

TRUST INDENTURE

by and between

SW DOWNTOWN BUSINESS IMPROVEMENT DISTRICT

and

UMB BANK, N.A.,
as Trustee

Dated as of _____, 2020

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EXHIBIT A PROJECT FUND DISBURSEMENT REQUEST
EXHIBIT B BALLOT QUESTIONS

TRUST INDENTURE, dated as of _____, 2020 (this “**Indenture**”), by and between **SW DOWNTOWN BUSINESS IMPROVEMENT DISTRICT** (the “**Issuer**”), a public corporation and political subdivision of the State of Colorado, and **UMB BANK, N.A.**, Denver, Colorado, as Trustee (the “**Trustee**”), a national banking association duly organized and existing under the laws of the United States of America.

RECITALS:

WHEREAS, the Issuer is a quasi-municipal corporation and political subdivision of the State of Colorado (the “**State**”), duly and regularly created as a business improvement district under the constitution and laws of the State, in particular Title 31, Article 25, Part 12, Colorado Revised States, as amended (the “**Act**”), and pursuant to Ordinance No. 17-94 adopted by the City Council of the City of Colorado Springs, Colorado (the “**City**”) on October 10, 2017; and

WHEREAS, the Issuer was organized for the purpose of providing certain public improvements and services to and for the benefit of the properties within the Issuer, and is authorized by the Act and its Operating Plan (defined herein) to borrow money and to issue bonds to evidence such borrowing; and

WHEREAS, at a regular election of the qualified electors of the Issuer, duly called and held on November 7, 2017 (the “**Election**”), in accordance with law and pursuant to due notice, a majority of those qualified to vote and voting at the Election voted in favor of, *inter alia*, the issuance of indebtedness and the imposition of taxes for the payment thereof, for the purpose of providing certain public improvements and facilities (“**Public Improvements**”), the questions relating thereto being as set forth in Exhibit B hereto; and

WHEREAS, the Colorado Springs Urban Renewal Authority (“**Authority**”), the Issuer and Interurban Development Company, LLC, a Colorado limited liability company (“**Developer**”) have entered into that certain Urban Renewal Agreement for Development of the Museum & Park Urban Renewal Area dated _____, 2020 (“**Development Agreement**”), whereby, among other things, the Authority allocated and pledged to the Issuer, the TIF Revenues (as such term is defined in the Development Agreement) to assist in the redevelopment of the Area (as defined in the Development Agreement) which is part of the Museum & Park Urban Renewal Plan and within the boundaries of the Issuer; and

WHEREAS, the Issuer, SW Downtown Metropolitan District No. _ (the “**Metropolitan District**”), and the Trustee desire to enter into a Capital Pledge Agreement (as more particularly defined herein, the “**Pledge Agreement**”), pursuant to which (i) the Issuer agrees to finance a portion of the costs of the Public Improvements through the issuance of the Bonds; and (ii) the Metropolitan District agrees to impose a debt service mill levy and remit or cause to be remitted all revenues resulting from the imposition of such mill levy to the Trustee in order to provide security for payment of the Bonds; and

WHEREAS, in accordance with the Pledge Agreement, the Issuer desires to issue the Bonds in order to finance a portion of the costs of the Public Improvements, and require the Metropolitan District to impose the Metropolitan District Required Mill Levy (defined herein) and remit or cause to be remitted the proceeds thereof, together with Specific Ownership Taxes

(as defined here), to the Trustee in order to secure payment of the principal of and interest on the Bonds; and

WHEREAS, for the purpose of obtaining funding for all or a portion of the Public Improvements prior to the time that funding from Bond proceeds is available to pay Actual Capital Costs, the Issuer has entered into that certain Facilities Funding and Acquisition Agreement dated as of December 14, 2017, with CSJ No. 1, LLC, CSJ No. 2, LLC, Urban Enterprises, LLC, Urban Properties No. 4, LLC and SRPC, LLC (the “**Reimbursement Agreement**”); and

WHEREAS, the Issuer has the power and authority to issue Bonds (which may include notes, certificates of indebtedness, debentures or other contractual obligations) pursuant to the Act and the Supplemental Public Securities Act, constituting Sections 11-57-201 et seq., Colorado Revised Statutes, as amended (the “**Supplemental Act**”), to finance the activities or operations permitted and authorized to be undertaken by the Issuer under the Act, the Elections, and the Operating Plan; and

WHEREAS, the Issuer has agreed to provide financing for Actual Capital Costs by the issuance of bonds and other financial obligations payable from the Pledged Revenues; and

WHEREAS, the Issuer expects and intends to issue Bonds authorized herein pursuant to one or more Supplemental Indentures executed by the Issuer and the Trustee in accordance with the provisions hereof in order to finance Actual Capital Costs and refund in whole or in part any of its Outstanding Obligations; and

WHEREAS, the execution and delivery of this Indenture and one or more Supplemental Indentures have been duly authorized by a resolution (the “**Bond Resolution**”) duly adopted by the Board of Directors of the Issuer (the “**Board**”); and

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that, in consideration of the premises and the mutual covenants herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, for the benefit of the Owners and in order to secure the payment of principal or redemption price, as the case may be, in respect of all Bonds, as defined herein, issued and outstanding under this Indenture, the Issuer does hereby sell, assign, transfer, set over and pledge unto, and grants a security interest in, the Trustee, its successors in the trust and its assigns forever: (a) all of the right, title and interest of the Issuer in and to the Pledged Revenues; (b) all right, title and interest of the Issuer in the Funds created hereunder (except the Rebate Fund, and any trust funds or accounts created pursuant to Section 13.01 hereof) and the moneys held thereunder; and (c) all other property that may, from time to time hereafter, be subject to the lien hereof which the Trustee is hereby authorized to receive;

TO HAVE AND TO HOLD in trust, nevertheless, for the benefit and security of the present and future Owners of the Bonds issued under this Indenture, subject to the priorities among the Tiers (as defined herein) thereof and the other limitations provided for herein or in any Supplemental Indenture.

ARTICLE I

DEFINITIONS

In this Indenture (including the Recitals hereto) and any indenture supplemental hereto (except as otherwise expressly provided for or unless the context otherwise requires) the singular includes the plural, the masculine includes the feminine, and the following terms shall have the meanings specified in this Article:

“*Accreted Value*” means (a) with respect to any Capital Appreciation Bonds, as of any date of calculation, the sum of the amount set forth in a Supplemental Indenture as the amount representing the initial principal amount of such Capital Appreciation Bond plus the interest accumulated, compounded and unpaid thereon as of the most recent compounding date.

“*Accretion Date*” means any date defined as such in a Supplemental Indenture for purposes of determining the Accreted Value or Maturity Value of a Capital Appreciation Bond.

“*Act*” has the meaning set forth in the recitals hereto.

“*Actual Capital Costs*” means the costs which are incurred by the Issuer for purposes of planning, designing, constructing, financing and acquiring Public Improvements, as further described in the Operating Plan, the debt for which was approved at the Election, and which are to be financed with proceeds of the Bonds.

