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CITY OF SANTA FE, NEW MEXICO

TO

THE BANK OF NEW YORK MELLON TRUST COMPANY,  
NATIONAL ASSOCIATION, AS BOND TRUSTEE

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INDENTURE OF TRUST

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DATED AS OF OCTOBER 1, 2019

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

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3789.007\6-19-2019-Indenture of Trust

Exhibit

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## INDENTURE OF TRUST

THIS INDENTURE OF TRUST 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 THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association with trust powers, as Bond Trustee, being authorized to accept and execute trusts of the character herein set out,

### 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 to the governing body of the Issuer may deem advisable; and

WHEREAS, the execution and delivery of this Indenture of Trust (hereinafter sometimes referred to as the "Bond Indenture"), and the issuance of the bonds hereinafter authorized under this Bond Indenture, pursuant to the provisions of the Act, have been in all respects duly and validly authorized by an ordinance duly adopted and approved by the City Council of the Issuer; and

WHEREAS, the Issuer is authorized by law and deems necessary, in accordance with its powers described above, and has duly authorized and direct that its bonds, to be known as "City of Santa Fe, New Mexico Retirement Facility Revenue Bonds (El Castillo Retirement Residences Project)," be issued in two series (all bonds from time to time outstanding under the terms of this Bond Indenture being hereinafter referred to as the "Bonds"); and

WHEREAS, the lease of the Series 2019 Project (as defined below) and the payment of lease payments in connection therewith will be pursuant to the terms of a Lease and Purchase Agreement dated as of October 1, 2019 (the "Agreement") between the Issuer and El Castillo Retirement Residences, a "501(c)(3) corporation" as defined in the Act and a New Mexico nonprofit corporation (the "Obligor"); and

WHEREAS, to secure the payment of the principal of the Bonds, premium, if any, and the interest thereon and the performance and observance of the covenants and conditions herein contained the Issuer has authorized the execution and delivery of this Bond Indenture; and

WHEREAS, the Issuer has determined to issue a series of Bonds hereunder, designated "City of Santa Fe, New Mexico Retirement Facility Revenue Bonds (El Castillo Retirement Residences Project) Series 2019A" (hereinafter called the "Series 2019A Bonds") in the aggregate principal amount of \$\_\_\_\_\_ for the purpose of (a) financing certain capital costs for the Obligor, including the acquisition, construction and equipment of a new adult residential retirement facility to be located within the City at



Association, as trustee, or at the designated corporate trust office of its successor in trust (the "Bond Trustee") under an Indenture of Trust dated as of October 1, 2019 (the "Bond Indenture") by and between the Issuer and the Bond Trustee. Interest on this Bond will be paid on each interest payment date (or, if such interest payment date is not a business day, on the next succeeding business day), by check or draft mailed to the person in whose name this Bond is registered (the "registered owner") in the registration records of the Issuer maintained by the Bond Trustee at the address appearing thereon at the close of business on the last day of the calendar month next preceding such interest payment date (the "Regular Record Date") or by wire transfer of same day funds upon receipt by the Bond Trustee prior to the Regular Record Date of a written request by a registered owner of \$1,000,000 or more in aggregate principal amount of Bonds. The CUSIP number and appropriate dollar amounts for each CUSIP number shall accompany all payments of principal of, redemption premium, if any, and interest on the Bonds. Any such interest not so timely paid or duly provided for shall cease to be payable to the person who is the registered owner hereof at the close of business on the Regular Record Date and shall be payable to the person who is the registered owner hereof at the close of business on a Special Record Date (as defined in the hereinafter defined Agreement), for the payment of any defaulted interest. Such Special Record Date shall be fixed by the Bond Trustee whenever moneys become available for payment of the defaulted interest, and notice of the Special Record Date shall be given to the registered owners of such Bonds not less than ten days prior to such Special Record Date. Alternative means of payment of interest may be used if mutually agreed upon between the owner of this Bond and the Bond Trustee, as provided in the Bond Indenture. All such payments shall be made in lawful money of the United States of America without deduction for the services of the Bond Trustee.

This Bond shall be issued pursuant to a book entry system administered by The Depository Trust Company (together with any successor thereto, "Securities Depository"). The book entry system will evidence beneficial ownership of the Bonds with transfers of ownership effected on the register held by the Securities Depository pursuant to rules and procedures established by the Securities Depository. So long as the book entry system is in effect, transfer of principal, interest and premium payments, and provisions of notices or other communications, to beneficial owners of the Bonds will be the responsibility of the Securities Depository as set forth in the Bond Indenture.

This Bond is one of a duly authorized series of bonds of the Issuer dated as of the Delivery Date, known as "City of Santa Fe, New Mexico Retirement Facility Revenue Bonds (El Castillo Retirement Residences Project) Series 2019A" (the "Series 2019A Bonds") and issued in an aggregate principal amount of \$\_\_\_\_\_ for the purpose of providing funds to finance the cost of a project located in the City of Santa Fe, New Mexico (the "Project") for El Castillo Retirement Residences, a New Mexico nonprofit corporation (the "Obligor"), to fund a debt service reserve fund, to fund capitalized interest and to pay a portion of the cost of issuance.

To provide for the acquisition, improvement and equipping of the Project, the Issuer and the Obligor have entered into a Lease and Purchase Agreement dated as of October 1, 2019 (the "Agreement"). To secure the payment obligations of the Obligor under the Agreement, the Obligor has issued its Series 2019A Note (the "Series 2019A Note") pursuant to a Master Trust Indenture and Security Agreement dated as of December 1, 2012, as supplemented (the "Master Indenture"), between the Obligor and The Bank of New York Mellon Trust Company, National Association, as master trustee (the "Master Trustee"). Pursuant to the Master Indenture, the Obligor has pledged and granted a security interest in the Gross Revenues (as defined in the Master Indenture) and certain other property to the Master Trustee to secure the Series 2019A Note. The Issuer, on behalf of the Obligor, has also issued its Retirement Facility Revenue Bonds (El Castillo Retirement Residences Project) Series 2019B (the "Series 2019B Bonds" and, together with the Series 2019A Bonds, the "Bonds"), which will be on a parity with the Series 2019A Bonds and will also be secured by a parity note issued under the Master Indenture. Additional obligations on a parity with the

Series 2019A Note may be issued pursuant to the Master Indenture subject to the conditions and terms contained therein, and the payments on such additional obligations will also be secured by a pledge of the Gross Revenues and certain other property. The Series 2019A Note is additionally secured by a Mortgage, Security Agreement, Financing Statement and Assignment of Leases and Rents dated as of October 1, 2019 (the "Mortgage") from the Issuer to the Master Trustee.

This Bond and the claims for interest hereon are payable only out of the revenues derived by the Issuer pursuant to the Agreement. The Series 2019A Bonds are issued under and are equally and ratably secured and are entitled to the protection given by the Bond Indenture.

No recourse under or upon any obligation, covenant, or agreement contained in the Bond Indenture, or in any Bond, or under any judgment obtained against the Issuer or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, under or independent of the Bond Indenture, shall be had against any director, incorporator, officer, agent, employee, or representative as such, past, present or future, of the Issuer, either directly or through the Issuer or otherwise, for the payment for or to the Issuer or for or to the registered owner of any Bond issued thereunder or otherwise, of any sum that may be due and unpaid by the Issuer upon any such Bond.

Neither the councilpersons, officers, agents, employees or representatives of the Issuer past, present or future, nor any person executing this Bond or the Bond Indenture, shall be personally liable hereon or thereon or be subject to any personal liability by reason of the issuance hereof and thereof, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty, or otherwise, all such liability being expressly released and waived as a condition of and in consideration for the execution of the Bond Indenture and the issuance of this Bond.

Reference is hereby made to the Bond Indenture and all indentures supplemental thereto and the Master Indenture for a description of the revenues pledged, the nature and extent of the security, the rights, duties, and obligations of the Issuer, the Bond Trustee and the owners of the Bonds, and the terms and conditions upon which the Bonds are, and are to be, secured.

The Series 2019A Bonds are subject to optional redemption prior to maturity at the direction of the Obligor in whole or in part on \_\_\_\_\_, 20\_\_ or on any date thereafter, at a redemption price equal to the principal amount of such Series 2019A Bonds to be redeemed, together with accrued interest to the redemption date.

The Series 2019A Bonds maturing on \_\_\_\_\_, 20\_\_ are subject to mandatory sinking fund redemption at a redemption price equal to the principal amount thereof plus accrued interest to the redemption date. As and for a sinking fund for the redemption of Series 2019A Bonds maturing on \_\_\_\_\_, 20\_\_, the Issuer shall cause to be deposited into the Principal Account of the Bond Fund a sum which is sufficient to redeem on \_\_\_\_\_ of each of the following years (after credit as provided below) the following principal amounts of Series 2019A Bonds maturing on \_\_\_\_\_, 20\_\_, plus accrued interest to the redemption date:



Year                      Amount                      Year                      Amount

\_\_\_\_\_  
\*maturity

The Series 2019A Bonds maturing on \_\_\_\_\_, 20\_\_ are subject to mandatory sinking fund redemption at a redemption price equal to the principal amount thereof plus accrued interest to the redemption date. As and for a sinking fund for the redemption of Series 2019A Bonds maturing on \_\_\_\_\_, 20\_\_, the Issuer shall cause to be deposited into the Principal Account of the Bond Fund a sum which is sufficient to redeem on \_\_\_\_\_ of each of the following years (after credit as provided below) the following principal amounts of Series 2019A Bonds maturing on \_\_\_\_\_, 20\_\_, plus accrued interest to the redemption date:

Year                      Amount                      Year                      Amount

\_\_\_\_\_  
\*maturity

At the option of the Obligor to be exercised by delivery of a written certificate to the Bond Trustee on or before the 45th day next preceding any sinking fund redemption date, it may (i) deliver to the Bond Trustee for cancellation Series 2019A Bonds or portions thereof of the same maturity and interest rate, in an aggregate principal amount desired by the Obligor or (ii) specify a principal amount of Series 2019A Bonds or portions thereof of the same maturity and interest rate, which prior to said date have been redeemed (otherwise than through the operation of the sinking fund) and canceled by the Bond Trustee at the request of the Obligor and not theretofore applied as a credit against any sinking fund redemption obligation.

The Series 2019A Bonds shall be subject to optional redemption at the direction of the Obligor prior to their scheduled maturities, in whole or in part at a redemption price equal to the principal amount thereof plus accrued interest from the most recent interest payment date to the redemption date on any date following the occurrence of any of the following events:

(1) in case of damage or destruction to, or condemnation of, any property, plant, and equipment of any Obligated Group Member, to the extent that the net proceeds of insurance or condemnation award exceed the Threshold Amount (as defined in the Master Indenture) and the Obligor has determined not to use such net proceeds or award to repair, rebuild or replace such property, plant, and equipment; or

(2) as a result of any changes in the Constitution or laws of the State of New Mexico or of the United States of America or of any legislative, executive, or administrative action (whether state or federal) or of any final decree, judgment, or order of any court or administrative body (whether state or federal), the obligations of the Obligor under the Agreement have become, as established by an Opinion of Counsel,

void or unenforceable in each case in any material respect in accordance with the intent and purpose of the parties as expressed in the Agreement.

The Series 2019A Bonds are subject to mandatory redemption in whole or in part on any date for which timely notice of redemption can be given by the Bond Trustee following a Completion Date (as defined in the Agreement) at a redemption price equal to the aggregate principal amount of the Series 2019A Bonds to be redeemed plus accrued interest to the redemption date, without premium, to the extent Surplus Construction Fund Moneys (as defined in the Agreement) are transferred to the Principal Account of the Bond Fund.

If less than all Series 2019A Bonds are to be optionally redeemed, the Obligor may select the maturities eligible for redemption which are to be redeemed. If less than all Series 2019A Bonds of a single maturity are to be redeemed, the selection shall be made by the Securities Depository or by lot by the Bond Trustee. Notwithstanding the foregoing, if less than all of the Outstanding Bonds or portions thereof are to be redeemed, the Bonds to be redeemed shall be selected first, from any Outstanding Series 2019B-2 Bonds, then from any Outstanding Series 2019B-1 Bonds and then from any Outstanding Series 2019A Bonds. Notice of the call for any redemption shall be given by the Bond Trustee by sending a copy of the redemption notice by mail not more than 60 nor less than 30 days prior to the redemption date to the registered owner of each Series 2019A Bond to be redeemed as shown on the registration records kept by the Bond Trustee, as provided in the Bond Indenture. All Series 2019A Bonds or portions thereof called for redemption will cease to bear interest after the specified redemption date, provided funds for their payment are on deposit at the place of payment at that time.

In lieu of redeeming the Series 2019A Bonds, the Bond Trustee shall, at the direction of the Obligor, use such funds otherwise available under the Bond Indenture for redemption of Series 2019A Bonds to purchase Series 2019A Bonds as described in the Bond Indenture.

The Series 2019A Bonds are issuable as fully registered Bonds in denominations of \$5,000 and any integral multiple thereof and are exchangeable for an equal aggregate principal amount of fully registered Series 2019A Bonds of the same maturity of other authorized denominations at the aforesaid office of the Bond Trustee but only in the manner and subject to the limitations and on payment of the charges provided in the Bond Indenture.

This Bond is fully transferable by the registered owner hereof in person or by his or her duly authorized attorney on the registration books kept at the designated corporate trust office of the Bond Trustee upon surrender of this Bond together with a duly executed written instrument of transfer satisfactory to the Bond Trustee. Upon such transfer a new fully registered Series 2019A Bond of authorized denomination or denominations for the same aggregate principal amount and maturity will be issued to the transferee in exchange herefor, all upon payment of the charges and subject to the terms and conditions set forth in the Bond Indenture.

The Bond Trustee will not be required to transfer or exchange any Series 2019A Bond after the mailing of notice calling such Series 2019A Bond or any portion thereof for redemption has been given as herein provided, nor during the period beginning at the opening of business 15 days before the day of mailing by the Bond Trustee of a notice of prior redemption and ending at the close of business on the day of such mailing.

The Issuer and the Bond Trustee may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of making payment (except to the extent otherwise provided hereinabove and in the Bond Indenture with respect to Regular and Special Record Dates for the

payment of interest) and for all other purposes, and neither the Issuer nor the Bond Trustee shall be affected by any notice to the contrary. The principal of, premium, if any, and interest on this Bond shall be paid free from and without regard to any equities between the Obligor and the original or any intermediate owner hereof, or any setoffs or counterclaims.

The owner of this Bond shall have no right to enforce the provisions of the Bond Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Bond Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Bond Indenture. In case an event of default under the Bond Indenture shall occur, the principal of all of the Bonds at any such time Outstanding under the Bond Indenture may be declared or may become due and payable, upon the conditions and in the manner and with the effect provided in the Bond Indenture. The Bond Indenture provides that such declaration may in certain events be waived by the Bond Trustee or the owners of a requisite principal amount of the Bonds Outstanding under the Bond Indenture.

To the extent permitted by, and as provided in, the Bond Indenture, modifications or amendments of the Bond Indenture, or of any indenture supplemental thereto, and of the rights and obligations of the Issuer and of the owners of the Bonds may be made with the consent of the Issuer and the Bond Trustee and, in certain instances, of not less than a majority in aggregate principal amount of the Bonds then Outstanding; provided, however, that no such modification or amendment shall be made which will affect the terms of payment of the principal of, premium, if any, or interest on any of the Bonds, which are unconditional. Any such consent by the owner of this Bond shall be conclusive and binding upon such owner and upon all future owners of this Bond and of any Bond issued upon the transfer or exchange of this Bond whether or not notation of such consent is made upon this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Bond Indenture and issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law.

THIS BOND shall not be entitled to any benefit under the Bond Indenture, or any indenture supplemental thereto, or become valid or obligatory for any purpose until the Bond Trustee shall have manually signed the certificate of authentication hereon.

IN WITNESS WHEREOF, the City of Santa Fe, New Mexico has caused this Bond to be executed with the manual or facsimile signatures of its Mayor and Finance Director and attested by its City Clerk, and a facsimile of its seal to be hereto affixed or printed, all as of the date set forth above.

CITY OF SANTA FE, NEW MEXICO

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

By: \_\_\_\_\_  
Finance Director

(SEAL)

Attest:

\_\_\_\_\_  
City Clerk



(FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION)

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

Date of Authentication: THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION, as Bond Trustee

\_\_\_\_\_

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

(END OF FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION)

[FORM OF ASSIGNMENT]

ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the within Bond, and does hereby irrevocably constitute and appoint \_\_\_\_\_ attorney to transfer such Bond on the books kept for registration and transfer of the within Bond, with full power of substitution in the premises.

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

\_\_\_\_\_

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

Signature Guaranteed By:

\_\_\_\_\_

Authorized Signatory

NOTE: The signature to this Assignment must be guaranteed by a financial institution that is a member of the Securities Transfer Agents Medallion Program ("STAMP"), the Stock Exchange Medallion Program ("SEMP") or the New York Stock Exchange, Inc. Medallion Signature Program ("MSP").

\* \* \* [END OF SERIES 2019A BOND FORM] \* \* \*

WHEREAS, the Issuer has determined to issue an initial series of Bonds hereunder, designated "City of Santa Fe, New Mexico Retirement Facility Revenue Bonds (El Castillo Retirement Residences Project) Series 2019B" (hereinafter called the "Series 2019B Bonds") in the aggregate principal amount of \$\_\_\_\_\_ for the purpose of (a) financing certain capital costs for the Obligor, including (i) the Series

2019 Project; (b) establishing a debt service reserve fund, (c) funding capitalized interest and (d) pay for certain costs of issuance;

WHEREAS, the Series 2019B Bonds may be divided into subseries based on stated maturity dates as provided in Section 2.03(c) and (d) of this Bond Indenture; and

WHEREAS, the Series 2019B Bonds, the Bond Trustee's Authentication Certificate and the Assignment are to be substantially in the following forms, with such necessary or appropriate variations, omissions, and insertions as permitted or required by this Bond Indenture:

(FORM OF SERIES 2019B BOND)  
(Face of Bond)

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

No. B-\_\_R-\_\_ \$\_\_\_\_\_

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Delivery Date</u>	<u>Cusip No.</u>
_____%			____ _

REGISTERED OWNER:  
PRINCIPAL AMOUNT: \_\_\_\_\_ DOLLARS

THE CITY OF SANTA FE, NEW MEXICO, a municipal corporation and political subdivision of the State of New Mexico (the "Issuer"), for value received, promises to pay, from the sources described herein, to the registered owner specified above, or registered assigns, the principal amount specified above, on the maturity date specified above (unless this Bond shall have been called for prior redemption) and to pay, from such sources, interest on said sum on [May 15] and [November 15] of each year, commencing \_\_\_\_\_, 20\_\_, at the interest rate specified above, until payment of the principal hereof has been made or provided for. This Bond will bear interest from the most recent interest payment date to which interest has been paid or provided for, or, if no interest has been paid, from the Delivery Date of this Bond.

