is permitted at that time under the provisions of the Bond Indenture and the Obligor specifies the date for such redemption. In the event the Obligor prepays all of the Lease Payments due and to become due on all the Notes by exercising the option granted by this Section and upon payment of all reasonable and necessary fees and expenses of the Bond Trustee, the Issuer and any Paying Agent accrued and to accrue through final payment of the Bonds called for redemption as a result of such prepayment and of all Administration Expenses through final payment of the Bonds called for redemption as a result of such prepayment, this Agreement shall terminate; provided that no such termination shall occur unless all of the Bonds are no longer Outstanding.

ARTICLE XI

MISCELLANEOUS

Section 11.1. Notices. Any notice, request or other communication under this Agreement shall be given in writing and shall be deemed to have been given by either party to the other party at the addresses shown below upon any of the following dates:

(a) The date of notice by telefax, telecopy, or similar telecommunications, transmission of which is confirmed by telephone, and which is confirmed promptly in writing;

(b) Three Business Days after the date of the mailing thereof, as shown by the post office receipt if mailed to the other party hereto by registered or certified mail;

(c) The date of the receipt thereof by such other party if not given pursuant to (a) or (b) above.

Notwithstanding the foregoing, notices, requests or other communications addressed to the Trustee shall be effective only upon receipt.

The address for notice for each of the parties shall be as follows:

Issuer:

City of Santa Fe, New Mexico  
200 Lincoln Avenue  
Santa Fe, New Mexico 87501  
Attention: City Attorney  
Telephone: (505) 955-6512

with copy to:

Modrall Sperling  
123 East Marcy Ave.  
Suite 201  
Santa Fe, New Mexico 87501  
Attention: Peter L. Franklin  
Telephone: (505) 984-2856  
Email: [peter.franklin@modrall.com](mailto:peter.franklin@modrall.com)

Obligor:

El Castillo Retirement Residences  
250 East Alameda  
Santa Fe, New Mexico 87501  
Telephone: (505) 988-2877  
Attention: President  
Email: [ajahner@elcnm.com](mailto:ajahner@elcnm.com)

with a copy to:

The Jones Firm  
141 East Palace Ave.  
Suite 220  
Santa Fe, New Mexico 87501  
Telephone: (505) 982-0011  
Attention: Carol Clifford  
Email: [carol@thejonesfirm.com](mailto:carol@thejonesfirm.com)

Bond Trustee:

The Bank of New York Mellon Trust Company,  
National Association  
1775 Sherman Street  
Suite 2775  
Denver, Colorado 80203  
Attention: Troy Pitman  
Telephone: (303) 764-3571  
Telecopy: (303) 830-3747  
Email: [troy.pitman@bnymellon.com](mailto:troy.pitman@bnymellon.com)

Notwithstanding the foregoing, notices to the Bond Trustee shall be effective only upon receipt.

Section 11.2. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Obligor, and their respective successors and assigns, subject, however, to the limitations contained in Sections 8.1, 8.2 and 11.9 hereof.

Section 11.3. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.4. Amounts Remaining in Funds. It is agreed by the parties hereto that any amounts remaining in the Bond Fund, the Reserve Fund and any Construction Fund upon expiration or sooner termination of this Agreement, after payment in full of the Bonds (or provision for payment thereof having been made in accordance with the provisions of the Bond Indenture), the fees, charges, and expenses of the Bond Trustee, the Issuer and the Paying Agent in accordance with the Bond Indenture, the Administration Expenses and all other amounts required to be paid under this Agreement and the Bond Indenture, shall belong to and be paid to the Obligor by the Bond Trustee or the Issuer.

Section 11.5. Amendments, Changes, and Modifications. Except as otherwise provided in this Agreement or in the Bond Indenture, subsequent to the initial issuance of Bonds and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Bond Indenture), this Agreement may not be effectively amended, changed, modified, altered, or terminated without the written consent of the Bond Trustee.

Section 11.6. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.7. Payment. At such time as the principal of, premium, if any, and interest on all Bonds Outstanding under the Bond Indenture shall have been paid, or shall be deemed to be paid, in accordance with the Bond Indenture, and all other sums payable by the Obligor under this Agreement shall have been paid, the Notes shall be deemed to be fully paid and shall be delivered by the Bond Trustee to the Obligor.