“*Administrative Costs*” means any fees and expenses accrued or due and payable to the Trustee, the Bond Registrar (if the Trustee is not acting as Bond Registrar), the Paying Agent (if the Trustee is not acting as Paying Agent) and any Authenticating Agent.

“*Authenticating Agent*” means any agent so designated in and appointed pursuant to Section 2.09.

“*Authority*” has the meaning set forth in the recitals hereto.

“*Authorized Denominations*” means, with respect to any Series of Bonds, the denomination or denominations defined as such in a Supplemental Indenture authorizing such Series of Bonds.

“*Bankruptcy Code*” means Title 11 of the United States Code, as amended from time to time.

“*Beneficial Owner*” is defined in Section 2.05 when the Bonds are in the Book-Entry System and otherwise means the Owner.

“*Board*” means the Board of Directors of the Issuer.

“*Bond Counsel*” means Greenberg Traurig, LLP, or any other attorney-at-law or firm of attorneys of nationally recognized standing in matters pertaining to the issuance of bonds or other obligations by states and their political subdivisions, duly admitted to the practice of law

before the highest court of any state of the United States of America, and, except as otherwise provided in this Indenture or a Supplemental Indenture, selected by the Issuer.

“*Bond Register*” and “*Bond Registrar*” have the respective meanings specified in Section 2.06 hereof.

“*Bond*” or “*Bonds*” means any bonds or any other evidences of indebtedness for borrowed money issued from time to time hereunder pursuant to the terms of a Supplemental Indenture. Pursuant to the Act, the terms “*Bond*” or “*Bonds*” shall include notes, interim certificates or receipts, temporary bonds, certificates of indebtedness, debentures and any other obligations, in each case to the extent secured by this Indenture.

“*Book-Entry System*” means the system maintained by the Securities Depository and described in Section 2.05.

“*Business Day*” means any day other than (a) a Saturday or Sunday or legal holiday or a day on which banking institutions in any of the cities in which the principal offices of the Issuer, the Trustee, any Paying Agent, the Authenticating Agent and the Bond Registrar are located are authorized by law or executive order to close; or (b) a day on which the New York Stock Exchange is closed.

“*Capital Appreciation Bonds*” means Bonds all or a portion of the interest on which is compounded and accumulated at the rates and on the dates set forth in a Supplemental Indenture and is payable only upon redemption or on the maturity date of such Bonds. Bonds which are issued as Capital Appreciation Bonds, but later convert to Bonds on which interest is paid periodically shall be Capital Appreciation Bonds until the conversion date and from and after such conversion date shall no longer be Capital Appreciation Bonds, but shall be treated as having a principal amount equal to their Accreted Value on the conversion date.

“*Code*” means the Internal Revenue Code of 1986, as amended from time to time. References to the code and sections of the Code include relevant applicable regulations and proposed regulations thereunder and under the Internal Revenue Code of 1954, as amended to the date of enactment of the Tax Reform Act of 1986, and any successor provisions to those sections, regulations or proposed regulations and, in addition, include all revenue rulings, announcements, notices, procedures and judicial determinations under the foregoing applicable to the Bonds.

“*Consent Party or Consent Parties*” means the Owner of Bonds or, if such Bonds are held in the name of Cede, the Participant (as determined by a list provided by DTC) with respect to such Bonds, or if so designated in writing by a Participant, the Beneficial Owner of such Bonds.

“*Counsel*” means an attorney – at – law or law firm satisfactory to the Trustee (who may be counsel for the Issuer).

“*County*” means El Paso County Colorado.

“*Current Interest Bonds*” means Bonds on which interest is payable on Interest Payment Dates prior to maturity or redemption prior to maturity.

“*Dated Date*” means, with respect to any Bond, the dated date set forth for such Bond in the Supplemental Indenture pursuant to which such Bond is issued.

“*Default*” means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

“*Defeasance Obligations*” means (a) direct obligations of the United States of America, and (b) obligations unconditionally guaranteed as to full and timely payment by the United States of America.

“*Developer*” means Interurban Development Company, LLC, a Colorado limited liability company, and any successors or assigns of such entity.

[“*Developer Advances*” means amounts advanced or incurred by the Developer to pay any Actual Capital Costs, including without limitation, Actual Capital Costs paid directly by the Developer, and advances from the Developer to the Issuer for payment of Actual Capital Costs, including interest accrued on such advances pursuant to the Reimbursement Agreement.]

“*Development Agreement*” has the meaning set forth in the recitals hereto.

“*District Debt Service Mill Levy*” means an ad valorem mill levy (a mill being equal to 1/10 of 1 cent) imposed by the Issuer upon all taxable property of the Issuer each year at a rate and in an amount sufficient (taking into account amounts then on deposit in any Senior Reserve Fund or Subordinate Reserve Fund), to pay the principal of, premium, if any, and interest on the Bonds as the same become due and payable, to fund any Surplus Fund if so provided in any Supplemental Indenture, and to replenish any Senior Reserve Fund or Subordinate Reserve Fund, but not in excess of fifty (50) mills, net of the costs of collection and any tax refunds or abatements authorized by or on behalf of El Paso County, subject to the following adjustments:

(a) if, on or after [October 10], 2017, there are changes in the method of calculating assessed valuation or any constitutionally mandated tax credit, cut or abatement, the District Debt Service Mill Levy of 50 mills shall be increased or decreased to reflect such changes, such increases or decreases to be determined by the Board in good faith (such determination to be binding and final) so that to the extent possible, the actual tax revenue generated from such adjusted District Debt Service Mill Levy, are neither diminished nor enhanced as a result of such changes. For purposes of the foregoing, a change in the ratio of actual valuation shall be deemed to be a change in the method of calculating assessed valuation; and

(b) notwithstanding anything herein to the contrary, in no event may the District Debt Service Mill Levy be established at a mill levy which would cause the Issuer to derive tax revenue in any year in excess of the maximum tax increases permitted by the Issuer’s electoral authorization, and if the District Debt Service Mill Levy as calculated pursuant to the foregoing would cause the amount of taxes collected in any year to exceed the maximum tax increase permitted by the Issuer’s electoral

authorization, the District Debt Service Mill Levy shall be reduced to the point that such maximum tax increase is not exceeded.

“*Electronic Means*” shall mean telecopy, facsimile transmission, email transmission or similar electronic means of communicating providing evidence of transmission.

“*Event of Default*” means any of the events specified in Section 9.01 hereof to be an Event of Default.

“*Fitch*” means Fitch, Inc., its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “*Fitch*” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer.

“*Fiscal Year*” means the 12-month period constituting the Issuer’s fiscal year, currently commencing January 1 and ending December 31, as may be changed by the Issuer.

“*Indenture*” means this Indenture and any supplement or amendment hereto pursuant to a Supplemental Indenture.

“*Interest Payment Date*” means, with respect to any Series of Bonds, the date or dates defined as such in the Supplemental Indenture pursuant to which such Series is issued for purposes of paying the interest on such Bonds; provided that, unless otherwise provided by any Supplemental Indenture, the Interest Payment Dates for any Bonds upon which interest shall be paid semiannually shall be June 1 and December 1 of each Fiscal Year during which such Bonds are Outstanding.