THE BONDS ARE NOT A GENERAL OBLIGATION OF THE CITY OF SANTA FE, NEW MEXICO WITHIN THE MEANING OF THE CONSTITUTION OR LAWS OF THE STATE OF NEW MEXICO. THE BONDS ARE PAYABLE SOLELY OUT OF THE REVENUE DERIVED FROM THE PROJECT FOR WHICH THE BONDS ARE ISSUED. THE BONDS SHALL NEVER CONSTITUTE AN INDEBTEDNESS OF THE CITY OF SANTA FE, NEW MEXICO WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL PROVISION OR STATUTORY LIMITATION AND SHALL NEVER CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE CITY OF SANTA FE, NEW MEXICO OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWERS.

This Bond and the series of Bonds of which it is a part have been issued under and pursuant to the provisions of the New Mexico Industrial Revenue Bond Act, Chapter 3, Article 32 NMSA 1978, as amended (the "Act"). This Bond is a limited obligation of the Issuer payable solely from the revenues, receipts and resources of the Issuer pledged to its payment and not from any other revenues, funds or assets of the Issuer.

The principal of and premium, if any, on this Bond are payable upon the presentation and surrender hereof at the designated trust office of The Bank of New York Mellon Trust Company, National Association, as trustee, or at the designated corporate trust office of its successor in trust (the "Bond Trustee") under an Indenture of Trust dated as of October 1, 2019 (the "Bond Indenture") by and between the Issuer and the Bond Trustee. Interest on this Bond will be paid on each interest payment date (or, if such interest payment date is not a business day, on the next succeeding business day), by check or draft mailed to the person in whose name this Bond is registered (the "registered owner") in the registration records of the Issuer maintained by the Bond Trustee at the address appearing thereon at the close of business on the last day of the calendar month next preceding such interest payment date (the "Regular Record Date") or by wire transfer of same day funds upon receipt by the Bond Trustee prior to the Regular Record Date of a written request by a registered owner of \$1,000,000 or more in aggregate principal amount of Bonds. The CUSIP number and appropriate dollar amounts for each CUSIP number shall accompany all payments of principal of, redemption premium, if any, and interest on the Bonds. Any such interest not so timely paid or duly provided for shall cease to be payable to the person who is the registered owner hereof at the close of business on the Regular Record Date and shall be payable to the person who is the registered owner hereof at the close of business on a Special Record Date (as defined in the hereinafter defined Agreement), for the payment of any defaulted interest. Such Special Record Date shall be fixed by the Bond Trustee whenever moneys become available for payment of the defaulted interest, and notice of the Special Record Date shall be given to the registered owners of such Bonds not less than ten days prior to such Special Record Date. Alternative means of payment of interest may be used if mutually agreed upon between the owner of this Bond and the Bond Trustee, as provided in the Bond Indenture. All such payments shall be made in lawful money of the United States of America without deduction for the services of the Bond Trustee.

This Bond shall be issued pursuant to a book entry system administered by The Depository Trust Company (together with any successor thereto, "Securities Depository"). The book entry system will evidence beneficial ownership of the Bonds with transfers of ownership effected on the register held by the Securities Depository pursuant to rules and procedures established by the Securities Depository. So long as the book entry system is in effect, transfer of principal, interest and premium payments, and provisions of notices or other communications, to beneficial owners of the Bonds will be the responsibility of the Securities Depository as set forth in the Bond Indenture.

This Bond is one of a duly authorized series of bonds of the Issuer dated as of the Delivery Date, known as "City of Santa Fe, New Mexico Retirement Facility Revenue Bonds (El Castillo Retirement Residences Project) Series 2019B" (the "Series 2019B Bonds") and issued in an aggregate principal amount of \$\_\_\_\_\_ for the purpose of providing funds to finance the cost of a project located in the City of Santa Fe, New Mexico (the "Project") for El Castillo Retirement Residences, a New Mexico nonprofit corporation (the "Obligor"), to fund a debt service reserve fund, to fund capitalized interest and to pay a portion of the cost of issuance.

To provide for the acquisition, improvement and equipping of the Project, the Issuer and the Obligor have entered into a Lease and Purchase Agreement dated as of October 1, 2019 (the "Agreement"). To secure the payment obligations of the Obligor under the Agreement, the Obligor has issued its Series 2019B Note (the "Series 2019B Note") pursuant to a Master Trust Indenture and Security Agreement dated as of December 1, 2012, as supplemented (the "Master Indenture"), between the Obligor and The Bank of New York Mellon Trust Company, National Association, as master trustee (the "Master Trustee"). Pursuant to the Master Indenture, the Obligor has pledged and granted a security interest in the Gross Revenues (as defined in the Master Indenture) and certain other property to the Master Trustee to secure the Series 2019B Note. The Issuer, on behalf of the Obligor, has also issued its Retirement Facility Revenue Bonds (El Castillo Retirement Residences Project) Series 2019A (the "Series 2019A Bonds" and, together with the

Series 2019B Bonds, the "Bonds"), which will be on a parity with the Series 2019B Bonds and will also be secured by a parity note issued under the Master Indenture. Additional obligations on a parity with the Series 2019B Note may be issued pursuant to the Master Indenture subject to the conditions and terms contained therein, and the payments on such additional obligations will also be secured by a pledge of the Gross Revenues and certain other property. The Series 2019B Note is additionally secured by a Mortgage, Security Agreement, Financing Statement and Assignment of Leases and Rents dated as of October 1, 2019 (the "Mortgage") from the Issuer to the Master Trustee.

This Bond and the claims for interest hereon are payable only out of the revenues derived by the Issuer pursuant to the Agreement. The Series 2019B Bonds are issued under and are equally and ratably secured and are entitled to the protection given by the Bond Indenture.

No recourse under or upon any obligation, covenant, or agreement contained in the Bond Indenture, or in any Bond, or under any judgment obtained against the Issuer or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, under or independent of the Bond Indenture, shall be had against any director, incorporator, officer, agent, employee, or representative as such, past, present or future, of the Issuer, either directly or through the Issuer or otherwise, for the payment for or to the Issuer or for or to the registered owner of any Bond issued thereunder or otherwise, of any sum that may be due and unpaid by the Issuer upon any such Bond.

Neither the councilpersons, officers, agents, employees or representatives of the Issuer past, present or future, nor any person executing this Bond or the Bond Indenture, shall be personally liable hereon or thereon or be subject to any personal liability by reason of the issuance hereof and thereof, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty, or otherwise, all such liability being expressly released and waived as a condition of and in consideration for the execution of the Bond Indenture and the issuance of this Bond.

Reference is hereby made to the Bond Indenture and all indentures supplemental thereto and the Master Indenture for a description of the revenues pledged, the nature and extent of the security, the rights, duties, and obligations of the Issuer, the Bond Trustee and the owners of the Bonds, and the terms and conditions upon which the Bonds are, and are to be, secured.

The Series 2019B-1 Bonds are subject to optional redemption prior to maturity by the Issuer at the direction of the Obligor in whole or in part on \_\_\_\_\_, 20\_\_ or on any date thereafter, at the redemption price equal to the principal amount of such Series 2019B-1 Bonds to be redeemed, together with accrued interest to the redemption date.

The Series 2019B-2 Bonds are subject to optional redemption prior to maturity by the Issuer at the direction of the Obligor in whole or in part on \_\_\_\_\_, 20\_\_ or on any date thereafter, at the redemption price equal to the principal amount of such Series 2019B-2 Bonds to be redeemed, together with accrued interest to the redemption date.

The Series 2019B Bonds shall be subject to optional redemption at the direction of the Obligor prior to their scheduled maturities, in whole or in part at a redemption price equal to the principal amount thereof plus accrued interest from the most recent interest payment date to the redemption date on any date following the occurrence of any of the following events:

(1) in case of damage or destruction to, or condemnation of, any property, plant, and equipment of any Obligated Group Member, to the extent that the net proceeds of insurance or condemnation award



exceed the Threshold Amount (as defined in the Master Indenture) and the Obligor has determined not to use such net proceeds or award to repair, rebuild or replace such property, plant, and equipment; or

(2) as a result of any changes in the Constitution or laws of the State of New Mexico or of the United States of America or of any legislative, executive, or administrative action (whether state or federal) or of any final decree, judgment, or order of any court or administrative body (whether state or federal), the obligations of the Obligor under the Agreement have become, as established by an Opinion of Counsel, void or unenforceable in each case in any material respect in accordance with the intent and purpose of the parties as expressed in the Agreement.

The Series 2019B Bonds are also subject to mandatory redemption at a redemption price equal to the principal amount thereof plus accrued interest to the redemption date on the fifteenth day of each month, to the extent monies are on deposit in the Entrance Fee Redemption Account of the Bond Fund as provided in the Bond Indenture; provided that the Series 2019B-2 Bonds shall be redeemed prior to the Series 2019B-1 Bonds.

The Series 2019B Bonds are subject to mandatory redemption in whole or in part on any date for which timely notice of redemption can be given by the Bond Trustee following a Completion Date (as defined in the Agreement) at a redemption price equal to the aggregate principal amount of the Series 2019B Bonds to be redeemed plus accrued interest to the redemption date, without premium, to the extent Surplus Construction Fund Moneys (as defined in the Agreement) are transferred to the Principal Account of the Bond Fund.

If less than all Series 2019B Bonds are to be optionally redeemed, the Obligor may select the series and maturities eligible for redemption which are to be redeemed. If less than all Series 2019B Bonds of a single maturity are to be redeemed, the selection shall be made by the Securities Depository or by lot by the Bond Trustee. Notwithstanding the foregoing, if less than all of the Outstanding Bonds or portions thereof are to be redeemed, the Bonds to be redeemed shall be selected first, from any Outstanding Series 2019B-2 Bonds, then from any Outstanding Series 2019B-1 Bonds and then from any Outstanding Series 2019A Bonds. Notice of the call for any redemption shall be given by the Bond Trustee by sending a copy of the redemption notice by mail not more than 60 nor less than 30 days prior to the redemption date to the registered owner of each Series 2019B Bond to be redeemed as shown on the registration records kept by the Bond Trustee, as provided in the Bond Indenture. All Series 2019B Bonds or portions thereof called for redemption will cease to bear interest after the specified redemption date, provided funds for their payment are on deposit at the place of payment at that time.

In lieu of redeeming the Series 2019B Bonds, the Bond Trustee shall, at the direction of the Obligor, use such funds otherwise available under the Bond Indenture for redemption of Series 2019B Bonds to purchase Series 2019B Bonds as described in the Bond Indenture.

The Series 2019B Bonds are issuable as fully registered Bonds in denominations of \$5,000 and any integral multiple thereof and are exchangeable for an equal aggregate principal amount of fully registered Series 2019B Bonds of the same series and maturity of other authorized denominations at the aforesaid office of the Bond Trustee but only in the manner and subject to the limitations and on payment of the charges provided in the Bond Indenture.

This Bond is fully transferable by the registered owner hereof in person or by his or her duly authorized attorney on the registration books kept at the designated corporate trust office of the Bond Trustee upon surrender of this Bond together with a duly executed written instrument of transfer satisfactory to the Bond Trustee. Upon such transfer a new fully registered Series 2019B Bond of authorized

denomination or denominations for the same aggregate principal amount, series and maturity will be issued to the transferee in exchange herefor, all upon payment of the charges and subject to the terms and conditions set forth in the Bond Indenture.

The Bond Trustee will not be required to transfer or exchange any Series 2019B Bond after the mailing of notice calling such Series 2019B Bond or any portion thereof for redemption has been given as herein provided, nor during the period beginning at the opening of business 15 days before the day of mailing by the Bond Trustee of a notice of prior redemption and ending at the close of business on the day of such mailing.

The Issuer and the Bond Trustee may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of making payment (except to the extent otherwise provided hereinabove and in the Bond Indenture with respect to Regular and Special Record Dates for the payment of interest) and for all other purposes, and neither the Issuer nor the Bond Trustee shall be affected by any notice to the contrary. The principal of, premium, if any, and interest on this Bond shall be paid free from and without regard to any equities between the Obligor and the original or any intermediate owner hereof, or any setoffs or counterclaims.

The owner of this Bond shall have no right to enforce the provisions of the Bond Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Bond Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Bond Indenture. In case an event of default under the Bond Indenture shall occur, the principal of all of the Bonds at any such time Outstanding under the Bond Indenture may be declared or may become due and payable, upon the conditions and in the manner and with the effect provided in the Bond Indenture. The Bond Indenture provides that such declaration may in certain events be waived by the Bond Trustee or the owners of a requisite principal amount of the Bonds Outstanding under the Bond Indenture.

To the extent permitted by, and as provided in, the Bond Indenture, modifications or amendments of the Bond Indenture, or of any indenture supplemental thereto, and of the rights and obligations of the Issuer and of the owners of the Bonds may be made with the consent of the Issuer and the Bond Trustee and, in certain instances, of not less than a majority in aggregate principal amount of the Bonds then Outstanding; provided, however, that no such modification or amendment shall be made which will affect the terms of payment of the principal of, premium, if any, or interest on any of the Bonds, which are unconditional. Any such consent by the owner of this Bond shall be conclusive and binding upon such owner and upon all future owners of this Bond and of any Bond issued upon the transfer or exchange of this Bond whether or not notation of such consent is made upon this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Bond Indenture and issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law.

THIS BOND shall not be entitled to any benefit under the Bond Indenture, or any indenture supplemental thereto, or become valid or obligatory for any purpose until the Bond Trustee shall have manually signed the certificate of authentication hereon.

IN WITNESS WHEREOF, the City of Santa Fe, New Mexico has caused this Bond to be executed with the manual or facsimile signatures of its Mayor and Finance Director and attested by its City Clerk, and a facsimile of its seal to be hereto affixed or printed, all as of the date set forth above.

CITY OF SANTA FE, NEW MEXICO

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

(SEAL)

By: \_\_\_\_\_  
Finance Director

Attest:

\_\_\_\_\_  
City Clerk

(FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION)

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

Date of Authentication: \_\_\_\_\_ THE BANK OF NEW YORK MELLON TRUST  
COMPANY, NATIONAL ASSOCIATION,  
as Bond Trustee

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

(END OF FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION)

[FORM OF ASSIGNMENT]

ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the within Bond, and does hereby irrevocably constitute and appoint \_\_\_\_\_ attorney to transfer such Bond on the books kept for registration and transfer of the within Bond, with full power of substitution in the premises.

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

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

Signature Guaranteed By:

\_\_\_\_\_

Authorized Signatory

NOTE: The signature to this Assignment must be guaranteed by a financial institution that is a member of the Securities Transfer Agents Medallion Program ("STAMP"), the Stock Exchange Medallion Program ("SEMP") or the New York Stock Exchange, Inc. Medallion Signature Program ("MSP").

\* \* \* [END OF SERIES 2019B BOND FORM] \* \* \*

WHEREAS, all things necessary to make the Bonds, when authenticated by the Bond Trustee and issued as in this Bond Indenture provided, the valid, binding, and legal obligations of the Issuer and to constitute this Bond Indenture a valid, binding, and legal instrument for the security of the Bonds in accordance with its terms, have been done and performed

NOW, THEREFORE, THIS INDENTURE OF TRUST WITNESSETH:

That the Issuer, in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Bonds by the owners thereof and of the sum of One Dollar to it duly paid by the Bond Trustee at or before the execution and delivery of these presents, and for other good and valuable consideration, the receipt of which is hereby acknowledged, in order to secure the payment of the principal of, premium, if any, and interest on all Bonds at any time Outstanding under this Bond Indenture, according to their tenor and effect, and to secure the performance and observance of all the covenants and conditions in the Bonds and herein contained, and to declare the terms and conditions upon and subject to which the Bonds are issued and secured, has executed and delivered this Bond Indenture and has granted, bargained, sold, warranted, alienated, remised, released, conveyed, assigned, pledged, set over, and confirmed, and by these presents does grant, bargain, sell, warrant, alien, remise, release, convey, assign, pledge, set over, and confirm unto The Bank of New York Mellon Trust Company, National Association, as trustee, and to its successors and assigns forever, all and singular the following described property, franchises, and income:

A. All of the Issuer's right, title and interest in and to any Note delivered by the Obligor to the Issuer pursuant to the Agreement; and

B. All of the Issuer's right, title and interest in and to the Agreement (except for the rights of the Issuer to receive payments, if any, under Sections 5.7, 7.5, and 9.5 of the Agreement and the Issuer's rights to give consents and approvals under the Agreement), together with all powers, privileges, options and other benefits of the Issuer contained in the Agreement; provided, however, that nothing in this clause shall impair, diminish or otherwise affect the Issuer's obligations under the Agreement or, except as otherwise provided in this Bond Indenture, impose any such obligations on the Bond Trustee; and

C. Amounts on deposit from time to time in the Bond Fund, Reserve Fund, Construction Fund and Cost of Issuance Fund, but excluding the Rebate Fund (all as defined in the Agreement), subject to the provisions of this Bond Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein; and

D. Any and all property of every kind or description which may from time to time hereafter be sold, transferred, conveyed, assigned, hypothecated, endorsed, deposited, pledged, mortgaged, granted or delivered to, or deposited with the Bond Trustee as additional security by the Issuer or anyone on its part or with its written consent, or which pursuant to any of the provisions hereof or of the Agreement or any Note may come into the possession of or control of the Bond Trustee or a receiver appointed pursuant to Article VIII hereof, as such additional security; and the Bond Trustee is hereby authorized to receive any and all such property as and for additional security for the payment of the Bonds, and to hold and apply all such property subject to the terms hereof.