Section 11.8. Governing Law. This Agreement shall be governed and construed in accordance with the law of the State of New Mexico.

Section 11.9. No Pecuniary Liability of Issuer. No provision, covenant, or agreement contained in this Agreement, or any obligations herein imposed upon the Issuer, or the breach thereof, shall constitute an indebtedness of the Issuer within the meaning of any New Mexico constitutional provision or statutory limitation or shall constitute or give rise to a pecuniary liability of the Issuer or a charge against its general credit. In making the agreements, provisions, and covenants set forth in this Agreement, the Issuer has not obligated itself except with respect to the application of the revenues, income, and all other property therefrom, as hereinabove provided.

Section 11.10. Payments Due on Holidays. If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Agreement, shall be a legal holiday or a day on which banking institutions in Denver, Colorado are authorized by law to remain closed, such payment may be made or act performed or right exercised on the next succeeding day not a legal holiday or a day on which such banking institutions are authorized by law to remain closed with the same force and effect as if done on the nominal date provided in this Agreement.

Section 11.11. No Individual Liability. No covenant or agreement contained in this Agreement or the Bond Indenture shall be deemed to be the covenant or agreement of any member of the City Council or the governing body of the Obligor or the Bond Trustee or of any officer, director, councilperson, trustee, agent or employee of the Issuer, the Bond Trustee or the Obligor, in his or her individual capacity, and none of such persons shall be subject to any personal liability or accountability by reason of the execution hereof, whether by virtue of any constitution, statute or rule of law, or by the enforcement or any assessment or penalty, or otherwise.

Section 11.12. Survival of Covenants. All covenants, agreements, representations and warranties made by the Obligor in this Agreement, the Bond Indenture, the Notes and the Bonds, and in any certificates or other documents or instruments delivered pursuant to this Agreement or the Bond Indenture, shall survive the execution and delivery of this Agreement, and the Bond Indenture and the Notes and shall continue in full force and effect until the Bonds and the Notes are paid in full and all of the Obligor's other payment obligations (including without limitation the indemnification obligation under Section 7.5 and the obligations under Sections 5.5, 5.7 and 9.5 hereof) under this Agreement, the Bond Indenture, the Notes and the Bonds are satisfied. All such covenants, agreements, representations and warranties shall be binding upon any successor and assigns of the Obligor.

IN WITNESS WHEREOF, the Issuer and the Obligor have caused this Agreement to be executed in their respective corporate names, all as of the date first above written.

ATTEST:

CITY OF SANTA FE, NEW MEXICO

By: \_\_\_\_\_  
City Clerk

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

(SEAL)

EL CASTILLO RETIREMENT RESIDENCES

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

President



EXHIBIT A

SERIES 2019 PROJECT DESCRIPTION

The acquisition, construction and equipping of a new adult residential retirement facility consisting of approximately 68 independent living units and related common areas and parking to be known as La Secoya and located at 401 Old Taos Highway, Santa Fe, New Mexico.

EXHIBIT B  
to Lease and Purchase Agreement

FORM FOR COST OF ISSUANCE DISBURSEMENT

NO. \_\_\_\_\_

The Bank of New York Mellon Trust Company,  
National Association, as Bond Trustee  
1775 Sherman Street  
Suite 2775  
Denver, Colorado 80203  
Attention: Corporate Trust Department

Re: City of Santa Fe, New Mexico Retirement Facility Revenue Bonds (El Castillo Retirement Residences Project) Series 2019A and Series 2019B

Ladies and Gentlemen:

This request for disbursement is submitted to you pursuant to Section 4.7 of the Lease and Purchase Agreement (the "Agreement") dated as of October 1, 2019, between the City of Santa Fe, New Mexico and El Castillo Retirement Residences (the "Obligor") relating to the captioned Bonds. You are hereby requested to make the disbursements shown on Exhibit A hereto from the Cost of Issuance Fund for the payment of Cost of Issuance, as defined and provided in the Agreement.

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

EL CASTILLO RETIREMENT RESIDENCES,  
as Obligor

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