“*Issuer*” means the SW Downtown Business Improvement District, and any successors thereto.

“*Issuer Representative*” means (i) the President of the Board of Directors of the Issuer, the Secretary of the Board of Directors of the Issuer, or any other member of the Board of Directors of the Issuer or (ii) any other person designated to act on behalf of the Issuer as evidenced by a written certificate furnished to the Trustee containing the specimen signature of such person and signed for the Issuer by the President of the Board of Directors of the Issuer, the Secretary of the Board of Directors of the Issuer, or any other member of the Board of Directors of the Issuer.

“*Issuer’s Engineer*” means any person at the time retained by or on behalf of the Issuer which person is not an employee of the Issuer or the Developer, is experienced and has a favorable as an engineer, is licensed in the State as an engineer and is qualified to make the certifications set forth in the Project Fund Disbursement Request, the form of which is attached hereto as Exhibit A.

“*Maturity Value*” means any amount defined as such in a Supplemental Indenture for purposes of determining the amount payable to the Owner of a Capital Appreciation Bond at the maturity of such Capital Appreciation Bond.

“Metropolitan District Required Mill Levy” means an ad valorem mill levy (a mill being equal to 1/10 of 1 cent) imposed by the Metropolitan District upon all taxable property of the Metropolitan District each year at a rate and in an amount sufficient (taking into account amounts then on deposit in any Senior Reserve Fund or Subordinate Reserve Fund), to pay the principal of, premium, if any, and interest on the Bonds as the same become due and payable, to fund any Surplus Fund if so provided in any Supplemental Indenture, and to replenish any Senior Reserve Fund or Subordinate Reserve Fund, but not in excess of thirty (30) mills, net of the costs of collection and any tax refunds or abatements authorized by or on behalf of El Paso County, subject to the following adjustments:

(a) In the event the method for calculating assessed valuation is or was changed after January 1, 2006, the levy cap of 30 mills will be increased or decreased to reflect such change, such increases or decreases to be determined by the Board in good faith (such determination to be binding and final) so that to the extent possible, the actual tax revenues generated by the mill levy, as adjusted, are neither diminished nor enhanced as a result of such changes; for purposes of the foregoing, a change in the ratio of actual valuation to assessed valuation shall be deemed to be a change in the method calculating assessed valuation.

(b) Notwithstanding anything herein to the contrary, in no event may the Metropolitan District Required Mill Levy be established at a mill levy which would cause the Metropolitan District to derive tax revenue in any year in excess of the maximum tax increases permitted by the Metropolitan District’s electoral authorization, and if the Metropolitan District Required Mill Levy as calculated pursuant to the foregoing would cause the amount of taxes collected in any year to exceed the maximum tax increase permitted by the Metropolitan District’s electoral authorization, the Metropolitan District Required Mill Levy shall be reduced to the point that such maximum tax increase is not exceeded.

“Monthly Calculation Date” means the twenty-fifth day of each calendar month (or, in the event such twenty-fifth day is not a Business Day, the next succeeding Business Day).

“Moody’s” means Moody’s Investors Service, Inc., a Delaware corporation, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer.

“Obligations” means Senior Bonds and Subordinate Obligations.

“Operating Plan” means, collectively, each Operating Plan filed annually by the Issuer with the City pursuant to the Act; as of the date of this Master Indenture, the 2020 Operating Plan is the most recent Operating Plan which has been filed by the Issuer.

“Original Principal Amount” means any amount defined as such in a Supplemental Indenture for purposes of determining certain rights of the Owner of, or certain other matters with respect to, a Capital Appreciation Bond.

“*Outstanding*” in connection with the Bonds, means, as of the time in question, all Bonds authenticated and delivered under the Indenture, except:

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

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

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

(d) Bonds in lieu of which others have been authenticated under Section 2.12 of this Indenture.

In determining whether the Owners of a requisite aggregate principal amount of the applicable Series or Tier of Bonds outstanding have concurred in any request, demand, authorization, direction, notice, consent or waiver under the provisions hereof, Bonds which are held by or on behalf of the Issuer (unless all of the outstanding Bonds are then owned by the Issuer) shall be disregarded for the purpose of any such determination.

“*Owner*” or “*registered owner*” means the registered owner of any Bond.

“*Participants*” means any broker-dealer, bank, or other financial institution from time to time for which DTC or another securities depository that the Issuer provides and appoints, acts as securities depository for the Bonds.

“*Paying Agent*” or “*Co-Paying Agent*” means any national banking association, bank, bank and trust company or trust company appointed by the Issuer to serve as paying agent for the Bonds. The Trustee shall serve initially as Paying Agent. “*Principal Office*” of any Paying Agent shall mean the office thereof designated in writing to the Trustee.

“*Permitted Investments*” means any investment or deposit the District is permitted to make under then applicable law.

“*Person*” means any natural person, firm, corporation, partnership, limited liability company, state, political subdivision of any state, other public body or other organization or association.

“*Pledge Agreement*” has the meaning set forth in the Recitals hereto.

“*Pledged Revenues*” means (a) all revenues derived from the imposition of the District Debt Service Mill Levy and the Metropolitan District Required Mill Levy, net of the costs of collection thereof; (b) all Pledged TIF Revenues; (c) the Specific Ownership Tax Revenue; (d) any investment earnings from investments of moneys in certain of the Funds which is credited to the Revenue Fund as provided in Section 6.02; (e) any moneys received from any other Person with the direction that they be applied as Pledged Revenues; and (f) any other legally available amounts that the Issuer may designate, by resolution of its Board of Directors, to be paid to the Trustee for deposit into the Revenue Fund, or otherwise held under this Indenture.

“*Pledged TIF Revenues*” means the Pledged Revenues, as such term is defined and described in the Development Agreement.

“*Project Fund*” means the fund so designated established pursuant to Section 5.08.

“*Public Improvements*” has the meaning set forth in the Recitals hereto.

“*Rating Agency*” or “*Rating Agencies*” means, with respect to a Series of Bonds, Fitch, Moody’s or S&P or any other nationally recognized credit rating agencies specified in the related Supplemental Indenture; provided that any such rating agency shall, at the time in question, be maintaining a rating on such Series of Bonds at the request of the Issuer.

“*Rebate Fund*” means the trust fund so designated which is established pursuant to Section 5.09.

“*Record Date*” means, as the case may be, the applicable Regular or Special Record Date.

“*Regular Record Date*” means, with respect to any Series of Bonds, the date specified as such in a Supplemental Indenture for purposes of paying interest on such Bonds.

“*Reimbursement Agreement*” has the meaning set forth in the recitals hereto.

“*Reserve Requirement*” means, with respect to any Series of Bonds, the amount, if any, set forth and designated as such in a Supplemental Indenture relating to such Bonds.

“*Revenue Fund*” means the trust fund so designated which is established pursuant to Section 5.02.

“*S&P*” means S&P Global Ratings, its successors and assigns, and, if such entity shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “*S&P*” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer.

“*Securities Depository*” means The Depository Trust Company, New York, New York, or its nominee and the successors and assigns of such nominee, or any successor appointed under Section 2.05.