TO HAVE AND TO HOLD the same with all privileges and appurtenances hereby conveyed and assigned, or agreed or intended to be, to the Bond Trustee and its successors in said trust and assigns forever;

IN TRUST, NEVERTHELESS, upon the terms herein set forth for the equal and proportionate benefit, security, and protection of all owners of the Bonds issued under and secured by this Bond Indenture without privilege, priority, or distinction as to the lien or otherwise of any of the Bonds over any other of the Bonds;

PROVIDED, HOWEVER, that if the Issuer, its successors or assigns, shall pay, or cause to be paid, the principal of the Bonds and the premium, if any, and the interest due or to become due thereon, at the times and in the manner mentioned in the Bonds according to the true intent and meaning thereof, and shall cause the payments to be made into the Bond Fund as hereinafter required or shall provide, as permitted hereby, for the payment thereof by depositing with the Bond Trustee the entire amount due or to become due hereon, or certain securities as herein permitted and shall keep, perform, and observe all the covenants and conditions pursuant to the terms of this Bond Indenture to be kept, performed, and observed by it, and shall pay or cause to be paid to the Bond Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payments this Bond Indenture and the rights hereby granted shall cease, determine, and be void; otherwise this Bond Indenture to be and remain in full force and effect.

THIS BOND INDENTURE FURTHER WITNESSETH and it is expressly declared that all Bonds issued and secured hereunder are to be issued, authenticated, and delivered and all said rights hereby pledged and assigned are to be dealt with and disposed of under, upon, and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses, and purposes as hereinafter expressed, and the Issuer has agreed and covenanted, and does hereby agree and covenant, with the Bond Trustee and with the respective owners from time to time of the Bonds as follows:

[END OF PREAMBLE]

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. All defined words and phrases used in this Bond Indenture shall have the meaning given and ascribed to such words and phrases in Article I of the Agreement.

Section 1.02. Recital Incorporation. The recitals set forth in the beginning of this Indenture are hereby incorporated herein.

ARTICLE II

AUTHORIZATION, TERMS, EXECUTION AND ISSUANCE OF BONDS

Section 2.01. Authorized Amount of Bonds. No Bonds may be issued under this Bond Indenture except in accordance with this Article. The total original principal amount of Series 2019A Bonds that may be issued hereunder is hereby expressly limited to \$\_\_\_\_\_, and the total original principal amount of Series 2019B Bonds that may be issued hereunder is hereby expressly limited to \$\_\_\_\_\_, except as provided in Section 2.06 hereof.

Section 2.02. All Bonds Equally and Ratably Secured; Bonds Not an Obligation of Issuer. All Bonds issued under this Bond Indenture and at any time Outstanding shall in all respects be equally and ratably secured hereby, without preference, priority, or distinction on account of the date or dates or the actual time or times of the issuance or maturity of the Bonds, so that all Bonds at any time issued and Outstanding hereunder shall have the same right, lien, and preference under and by virtue of this Bond Indenture, and shall all be equally and ratably secured hereby. The Bonds shall be payable solely out of the revenues and other security pledged hereby and shall not constitute an indebtedness of the Issuer within the meaning of any state constitutional provision or statutory limitation and shall never constitute nor give rise to a pecuniary liability of the Issuer.

Section 2.03. Authorization of Bonds. (a) There is hereby authorized to be issued hereunder and secured hereby a series of bonds designated as the "City of Santa Fe, New Mexico Retirement Facility Revenue Bonds (El Castillo Retirement Residences Project) Series 2019A." The Bonds shall be numbered consecutively upward from AR-1.

(b) The Series 2019A Bonds shall bear interest from the most recent interest payment date to which interest has been paid or provided for, or, if no interest has been paid, from the Delivery Date of the Series 2019A Bonds. The Series 2019A Bonds shall bear interest on the basis of a 360 day year composed of twelve 30 day months payable each [May 15] and each [November 15], commencing \_\_\_\_\_, 20\_\_\_, at the rates per annum and shall mature on \_\_\_\_\_ in the years and principal amounts as follows:

<u>Year</u>	<u>Principal Amount</u>	<u>Interest Rate(%)</u>	<u>Year</u>	<u>Principal Amount</u>	<u>Interest Rate(%)</u>
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(c) There is hereby authorized to be issued hereunder and secured hereby an issue of bonds designated as the "City of Santa Fe, New Mexico Retirement Facility Revenue Bonds (El Castillo Retirement Residences Project) Series 2019B." The Series 2019B Bonds shall be issued in two subseries designated "Series 2019B-1" and "Series 2019B-2." The Series 2019B-1 Bonds and the Series 2019B-2 Bonds shall be identical except as provided below in paragraph (d). The Series 2019B-1 Bonds shall be numbered consecutively upward from B-1R-1 and the Series 2019B-2 Bonds shall be numbered consecutively upward from B-2R-1.



(d) The Series 2019B Bonds shall bear interest from the most recent interest payment date to which interest has been paid or provided for, or, if no interest has been paid, from the Delivery Date of the Series 2019B Bond. The Series 2019B Bonds shall bear interest on the basis of a 360 day year composed of twelve 30 day months payable each [May 15] and [November 15], beginning \_\_\_\_\_, 20\_\_, at the rates per annum and shall mature on the dates and principal amounts as follows:

<u>Subseries</u>	<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate(%)</u>
B-1			
B-2			

(e) The Bonds shall be issued in Authorized Denominations and shall be dated as of the Delivery Date. The Bonds are subject to prior redemption as herein set forth and shall be substantially in the form and tenor hereinabove recited with appropriate variations, omissions, and insertions as are permitted or required by this Bond Indenture.

(f) The principal of and premium, if any, on the Bonds shall be payable in lawful money of the United States of America at the Payment Office of the Bond Trustee, or at the designated corporate trust office of its successor, upon presentation and surrender of the Bonds. Payment of interest on any Bond shall be made to the person who is the registered owner thereof at the close of business on the Regular Record Date for such Interest Payment Date by check mailed by the Bond Trustee on such Interest Payment Date to such registered owner at his or her address as it appears on the registration records kept by the Bond Trustee or by wire transfer of same day funds upon receipt by the Bond Trustee prior to the Regular Record Date of a written request by a registered owner of \$1,000,000 or more in aggregate principal amount of Bonds. The CUSIP number and appropriate dollar amounts for each CUSIP number shall accompany all payments of principal, premium, if any, and interest on the Bonds. Any such interest not so timely paid or duly provided for shall cease to be payable to the person who is the registered owner of such Bond at the close of business on the Regular Record Date and shall be payable to the person who is the registered owner thereof at the close of business on a Special Record Date for the payment of any such defaulted interest. Such Special Record Date shall be fixed by the Bond Trustee whenever moneys become available for payment of the defaulted interest, and notice of the Special Record Date shall be given to the registered owners of the Bonds not less than ten days prior thereto by first class postage prepaid mail to each such registered owner as shown on the registration records, stating the date of the Special Record Date and the date fixed for the payment of such defaulted interest. Alternative means of payment of interest may be used if mutually agreed upon between the owners of any Bonds and the Bond Trustee. All such payments shall be made in lawful money of the United States of America.

Notwithstanding the foregoing, payments of the principal of and interest on any Bonds that are subject to the book entry system as provided in Article II of this Bond Indenture shall be made in accordance with the rules, regulations and procedures established by the securities depository in connection with the book entry system.

Section 2.04. Execution of Bonds, Signatures. The Bonds shall be executed on behalf of the Issuer by its Mayor and Finance Director and its seal shall be thereunto affixed and attested by the City Clerk. The signatures of such officers and the seal of the Issuer may be in facsimile. In case any officer who shall have signed any of the Bonds shall cease to hold such office and any of such Bonds shall have been authenticated by the Bond Trustee or delivered or sold, such Bonds with the signatures thereto affixed

may, nevertheless, be authenticated by the Bond Trustee, and delivered, and may be sold by the Issuer, as though the person or persons who signed such Bonds had remained in office.

Section 2.05. Registration and Exchange of Bonds; Persons Treated as Owners. The Issuer shall cause books for the registration and for the transfer of the Bonds as provided in this Bond Indenture to be kept by the Bond Trustee which is hereby appointed the bond registrar of the Issuer for the Bonds. Upon surrender for transfer of any fully registered Bond at the Payment Office of the Bond Trustee, duly endorsed for transfer or accomplished by an assignment duly executed by the registered owner or his attorney duly authorized in writing, the Issuer shall execute and the Bond Trustee shall authenticate and deliver in the name of the transferee or transferees a new fully registered Bond or Bonds of a like aggregate principal amount for a like principal amount, maturity and interest rate.

The Issuer shall execute and the Bond Trustee shall authenticate and deliver Bonds which the Bondholder making the exchange is entitled to receive, bearing numbers not contemporaneously Outstanding. The execution by the Issuer of any fully registered Bond of any denomination shall constitute full and due authorization of such denomination and the Bond Trustee shall thereby be authorized to authenticate and deliver such Bond.

The Bond Trustee shall not be required to transfer or exchange any Bond after the mailing of notice calling such Bond or any portion thereof for redemption has been given as herein provided, nor during the period beginning at the opening of business 15 days before the day of mailing by the Bond Trustee of a notice of prior redemption and ending at the close of business on the day of such mailing except for Bondholders of \$1,000,000 or more in aggregate principal amount of the Bonds.

As to any Bond, the Person in whose name the same shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of principal of or interest on any Bond shall be made only to or upon the written order of the registered owner thereof or his legal representative, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums paid.

The Bond Trustee shall require the payment by any Bondholder requesting exchange or transfer of any tax or other governmental charge required to be paid with respect to such exchange or transfer.

Section 2.06. Lost, Stolen, Destroyed, and Mutilated Bonds. Upon receipt by the Bond Trustee of evidence satisfactory to it of the ownership of and the loss, theft, destruction, or mutilation of any Bond and, in the case of a lost, stolen, or destroyed Bond, of indemnity satisfactory to it, and upon surrender and cancellation of the Bond if mutilated, (i) the Issuer shall execute, and the Bond Trustee shall authenticate and deliver, a new Bond of the same series, date, maturity and interest rate as the lost, stolen, destroyed or mutilated Bond in lieu of such lost, stolen, destroyed, or mutilated Bond or (ii) if such lost, stolen, destroyed, or mutilated Bond shall have matured or have been called for redemption, in lieu of executing and delivering a new Bond as aforesaid, the Issuer may pay such Bond. Any such new Bond shall bear a number not contemporaneously Outstanding. The applicant for any such new Bond may be required to pay all expenses and charges of the Issuer and of the Bond Trustee in connection with the issue of such new Bond. All Bonds shall be held and owned upon the express condition that, to the extent permitted by law, the foregoing conditions are exclusive with respect to the replacement and payment of mutilated, destroyed, lost, or stolen Bonds, negotiable instruments, or other securities. If, after the delivery of such new Bond, a bona fide purchaser of the original Bond in lieu of which such duplicate Bond was issued presents for payment such original Bond, the Obligor or the Bond Trustee shall be entitled to recover upon such new Bond from the person to whom it was delivered or any person taking therefrom, except a bona fide purchaser, and shall be

entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the Obligor or the Bond Trustee in connection therewith.

Section 2.07. Delivery of Bonds. Upon the execution and delivery of this Bond Indenture, the Issuer shall execute and deliver to the Bond Trustee and the Bond Trustee shall authenticate the Bonds and deliver them to the initial purchasers thereof as directed by the Issuer and as hereinafter in this Section provided.

Prior to the delivery by the Bond Trustee of any of the Bonds there shall be filed with and delivered to the Bond Trustee at least:

(a) A Certified Ordinance authorizing the execution and delivery of the Agreement and this Bond Indenture and the issuance of the Bonds.

(b) Original executed counterparts of the Agreement, this Bond Indenture and the Supplemental Indenture and a conformed copy of the Master Indenture.

(c) The Notes, duly executed and authenticated and duly assigned and payable to the Bond Trustee.

(d) A request and authorization to the Bond Trustee on behalf of the Issuer and signed by its Mayor to authenticate and deliver the Bonds to the purchasers therein identified upon payment to the Bond Trustee but for the account of the Issuer of a sum specified in such request and authorization plus accrued interest thereon to the date of delivery, together with instructions as to the disposition of the proceeds of the Bonds.

(e) An Opinion of Bond Counsel to the effect that the Bonds have been duly and validly authorized, issued and delivered and constitute valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their terms, that the interest payable on the Bonds is excludable from gross income for federal income tax purposes and that each of the instruments to which the Issuer is a party has been duly and validly authorized, executed and delivered by the Issuer and constitutes the legal, valid and binding obligation of the Issuer, enforceable against the Issuer in accordance with its terms, subject to customary qualifications on enforceability.

Section 2.08. Bond Trustee's Authentication Certificate. The Bond Trustee's authentication certificate upon the Bonds shall be substantially in the form and tenor hereinbefore provided. No Bond shall be secured hereby or entitled to the benefit hereof, or shall be valid or obligatory for any purpose, unless the certificate of authentication, substantially in such form, has been duly executed by the Bond Trustee; and such certificate of the Bond Trustee upon any Bond shall be conclusive evidence and the only competent evidence that such Bond has been authenticated and delivered hereunder. The Bond Trustee's certificate of authentication shall be deemed to have been duly executed by it if manually signed by an authorized signatory of the Bond Trustee, but it shall not be necessary that the same person sign the certificate of authentication on all of the Bonds issued hereunder.

Section 2.09. No Issuance of Additional Bonds. The Issuer agrees that it will not issue any additional bonds under this Bond Indenture other than the Bonds. Only the Bonds shall be Outstanding under this Bond Indenture and entitled to the security of the Trust Estate.

Section 2.10. Intentionally Omitted.

Section 2.11. Cancellation and Destruction of Bonds By the Bond Trustee. Whenever any Outstanding Bonds shall be delivered to the Bond Trustee for the cancellation thereof pursuant to this Bond Indenture, upon payment of the principal amount or interest represented thereby or for replacement pursuant to Section 2.06 hereof, such Bonds shall be promptly cancelled and treated in accordance with the Bond Trustee's standard retention policies. In the event of destruction of the Bonds by the Bond Trustee, a certificate of destruction evidencing such destruction shall be furnished by the Bond Trustee to the Issuer and the Obligor upon written request.

Section 2.12. Book Entry Only System. The Bonds shall be initially issued in the form of a single fully registered Bond for each maturity of the Bonds registered in the name of Cede & Co., as nominee of DTC, and except as provided in Section 2.13 hereof, all of the outstanding Bonds shall be registered in the name of Cede & Co., as nominee of DTC.

With respect to Bonds registered in the name of Cede & Co., as nominee of DTC, the Issuer and the Bond Trustee shall have no responsibility or obligation to any participant in DTC (a "DTC Participant") or to any person on behalf of whom such a DTC Participant holds an interest in the Bonds, except as provided in this Indenture. Without limiting the immediately preceding sentence, the Issuer and the Bond Trustee shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any DTC Participant or any other person, other than a Bondholder, as shown on the registration books, of any notice with respect to the Bonds, including any notice of redemption, or (iii) the payment to any DTC Participant or any other person, other than a Bondholder as shown in the registration books, of any amount with respect to principal of, premium, if any, or interest on, the Bonds. Notwithstanding any other provision of this Bond Indenture to the contrary, the Issuer and the Bond Trustee shall be entitled to treat and consider the person in whose name each Bond is registered in the registration books as the absolute owner of such Bond for the purpose of payment of principal, premium, if any, and interest with respect to such Bond, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfers with respect to such Bond, and for all other purposes whatsoever. The Bond Trustee shall pay all principal of, premium, if any, and interest on the Bonds only to or upon the order of the respective owners, as shown in the registration books as provided in this Bond Indenture, or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer's obligations with respect to payment of principal of, premium, if any, and interest on, the Bonds to the extent of the sum or sums so paid. No person other than an owner, as shown in the registration books, shall receive a Bond certificate evidencing the obligation of the Issuer to make payments of principal, premium, if any, and interest, pursuant to this Bond Indenture. Upon delivery by DTC to the Bond Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the provisions in this Bond Indenture with respect to payment of interest to the registered owner at the close of business on the Record Date, the word "Cede & Co." in this Bond Indenture shall refer to such new nominee of DTC.

Section 2.13. Successor Securities Depository; Transfers Outside Book Entry Only System. (a) In the event that the Obligor determines that DTC is incapable of discharging its responsibilities described herein and in the representation letter of the Issuer to DTC (the "DTC Letter") and that it is in the best interest of the beneficial owners of the Bonds that they be able to obtain certificated Bonds, the Issuer, at the direction of the Obligor, shall (i) appoint a successor securities depository, qualified to act as such under Section 17(a) of the Securities Exchange Act of 1934, as amended, notify DTC and DTC Participants, identified by DTC, of the appointment of such successor securities depository and transfer one or more separate Bonds to such successor securities depository or (ii) notify DTC and DTC Participants, identified by DTC, of the availability through DTC of Bonds and transfer one or more separate Bonds to DTC Participants, identified by DTC, having Bonds credited to their DTC accounts. In such event, the Bonds

shall no longer be restricted to being registered in the registration books in the name of Cede & Co., as nominee of DTC, but may be registered in the name of the successor securities depository, or its nominee, or in whatever name or names Bondholders transferring or exchanging Bonds shall designate, in accordance with the provisions of this Bond Indenture.

(b) Upon the written consent of 100% of the beneficial owners of the Bonds, the Bond Trustee, in accordance with the DTC Letter, shall withdraw the Bonds from DTC, and authenticate and deliver Bonds fully registered to the assignees of DTC or its nominee. If the request for such withdrawal is not the result of any Issuer action or inaction, such withdrawal, authentication and delivery shall be at the cost and expense (including costs of printing, preparing and delivering such Bonds) of the Persons requesting such withdrawal, authentication and delivery.

Section 2.14. Payments to Cede & Co. Notwithstanding any other provision of this Bond Indenture to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of, premium, if any, and interest on, such Bond and all notices, transfers and deliveries with respect to such Bond shall be made and given, respectively, in the manner provided in the DTC Letter.

Section 2.15. Temporary Bonds. Pending preparation of definitive Bonds, the Issuer may issue, in lieu of definitive Bonds, one or more temporary printed or typewritten Bonds in Authorized Denominations, of substantially the tenor recited above. At the request of the Issuer, the Trustee shall authenticate definitive Bonds in exchange for and upon surrender of an equal principal amount of temporary Bonds of the same series, maturity and interest rate. Until so exchanged, temporary Bonds shall have the same rights, remedies and security hereunder as definitive Bonds. Temporary Series 2019A Bonds shall be numbered consecutively upward from TAR-1, temporary Series 2019B-1 Bonds shall be numbered TBR-1-1 and temporary Series 2019B-2 Bonds shall be numbered TBR-2-1.