“*Senior Beneficiary*” means the Owner of any Outstanding Senior Bond.

“*Senior Bond Fund*” means the trust fund so designated which is established pursuant to Section 5.03 hereof.

“*Senior Bond Reserve Fund*” means the trust fund so designated which is established pursuant to Section 5.04 hereof.

“*Senior Bonds*” means Bonds senior to the Subordinate Bonds.

[“*Senior Tier Representative*” means the Tier Representative for the Senior Bonds.]

“*Series*” means the Bonds designated as a series of Bonds in a Supplemental Indenture and any Bonds authenticated and delivered in lieu of or in substitution for such Bonds pursuant to any Supplemental Indenture.

“*Special Record Date*” means such date as may be fixed for the payment of past due interest in accordance with Section 2.10.

“*Specific Ownership Tax Revenue*” means the specific ownership taxes remitted to the District and to the Metropolitan District pursuant to Section 42-3-107, C.R.S., or any successor statute, as a result of imposition by the District of the District’s Debt Service Mill Levy in accordance with this Indenture and the Metropolitan District of the Metropolitan District Required Mill Levy in accordance with the Pledge Agreement and this Indenture, net of any costs of collection.

“*State*” means the State of Colorado.

“*Subordinate Beneficiary*” means the Owner of any Outstanding Subordinate Bond.

“*Subordinate Bond Fund*” means the trust fund so designated which is established pursuant to Section 5.05 hereof.

“*Subordinate Bond Reserve Fund*” means the trust fund so designated which is established pursuant to Section 5.06 hereof.

“*Subordinate Bonds*” means Bonds subordinate to the Senior Bonds.

[“*Subordinate Tier Representative*” means the Tier Representative for the Subordinate Bonds.]

“*Supplemental Act*” means Sections 11-57-201 et seq., Colorado Revised Statutes, as amended.

“*Supplemental Indenture*” means any indenture supplementing or amending this Indenture that is executed and delivered pursuant to Article XII hereof.

“*Surplus Fund*” means the trust fund so designated which is established pursuant to Section 5.10.

“*Tax Certificate*” means any Tax Certificate or Tax Regulatory Agreement executed by the Issuer on the date of the issuance of any Series of Bonds.

“*Tax-Exempt Bonds*” means any Bonds issued and delivered pursuant to this Indenture, the interest on which is excluded from the federal gross income of the Registered Owners thereof under the Code.

“*Tier*” means (i) the Senior Bonds and Other Senior Obligations, or (ii) the Subordinate Bonds.

“*Tier Representative*” means the Person designated as such for a given Tier by a Supplemental Indenture or the Consent Party or Consent Parties representing a majority in principal amount of the Bonds of such Tier which are Outstanding at the time of such designation, as such representative may be replaced by subsequent action of the Consent Party or Consent Parties representing a majority in principal amount of the Bonds of such Tier which are Outstanding at the time of such replacement.

“*Trust Estate*” means the property and revenues pledged by the Issuer to the Trustee pursuant to the granting clauses hereof.

“*Trustee*” means UMB Bank, n.a and its successors and assigns approved pursuant hereto.

The words “hereof,” “herein,” “hereto,” “hereby” and “hereunder” refer to the entire Indenture.

ARTICLE II

AUTHORIZATION AND TERMS OF BONDS

Section 2.01. Authorization of Bonds. The Issuer hereby authorizes the issuance of the Bonds, provided that:

(a) any Series of Bonds shall be issued solely pursuant to a Supplemental Indenture and in accordance with Articles II and III hereof, and such Supplemental Indenture shall contain, among other things, such provisions as required by this Indenture;

(b) each Series of Bonds shall be designated as a Series of Senior Bonds, or Subordinate Bonds by the Supplemental Indenture pursuant to which such Series of Bonds is issued and have a maturity date no later than thirty (30) years from the date of issuance of such Series of Bonds;

(c) the Bonds shall be issued solely for the purposes of (i) providing funds for the financing of Actual Capital Costs, (ii) refunding, in whole or in part, at or before their respective final maturities any Bonds or other obligations of the Issuer or any other entity that were issued to provide funds for the Project, (iii) paying interest on Bonds, (iv) funding a Reserve Requirement, (v) paying costs of issuing the Bonds, and (vi) such

other purposes related to the issuance of Bonds as may be set forth in a Supplemental Indenture; and

(d) the maximum principal amount of Current Interest Bonds that may be issued under the Indenture (excluding any Bonds issued to refund any Outstanding Bonds) shall not exceed \$50,000,000.

Section 2.02. Denominations, Interest Rates and Maturity of Bonds. Each Bond shall be issuable only in Authorized Denominations, as set forth in the Supplemental Indenture pursuant to which such Bond is issued. Each Bond shall mature on the dates and in the aggregate principal amounts, subject to Section 2.01 hereof, and shall bear interest at the per annum interest rates, and shall be subject to redemption prior to maturity, as set forth in the Supplemental Indenture pursuant to which such Bond is issued; provided, however, that the maximum annual interest rate on any Series of Bonds shall not exceed 8.00%. Each Bond shall be dated as of the Dated Date for such Bond as set forth in the Supplemental Indenture pursuant to which such Bond is issued. Each Bond shall bear interest from the last Interest Payment Date to which interest has accrued and has been paid or duly provided for, or if no interest has been paid or duly provided for, from the Dated Date of such Bond until payment of the principal or redemption price thereof shall have been made or provided for in accordance with the provisions of this Indenture and such Supplemental Indenture, whether upon maturity, redemption or otherwise.

Section 2.03. Limited Obligations. The Bonds are special, limited revenue obligations of the Issuer and the principal or redemption price thereof, interest and premium, if any, thereon and other expenses in connection therewith, shall be payable solely from the Pledged Revenues and the remainder of the Trust Estate as provided herein. The Bonds shall not constitute a general obligation of the Issuer. The Bonds shall not constitute an indebtedness of the State, the County, or any other county, municipality or public body of the State, except that the Bonds shall be special, limited revenue obligations of the Issuer as set forth above. The Bonds are not secured by any lien or a mortgage on or security interest in any property of the Issuer other than the Pledged Revenues and the remainder of the Trust Estate.

Section 2.04. Bond Forms. The form of each Series of Bonds shall be set forth in the Supplemental Indenture pursuant to which such Series is issued or as an appendix or exhibit thereto. The Issuer may cause a copy of the text of the opinions of Bond Counsel delivered at the original issuance of any Bonds to be printed on or attached to such Bonds, and, upon request of the Issuer and the deposit with the Trustee of executed counterparts of such opinions, the Trustee shall certify that the text appearing on such Bonds is a true and correct copy of such opinions, by manual or facsimile signature. Pursuant to recommendations promulgated by the Committee on Uniform Security Identification Procedures, "CUSIP" numbers may be printed on the Bonds. The Bonds may bear such notation, endorsement or legend satisfactory to the Trustee as may be required to conform to usage or law with respect thereto.

Section 2.05. Fully Registered Form; Book-Entry System for Bonds; Bond Registrar and Bond Register.

(a) The Bonds shall be issued in fully registered form. Except as otherwise provided in a Supplemental Indenture with respect to any Series of Bonds:

(i) The Issuer shall cause the Bonds to be issued in a form eligible for deposit by the registered owner with The Depository Trust Company, New York, New York (“DTC”) and deposited in the Book-Entry System maintained by DTC and registered in the name of Cede & Co., as nominee of DTC as Securities Depository for the Bonds in accordance with the terms of a letter of representations from the Issuer to DTC. The Bonds shall be registered upon subsequent transfer or exchange as provided in this Indenture.

(ii) A single certificate for each maturity of each Series bearing interest at the same interest rate shall be issued and delivered to the Securities Depository for the Bonds. The actual purchasers of the Bonds (the “Beneficial Owners”) will not receive physical delivery of Bond certificates except as provided herein. So long as there exists a Securities Depository as provided herein, all transfers of beneficial ownership interests in the Bonds shall be made by book entry only, and no person purchasing, selling or otherwise transferring beneficial ownership interests in the Bonds will be permitted to receive, hold or deliver any Bond certificate. The Issuer and the Trustee shall treat the Securities Depository or its nominee as the sole and exclusive Owner for all purposes, including payments of principal of, premium, if any, and interest on the Bonds, notices and voting, except in the cases where voting by Consent Parties is provided for herein.

(b) The Issuer and the Trustee covenant and agree, so long as DTC shall continue to serve as Securities Depository for any of the Bonds, to meet the requirements of DTC with respect to required notices and other provisions of any letter of representations with DTC.

(c) For any Bonds held by a Securities Depository pursuant to this Section, the Issuer and the Trustee may conclusively rely upon (a) a certificate of the Securities Depository as to the identity of the Participants in the Book-Entry System with respect to the Bonds; and (b) a certificate of any such Participant as to the identity of, and the respective principal amount of Bonds beneficially owned by, the Beneficial Owners.

(d) Whenever Bonds remain Outstanding and the beneficial ownership thereof must be determined by the books of the Securities Depository, the requirements in this Indenture for holding, delivering, tendering or transferring Bonds shall be deemed modified with respect to such Bonds to require the appropriate person to meet the requirements of the Securities Depository with respect to such actions to produce the same effect. Any provision hereof permitting or requiring delivery of Bonds shall, for Bonds in the Book-Entry System, be satisfied by notation on the books of the Securities Depository in accordance with state law.

(e) For any Bonds held by a Securities Depository pursuant to this Section, the Trustee and the Issuer may from time to time appoint a successor Securities

Depository and enter into any agreement with such Securities Depository to establish procedures with respect to the Bonds not inconsistent with the provisions of this Indenture. Any successor Securities Depository shall be a “clearing agency” registered under Section 17A of the Securities Exchange Act of 1934, as amended.

(f) Neither the Issuer nor the Trustee shall have any responsibility or obligation to any Securities Depository, any Participant in the Book-Entry System or the Beneficial Owners with respect to (a) the accuracy of any records maintained by the Securities Depository or any Participant; (b) the payment by the Securities Depository or by any Participant of any amount due to any Beneficial Owner in respect of the principal amount, including premium, or redemption or purchase price of, or interest on, any Bonds; (c) the delivery of any notice by the Securities Depository or any Participant; (d) the selection of the Beneficial Owners to receive payment in the event of any partial redemption of any Bonds; or (e) any other action taken by the Securities Depository or any Participant in connection with any Bonds.

(g) If the Issuer directs that any Bonds be deposited in the Book-Entry System maintained by DTC, Bond certificates shall be delivered to and registered in the name of the Beneficial Owners of such Bonds only under the following circumstances:

(i) The Securities Depository determines to discontinue providing its service with respect to such Bonds and no successor Securities Depository is appointed as described above. Such a determination may be made at any time by giving reasonable notice to the Issuer or the Trustee and discharging its responsibilities with respect thereto under applicable law.

(ii) The Issuer determines not to continue the Book-Entry System through any Securities Depository.

(h) If at any time the Securities Depository ceases to hold any Bonds, all references herein to the Securities Depository shall be of no further force or effect.

Section 2.06. Bond Registrar.

(a) The Issuer shall designate one or more persons to act as “Bond Registrar” for the Bonds; provided that the Bond Registrar appointed for the Bonds shall be either the Trustee or a person which would meet the requirements for qualification as a Trustee imposed by Section 10.13 hereof. The Issuer hereby designates the Trustee as the initial Bond Registrar for the Bonds. Any person other than the Trustee undertaking to act as Bond Registrar shall first execute a written agreement, in form satisfactory to the Trustee and the Issuer, to perform the duties of a Bond Registrar under this Indenture.

(b) The Bond Registrar shall act as registrar and transfer agent for such Bonds. The Issuer shall cause to be kept at an office of the Bond Registrar a register (herein sometimes referred to as the “Bond Register”) in which, subject to such reasonable regulations as it, the Trustee or the Bond Registrar may prescribe, the Issuer shall provide for the registration of the Bonds and for the registration of transfers of the Bonds. The Issuer shall cause the Bond Registrar to designate, by a written notification

to the Trustee, a specific office location (which may be changed from time to time, upon similar notification) at which the Bond Register is kept. The principal corporate trust office of the Trustee shall be deemed to be such office in respect of the Bonds for which the Trustee is acting as Bond Registrar unless another location shall be specified by the Trustee in writing to the Issuer.

(c) The Bond Registrar shall at such time as reasonably requested by the Trustee, certify and furnish to the Trustee and any Paying Agent as the Trustee shall specify, the names, addresses, and holdings of Owners and any other relevant information reflected in the Bond Register, and the Trustee and any such Paying Agent shall for all purposes be fully entitled to rely upon the information so furnished to them and shall have no liability or responsibility in connection with the preparation thereof except to the extent that any such information was furnished or supplied to the Bond Registrar by any such entity.

Section 2.07. Registration, Transfer and Exchange of Bonds.

(a) Upon surrender for transfer of a Bond of any Series at the designated office of the Bond Registrar, the Issuer shall execute and the Trustee or its Authenticating Agent shall authenticate and deliver in the name of the transferee or transferees, one or more new fully registered Bond of the same Series of Authorized Denominations for the aggregate principal amount which the registered owner is entitled to receive.

(b) At the option of the Owner, Bonds may be exchanged for other Bonds of the same Series and maturity, of any other Authorized Denomination, of a like aggregate principal amount, upon surrender of the Bonds to be exchanged at the office of the Bond Registrar. Whenever any Bonds are so surrendered for exchange, the Issuer shall execute, and the Trustee shall authenticate and deliver, the Bonds which the Owner making the exchange is entitled to receive.

(c) All Bonds presented for transfer or exchange, redemption or payment (if so required by the Issuer, the Bond Registrar or the Trustee), shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and with guaranty of signature satisfactory to the Bond Registrar, duly executed by the Owner or by its attorney duly authorized in writing.

(d) The Bond Registrar may require payment of a sum sufficient to cover any taxes or other governmental charges and any reasonable fees that may be imposed in relation thereto.