## ARTICLE III

### REVENUES AND FUNDS

Section 3.01. Application of Proceeds of Bonds. (a) The Issuer will sell and cause to be delivered to the initial purchasers thereto the Series 2019A Bonds and will deliver the proceeds thereof to the Bond Trustee for disposal as follows:

(i) Deposit, into the Series 2019A Account of the Reserve Fund, the amount specified in the request and authorization to the Bond Trustee described in Section 2.07(d).

(ii) Deposit, into the Cost of Issuance Fund, the amount specified in the request and authorization to the Bond Trustee described in Section 2.07(d).

(iii) Deposit into the Funded Interest Account of the Construction Fund, the amount specified in the request and authorization to the Bond Trustee described in Section 2.07(d).

(iv) Deposit, into the Project Account of the Construction Fund, the balance of the proceeds of the Series 2019A Bonds.

(b) The Issuer will sell and cause to be delivered to the initial purchasers thereof the Series 2019B Bonds and will deliver the proceeds thereof to the Bond Trustee for disposal as follows:

(i) Deposit, into the Series 2019B Account of the Reserve Fund, the amount specified in the request and authorization to the Bond Trustee described in Section 2.07(d).

(ii) Deposit, into the Cost of Issuance Fund, the amount specified in the request and authorization to the Bond Trustee described in Section 2.07(d).

(iii) Deposit into the Funded Interest Account of the Construction Fund, the amount specified in the request and authorization to the Bond Trustee described in Section 2.07(d).

(iv) Deposit, into the Project Account of the Construction Fund, the balance of the proceeds of the Series 2019B Bonds.

Section 3.02. Creation of the Bond Fund. There is hereby created by the Issuer and ordered established with the Bond Trustee a trust fund to be designated as the "City of Santa Fe, New Mexico Retirement Facility Revenue Bonds (El Castillo Retirement Residences Project) Bond Fund" (the "Bond Fund"). There are hereby created by the Issuer and ordered established with the Bond Trustee three separate accounts within the Bond Fund to be designated as the Principal Account, the Interest Account and the Entrance Fee Redemption Account, respectively. Moneys on deposit in the Principal Account shall be used to pay the principal of and premium, if any, on the Bonds, when due and payable. Moneys on deposit in the Interest Account shall be used to pay the interest on the Bonds. Moneys on deposit in the Entrance Fee Redemption Account shall be used to pay the redemption price of, first, Series 2019B-2 Bonds and, second, Series 2019B-1 Bonds, on each Entrance Fee Redemption Date as provided in Section 5.09 hereof.

Section 3.03. Payments into the Bond Fund. (a) There shall be deposited into the Interest Account all accrued interest received from the sale of the Bonds to the initial purchasers thereof. In addition, there shall also be deposited into the Principal Account or the Interest Account, as and when received, (i) all payments on the Notes, (ii) all moneys transferred to the Bond Fund from the Reserve Fund



pursuant to Section 3.10 hereof, (iii) all other moneys required to be deposited therein pursuant to the Agreement, and (iv) all other moneys received by the Bond Trustee when accompanied by directions that such moneys are to be paid into the Principal Account or the Interest Account. There also shall be retained or deposited in the Principal Account or the Interest Account all interest and other income received on investments or moneys required to be transferred thereto, in accordance with Section 6.02 hereof. The Issuer hereby covenants and agrees that so long as any of the Bonds are Outstanding it will deposit, or cause to be deposited, into the Principal Account or the Interest Account for its account sufficient sums from revenues and receipts derived from the Agreement promptly to meet and pay the principal of, premium, if any, and interest on the Bonds as the same become due and payable.

(b) There shall be deposited into the Entrance Fee Redemption Account all moneys received by the Bond Trustee from the Master Trustee on each Entrance Fee Transfer Date pursuant to Section \_\_\_\_ of Supplemental Indenture Number 2 for deposit therein.

Section 3.04. Use of Moneys in the Principal Account and the Interest Account. The amounts deposited into the Interest Account pursuant to Section 3.01 hereof shall be used to pay accrued interest on the appropriate series of Bonds on the first Interest Payment Date. Except as provided in Sections 3.15 and 8.05 hereof, moneys in the Principal Account or the Interest Account shall be used solely for the payment of the principal of, premium, if any, and interest on the Bonds on a pro rata basis.

Section 3.05. Custody of the Bond Fund. The Bond Fund shall be in the custody of the Bond Trustee but in the name of the Issuer, and the Issuer hereby authorizes and directs the Bond Trustee to withdraw sufficient funds from the Principal Account or the Interest Account of the Bond Fund to pay the principal of, premium, if any, and interest on the Bonds as the same come due and payable, which authorization and direction the Bond Trustee hereby accepts.

Section 3.06. Construction Fund. (a) There is hereby created and established with the Bond Trustee a trust fund designated as the "City of Santa Fe, New Mexico Retirement Facility Revenue Bonds (El Castillo Retirement Residences Project) Construction Fund" (the "Construction Fund"). There are hereby created by the Issuer and ordered established with the Bond Trustee two separate accounts within the Construction Fund to be designated as the Funded Interest Account and the Project Account. Moneys in the Construction Fund shall be used to pay Costs of the Series 2019 Project or as hereinafter provided. Under no circumstances shall moneys in the Construction Fund be used to pay Cost of Issuance.

(b) In the event there are insufficient moneys in the Interest Account of the Bond Fund to pay interest on the Bonds when due, the Bond Trustee shall transfer moneys in the Funded Interest Account of the Construction Fund to the Interest Account of the Bond Fund to pay such interest when due. Moneys in the Funded Interest Account of the Construction Fund shall be used to pay investment management fees as set forth in a written request of the Obligor to the Bond Trustee. Upon the maturity or sale of a Premium Security, the Bond Trustee shall transfer the appropriate amount of premium as set forth in Section 6.01 hereof to the account in which such Premium Security was held. The Bond Trustee shall disburse moneys in the Project Account of the Construction Fund as provided herein and in Section 4.6 of the Agreement. All Surplus Construction Fund Money remaining in the Construction Fund after the Completion Certificate is filed with the Bond Trustee and payment of all other costs then due and payable shall be transferred to the Principal Account and shall be used to redeem Bonds in accordance with Section 5.10 hereof.

(c) Payments from the Construction Fund shall be made in accordance with this Article III and Article IV of the Agreement. Upon receipt of the required certificates, the Bond Trustee shall pay the amount requested pursuant to the Disbursement Agreement.

(d) If an Event of Default occurs under this Bond Indenture, and the Bond Trustee declares the principal of all Bonds and the interest accrued thereon to be due and payable, no moneys may be paid out of the Construction Fund by the Bond Trustee during the continuance of such an Event of Default; provided, however, that if such an Event of Default shall be waived and such declaration shall be rescinded by the Bond Trustee or the holders and owners of the Bonds pursuant to the terms of this Bond Indenture, the full amount of any such remaining moneys in the Construction Fund may again be disbursed by the Bond Trustee in accordance with the provisions of the Agreement and this Bond Indenture.

Section 3.07. Completion Certificate. At such time as the Obligor determines that construction of the Series 2019 Project has been completed in substantial compliance with the final plans and specifications for the Series 2019 Project or has determined to terminate any further construction of the Series 2019 Project, it shall deliver the Completion Certificate to the Bond Trustee pursuant to Section 4.2 of the Agreement.

Section 3.08. Creation of the Reserve Fund. (a) There is hereby created and established with the Bond Trustee a trust fund designated as the "City of Santa Fe, New Mexico Retirement Facility Revenue Bonds (El Castillo Retirement Residences Project) Debt Service Reserve Fund" (the "Reserve Fund"). Within the Reserve Fund there are hereby created and established two separate Reserve Accounts: (i) the Series 2019A Reserve Account and (ii) the Series 2019B Reserve Account.

(b) Moneys on deposit in the Reserve Fund shall be used to provide a reserve for the payment of the principal of and interest on the Bonds. Moneys on deposit in the Series 2019A Reserve Account shall be used solely to provide a reserve for the payment of the principal of and interest on the Series 2019A Bonds. Moneys on deposit in the Series 2019B Reserve Account shall be used solely to provide a reserve for the payment of the principal of and interest on the Series 2019B Bonds.

Section 3.09. Payments Into the Reserve Fund. In addition to the deposits required by Section 3.01 hereof, there shall be deposited into the appropriate Reserve Account of the Reserve Fund any Reserve Fund Obligations delivered by the Obligor to the Bond Trustee pursuant to Section 5.6 of the Agreement. In addition, there shall be deposited into the appropriate Reserve Account of the Reserve Fund all moneys required to be transferred thereto pursuant to Section 6.02 hereof, and all other moneys received by the Bond Trustee when accompanied by directions that such moneys are to be paid into such Reserve Account of the Reserve Fund. There shall also be retained in each Reserve Account of the Reserve Fund all interest and other income received on investments of Reserve Fund moneys in such Reserve Account to the extent provided in Section 6.02 hereof.

Section 3.10. Use of Moneys in the Reserve Fund. (a) Except as provided herein and in Section 3.15 hereof, moneys in each Reserve Account in the Reserve Fund shall be used solely for the payment of the principal of and interest on the related series of Bonds in the event moneys in the Bond Fund and the Funded Interest Account are insufficient to make such payments when due, whether on an interest payment date, redemption date, maturity date, acceleration date or otherwise.

(b) Upon the occurrence of an Event of Default of which the Bond Trustee is deemed to have notice hereunder and the election by the Bond Trustee of the remedy specified in Section 8.02(a) hereof, any Reserve Fund Obligations in the Reserve Fund shall, subject to the provisions of Section 3.16 hereof, be transferred by the Bond Trustee to the Principal Account and applied in accordance with Section 8.05 hereof. In the event of the redemption of a portion of any series of Bonds, any Reserve Fund Obligations on deposit in the applicable Reserve Account of the Reserve Fund in excess of the Reserve Fund Requirement on the Bonds of such series to be Outstanding immediately after such redemption may, subject to the provisions of Section 3.16 hereof, be transferred to the Principal Account and applied to the payment



of the principal of the series of Bonds to be redeemed. On [May 15] and [November 15] in each year, any earnings on the Reserve Fund Obligations on deposit in a Reserve Account of the Reserve Fund that are in excess of the Reserve Fund Requirement for such Reserve Account shall be transferred during the construction period for the Series 2019 Project into the Funded Interest Account of the Construction Fund created in connection with the issuance of Bonds for the Series 2019 Project or, if after the completion of such construction period, into the Interest Account of the Bond Fund.

(c) On the final maturity date of any series of Bonds, any Reserve Fund Obligations in the applicable Reserve Account of the Reserve Fund in excess of the Reserve Fund Requirement for such Reserve Account after giving effect to such maturity may, upon the direction of the Obligor, be used to pay the principal of and interest on such series of Bonds on such final maturity date or for the payment of Project Costs.

(d) If at any time moneys in a Reserve Account in the Reserve Fund are sufficient to pay the principal or redemption price of all Bonds of the related series, the Bond Trustee may use the moneys on deposit in the Reserve Fund to pay such principal or redemption price of such related series of Bonds.

Section 3.11. Custody of the Reserve Fund. The Reserve Fund and the Reserve Accounts therein shall be in the custody of the Bond Trustee but in the name of the Issuer, and the Issuer hereby authorizes and directs the Bond Trustee to transfer sufficient moneys from the applicable Reserve Account of the Reserve Fund to the Bond Trustee for deposit to the Bond Fund to pay the principal of and interest on the Bonds of the related series for the purposes herein described, which authorization and direction the Bond Trustee hereby accepts. In the event there shall be a deficiency in the Principal Account or the Interest Account on any payment date for any series of Bonds, the Bond Trustee shall promptly make up such deficiency from the applicable Reserve Account of the Reserve Fund.

Section 3.12. Nonpresentment of Bonds. In the event that any Bonds shall not be presented for payment when the principal thereof or interest thereon becomes due, either at maturity, the date fixed for redemption thereof, or otherwise, if funds sufficient for the payment thereof shall have been deposited into the Bond Fund or otherwise made available to the Bond Trustee for deposit therein as provided in Section 3.03 hereof, all liability of the Issuer to the owner or owners thereof for the payment of such Bonds shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Bond Trustee to hold such fund or funds, without liability for interest thereon, for the benefit of the owner or owners of such Bonds, who shall thereafter be restricted exclusively to such fund or funds for any claim of whatever nature on his or their part under this Bond Indenture or on, or with respect to, said Bond, and all such funds shall remain uninvested. If any Bond shall not be presented for payment within the period of two years following the date of final maturity of such Bond, the Bond Trustee shall, to the extent required by law, transfer such funds to the state treasury of the state in which the designated corporate office of the Bond Trustee is located, in which case the owner of such Bonds shall look only to such state for payment, or, in the alternative, to the extent permitted by law, the Bond Trustee shall, upon request in writing by the Obligor, return such funds to the Obligor free of any trust or lien and such Bond shall, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the Obligor. In either event, the Bond Trustee shall have no further responsibility with respect to such moneys or payment of such Bonds. Thereafter, the Bondholders shall be entitled to look only to the Obligor for payment, and then only to the extent of the amount so repaid by the Bond Trustee. The Obligor shall not be liable for any interest on any sums paid to it.

Section 3.13. Bond Trustee's and Paying Agents' Fees, Charges, and Expenses. Pursuant to the provisions of the Agreement, the Obligor has agreed to pay to the Bond Trustee and to each Paying Agent, commencing with the effective date of the Agreement and continuing until the principal of, premium, if

any, and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the provisions of this Bond Indenture, the reasonable and necessary fees and expenses (including reasonable attorneys fees and expenses) of the Bond Trustee and each Paying Agent, as and when the same become due, upon the submission by the Bond Trustee and each Paying Agent of a statement therefor.

Section 3.14. Moneys to be Held in Trust. All moneys required to be deposited with or paid to the Bond Trustee under any provision of this Bond Indenture (except moneys in the Rebate Fund) shall be held by the Bond Trustee in trust for the purposes specified in this Bond Indenture, and except for moneys deposited with or paid to the Bond Trustee for the redemption of Bonds for which the notice of redemption has been duly given, shall, while held by the Bond Trustee, constitute part of the Trust Estate and be subject to the lien hereof.

Section 3.15. Repayment to the Obligor from the Funds. Any amounts remaining in the Bond Fund, Reserve Fund or Construction Fund after payment in full of the Bonds (or after making provision for such payment), the fees and expenses of the Bond Trustee and the Paying Agents (including attorneys fees and expenses, if any), the Administration Expenses, and all other amounts required to be paid hereunder and under the Agreement shall be paid to the Obligor upon the termination of the Agreement and used only for the payment of Project Costs.

Section 3.16. Rebate Fund.

(a) A special Rebate Fund is hereby established by the Issuer. The Rebate Fund shall be for the sole benefit of the United States of America and shall not be subject to the claim of any other Person, including without limitation the Bondholders. The Rebate Fund is established for the purpose of complying with Section 148 of the Code and the Treasury Regulations promulgated pursuant thereto. The money deposited in the Rebate Fund, together with all investments thereof and investment income therefrom, shall be held in trust and applied solely as provided in this Section. The Rebate Fund is not a portion of the Trust Estate and is not subject to the lien of this Bond Indenture. Notwithstanding the foregoing, the Bond Trustee with respect to the Rebate Fund is afforded all the rights, protections and immunities otherwise accorded to it hereunder.

(b) Within 60 days after the close of each fifth "Bond Year," the Bond Trustee shall receive from the Obligor a computation in the form of a certificate of an officer of the Obligor of the amount of "Excess Earnings," if any, for the period beginning on the date of delivery of the Bonds and ending at the close of such "Bond Year" and the Obligor shall pay to the Bond Trustee for deposit into the Rebate Fund an amount equal to the difference, if any, between the amount then in the Rebate Fund and the Excess Earnings so computed. The term "Bond Year" means with respect to the Bonds each one-year period ending on the anniversary of the date of delivery of the Bonds or such other period as may be elected by the Issuer in accordance with the Regulations and notice of which election has been given to the Bond Trustee. If, at the close of any Bond Year, the amount in the Rebate Fund exceeds the amount that would be required to be paid to the United States of America under paragraph (d) below if the Bonds had been paid in full, such excess may, at the request of the Obligor, be transferred from the Rebate Fund and paid to the Obligor.

(c) In general, "Excess Earnings" for any period of time means the sum of

(i) the excess of --

(A) the aggregate amount earned during such period of time on all "Nonpurpose Investments" (including gains on the disposition of such Obligations) in which "Gross

Proceeds" of the issue are invested (other than amounts attributable to an excess described in this subparagraph (c)(i)), over

(B) the amount that would have been earned during such period of time if the "Yield" on such Nonpurpose Investments (other than amounts attributable to an excess described in this subparagraph (c)(i)) had been equal to the yield on the issue, plus

(ii) any income during such period of time attributable to the excess described in subparagraph (c)(i) above.

The term Nonpurpose Investments, Gross Proceeds, Issue Date and Yield shall have the meanings given to such terms in section 148 of the Code and the Regulations promulgated pursuant to such section.

(d) The Bond Trustee shall, as directed in writing by the Obligor, pay to the United States of America at least once every five years, to the extent that funds are available in the Rebate Fund or otherwise provided by the Obligor, an amount that ensures that at least 90 percent of the Excess Earnings from the date of delivery of the Bonds to the close of the period for which the payment is being made will have been paid. The Bond Trustee shall pay to the United States of America not later than 60 days after the Bonds have been paid in full as directed by the Obligor in writing, to the extent that funds are available in the Rebate Fund or otherwise provided by the Obligor, 100 percent of the amount then required to be paid under Section 148(f) of the Code as a result of Excess Earnings.

(e) The amounts to be computed, paid, deposited or disbursed under this section shall be determined by the Obligor acting on behalf of the Issuer within thirty days after each Bond Year. By such date, the Obligor shall also notify, in writing, the Bond Trustee and the Issuer of the determinations the Obligor has made and the payment to be made pursuant to the provisions of this section. Upon written request of any registered owner of Bonds, the Obligor shall furnish to such registered owner of Bonds a certificate (supported by reasonable documentation, which may include calculation by Bond Counsel or by some other service organization) showing compliance with this section and other applicable provisions of section 148 of the Code.

(f) The Bond Trustee shall maintain a record of the periodic determinations by the Obligor of the Excess Earnings for a period beginning on the first anniversary date of the issuance of the Bonds and ending on the date six years after the final retirement of the Bonds or such later date as required by the Bond Trustee's policies or procedures. Such records provided by the Obligor shall state each such anniversary date and summarize the manner in which the Excess Earnings, if any, was determined.

(g) If the Bond Trustee shall declare the principal of the Bonds and the interest accrued thereon immediately due and payable as the result of an Event of Default specified in this Bond Indenture, or if the Bonds are optionally or mandatorily prepaid or redeemed prior to maturity as a whole in accordance with their terms, any amount remaining in any of the funds shall be transferred to the Rebate Fund to the extent that the amount therein is less than the Excess Earnings computed by the Obligor as of the date of such acceleration or redemption, and the balance of such amount shall be used immediately by the Bond Trustee for the purpose of paying principal of, redemption premium, if any, and interest on the Bonds when due. In furtherance of such intention, the Issuer hereby authorizes and directs its Mayor 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.

(h) The requirements contained in this Section relating to the computation and payment of Excess Earnings shall not be applicable if all Gross Proceeds of the Bonds are expended in compliance with Treasury Regulations Section 1.148-7.

(i) Notwithstanding any of the provisions of this Section, the Bond Trustee shall have no duty or responsibility with respect to the Rebate Fund except to follow the specific written instructions of the Obligor.

Section 3.17. Intentionally Omitted.

Section 3.18. Cost of Issuance Fund. There is hereby created and established with the Bond Trustee a trust fund designated as the "City of Santa Fe, New Mexico Retirement Facility Revenue Bonds (El Castillo Retirement Residences Project) Cost of Issuance Fund" (the "Cost of Issuance Fund"). The Bond Trustee shall disburse moneys in the Cost of Issuance Fund as provided in Article IV of the Agreement. Moneys in the Cost of Issuance Fund may be used only for payment of the Cost of Issuance. On the earlier of (a) the day the Bond Trustee receives a certificate of the Obligor to the effect that all Cost of Issuance relating to the Bonds has been paid and (b) December 1, 2019, any moneys remaining in the Cost of Issuance Fund shall be transferred to the Project Account of the Construction Fund, and thereafter no such moneys shall be used to pay Cost of Issuance. The Cost of Issuance Fund shall then be closed.

## ARTICLE IV

### COVENANTS OF THE ISSUER

Section 4.01. Performance of Covenants: Authority. The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions contained in this Bond Indenture, in any and every Bond and in all proceedings of the City Council pertaining hereto; provided, however, that except for the covenant of the Issuer set forth in Section 4.02 hereof relating to payment of the Bonds, the Issuer shall not be obligated to take any action or execute any instrument pursuant to any provision hereof until it shall have been requested to do so by the Obligor or by the Bond Trustee, or shall have received the instrument to be executed and at the option of the Issuer shall have received from the party requesting such execution assurance satisfactory to the Issuer that the Issuer shall be reimbursed for its reasonable expenses incurred or to be incurred in connection with taking such action or executing such instrument. The Issuer covenants that it is duly authorized under the laws of the State of New Mexico, including particularly and without limitation the Act, to issue the Bonds and to execute this Bond Indenture, and to pledge the revenues and receipts hereby pledged, and to assign its rights under and pursuant to the Agreement and the Notes in the manner and to the extent herein set forth, that all action on its part and to the extent herein set forth, that all action on its part for the issuance of the Bonds and the execution and delivery of this Bond Indenture has been duly and effectively taken and will be duly taken as provided herein, and that the Bonds in the hands of the owners thereof are and will be valid and enforceable limited obligations of the Issuer according to the import hereof, except as enforcement thereof and hereof may be limited by bankruptcy, insolvency, moratorium, reorganization and other similar laws affecting the rights of creditors and by the application of general principles of equity, if such remedies are pursued.

Section 4.02. Payments of Principal, Premium, If Any, and Interest. The Issuer will promptly pay or cause to be paid the principal of, premium, if any, and interest on all Bonds issued hereunder according to the terms hereof. The principal, premium, if any, and interest payments are payable solely from revenues and other amounts derived from the Notes, and from the other security pledged hereby, which revenues and security are hereby specifically pledged to the payment thereof in the manner and to the extent herein specified. Nothing in the Bonds or in this Bond Indenture shall be considered or construed as pledging any funds or assets of the Issuer other than those pledged hereby.

Section 4.03. Supplemental Indentures: Recordation of Bond Indenture and Supplemental Indentures. The Issuer will execute and deliver all indentures supplemental hereto, and will cause this Bond Indenture, the Agreement, and all supplements hereto and thereto, as well as all security instruments and financing statements relating thereto, to be filed in each office required by law in order to publish notice of the liens created by this Bond Indenture and the Agreement. The Bond Trustee shall cause to be filed a continuation statement with respect to each Uniform Commercial Code financing statement relating to the Bonds on which it is listed as a secured party, and which was filed at the time of the issuance thereof, in such manner and in such places as the initial filings (copies of which shall be provided to the Bond Trustee by the Issuer) were made. The Obligor shall be responsible for the reasonable costs incurred by the Bond Trustee in the preparation and filing of all such continuation statements hereunder. Notwithstanding anything to the contrary contained herein, the Bond Trustee shall not be responsible for any initial filings of any financing statements or the information contained therein (including the exhibits thereto), the perfection of any such security interests, or the accuracy or sufficiency of any description of collateral in such initial filings or for filing any modifications or amendments to the initial filings required by any amendments to Article 9 of the Uniform Commercial Code, and unless the Bond Trustee shall have been notified by the Issuer or the Obligor that any such initial filing or description of collateral was or has become defective, the Bond Trustee shall be fully protected in relying on such initial filing and descriptions in filing

any continuation statements or modifications thereto pursuant to this Section 4.03 and in filing any continuation statements in the same filing offices as the initial filings were made.

Section 4.04. Lien of Bond Indenture. The Issuer hereby agrees not to create any lien having priority or preference over the lien of this Bond Indenture upon the Trust Estate or any part thereof, other than the security interest granted by it to the Bond Trustee, except as otherwise specifically provided in Article VIII hereof. The Issuer agrees that no obligations the payment of which is secured by payments or other moneys or amounts derived from the Agreement and the other sources provided herein will be issued by it except in accordance with Sections 2.09 and 2.10 of this Bond Indenture.

Section 4.05. Rights Under the Agreement. The Issuer will observe all of the obligations, terms and conditions required on its part to be observed or performed under the Agreement. The Issuer agrees that wherever in the Agreement it is stated that the Issuer will notify the Bond Trustee, give the Bond Trustee some right or privilege, or in any way attempts to confer upon the Bond Trustee the ability for the Bond Trustee to protect the security for payment of the Bonds, that such part of the Agreement shall be as though it were set out in this Bond Indenture in full.

The Issuer agrees that the Bond Trustee as assignee of the Agreement may enforce, in its name or in the name of the Issuer, all rights of the Issuer (except those rights to indemnification and payment under Sections 5.7, 7.5 and 9.5 thereof) and all obligations of the Obligor under and pursuant to the Agreement for and on behalf of the Bondholders, whether or not the Issuer is in default hereunder.

Section 4.06. Tax Covenants. (a) The Issuer covenants and agrees that until the final maturity of the Bonds, based upon the Obligor's covenants in Section 4.9 of the Agreement, it will not knowingly take any action, use any money on deposit in any fund or account maintained in connection with the Bonds, whether or not such money was derived from the proceeds of the sale of the Bonds or from any other source, in a manner that would cause the Bonds to be arbitrage bonds, within the meaning of Section 148 of the Code. In the event the Obligor notifies the Issuer that it is necessary to restrict or limit the yield on the investment of moneys held by the Bond Trustee pursuant to this Bond Indenture, or to use such moneys in any certain manner to avoid the Bonds being considered arbitrage bonds, the Issuer at the written direction and expense of the Obligor shall deliver to the Bond Trustee appropriate written instructions of the Issuer, in which event the Bond Trustee shall take such action as instructed to restrict or limit the yield on such investment or to use such moneys in accordance with such instructions.

(b) The Issuer shall not knowingly use any proceeds of Bonds or any other funds of the Issuer, directly or indirectly, in any manner, and shall not knowingly take any other action or actions, that would result in any of the Bonds being treated other than as an obligation described in Section 103(a) of the Code.

(c) The Issuer will not knowingly use any portion of the proceeds of the Bonds, including any investment income earned on such proceeds, directly or indirectly, to make or finance loans to Persons who are not Exempt Persons. 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, determined according to Section 513(a) of the Code, constitutes a loan to a Person who is not an Exempt Person.

(d) The Issuer will not knowingly take any action that would result in all or any portion of the Bonds being treated as federally guaranteed within the meaning of Section 149(b)(2) of the Code.

(e) For purposes of this Section, the Issuer's compliance shall be based solely on acts or omissions by the Issuer, and no acts, omissions or directions of the Obligor, the Bond Trustee or any other Persons shall be attributable to the Issuer.

Section 4.07. Change in Law. To the extent that published rulings of the Internal Revenue Service, or amendments to the Code or the Regulations modify the covenants of the Issuer that are set forth in this Bond Indenture or that are necessary for interest on the Bonds to be excludable from gross income for federal income tax purposes, the Issuer, upon receiving the written Opinion of Bond Counsel to such effect, will comply, at the expense of the Obligor, with such modifications and direct the Bond Trustee to take such action as may be required to comply with such modifications.



ARTICLE V

REDEMPTION OF BONDS

Section 5.01. Optional Redemption of Bonds. (a) The Series 2019A Bonds are subject to optional redemption prior to maturity by the Issuer at the direction of the Obligor in whole or in part on \_\_\_\_\_, 20\_\_ or on any date thereafter, at a redemption price equal to the principal amount of such Series 2019A Bonds to be redeemed, together with accrued interest to the redemption date.

(b)(i) The Series 2019B-1 Bonds are subject to optional redemption prior to maturity by the Issuer at the direction of the Obligor in whole or in part on \_\_\_\_\_, 20\_\_ or on any date thereafter, at a redemption price equal to the principal amount of such Series 2019B-1 Bonds to be redeemed, together with accrued interest to the redemption date.

(ii) The Series 2019B-2 Bonds are subject to optional redemption prior to maturity by the Issuer at the direction of the Obligor in whole or in part on \_\_\_\_\_, 20\_\_ or on any date thereafter, at a redemption price equal to the principal amount of such Series 2019B-2 Bonds to be redeemed, together with accrued interest to the redemption date.

Section 5.02. Sinking Fund Redemption.

(a) The Series 2019A Bonds maturing on \_\_\_\_\_, 20\_\_ are subject to mandatory sinking fund redemption at a redemption price equal to the principal amount thereof plus accrued interest to the redemption date. As and for a sinking fund for the redemption of Series 2019A Bonds maturing on \_\_\_\_\_, 20\_\_, the Issuer shall cause to be deposited into the Principal Account of the Bond Fund a sum which is sufficient to redeem on \_\_\_\_\_ of each of the following years (after credit as provided below) the following principal amounts of Series 2019A Bonds maturing on \_\_\_\_\_, 20\_\_, plus accrued interest to the redemption date:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
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\_\_\_\_\_  
\*maturity

(b) The Series 2019A Bonds maturing on \_\_\_\_\_, 20\_\_ are subject to mandatory sinking fund redemption at a redemption price equal to the principal amount thereof plus accrued interest to the redemption date. As and for a sinking fund for the redemption of Series 2019A Bonds maturing on \_\_\_\_\_, 20\_\_, the Issuer shall cause to be deposited into the Principal Account of the Bond Fund a sum which is sufficient to redeem on \_\_\_\_\_ of each of the following years (after credit as provided below) the following principal amounts of Series 2019A Bonds maturing on \_\_\_\_\_, 20\_\_, plus accrued interest to the redemption date:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
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\*maturity

(c) On or before the 30th day prior to each sinking fund payment date, the Bond Trustee shall proceed to select for redemption (by lot in such manner as the Bond Trustee may determine) from all Series 2019A Bonds Outstanding maturing on \_\_\_\_\_, 20\_\_ and 20\_\_, as the case may be, a principal amount of such Series 2019A Bonds equal to the aggregate principal amount of such Series 2019A Bonds of such maturity and interest rate redeemable with the required sinking fund payment, and shall call such Series 2019A Bonds or portions thereof (\$5,000 or any integral multiple thereof) for redemption from the sinking fund on the next \_\_\_\_\_, and give notice of such call. At the option of the Obligor to be exercised by delivery of a written certificate to the Bond Trustee on or before the 45th day next preceding any sinking fund redemption date, it may (i) deliver to the Bond Trustee for cancellation Series 2019A Bonds or portions thereof maturing on \_\_\_\_\_, 20\_\_ and 20\_\_, as the case may be, in an aggregate principal amount desired by the Obligor or (ii) specify a principal amount of Series 2019A Bonds or portions thereof maturing on \_\_\_\_\_, 20\_\_ and 20\_\_, as the case may be, which prior to said date have been redeemed (otherwise than through the operation of the sinking fund) and canceled by the Bond Trustee at the request of the Issuer and not theretofore applied as a credit against any sinking fund redemption obligation. Each such Series 2019A Bond or portion thereof so delivered or previously redeemed shall be credited by the Bond Trustee at 100% of the principal amount thereof against the obligation of the Issuer to redeem Series 2019A Bonds of the same maturity and interest rate on such sinking fund redemption date. Any excess shall be credited against the next sinking fund redemption obligation to redeem such Series 2019A Bonds. In the event that the Obligor shall avail itself of the provisions of clause (i) of the second sentence of this paragraph, the certificate required by the second sentence of this paragraph shall be accompanied by the Series 2019A Bonds or portions thereof to be canceled.

Section 5.03. Method of Selection of Bonds in Case of Partial Redemption; Redemption Priority.

(a) In the event that less than all of the Outstanding Bonds or portions thereof are to be redeemed as provided in Sections 5.01, 5.08, 5.09 or 5.10 hereof, the Bonds to be redeemed shall be selected first, from any Outstanding Series 2019B-2 Bonds, then from any Outstanding Series 2019B-1 Bonds and then from any Outstanding Series 2019A Bonds.

(b) In the event that less than all of the Outstanding Bonds or portions thereof of a particular series are to be redeemed as provided in Sections 5.01, 5.08, 5.09 or 5.10 hereof, the Obligor may select the particular maturities of such series to be redeemed. If less than all Bonds or portions thereof of a single maturity are to be redeemed, they shall be selected by the Securities Depository or by lot in such manner as the Bond Trustee may determine.

(c) If a Bond is of a denomination larger than the minimum Authorized Denomination, a portion of such Bond may be redeemed, but Bonds shall be redeemed only in the principal amount of an Authorized Denomination and no Bond may be redeemed in part if the principal amount to be Outstanding following such partial redemption is not an Authorized Denomination.

Section 5.04. Notice of Redemption. Series 2019A Bonds shall be called for redemption by the Bond Trustee as herein provided upon receipt by the Bond Trustee at least 45 days prior to the redemption date of a certificate of the Obligor specifying the principal amount of Bonds to be called for redemption, the applicable redemption price or prices and the provision or provisions of this Bond Indenture pursuant to which such Bonds are to be called for redemption. The provisions of the preceding sentence shall not apply to the redemption of Bonds pursuant to the sinking fund provided in Section 5.02 hereof or pursuant

to the mandatory entrance fee redemption provided in Section 5.09 hereof, and such Bonds shall be called for redemption by the Bond Trustee without the necessity of any action by the Obligor or the Issuer. In case of every redemption, the Bond Trustee shall cause notice of such redemption to be given by mailing by first class mail, postage prepaid, a copy of the redemption notice to the owners of the Bonds designated for redemption in whole or in part, at their addresses as the same shall last appear upon the registration books, in each case not more than 60 nor less than 30 days prior to the redemption date. In addition, notice of redemption shall be sent by first class or registered mail, return receipt requested, or by over night delivery service (1) contemporaneously with such mailing: (A) to any owner of \$1,000,000 or more in principal amount of Bonds and (B) to at least two or more information services of national recognition that disseminate redemption information with respect to municipal bonds; and (2) to any securities depository registered as such pursuant to the Securities Exchange Act of 1934, as amended, that is an owner of Bonds to be redeemed so that such notice is received at least two days prior to such mailing date. An additional notice of redemption shall be given by certified mail, postage prepaid, mailed not less than 60 nor more than 90 days after the redemption date to any owner of Bonds selected for redemption that has not surrendered the Bonds called for redemption, at the address as the same shall last appear upon the registration books.

All notices of redemption shall state:

- (1) the redemption date,
- (2) the redemption price,
- (3) the identification, including complete designation (including series) and issue date of the Bonds and the CUSIP number (and in the case of partial redemption, certificate number and the respective principal amounts, interest rates and maturity dates) of the Bonds to be redeemed,
- (4) that on the redemption date the redemption price will become due and payable upon each such Bonds, and that interest thereon shall cease to accrue from and after said date, and any condition to such redemption,
- (5) the name and address of the Bond Trustee and any paying agent for such Bonds, including the place where such Bonds are to be surrendered for payment of the redemption price and the name and phone number of a contact person at such address.

Provided, however, that failure to give any such notice, or any defect therein, shall not affect the validity of any proceedings for the redemption of such Bonds.

Section 5.05. Bonds Due and Payable on Redemption Date; Interest Ceases to Accrue; Conditional Notice. On or before the business day prior to the redemption date specified in the notice of redemption, an amount of money sufficient to redeem all Bonds called for redemption at the appropriate redemption price, including accrued interest to the date fixed for redemption, shall be deposited with the Bond Trustee. If at the time of mailing of notice of any optional redemption the Obligor shall not have deposited with the Bond Trustee moneys sufficient to redeem all of the Bonds called for redemption, such notice may state that it is conditional in that it is subject to the deposit of moneys with the Bond Trustee not later than the redemption date, and such notice shall be of no effect unless such moneys are so deposited. On the redemption date the principal amount of each Bond to be redeemed, together with the accrued interest thereon to such date and redemption premium, if any, shall become due and payable; and from and after such date, notice having been given and deposit having been made in accordance with the provisions

of this Article V, then, notwithstanding that any Bonds called for redemption shall not have been surrendered, no further interest shall accrue on any such Bonds. From and after such date of redemption (such notice having been given and such deposit having been made), the Bonds to be redeemed shall not be deemed to be Outstanding hereunder, and the Issuer shall be under no further liability in respect thereof.