(e) Neither the Issuer nor the Bond Registrar on behalf of the Issuer shall be required (a) to register the transfer of or exchange any Bond during a period beginning at the opening of business 15 days before the day of mailing of a notice of redemption of Bonds selected for redemption and ending at the close of business on the day of such mailing, or (b) to register the transfer of or exchange any Bond so selected for redemption in whole or in part.

(f) New Bonds delivered upon any transfer or exchange shall be valid obligations of the Issuer, evidencing the same debt as the Bonds surrendered, shall be secured by this Indenture and shall be entitled to all of the security and benefits hereof to the same extent as the Bonds surrendered.

Section 2.08. Execution. The Bonds shall be executed in the name and on behalf of the Issuer by the manual or facsimile signature of the President of the Board of Directors of the Issuer, and the corporate seal of the Issuer shall be affixed, imprinted, lithographed or reproduced thereon and attested by the manual or facsimile signature of the Secretary of the Board of Directors of the Issuer; provided that at least one signature on each Bond shall be a manual signature. Any Bond may be signed (manually or by facsimile) or attested on behalf of the Issuer by any person who, at the date of such act, shall hold the proper office, notwithstanding that at the date of authentication, issuance or delivery, such person may have ceased to hold such office.

Section 2.09. Authentication; Authenticating Agent.

(a) No Bond shall be valid for any purpose until the certificate of authentication shall have been duly executed as provided in this Indenture, and such authentication shall be conclusive proof that such Bond has been duly authenticated and delivered under this Indenture and that the Owner thereof is entitled to the benefit of the trust hereby created.

(b) If the Bond Registrar is other than the Trustee, the Trustee may appoint the Bond Registrar as an Authenticating Agent with the power to act on such Trustee's behalf and subject to its direction in the authentication and delivery of Bonds in connection with transfers and exchanges under Section 2.07 hereof, and the authentication and delivery of Bonds by an Authenticating Agent pursuant to this Section shall, for all purposes of this Indenture, be deemed to be the authentication and delivery "by the Trustee." The Trustee shall, however, itself authenticate all Bonds upon their initial issuance and any Bonds issued in substitution for other Bonds pursuant to Sections 2.12 and 2.13 hereof. The Trustee shall be entitled to be reimbursed for payments made to any Authenticating Agent as reasonable compensation for its services.

Section 2.10. Payment of Principal and Interest; Interest Rights Preserved.

(a) The principal, redemption price or purchase price of any Bond shall be payable when due, upon surrender of such Bond, in any coin or currency of the United States of America which, at the time of payment, is legal tender for the payment of public and private debts, at the Principal Office of any Paying Agent. Interest on any Bond on each Interest Payment Date in respect thereof shall be payable by check mailed to the address of the person entitled thereto as such address shall appear in the Bond Register, or, at the request of an Owner of \$1,000,000 or more in principal amount of Bonds, by wire transfer to an account located in the United States of America which is designated in writing by such Owner.

(b) Interest on any Bond which is payable, and is punctually paid or duly provided for, on an Interest Payment Date shall be paid to the person in whose name that Bond is registered at the close of business on the Regular Record Date for such interest.

(c) Any interest on any Bond which is payable, but is not punctually paid or provided for, on any Interest Payment Date (referred to in this Section as “Past Due Interest”) shall forthwith cease to be payable to the Owner of such Bond on the relevant Regular Record Date or Interest Payment Date by virtue of having been such Owner, and such Past Due Interest shall be paid to the person in whose name the Bond is registered at the close of business on a Special Record Date to be fixed by the Trustee, such date to be no more than 15 nor fewer than 10 days prior to the date of proposed payment. The Trustee shall cause notice of the proposed payment of such Past Due Interest and the Special Record Date therefor to be mailed, first-class, postage prepaid, to the Bond Registrar and the Paying Agent and to each Owner at its address as it appears in the Bond Register, not fewer than 10 days prior to such Special Record Date.

(d) Subject to the foregoing provisions of this Section, each Bond delivered under this Indenture upon registration of transfer of or exchange for or in lieu of any other Bonds shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Bonds.

(e) To the extent principal of any Bond is not paid when due, such principal shall remain Outstanding until paid and shall continue to bear interest at the rate then borne by the Bond, subject to the limitation set forth in Section 13.02 hereof.

Section 2.11. Persons Deemed Owners. The Issuer, the Trustee, any Paying Agent, the Bond Registrar and any Authenticating Agent may deem and treat the person in whose name any Bonds are registered as the absolute owner thereof (whether or not such Bonds shall be overdue and notwithstanding any notation of ownership or other writing thereon) for the purpose of receiving payment of or on account of the principal of (and premium, if any, on), purchase price and redemption price of and (subject to Section 2.10 hereof) interest on, such Bonds, and for all other purposes, and neither the Issuer, the Trustee, any Paying Agent, the Bond Registrar nor the Authenticating Agent shall be affected by any notice to the contrary. All such payments so made to any such registered owner, or upon its order, shall be valid and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for moneys payable upon any such Bonds.

Section 2.12. Mutilated, Destroyed, Lost or Stolen Bonds.

(a) If any Bond shall become mutilated, lost, stolen or destroyed, the affected Owner shall be entitled to the issuance of a substitute Bond only as follows:

(i) in the case of a lost, stolen or destroyed Bond, the Owner shall (a) provide notice of the loss, theft or destruction to the Issuer and the Trustee within a reasonable time after the Owner receives notice or becomes aware of the loss, theft or destruction; (b) request the issuance of a substitute Bond; and

(c) provide evidence, satisfactory to the Issuer and the Trustee, of the ownership and the loss, theft or destruction of the affected Bond;

(ii) in the case of a mutilated Bond, the Owner shall surrender the Bond to the Trustee for cancellation; and

(iii) in all cases, the Owner shall provide indemnity against any and all claims arising out of or otherwise related to the issuance of substitute Bonds pursuant to this Section satisfactory to the Issuer and the Trustee.

(b) Upon compliance with requirements of subsection (a) of this Section, a new Bond of like tenor, Series, maturity and denomination, executed by the Issuer, shall be authenticated by the Trustee and delivered to the Owner, all at the expense of the Owner to whom the substitute Bond is delivered. Notwithstanding the foregoing, the Trustee shall not be required to authenticate and deliver any substitute Bond for a Bond which has been called for redemption or which has matured or is about to mature or be redeemed and, in any such case, the principal or redemption price and interest then due or becoming due shall be paid by the Trustee or a Paying Agent in accordance with the terms of the mutilated, lost, stolen or destroyed Bond without substitution therefor.

(c) Every substituted Bond issued pursuant to this Section shall constitute an additional contractual obligation of the Issuer and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Bonds duly issued hereunder unless the Bond alleged to have been destroyed, lost or stolen shall be at any time enforceable by a bona fide purchaser for value without notice. In the event the Bond alleged to have been destroyed, lost or stolen shall be enforceable by anyone, the Issuer may recover the substitute Bond from the Owner to whom it was issued or from anyone taking under the Owner except a bona fide purchaser for value without notice.

(d) All Bonds shall be held and owned upon the express condition that the provisions of this Section are exclusive with respect to the replacement or payment of mutilated, destroyed, lost or stolen Bonds, and shall preclude any and all other rights or remedies, notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or investment or other securities without their surrender.