Section 5.06. Cancellation. All Bonds which have been redeemed shall be cancelled by the Bond Trustee and treated as provided in Section 2.11 hereof.

Section 5.07. Partial Redemption of Fully Registered Bonds. Upon surrender of any fully registered Bond for redemption in part only, the Issuer shall execute and the Bond Trustee shall authenticate and deliver to the owner thereof, at the expense of the Obligor, a new Bond or Bonds of the same series, maturity and interest rate of Authorized Denominations in an aggregate principal amount equal to the unredeemed portion of the Bond surrendered.

Section 5.08. Extraordinary Optional Redemption. The Bonds shall be subject to optional redemption at the direction of the Obligor prior to their scheduled maturities, in whole or in part at a redemption price equal to the principal amount thereof plus accrued interest from the most recent interest payment date to the redemption date on any date following the occurrence of any of the following events:

(1) in case of damage or destruction to, or condemnation of, any property, plant, and equipment of any Obligated Group Member, to the extent that the net proceeds of insurance or condemnation award exceed the Threshold Amount (as defined in the Master Indenture) and the Obligor has determined not to use such net proceeds or award to repair, rebuild or replace such property, plant, and equipment; or

(2) as a result of any changes in the Constitution or laws of the State of New Mexico or of the United States of America or of any legislative, executive, or administrative action (whether state or federal) or of any final decree, judgment, or order of any court or administrative body (whether state or federal), the obligations of the Obligor under the Agreement have become, as established by an Opinion of Counsel, void or unenforceable in each case in any material respect in accordance with the intent and purpose of the parties as expressed in the Agreement.

Section 5.09. Mandatory Entrance Fee Redemption. (a) To the extent that moneys are on deposit in the Entrance Fee Redemption Account on the day following any Entrance Fee Transfer Date, the Series 2019B-2 Bonds and the Series 2019B-1 Bonds are subject to mandatory redemption on the next following Entrance Fee Redemption Date in the immediately succeeding calendar month at a redemption price equal to the principal amount thereof plus accrued interest to such redemption date.

(b) The principal amount of the Series 2019B-2 Bonds and the Series 2019B-1 Bonds to be redeemed on an Entrance Fee Redemption Date shall be equal to the largest Authorized Denomination of the Bonds of the applicable series for which the redemption price thereof is on deposit in the Entrance Fee Redemption Account on the day following the immediately preceding Entrance Fee Transfer Date.

(c) As soon as practicable after each Entrance Fee Redemption Date, the Bond Trustee shall give notice to the Master Trustee of the principal amount of the Series 2019B-2 Bonds and the Series 2019B-1 Bonds that remain Outstanding after such redemption.

(d) Notwithstanding the foregoing, the Series 2019B-2 Bonds shall be redeemed first and then the Series 2019B-1 Bonds shall be redeemed.

Section 5.10. Mandatory Redemption upon Completion or Termination of a Project. The Bonds are subject to mandatory redemption in whole or in part on any date for which timely notice of redemption can be given by the Bond Trustee following a Completion Date at a redemption price equal to the aggregate principal amount of the Bonds to be redeemed plus accrued interest to the redemption date, without premium, to the extent Surplus Construction Fund Moneys are transferred to the Principal Account of the Bond Fund.

Section 5.11. Purchase in Lieu of Redemption. If any Bond is called for optional redemption in whole or in part the Obligor may elect to have such Bond purchased in lieu of redemption.

Purchase in lieu of redemption shall be available with respect to all Bonds called for optional redemption or for such lesser portion of such Bonds as constitute Authorized Denominations. The Obligor may direct the Bond Trustee to purchase all or such lesser portion of the Bonds so called for redemption with funds provided by the Obligor. Any such direction to the Bond Trustee must be in writing, state either that all the Bonds called for redemption are to be purchased or, if less than all of the Bonds called for redemption are to be purchased, identify those Bonds to be purchased by maturity date and outstanding principal amount in Authorized Denominations, and be received by the Bond Trustee no later than 12:00 noon at least five Business Days prior to the scheduled redemption date thereof.

Subject in all cases to operational or other restrictions or requirements of the Securities Depository, if so directed, the Bond Trustee shall purchase (solely with funds provided by the Obligor) such Bonds on the date which otherwise would be the redemption date of such Bonds. Any of the Bonds called for redemption that are not purchased in lieu of redemption shall be redeemed as otherwise required by the Bond Indenture on such redemption date.

Subject in all cases to any operational or other restrictions or requirements of the Securities Depository, on or prior to the scheduled redemption date, any direction given to the Bond Trustee may be withdrawn by the Obligor by written notice to the Bond Trustee. Subject generally to the Bond Indenture, should a direction to purchase be withdrawn, the scheduled redemption of such Bonds shall occur.

The purchase shall be made for the account of the Obligor or its designee.

The purchase price of the Bonds shall be equal to the outstanding principal of, accrued and unpaid interest on and the redemption premium, if any, which would have been payable on such Bonds on the scheduled redemption date for such redemption. To pay the purchase price of such Bonds, the Bond Trustee shall use (A) funds deposited by the Obligor with the Bond Trustee for such purpose and (B) funds, if any, held under the Bond Indenture that the Bond Trustee would have used to pay the outstanding principal of, accrued and interest on and the redemption premium, if any, that would have been payable on the redemption of such Bonds on the scheduled redemption date. The Bond Trustee shall not purchase the Bonds pursuant to the above provisions if by no later than the redemption date, sufficient moneys have not been deposited with the Bond Trustee, or such moneys are deposited but are not available for such purpose.

No notice of the purchase in lieu of redemption shall be required to be given to the Bondholders (other than the notice of redemption otherwise required for such Bond).

## ARTICLE VI

### INVESTMENTS

Section 6.01. Investment of Bond Fund, Construction Fund and Reserve Fund Moneys. Any moneys held as part of the Bond Fund, Construction Fund or Reserve Fund shall be invested or reinvested by the Bond Trustee at the written request and direction of the Obligor (upon which the Bond Trustee is entitled to rely) in Permitted Investments. All Permitted Investments shall be either subject to redemption at any time at a fixed value at the option of the owner thereof or shall mature or be marketable not later than the business day prior to the date on which the proceeds are expected to be expended. For the purpose of any investment or replacement under this Section, the Permitted Investments shall be deemed to mature at the earliest date on which the Obligor is, on demand, obligated to pay a fixed sum in discharge of the whole of such obligation. The Bond Trustee may make any and all investments permitted by the provisions of this Section through its trust department. In order to comply with the directions of the Obligor, the Bond Trustee may sell, or present for redemption, or may otherwise cause liquidation prior to their maturities, any of the obligations in which funds have been invested, and the Bond Trustee shall not be liable for any loss or penalty of any nature resulting therefrom. In order to avoid loss in the event of any need for funds, the Obligor may instruct the Bond Trustee, in lieu of a liquidation or redemption of investments in the fund or account needing funds, to exchange such investment for investments in another fund or account that may be liquidated at no, or at reduced, loss. The Bond Trustee shall be under no liability for interest on any moneys received hereunder unless specifically agreed to in writing. Notwithstanding anything to the contrary in this Section 6.01, (i) the Obligor shall not direct the Bond Trustee to purchase any Premium Security unless the written instructions of the Obligor to make such purchase set forth the amount of premium on such Premium Security, and (ii) the Obligor shall not direct the Bond Trustee to sell any Premium Security, unless prior to such sale, the Obligor has directed the Trustee as to the amount of realized premium on such Premium Security to be transferred from the Funded Interest Account to the account in which such Premium Security was held.

The Bond Trustee shall have no obligation to invest and reinvest any cash held by it hereunder in the absence of timely and specific written investment direction from the Obligor. In no event shall the Bond Trustee be liable for the selection of investments or for investment losses incurred thereon. The Bond Trustee may purchase or sell to itself or any affiliate, as principal or agent, investments authorized by this Indenture. The Bond Trustee may rely on the investment directions of the Obligor as to both the suitability and legality of the directed investments. The Issuer and the Obligor acknowledge that regulations of the Comptroller of the Currency grant the right to receive brokerage confirmations of the security transactions as they occur, at no additional cost. To the extent permitted by law, the Issuer and the Obligor specifically waive compliance with 12 C.F.R. 12 and hereby notify the Bond Trustee that no brokerage confirmations need be sent relating to the security transactions as they occur.

Section 6.02. Allocation and Transfers of Investment Income. Any investments in any Fund shall be held by or under the control of the Bond Trustee and shall be deemed at all times a part of the Fund from which the investment was made. Any loss resulting from such investments shall be charged to such Fund. The Bond Trustee shall not be liable for any loss or penalty resulting from any such investment made in accordance with any permitted direction by a Obligor or for the Bonds becoming "arbitrage bonds" by reason of any such investment. Any interest or other gain from any fund from any investment or reinvestment pursuant to Section 6.01 hereof shall be allocated and transferred as follows:

(a) Any interest or other gain realized as a result of any investments or reinvestments of moneys in the Funded Interest Account of the Construction Fund or the Project Account of the Construction Fund shall be credited to the Funded Interest Account of the Construction Fund until such Funded Interest Account of the Construction Fund expires, and thereafter, to the Interest Account of the Bond Fund.

(b) Any interest or other gain realized as a result of any investments or reinvestments of moneys in the Principal Account and the Interest Account of the Bond Fund shall be credited at least

semiannually to the Interest Account unless a deficiency exists in any Reserve Account of the Reserve Fund, in which case such interest or other gain shall be paid into such Reserve Account forthwith.

(c) Any interest or other gain realized as a result of any investments or reinvestments of moneys in a Reserve Account of the Reserve Fund shall be credited to any Reserve Account of the Reserve Fund if a deficiency exists therein at that time. If a deficiency does not exist in a Reserve Account of the Reserve Fund at that time, such interest or other gain on other amounts paid into such Reserve Account shall be paid during the construction period for the Series 2019 Project for deposit into the Funded Interest Account of the Construction Fund created in connection with the issuance of Bonds for the Series 2019 Project or if after the completion of such construction period, for deposit into the Interest Account of the Bond Fund, in each case at least semiannually.

The Bond Trustee shall sell and reduce to cash a sufficient portion of such investments whenever the cash balance in any fund is insufficient for the purposes of such fund.

Section 6.03. Valuation of Permitted Investments. Accounting and valuation of Permitted Investments in any Fund or Account will be performed as follows:

(a) On a monthly basis the Bond Trustee shall furnish to the Obligor a full and complete statement of all receipts and disbursements of Permitted Investments in any Fund and Account covering such period.

(b) The Bond Trustee shall also furnish on or before \_\_\_\_\_ of each year a statement of the assets contained in each Fund and Account. Assets will be valued at market value as of the previous \_\_\_\_\_ by the Bond Trustee in such statement in accordance with the normal valuation procedures of the Bond Trustee; provided, however, in the event monies are withdrawn from the Reserve Fund for a deficiency in the Principal Account or Interest Account pursuant to Section 3.10(b) hereof, assets in the Reserve Fund shall also be valued as of the first Business Day after such transfer is made (such date and each October 31 referred to as a "Valuation Date"). In determining market value of Permitted Investments, the Bond Trustee may use and rely conclusively and without liability upon any generally recognized pricing information service (including brokers and dealers in securities) available to it.

(c) If on any Valuation Date, the amount on deposit in the Reserve Fund is less than 90% of the Reserve Fund Requirement as a result of a decline in the market value of investments on deposit in the Reserve Fund, the Obligor shall deposit with the Bond Trustee an amount necessary to restore the Reserve Fund to the Reserve Fund Requirement within 120 days following the date on which the Obligor receives notice of such deficiency.

(d) If at any time, the amount on deposit in the Reserve Fund is less than 100% of the Reserve Fund Requirement as a result of a draw on the Reserve Fund, the Obligor shall deposit with the Bond Trustee an amount necessary to restore the Reserve Fund to the Reserve Fund Requirement in not more than 12 substantially equal monthly installments beginning on the first day of the seventh month after the month in which such draw occurred.

## ARTICLE VII

### DISCHARGE OF BOND INDENTURE

Section 7.01. Discharge of the Bond Indenture. If, when the Bonds secured hereby shall become due and payable in accordance with their terms or otherwise as provided in this Bond Indenture and the whole amount of the principal of, premium, if any, and interest due and payable upon all of the Bonds shall



be paid, or provision shall have been made for the payment of the same, together with all other sums payable hereunder (including but not limited to the fees and expenses of the Bond Trustee and any Paying Agent, in accordance with Section 3.13 hereof), then the right, title and interest of the Bond Trustee in and to the Trust Estate and all covenants, agreements and other obligations of the Issuer to the Bondholders shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, upon the written request of the Issuer or of the Obligor, and upon receipt of an Opinion of Counsel to the effect that all conditions precedent herein provided relating to the satisfaction and discharge of this Bond Indenture have been complied with, the Bond Trustee shall execute such documents as may be reasonably required by and prepared by or on behalf of, the Issuer and shall turn over to the Obligor any surplus in the Bond Fund, Reserve Fund and Construction Fund.

All Outstanding Bonds of any one or more series shall prior to the maturity or redemption date thereof be deemed to have been paid within the meaning and with the effect expressed in this Section if (i) in case said Bonds are to be redeemed on any date prior to their maturity, the Obligor shall have given to the Bond Trustee in form satisfactory to it irrevocable written instructions to give on a date in accordance with the provisions of Section 5.04 hereof notice of redemption of such Bonds on said redemption date, such notice to be given in accordance with the provisions of Section 5.04 hereof, (ii) there shall have been deposited with the Bond Trustee (or another Paying Agent) either moneys in an amount which shall be sufficient, or Government Obligations which shall not contain provisions permitting the redemption thereof at the option of the issuer, or any other Person other than the holder thereof, the principal of and the interest on which when due, and without any reinvestment thereof, will provide moneys which, together with the moneys, if any, deposited with or held by the Bond Trustee or any Paying Agent at the same time (including the Bond Fund and the Reserve Fund), shall be sufficient, in the opinion of an independent certified public accountant, to pay when due the principal of, premium, if any, and interest due and to become due on said Bonds on or prior to the redemption date or maturity date thereof, as the case may be, and (iii) in the event that said Bonds are not by their terms subject to redemption within the next 45 days, the Obligor shall have given the Bond Trustee in form satisfactory to it irrevocable written instructions to give, as soon as practicable in the same manner as the notice of redemption is given pursuant to Section 5.04 hereof, a notice to the owners of such Bonds that the deposit required by subclause (ii) above has been made with the Bond Trustee (or another depository) and that said Bonds are deemed to have been paid in accordance with this Section and stating such maturity or redemption date upon which moneys are to be available for the payment of the principal of, premium, if any, and interest on said Bonds. Neither the Government Obligations nor moneys deposited with the Bond Trustee pursuant to this Section nor principal or interest payments on any such Government Obligations shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of, premium, if any, and interest on said Bonds; provided any such cash received from such principal or interest payments on such Government Obligations deposited with the Bond Trustee, if not then needed for such purpose, shall, at the written direction of the Obligor, either (1) be reinvested, to the extent practicable, in Government Obligations of the type described in clause (ii) of this paragraph maturing at the times and in amounts sufficient to pay when due the principal of, premium, if any, and interest to become due on said Bonds on or prior to such redemption date or maturity date thereof, as the case may be or (2) be used to pay principal and/or interest on the Bonds. At such time as any Bond shall be deemed paid as aforesaid, it shall no longer be secured by or entitled to the benefits of this Bond Indenture, except for the purpose of any payment from such moneys or Government Obligations deposited with the Bond Trustee and the purpose of transfer and exchange pursuant to Section 2.05 hereof.

The release of the obligations of the Issuer under this Section shall be without prejudice to the rights of the Bond Trustee to be paid reasonable compensation for all services rendered by it hereunder and all its reasonable and necessary expenses, charges and other disbursements incurred on or about the administration of the trust hereby created and the performance of its powers and duties hereunder.

## ARTICLE VIII

### DEFAULTS AND REMEDIES

Section 8.01. Events of Default. If any of the following events occur, it is hereby defined as and shall be deemed an "Event of Default":

(a) Default in the payment of the principal of or premium, if any, on any Bond when the same shall become due and payable, whether at the stated maturity thereof, or upon proceedings for redemption or as required by the sinking fund provisions hereof or otherwise.

(b) Default in the payment of any installment of interest on any Bond when the same shall become due and payable.

(c) Declaration under the Master Indenture that the principal of, and accrued interest on, any Obligation issued thereunder is immediately due and payable.

(d) Failure by the Issuer in the performance or observance of any other of the covenants, agreements or conditions in its part in this Bond Indenture or in the Bonds contained, which failure shall continue for a period of 60 days after written notice specifying such failure and requesting that it be remedied, is given to the Issuer and the Obligor by the Bond Trustee or to the Issuer, the Obligor and to the Bond Trustee by the owners of not less than 25% in principal amount of the Bonds Outstanding; but only if such failure is the result of the failure of the Obligor to perform its obligations under the Agreement.

Section 8.02. Remedies on Events of Default. Upon the occurrence of an Event of Default, the Bond Trustee shall have the following rights and remedies:

(a) The Bond Trustee shall, in the event that the payment of the principal of and accrued interest on any Note has been declared due and payable immediately by the Master Trustee, by notice in writing given to the Issuer and the Obligor, declare the principal amount of all Bonds then Outstanding and the interest accrued thereon to be immediately due and payable and said principal and interest shall thereupon become immediately due and payable. Upon any declaration of acceleration hereunder, the Bond Trustee shall give notice to the Bondholders in the same manner as a notice of redemption under Article V hereof, stating the date upon which the Notes and the Bonds shall be payable.

The provisions of the preceding paragraph, however, are subject to the condition that if, after the payment of the principal of, and accrued interest on, the Notes and the Bonds has been declared due and payable immediately, the declaration of the acceleration of the Notes shall be annulled in accordance with the provisions of the Master Indenture, the declaration of the acceleration of the Bonds shall be automatically annulled, and the Bond Trustee shall promptly give written notice of such annulment to the Issuer and the Obligor and notice to Bondholders in the same manner as a notice of redemption under Article V hereof; but no such annulment shall extend to or affect any subsequent Event of Default or impair any right or remedy consequent thereon.

(b) The Bond Trustee may, by mandamus, or other suit, action or proceeding at law or in equity, enforce the rights of the Bondholders, and require the Issuer or the Obligor or both of them to carry out the agreements with or for the benefit of the Bondholders and to perform its or their duties under the Act, the Agreement and this Bond Indenture.



(c) The Bond Trustee may, by action or suit in equity, require the Issuer to account as if it were the trustee of an express trust for the Bondholders but any such judgment against the Issuer shall be enforceable only against the funds and accounts hereunder in the hands of the Bond Trustee.

(d) The Bond Trustee may, by action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the Bondholders.

(e) The Bond Trustee may, 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.

No right or remedy is intended to be exclusive of any other right or remedy, but each and every such right or remedy shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

If any Event of Default shall have occurred and if requested by the owners of at least 25% in aggregate principal amount of Bonds then Outstanding and indemnified as provided in Section 9.01(m) hereof (except giving the notices described under Section 8.02(a) above, for which no indemnity may be required), the Bond Trustee shall be obligated to exercise one or more of the rights and powers conferred by this Section that, as advised by counsel, shall be deemed most expedient in the interests of such Bondholders. In the event the Bond Trustee shall receive inconsistent or conflicting requests and indemnity from two or more groups of owners of Outstanding Bonds, each representing less than a majority of the aggregate principal amount of the Outstanding Bonds, the Bond Trustee, shall follow the direction of the group of owners holding the largest aggregate principal amount of Bonds as to what action, if any, shall be taken.

Section 8.03. Majority of Bondholders May Control Proceedings. Anything in this Bond Indenture to the contrary notwithstanding, the owners of at least a majority in aggregate principal amount of the Bonds then Outstanding shall have the right, at any time, to the extent permitted by law, by an instrument or instruments in writing executed and delivered to the Bond Trustee, to direct the time, method, and place of conducting all proceedings, to be taken in connection with the enforcement of the terms and conditions of this Bond Indenture, or for the appointment of a receiver, and any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions hereof and provided, further, that notwithstanding anything to the contrary in this Bond Indenture, the Issuer shall have the sole ability to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of Section 4.10 of the Agreement. The Bond Trustee shall not be required to act on any direction given to it pursuant to this Section until indemnity as set forth in Section 9.01(m) hereof is provided to it by such Bondholders.

Section 8.04. Rights and Remedies of Bondholders. No owner of any Bond shall have any right to institute any suit, action, or proceeding in equity or at law for the enforcement of this Bond Indenture or for the execution of any trust hereof or for the appointment of a receiver or any other applicable remedy hereunder, unless a default has occurred of which the Bond Trustee has been notified as provided in Section 9.01 hereof, or of which by said Section it is deemed to have notice, nor unless such default shall have become an Event of Default and the owners of at least a majority in aggregate principal amount of Bonds then Outstanding shall have made written request to the Bond Trustee and shall have offered reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit, or proceeding in their own names, nor unless they have also offered to the Bond Trustee indemnity as provided in Section 9.01(m) hereof, nor unless the Bond Trustee shall thereafter fail or refuse to exercise

the powers hereinbefore granted, or to institute such action, suit, or proceeding in its own name; and such notification, request, and offer of indemnity are hereby declared in every case at the option of the Bond Trustee to be conditions precedent to the execution of the powers and trusts of this Bond Indenture, and to any action or cause of action for the enforcement of this Bond Indenture, or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more owners of the Bonds shall have the right in any manner whatsoever to affect, disturb, or prejudice the lien of this Bond Indenture by his, her, its, or their action or to enforce any right hereunder except in the manner herein provided and that all proceedings at law or in equity shall be instituted, had, and maintained in the manner herein provided and for the equal benefit of the owners of all Bonds then Outstanding. Nothing in this Bond Indenture contained shall, however, affect or impair the right of any owner of Bonds to enforce the payment of the principal of, premium, if any, or interest on any Bond at and after the maturity thereof, or the obligation of the Issuer to pay the principal of, premium, if any, and interest on each of the Bonds to the respective owners of the Bonds at the time and place, from the source and in the manner herein, and in the Bonds expressed.

Section 8.05. Application of Moneys. (a) Subject to the provisions of subparagraph (c) hereof, all moneys received by the Bond Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and the expenses, liabilities, and advances incurred or made by the Bond Trustee, be deposited into the Bond Fund, and all moneys so deposited into the Bond Fund and all moneys held in or deposited into the Bond Fund during the continuance of an Event of Default and available for payment of the Bonds under the provisions of Section 3.04 hereof shall (after payment of the fees and expenses of the Bond Trustee) be applied as follows:

(i) Unless the principal of all of the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied:

First: To the payment to the Persons entitled thereto of all installments of interest then due on the Bonds in the order of the maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or privilege; and

Second: To the payment to the Persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Bond Indenture), in the order of their due dates, with interest on such Bonds from the respective dates upon which they become due at the rate of interest borne by such Bonds and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto, without any discrimination or privilege.

(ii) If the principal of all the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon all of the Bonds (together with interest on overdue installments of principal at the rate of interest borne by each Bond), without preference or priority of principal over interest, any other installment of interest, or of any Bond over any other Bond, or of any series of Bonds over any other series of Bonds ratably, according to the amounts due respectively for principal and interest, to the Persons entitled thereto without any discrimination or privilege.

(iii) If the principal of all the Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article then, subject to the provisions of paragraph (ii) of this Section in the event that the principal of all the Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of the foregoing paragraph (i) of this Section.

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

(c) Notwithstanding the foregoing, any moneys transferred into any Account of the Bond Fund from any Reserve Account of the Reserve Fund shall be (i) held by the Bond Trustee separate and apart from any other moneys in such Account of the Bond Fund and (ii) applied solely to the payment of principal of and interest on the series of Bonds related to such Reserve Account.

(d) Whenever all of the Bonds and interest thereon have been paid under the provisions of this Section and all expenses and fees of the Bond Trustee and the Paying Agents and all Administration Expenses have been paid, any balance remaining in any funds shall be paid to the Obligor as provided in Section 3.15 hereof.

Section 8.06. Bond Trustee May Enforce Rights Without Bonds. All rights of action and claims under this Bond Indenture or any of the Bonds Outstanding hereunder may be enforced by the Bond Trustee without the possession of any of the Bonds or the production thereof in any trial or proceedings relative thereto; and any suit or proceeding instituted by the Bond Trustee shall be brought in its name as Bond Trustee, without the necessity of joining as plaintiffs or defendants any owners of the Bonds and any recovery of judgment shall be for the ratable benefit of the owners of the Bonds, subject to the provisions of this Bond Indenture.

Section 8.07. Bond Trustee to File Proofs of Claim in Receivership, Etc. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition, or other judicial proceedings affecting the Obligor, the Bond Trustee shall, to the extent permitted by law, be entitled to file such proofs of claims and other documents as may be necessary or advisable in order to have claims of the Bond Trustee and of the Bondholders allowed in such proceedings for the entire amount due and payable by the Issuer under the Bond Indenture or by the Obligor at the date of the institution of such proceedings and for any additional amounts which may become due and payable by it after such date, without prejudice, however, to the right of any Bondholder to file a claim in his, her or its own behalf.

No provision of this Bond Indenture empowers the Bond Trustee to authorize, consent to, accept or adopt on behalf of any Bondholder any plan or reorganization, arrangement, adjustment or composition affecting any of the rights of any Bondholders, or authorizes the Bond Trustee to vote in respect of the claim in any proceeding described in this Section.

In the event the Bond Trustee incurs expenses or renders services in any proceedings affecting the Obligor and described in this Section, the expenses so incurred and compensation for services so rendered are intended to constitute expenses of administration under the United States Bankruptcy Code or equivalent law.

Section 8.08. Delay or Omission No Waiver. No delay or omission of the Bond Trustee or of any Bondholder to exercise any right or power accruing upon any default or Event of Default shall exhaust or impair any such right or power or shall be construed to be a waiver of any such default or Event of Default, or acquiescence therein; and every power and remedy given by this Bond Indenture may be exercised from time to time and as often as may be deemed expedient.

Section 8.09. Discontinuance of Proceedings on Default, Position of Parties Restored. In case the Bond Trustee shall have proceeded to enforce any right under this Bond Indenture, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Bond Trustee, then and in every such case the Issuer and the Bond Trustee shall be restored to their former positions and rights hereunder with respect to the Trust Estate, and all rights, remedies, and powers of the Bond Trustee shall continue as if no such proceedings had been taken.

Section 8.10. Enforcement of Rights. The Bond Trustee, as pledgee and assignee for security purposes of all the right, title, and interest of the Issuer in and to the Agreement (except those rights under Section 5.7, 7.5, and 9.5 thereof) and the Notes shall, upon compliance with applicable requirements of law and except as otherwise set forth in this Article VIII, be the sole real party in interest in respect of, and shall have standing, exclusive of owners of Bonds to enforce each and every right granted to the Issuer under the Agreement and under the Notes. The Issuer and the Bond Trustee hereby agree, without in any way limiting the effect and scope thereof, that the pledge and assignment hereunder to the Bond Trustee of any and all rights of the Issuer in and to the Notes and the Agreement shall constitute an agency appointment coupled with an interest on the part of the Bond Trustee which, for all purposes of this Bond Indenture, shall be irrevocable and shall survive and continue in full force and effect notwithstanding the bankruptcy or insolvency of the Issuer or its default hereunder or on the Bonds. Subject to Section 9.01 hereof, in exercising such right and the rights given the Bond Trustee under this Article VIII, the Bond Trustee may take such action as, in the judgment of the Bond Trustee, would best serve the interests of the Bondholders, taking into account the provisions of the Master Indenture, together with the security and remedies afforded to owners of Note.

Section 8.11. Undertaking for Costs. All parties to this Indenture agree, and each Holder of any Bond by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Bond Indenture, or in any suit against the Bond Trustee for any action taken or omitted by it as Bond Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion access reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Bond Trustee, to any suit instituted by any Bondholder, or group of Bondholders, holding in aggregate more than 10% in principal amount of the Outstanding Bonds, or to any suit instituted by a Bondholder for the enforcement of the payment of the principal of (or premium, if any) or interest on any Bond on or after the respective maturities thereof expressed in such Bond (or, in the case of redemption, on or after the redemption date).

Section 8.12. Waiver of Events of Default. The Bond Trustee may in its discretion waive any Event of Default hereunder and its consequences, and shall do so upon the written request of the Owners of a majority in aggregate principal amount of the Bonds then Outstanding; provided, however, that the

Bond Trustee may not waive an Event of Default described in subparagraph (a) of Section 8.01 hereof without the written consent of the registered owners of all Bonds then Outstanding; and provided, further, that notwithstanding anything to the contrary in this Bond Indenture, the Issuer shall have the sole ability to waive any Event of Default in connection with the covenants and obligations of the Obligor under Section 4.10 of the Agreement.

## ARTICLE IX

### CONCERNING THE BOND TRUSTEE AND PAYING AGENTS

Section 9.01. Duties of the Bond Trustee. The Bond Trustee hereby accepts the trust imposed upon it by this Bond Indenture and agrees to perform said trusts, but only upon and subject to the following express terms and conditions, and no implied covenants or obligations shall be read into this Bond Indenture against the Bond Trustee:

(a) The Bond Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Bond Indenture. In case an Event of Default has occurred (which has not been cured) the Bond Trustee shall exercise such of the rights and powers vested in it by this Bond Indenture and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(b) The Bond Trustee may execute any of the trusts or powers hereof and perform any of its duties hereunder, either directly or by or through attorneys, agents, receivers, or employees, and the Bond Trustee shall not be responsible for any misconduct or negligence on the part of any receiver, agent or attorney appointed with due care by it hereunder, and shall be entitled to act upon an Opinion of Counsel concerning all matters of trust hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers, and employees as may reasonably be employed in connection with the trust hereof. The Bond Trustee may act upon an Opinion of Counsel and shall not be responsible for any loss or damage resulting from any action or nonaction taken by or omitted to be taken in good faith in reliance upon such Opinion of Counsel.

(c) The Bond Trustee shall not be responsible for any recital herein or in the Bonds (except in respect to the certificate of authentication by the Bond Trustee endorsed on the Bonds and the acceptance of the trusts hereunder).

(d) The Bond Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder or the proceeds thereof, or for any moneys disbursed by the Bond Trustee in accordance with this Bond Indenture. The Bond Trustee makes no representations as to the validity or sufficiency of this Bond Indenture or the Bonds. The Bond Trustee is not a party to, is not responsible for, and makes no representations with respect to matters set forth in any preliminary official statement, or similar document prepared and distributed in connection with the sale of the Bonds. The Bond Trustee may become the owner of the Bonds with the same rights which it would have if not Bond Trustee.

(e) The Bond Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram, teletransmission or other paper or document reasonably believed to be genuine and correct and to have been signed or sent by the proper person or persons. Any request or direction of the Issuer or the Obligor mentioned herein shall be sufficiently evidenced by a written request, order, or consent signed in the name of the Issuer or Obligor, by the Issuer Representative, or Obligor, as the case may be. Any action taken by the Bond Trustee pursuant to this Bond Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the owner of any Bonds shall be conclusive and binding upon all future owners of the same Bond and upon Bonds issued in place thereof.

(f) As to the existence or nonexistence of any fact or matter or as to the sufficiency or validity of any instrument, paper, or proceeding, the Bond Trustee shall be entitled to rely and shall be protected in



acting or refraining to act upon a certificate signed on behalf of the Issuer or the Obligor by the Issuer Representative or Obligor or such other person as may be designated for such purpose by certified resolution as sufficient evidence of the facts therein contained, and prior to the occurrence of a default of which the Bond Trustee has been notified as provided in subsection (h) of this Section, or of which by said subsection it is deemed to have notice, shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction, or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same.

(g) The permissive right of the Bond Trustee to do things enumerated in this Bond Indenture shall not be construed as a duty (except as otherwise herein provided) and the Bond Trustee shall not be answerable for other than its own negligence or willful misconduct, except that:

(1) the Bond Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Bond Trustee was negligent in ascertaining the pertinent facts;

(2) the Bond Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Bondholders of at least a majority in aggregate principal amount of the Outstanding Bonds relating to the time, method, and place of conducting any proceeding for any remedy available to the Bond Trustee, or exercising any trust or power conferred upon the Bond Trustee, under this Bond Indenture; and

(3) the Bond Trustee shall not be liable if the Bond Trustee reasonably relies in good faith upon an Officer's Certificate delivered pursuant to this Bond Indenture or an Opinion of Counsel.

(h) The Bond Trustee shall not be required to take notice or be deemed to have notice of any default hereunder except failure by the Issuer to cause to be made any of the payments to the Bond Trustee required to be made by Article III hereof unless the Bond Trustee shall be specifically notified in writing of such default by the Issuer or by the owners of at least a majority in aggregate principal amount of Bonds then Outstanding and all notices or other instruments required by this Bond Indenture to be delivered to the Bond Trustee, must, in order to be effective, be delivered to a Responsible Officer at the designated corporate trust office of the Bond Trustee, and in the absence of such notice so delivered, the Bond Trustee may conclusively assume there is no default except as aforesaid.

(i) All moneys received by the Bond Trustee shall, until used or applied or invested as herein provided, be held in trust in the manner and for the purposes for which they were received, but need not be segregated from other funds except to the extent required by this Bond Indenture or law.

(j) At any and all reasonable times the Bond Trustee and its duly authorized agents, attorneys, experts, engineers, accountants, and representatives shall have the right, but shall not be required, to inspect the Series 2019 Project, including all books, papers, and records of the Issuer and the Obligor pertaining to the Series 2019 Project and the Bonds.

(k) The Bond Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises, and no provision of this Bond Indenture shall require the Bond Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or

powers, if it shall have grounds for believing that repayment of such funds or indemnity satisfactory against such risk or liability is not assured to it.

(l) Notwithstanding anything in this Bond Indenture contained, the Bond Trustee shall have the right, but shall not be required, to demand in respect of the authentication of any Bonds, the withdrawal of any cash, or any action whatsoever within the purview of this Bond Indenture, any showings, certificates, opinion, appraisals, or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required, as a condition of such action by the Bond Trustee deemed desirable for the purpose of establishing the right of the Issuer to the authentication of any Bonds, the withdrawal of any cash, or the taking of any other action by the Bond Trustee.

(m) Before taking any action under this Section or Article VIII hereof, the Bond Trustee may require that indemnity reasonably satisfactory to it be furnished to it for the reimbursement of its fees, costs, liabilities and all expenses (including attorneys fees and expenses) which it may incur and to protect it against all liability, except liability which may result from its negligence or willful misconduct, by reason of any action so taken.

(n) Except as provided in Section 9.01(a) above, it shall not be the duty of the Bond Trustee, except as expressly provided herein, to see that any duties or obligations imposed herein or in the Agreement or the Disbursement Agreement upon the Issuer, the Obligor, or other Persons are performed, and the Bond Trustee shall not be liable or responsible because of the failure of the Issuer, the Obligor, or other Persons to perform any act required of them pursuant to the terms of this Bond Indenture.

(o) In acting or omitting to act pursuant to the provisions of the Agreement or the Disbursement Agreement, the Bond Trustee shall be entitled to and be protected by the rights and immunities accorded to it by the terms of this Bond Indenture.

(p) In the event the Bond Trustee receives inconsistent or conflicting requests and indemnity from two or more groups of holders of Bonds, each representing less than a majority in aggregate principal amount of the Bonds Outstanding, the Bond Trustee, shall follow the direction given by the group of holders holding the largest aggregate principal amount of the Bonds determine what action, if any, shall be taken.

(q) The Bond Trustee's immunities and protections from liability in connection with the performance of its duties under this Bond Indenture shall extend to the Bond Trustee's officers, directors, agents and employees. Such immunities and protections, together with the Bond Trustee's right to compensation, shall survive the Bond Trustee's resignation or removal and final payment of the Bonds.

(r) To the extent that the Bond Trustee is the holder of an Obligation (as defined in the Master Indenture) under the Master Indenture, in its capacity as Bond Trustee hereunder, the Bond Trustee shall not be required to take any action under the Master Indenture as an Obligation holder, including, without limitation, exercising voting or consent rights, without receiving the written direction of the owners of a majority in aggregate principal amount of the Bonds.

(s) The Bond Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that, the Bond Trustee shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the Issuer or the Obligor elects to give the Bond Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Bond Trustee in its discretion



elects to act upon such instructions, the Bond Trustee's understanding of such instructions shall be deemed controlling. The Bond Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Bond Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Issuer and the Obligor agree: (i) to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Bond Trustee, including without limitation the risk of the Bond Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting instructions to the Bond Trustee and that there may be more secure methods of transmitting instructions than the method(s) selected by the Issuer or the Obligor; and (iii) that the security procedures (if any) to be followed in connection with its transmission of instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances.