Section 2.13. Temporary Bonds. Pending preparation of definitive Bonds, or by agreement with the purchasers of all Bonds, the Issuer may issue, and, upon its request, the Trustee shall authenticate, in lieu of definitive Bonds one or more temporary printed or typewritten Bonds of substantially the tenor recited above in any denomination authorized as provided in a Supplemental Indenture. Upon request of the Issuer, the Trustee shall authenticate definitive Bonds in exchange for and upon surrender of an equal principal amount of temporary Bonds. Until so exchanged, temporary Bonds shall have the same rights, remedies and security hereunder as definitive Bonds.

Section 2.14. Cancellation of Surrendered Bonds. Bonds surrendered for payment, redemption, transfer or exchange and Bonds surrendered to the Trustee by the Issuer for

cancellation shall be canceled by the Trustee which shall notify the Bond Registrar of such cancellation. Canceled Bonds shall be destroyed in accordance with the Trustee's normal procedures and applicable retention laws.

ARTICLE III

CONDITIONS TO ISSUANCE OF BONDS

Section 3.01. Conditions to Issuance of Bonds. The Issuer may issue Bonds in such principal amounts as set forth in a Supplemental Indenture upon satisfaction of the requirements of subsections (a) through (f) below:

(a) No Event of Default hereunder shall have occurred and be continuing.

(b) The Issuer shall have provided to the Trustee a resolution of the Board of Directors of the Issuer authorizing the issuance of such Bonds.

(c) The Issuer and the Trustee shall have entered into a Supplemental Indenture authorizing the issuance of such Bonds, which Supplemental Indenture specifies at least the following:

(i) the Series and Tier designation, the name, the aggregate principal amount, the Authorized Denominations, the dated date, the maturity date or dates, the redemption requirements with respect thereto which shall contain any provisions required by Article VII hereof, the Reserve Requirement, if any, with respect to such Series of Bonds, which amount in the case of the issuance of any Senior Bonds or Subordinate Bonds shall be funded on the respective date of issuance thereof from the proceeds of such Bonds (or in the case of Bonds being refunded by such Senior Bonds or Subordinate Bonds, from amounts already on deposit in the respective reserve fund for the Bonds being refunded) or other amounts not derived from this Indenture, the form of such Bonds and, if such Bonds are Capital Appreciation Bonds, the aggregate Original Principal Amount of each Series and of each Authorized Denomination of such Series;

(ii) if the new Bonds are Current Interest Bonds, the fixed interest rate or rates, and the Interest Payment Date or Dates for the payment of such interest;

(iii) if such Bonds are Capital Appreciation Bonds, the Maturity Value, Accreted Value and Accretion Dates, or the manner of determining the same, for such Bonds;

(iv) the redemption provisions, if any, for such Bonds;

(v) the manner in which the proceeds of such Bonds are to be applied;
and

(vi) any variations in the terms set forth in this Indenture with respect to such Bonds.

(d) The Issuer shall have provided to the Trustee:

(i) a written opinion of Bond Counsel to the effect that (A) such Bonds have been duly authorized, executed and delivered by the Issuer and are valid and binding special, limited revenue obligations of the Issuer entitled to the benefit of this Indenture; and (B) the issuance of such Bonds will not adversely affect the exclusion from gross income for federal tax purposes of interest on any Outstanding Bonds which are Tax-Exempt Bonds;

(ii) if the Bonds are in the Book-Entry System, evidence that such Bonds have been accepted into the Book-Entry System (e.g. the Issuer has executed a letter of representations with DTC); and

(iii) an executed counterpart of the Supplemental Indenture described in subsection (d) of this Section.

Section 3.02. Equality of Bonds of Same Tier. All Bonds of the same Tier which are issued in conformity with this Indenture and which are from time to time Outstanding shall be equally and ratably secured by a lien on the Pledged Revenues and the remainder of the Trust Estate and shall not be entitled to any priority one over the other in the application of the Pledged Revenues or the remainder of the Trust Estate regardless of the time or times of the issuance of the Bonds, it being the intention of the parties hereto that there shall be no priority among the Bonds of the same Tier regardless of the fact that they may be actually issued and delivered at different times; provided that nothing herein shall be construed to preclude the creation of separate reserve accounts or the obtaining of separate surety bonds, credit facilities, or insurance policies or additional collateral for a Series of Bonds, which may or may not be pledged toward the payment of another Series of Bonds of the same or different Tiers.

Section 3.03. Priority of Lien. There is hereby created an irrevocable lien upon the Pledged Revenues and the remainder of the Trust Estate for the benefit of the Bonds authorized herein, subject to the priorities among the Tiers thereof as provided herein. The pledge made by this Indenture shall be valid and binding from and after the date of the first delivery of any Bonds, and the Pledged Revenues and the remainder of the Trust Estate and other moneys hereby pledged shall immediately be subject to the lien of this pledge without any physical delivery thereof or further act, and the lien of this pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the Issuer, irrespective of whether such parties have notice of such lien.

Section 3.04. Superior Obligations Prohibited. Nothing set forth herein shall be construed to permit the Issuer to issue additional obligations payable from Pledged Revenues or the remainder of the Trust Estate and having a lien thereon prior and superior to any Senior Bonds or Other Senior Obligations from time to time Outstanding.

ARTICLE IV

[INTENTIONALLY DELETED]

ARTICLE V

FUNDS AND ACCOUNTS

Section 5.01. Pledged Revenues To Be Paid Over to Trustee. On the last Business Day of each calendar month, the Issuer shall cause the Pledged Revenues received by it during such month to be paid to the Trustee. The Trustee shall deposit all Pledged Revenues, immediately upon receipt, into the Revenue Fund for application as provided in Section 5.02.

Section 5.02. Revenue Fund. There is hereby established with the Trustee a special fund to be designated the “SW Downtown Business Improvement District Revenue Fund” (the “Revenue Fund”).

(a) On each Monthly Calculation Date, the Trustee shall transfer all Pledged Revenues then on deposit in the Revenue Fund in the following order or priority:

(i) *First*, to the Issuer, an amount certified by the Issuer from time to time as being its Administrative Costs, if any, for the following calendar month.

(ii) *Second*, to the credit of the Rebate Fund to the extent and in the manner provided for in Section 5.13 hereof.

(iii) *Third*, to the credit of the Interest Account of the Senior Bond Fund to the extent and in the manner provided for in Section 5.03(b)(ii) hereof.

(iv) *Fourth*, to the credit of the Principal Account of the Senior Bond Fund to the extent and in the manner provided for in Section 5.03(c) hereof.

(v) *Fifth*, to the credit of the Senior Bond Reserve Fund to the extent and in the manner provided for in Section 5.04(d) hereof.

(vi) *Sixth*, to the credit of the Interest Account of the Subordinate Bond Fund to the extent and in the manner provided for in Section 5.05(b)(ii) hereof.

(vii) *Seventh*, to the credit of the Principal Account of the Subordinate Bond Fund to the extent and in the manner provided for in Section 5.05(c) hereof.