Section 9.02. Fees and Expenses of Bond Trustee and Paying Agent. The Issuer agrees, but solely from any funds received from the Obligor pursuant to the Agreement,

(a) to pay to the Bond Trustee, each Paying Agent and all other agents their reasonable and necessary fees for services rendered hereunder as and when the same become due and all expenses (including attorneys fees and expenses) reasonably and necessarily made or incurred by the Bond Trustee, such Paying Agent or such other agent in connection with such services as and when the same become due as provided in Section 3.13 hereof; and

(b) to reimburse the Bond Trustee upon its request for all reasonable expenses, disbursements, and advances incurred or made by the Bond Trustee in accordance with any provisions of this Bond Indenture (including the reasonable compensation, expenses, and disbursements of its agents and counsel), except any such expense, disbursement, or advance as may be attributable to the negligence or bad faith of the Bond Trustee.

As security for the performance of the obligations of the Issuer under this Section, the Bond Trustee shall be secured under this Bond Indenture by a lien subject and subordinate to the Bonds, in the case of money held for the credit of the Construction Fund or the Reserve Fund, and otherwise prior to the Bonds, and for the payment of the expenses and reimbursements due hereunder, the Bond Trustee shall have the right to use and apply any trust funds held by it hereunder, unless held or required to be held in the Construction Fund or the Reserve Fund.

Section 9.03. Resignation or Replacement of Bond Trustee. The present or any future Bond Trustee may resign by giving to the Issuer, the Obligor and each Bondholder thirty days' notice of such resignation. Such resignation shall not be effective until such time as a successor Bond Trustee shall have accepted its appointment. The present or any future Bond Trustee may be removed (a) at any time by an instrument in writing executed by the owners of at least a majority in aggregate principal amount of Bonds Outstanding or (b) if an Event of Default hereunder has not occurred and is continuing, by an instrument in writing executed by the Obligor.

In case the present or any future Bond Trustee shall at any time resign or be removed or otherwise become incapable of acting, a successor may be appointed by the owners of at least a majority in aggregate principal amount of the Bonds Outstanding by an instrument or concurrent instruments signed by such Bondholders, or their attorneys in fact duly appointed; provided that the Issuer may, by an instrument executed by order of the City Council, appoint a successor until a new successor shall be appointed by the Bondholders as herein authorized. The Issuer upon making such appointment shall forthwith give notice thereof to each Bondholder and to the Obligor, which notice may be given concurrently with the notice of

resignation given by any resigning Bond Trustee. Any successor so appointed by the Issuer shall immediately and without further act be superceded by a successor appointed in the manner above provided by the owners of at least a majority in aggregate principal amount of the Bonds Outstanding. In the event that the Issuer does not so act within thirty days after notice of resignation, the Bond Trustee shall have the right to petition a court of competent jurisdiction to appoint a successor Bond Trustee.

Every successor Bond Trustee shall always be a bank, banking corporation or trust company duly organized under the laws of the United States of America or any state or territory thereof, with trust powers in good standing, qualified to act hereunder, and having a combined capital and surplus of not less than \$50,000,000. Any successor appointed hereunder shall execute, acknowledge, and deliver to the Issuer and the predecessor Bond Trustee an instrument accepting such appointment hereunder and thereupon such successor shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its predecessor in the trust hereunder with like effect as if originally named as Bond Trustee herein; but the Bond Trustee retiring shall, nevertheless, on the written demand of its successor, execute and deliver an instrument conveying and transferring to such successor, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the predecessor, who shall, upon payment of the expenses, charges and other disbursements which are due and owing to it pursuant to Sections 3.13 and 9.02 hereof, duly assign, transfer and deliver to the successor all properties and moneys held by it under this Bond Indenture. Should any instrument in writing from the Issuer be required by any successor for more fully and certainly vesting in and confirming to it all of such estates, properties, rights, powers, and trusts, the Issuer shall, on request of such successor, make, execute, acknowledge, and deliver the deeds, conveyances, and necessary instruments in writing.

The notices herein provided for shall be given by mailing a copy thereof to the Obligor and the registered owners of the Bonds at their addresses as the same shall last appear on the registration books. The instruments evidencing the resignation or removal of the Bond Trustee and the appointment of a successor hereunder, together with all other instruments provided for in this Section shall be filed and/or recorded by the successor Bond Trustee in each recording office where this Bond Indenture shall have been filed and/or recorded.

Section 9.04. Conversion, Consolidation or Merger of Bond Trustee. Any bank, banking corporation or trust company into which the Bond Trustee merges or is consolidated, or to which it (or a receiver on its behalf) may sell or transfer its corporate trust business as a whole, or substantially as a whole, shall be the successor of the Bond Trustee under this Bond Indenture with the same rights, powers, duties, and obligations and subject to the same restrictions, limitations, and liabilities as its predecessor, all without the execution or filing of any papers or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding. In case any of the Bonds to be issued hereunder shall have authenticated, but not delivered, any successor Bond Trustee may adopt the certificate of any predecessor Bond Trustee, and deliver the same as authenticated; and, in case any of such Bonds shall not have been authenticated, any successor Bond Trustee may authenticate such Bonds in the name of such successor Bond Trustee.

Section 9.05. Designation and Succession of Paying Agent. The Bond Trustee and any other banks or trust companies, if any, designated as Paying Agent or Paying Agents in any supplemental indenture shall be the Paying Agent or Paying Agents for the Bonds.

Any bank or trust company with or into which any Paying Agent may be merged or consolidated, or to which the assets and business of such Paying Agent may be sold, shall be deemed the successor of such Paying Agent for the purposes of this Bond Indenture. If the position of Paying Agent shall become vacant for any reason, the Issuer shall, within thirty days thereafter, appoint such bank or trust company as

shall be specified by the Obligor and located in the same city as such Paying Agent to fill such vacancy; provided, however, that if the Issuer shall fail to appoint such Paying Agent within said period, the Bond Trustee shall make such appointment.

The Paying Agents, if any, shall enjoy the same protective provisions in the performance of their duties hereunder as are specified in Section 9.01 hereof with respect to the Bond Trustee insofar as such provisions may be applicable.

Section 9.06. Voting Rights with Respect to Notes. The Issuer hereby assigns and grants to the Bond Trustee, and the Bond Trustee shall, exercise for the benefit of the Bondholders, the power to execute all waivers, directions, consents, instructions, approvals, and other exercises of the voting rights of a holder and owner of any Note, which power shall be irrevocable so long as such Note shall be pledged hereunder. The Bond Trustee shall exercise such power with respect to any Note when and as, but only when and as, directed to do so by written direction of the Owners of a majority in aggregate principal amount of the then Outstanding Bonds of the related series.

## ARTICLE X

### SUPPLEMENTAL INDENTURES AND AMENDMENTS TO THE AGREEMENT

Section 10.01. Supplemental Indentures Not Requiring Consent of Bondholders. The Issuer and the Bond Trustee may, without the consent of, or notice to, the Bondholders, enter into such indentures or agreements supplemental hereto (which supplemental indentures or agreements shall thereafter form a part hereof) for any one or more or all of the following purposes:

(a) To add to the covenants and agreements in this Bond Indenture contained other covenants and agreements thereafter to be observed for the protection or benefit of the Bondholders.

(b) To cure any ambiguity, or to cure, correct, or supplement any defect or inconsistent provision contained in this Bond Indenture, or to make any provisions with respect to matters arising under this Bond Indenture or for any other purpose if such provisions are necessary or desirable and do not (as evidenced by an Opinion of Counsel delivered to the Bond Trustee) materially adversely affect the interests of the owners of Bonds.

(c) To subject to this Bond Indenture additional revenues, properties, or collateral.

(d) To qualify this Bond Indenture under the Trust Indenture Act of 1939, if such be hereafter required in the Opinion of Counsel.

(e) To satisfy any requirements imposed by a rating agency if necessary to maintain the then current rating on the Bonds.

(f) To maintain the extent to which the interest on the Bonds is not includable in the gross income of the recipients thereof, if in the opinion of Bond Counsel such supplemental indenture or agreement is necessary.

Section 10.02. Supplemental Indentures Requiring Consent of Bondholders. Exclusive of supplemental indentures covered by Section 10.01 hereof, the owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding affected thereby shall have the right, from time to time, to consent to and approve the execution by the Issuer and the Bond Trustee of such indenture or indentures supplemental hereto as shall be deemed necessary or desirable by the Issuer for the purpose of modifying, altering, amending, adding to, or rescinding, in any particular, any of the terms or provisions contained in this Bond Indenture; provided, however, that without the consent of the owners of all the Bonds at the time Outstanding nothing herein contained shall permit, or be construed as permitting any of the following:

(a) An extension of the maturity of, or a reduction of the principal amount of, or a reduction of the rate of, or extension of the time of payment of interest on, or a reduction of a premium payable upon any redemption of, any Bond.

(b) The deprivation of the owner of any Bond then Outstanding of the lien created by this Bond Indenture (other than as originally permitted hereby).

(c) A privilege or priority of any Bond or Bonds, over any other Bond.

(d) A reduction in the aggregate principal amount of the Bonds required for consent to any supplemental indenture.

Upon the execution of any supplemental indenture pursuant to the provisions of this Section, this Bond Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties, and obligations under this Bond Indenture of the Issuer, the Bond Trustee and all owners of Bonds then Outstanding shall thereafter be determined, exercised, and enforced hereunder, subject in all respects to such modifications and amendments.

If at any time the Issuer shall request the Bond Trustee to enter into such supplemental indenture for any of the purposes of this Section, the Bond Trustee shall, upon being satisfactorily indemnified with respect to costs, fees and expenses (including attorneys fees and expenses), cause notice of the proposed execution of such supplemental indenture to be mailed to the registered owners of the Bonds at their addresses as the same last appear on the registration books. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the designated office of the Bond Trustee for inspection by all Bondholders. If, within sixty days or such longer period as shall be prescribed by the Issuer following the giving of such notice, the owners of not less than a majority in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such supplemental indenture shall have consented to and approved the execution thereof as herein provided, no owner of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Bond Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof.

Section 10.03. Execution of Supplemental Indenture. The Bond Trustee is authorized to join with the Issuer in the execution of any such supplemental indenture and to make further agreements and stipulations which may be contained therein, but the Bond Trustee shall not be obligated to enter into any such supplemental indenture which affects its rights, duties, or immunities under this Bond Indenture. The Bond Trustee shall be entitled to receive, and shall be fully protected in relying upon, an Opinion of Counsel stating that the execution and delivery of a supplemental indenture is authorized or permitted by this Bond Indenture and has been effected in compliance with the provisions hereof. In connection with a supplemental indenture entered into pursuant to Section 10.01(b) hereof, the Bond Trustee may receive an Opinion of Counsel as conclusive evidence as to whether the Bondholders would be so affected by any such modification or amendment to this Bond Indenture.

Any supplemental indenture executed in accordance with the provisions of this Article shall thereafter form a part of this Bond Indenture; and all the terms and conditions contained in any such supplemental indenture as to any provision authorized to be contained therein shall be deemed to be part of this Bond Indenture for any and all purposes. In case of the execution and delivery of any supplemental indenture, express reference may be made thereto in the text of the Bonds issued thereafter, if any, if deemed necessary or desirable by the Bond Trustee.

Section 10.04. Consent of Obligor. Anything herein to the contrary notwithstanding, a supplemental indenture under this Article shall not become effective unless and until the Obligor shall have consented in writing to the execution and delivery of such supplemental indenture unless the Obligor is in default under the Agreement or an Event of Default described under Section 8.01(a), (b) or (c) hereunder has occurred and is continuing, in which case no consent of the Obligor shall be required. The Bond Trustee shall cause notice of the proposed execution of any supplemental indenture together with a copy of the proposed supplemental indenture to be mailed to the Obligor at least fifteen days prior to the proposed date of execution of such supplemental indenture.

Section 10.05. Amendments, Etc., of the Agreement Not Requiring Consent of Bondholders. The Issuer and the Bond Trustee shall, without the consent of or notice to the Bondholders, consent to any amendment, change, or modification of the Agreement as may be required (i) by the provisions of the Agreement and this Bond Indenture, (ii) for the purpose of curing any ambiguity or formal defect or omission, (iii) to satisfy any requirements imposed by a rating agency if necessary to maintain the then current rating on the Bonds, (iv) to maintain the extent to which the interest on the Bonds is not includable in the gross income of the recipients thereof, if in the opinion of Bond Counsel such amendment is necessary and (v) in connection with any other change therein which does not adversely affect the Bond Trustee or the owners of the Bonds.

Section 10.06. Amendments, Etc., of the Agreement Requiring Consent of Bondholders. Except for the amendments, changes, or modifications as provided in Section 10.05 hereof, neither the Issuer nor the Bond Trustee shall consent to any other amendment, change, or modification of the Agreement without the giving of notice to and the written approval or consent of the owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding given and procured as provided in Section 10.02 hereof. If at any time the Issuer and the Obligor shall request the consent of the Bond Trustee to any such proposed amendment, change, or modification of the Agreement, the Bond Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of such proposed amendment, change, or modification to be given in the same manner as provided in Section 10.02 hereof. Such notice shall briefly set forth the nature of such proposed amendment, change, or modification and shall state that copies of the instrument embodying the same are on file at the designated office of the Bond Trustee for inspection by all Bondholders.

In executing any amendment, change or modification of the Agreement, the Bond Trustee shall be entitled to receive, and shall be fully protected in relying upon, an Opinion of Counsel stating that the execution and delivery of such amendment, change, modification of the Agreement is authorized or permitted by this Bond Indenture and the Agreement and has been effected in compliance with the provisions of this Bond Indenture and the Agreement. The Bond Trustee may, but shall not be obligated to, enter into any such amendment, change, or modification which affects the Bond Trustee's own rights, duties or immunities. In connection with any amendment, change or modification in connection with Section 10.05(vi). Any such determination shall be binding and conclusive on the Issuer, the Obligor, and the Bondholders. The Bond Trustee may receive an Opinion of Counsel as conclusive evidence as to whether the Bondholders would be so affected by any such amendment, change, or modification of the Agreement.

## ARTICLE XI

### MISCELLANEOUS

Section 11.01. Evidence of Signature of Bondholders and Ownership of Bonds. Any request, consent, or other instrument which the Bond Indenture may require or permit to be signed and executed by the Bondholders may be in one or more instruments of similar tenor, and shall be signed or executed by such Bondholders in person or by their attorneys appointed in writing. Proof of the execution of any such instrument or of an instrument appointing any such attorney, or of the ownership of Bonds shall be sufficient (except as otherwise herein expressly provided) if made in the following manner, but the Bond Trustee may, nevertheless, in its discretion, require further or other proof in cases where it deems the same desirable.

(a) The fact and date of the execution by any Bondholder or his attorney of such instrument may be proved by the certificate of any officer authorized to take acknowledgments in the jurisdiction in which he purports to act that the person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before a notary public.

(b) The ownership of any fully registered Bond and the amount and numbers of such Bonds and the date of holding the same shall be proved by the registration books of the Issuer kept by the Bond Trustee. Any request or consent of the owner of any Bond shall bind all future owners of such Bond in respect of anything done or suffered to be done by the Issuer or the Bond Trustee in accordance therewith.

(c) The Bond Trustee may conclusively rely upon a certification by any Person to the effect that such Person is a beneficial owner of a specified principal amount of any series of Bonds in determining whether the owners of a specified percentage of the principal amount of such series of Bonds has consented, approved, waived, directed or otherwise taken any action under this Bond Indenture.

Section 11.02. No Personal Liability. No recourse under or upon any obligation, covenant or agreement contained in this Bond Indenture, or in any Bond hereby secured, or under any judgment obtained against the Issuer, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, under or independent of this Bond Indenture, shall be had against any officer, director, councilperson, agent or employee, as such, past, present or future, of any of the Issuer or the Bond Trustee, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to the holder of any Bond issued hereunder or otherwise of any sum that may be due and unpaid by the Issuer upon any such Bond. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such person to respond by reason of any act or omission on his part or otherwise, for the payment for or to the Issuer or any receiver thereof or for or to the holder of any Bond issued hereunder or otherwise, of any sum that may remain due and unpaid upon the Bonds hereby secured or any of them, is hereby expressly waived and released as a condition of and consideration for the execution of this Bond Indenture and the issue of such Bonds.

Section 11.03. Limited Obligation. The Bonds are limited obligations of the Issuer payable solely from the revenues, receipts and resources of the Issuer pledged to their payment and not from any other revenues, funds or assets of the Issuer. None of the Bonds of the Issuer issued hereunder shall be construed or constitute an indebtedness of the Issuer or an indebtedness or obligation (special, moral or general) of the State of New Mexico or Issuer within the meaning of any constitutional or statutory provision whatsoever.



Section 11.04. Parties Interested Herein. With the exception of rights herein expressly conferred on the Obligor, nothing in this Bond Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any person other than the Issuer, the Bond Trustee, the Paying Agents, and the owners of the Bonds, any right, remedy, or claim under or by reason of this Bond Indenture, and any covenants, stipulations, promises, and agreements in this Bond Indenture contained by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the Bond Trustee and the owners of the Bonds.

Section 11.05. Titles, Headings, Etc. The titles and headings of the articles, sections, and subdivisions of this Bond Indenture have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms or provisions hereof.

Section 11.06. Severability. In the event any provision of this Bond Indenture 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 11.07. Governing Law. This Bond Indenture shall be governed and construed in accordance with the laws of the State of New Mexico.

Section 11.08. Execution of Counterparts. This Bond Indenture 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 11.09. 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:

For all other communications relating to the Bonds:

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 11.10. Payments Due on Holidays. If the date for making any payment or the last day for performance of any act or the exercising of any right, as provided in this Bond Indenture, 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 Bond Indenture.

Section 11.11. Electronic Transmissions. The parties hereto agree that the transactions described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

IN WITNESS WHEREOF, CITY OF SANTA FE, NEW MEXICO has caused this Bond Indenture to be executed on its behalf by its Mayor and attested by its City Clerk, and THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION has caused this Bond Indenture to be executed on its behalf by its duly authorized officer to evidence its acceptance of the trusts hereby created, all as of the date first above written.

ATTEST:

CITY OF SANTA FE, NEW MEXICO

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

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

(SEAL)

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, NATIONAL ASSOCIATION, as  
Bond Trustee

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