(viii) *Eighth*, to the credit of the Subordinate Bond Reserve Fund to the extent and in the manner provided for in Section 5.06(d) hereof.

(ix) *Ninth*, to the credit of each account of the Project Fund created with respect to a Series of Senior Bonds to the extent and in the manner provided in Section 5.08(c) hereof (among such accounts as provided in a Supplemental Indenture).

(x) *Tenth*, to the credit of each account of the Project Fund created with respect to a Series of Subordinate Bonds to the extent and in the manner provided in Section 5.08(c) hereof (among such accounts as provided in a Supplemental Indenture).

(xi) *Eleventh*, to the credit of the Surplus Fund in the manner provided for in Section 5.10 hereof.

(b) Pending application of moneys in the Revenue Fund, such moneys shall be invested in Permitted Investments as provided in Section 6.02 hereof, and any earnings on or income from such investments shall be retained therein.

Section 5.03. Senior Bond Fund.

(a) ***Establishment; Use.*** There is hereby established with the Trustee a special fund to be designated the “SW Downtown Business Improvement District Senior Bond Fund” (the “Senior Bond Fund”) and, within the Senior Bond Fund, three separate and segregated accounts, to be designated the “Principal Account,” the “Interest Account,” and the “Capitalized Interest Account”. The Senior Bond Fund shall be used solely for the purposes set forth in this Section 5.03.

(b) ***Interest Account.***

(i) With respect to each Series of Senior Bonds, if provided in a Supplemental Indenture, the Trustee shall, upon delivery to the original purchasers thereof and from the proceeds thereof, credit to the Interest Account of the Senior Bond Fund the amount, if any, specified in the Supplemental Indenture providing for the issuance of such Series of Senior Bonds. The Trustee shall also deposit in the Interest Account of the Senior Bond Fund (A) that portion of the proceeds from the sale of any refunding Bonds to be used to pay interest on the Senior Bonds (unless an escrow agreement is used therefor); (B) any moneys received from any other Person with the direction that they be deposited in the Interest Account of the Senior Bond Fund; and (C) all amounts required to be transferred thereto from the funds and accounts specified in this subsection (b).

(ii) On each Monthly Calculation Date immediately preceding each of the twelve calendar months of each Fiscal Year, the Trustee shall make transfers to the credit of the Interest Account of the Senior Bond Fund from the sources set forth in (iv) below until the amounts so transferred equal the total of all interest on the Senior Bonds that will become payable during the current Fiscal Year and when the total amount payable in such Fiscal Year has been deposited to the Interest Account of the Senior Bond Fund, no more amounts shall be credited to the Interest Account of the Senior Bond Fund during that Fiscal Year:

(iii) In making the transfers required to be made and credited to the Interest Account of the Senior Bond Fund from the Revenue Fund pursuant to this Section, all deposits and credits otherwise made or required to be made to the Interest Account of the Senior Bond Fund consisting of investment earnings shall,

to the extent available for such purpose, be credited against such obligation. Each deposit required by this subsection (b) to pay the foregoing amounts shall be made by transfer from the following Funds and Accounts, in the following order of priority: *first*, from the Capitalized Interest Account of the Senior Bond Fund; *second*, from the Revenue Fund; *third*, from the Surplus Fund; *fourth*, from any account of the Project Fund created with respect to a Series of Senior Bonds; and *fifth*, only on the Monthly Calculation Date immediately preceding any Interest Payment Date for any Senior Bonds, from the Senior Bond Reserve Fund.

(iv) Moneys in the Interest Account of the Senior Bond Fund shall be used solely for the payment of interest on the Senior Bonds of any Series, and shall be applied by the Trustee to the payment of such amounts when due without further authorization or direction, except that the Issuer shall provide written direction.

(c) ***Principal Account.***

(i) The Trustee shall deposit to the credit of the Principal Account of the Senior Bond Fund: (A) that portion of the proceeds from the sale of any refunding Bonds to be used to pay principal of the Senior Bonds (unless an escrow agreement is used therefor); (B) any moneys received from any other Person with the direction that they be deposited in the Principal Account of the Senior Bond Fund; and (C) all amounts required to be transferred thereto from the funds and accounts specified in this subsection (c); provided, however, that the principal payment schedule for each Series of Senior Bonds shall be as set forth in the respective Supplemental Indenture for such Series of Senior Bonds and provided further, however, that no accumulations of principal for such Series of Senior Bonds shall begin on a Monthly Calculation Date pursuant to paragraph (ii) below until the first year in which principal is due with respect to such Series of Senior Bonds (as set forth in the related Supplemental Indenture).

(ii) On each Monthly Calculation Date immediately preceding each of the twelve calendar months of each Fiscal Year, the Trustee shall make transfers to the credit of the Principal Account of the Senior Bond Fund from the sources set forth in paragraph (iii) below until the amounts so transferred equal the total of all principal of all Senior Bonds maturing or subject to mandatory or other sinking fund redemption in such Fiscal Year, and when the total amount payable in such Fiscal Year has been deposited to the Principal Account of the Senior Bond Fund, no more amounts shall be credited to the Principal Account of the Senior Bond Fund during that Fiscal Year; provided, however, that the Trustee shall not make any transfer to the Principal Account of the Senior Bond Fund from the sources set forth in paragraph (iii) below until the Trustee has set aside in the Interest Account of the Senior Bond Fund the amount required to be transferred by the Trustee pursuant to Section 5.03(b)(i)(A)-(C) hereof.

(iii) In making the transfers required to be made and credited to the Principal Account of the Senior Bond Fund from the Revenue Fund pursuant to

this Section, all deposits and credits otherwise made or required to be made to the Principal Account of the Senior Bond Fund consisting of investment earnings shall, to the extent available for such purpose, be credited against such obligation. Each deposit required by this subsection (c) to pay the foregoing amounts shall be made by transfer from the following funds, in the following order of priority (after transfers therefrom to the Interest Account of the Senior Bond Fund required on the date of any such transfer): *first*, from the Revenue Fund; *second*, from the Surplus Fund; *third*, from any account of the Project Fund created with respect to a Series of Senior Bonds (except as otherwise provided in a Supplemental Indenture); and *fourth*, only on the Monthly Calculation Date immediately preceding any date on which principal is due at stated maturity or upon mandatory sinking fund redemption for any Senior Bonds, from the Senior Bond Reserve Fund.

(iv) Moneys in the Principal Account shall be used solely for the payment of the principal of Senior Bonds at the stated maturity thereof or on a sinking fund payment date therefor and shall be applied by the Trustee to such payment when due without further authorization or direction.

(d) ***Capitalized Interest Account.***

(i) With respect to each Series of Senior Bonds, if provided in a Supplemental Indenture, the Trustee shall: (a) create and establish a subaccount of the Capitalized Interest Account of the Senior Bond Fund with respect to such Series, identified by the appropriate Series designation, to provide for the receipt and disbursement of the proceeds of such Series; and (b) upon delivery to the original purchasers thereof and from the proceeds thereof, credit to such subaccount of the Capitalized Interest Account of the Senior Bond Fund the amount, if any, specified in the Supplemental Indenture providing for the issuance of such Series of Senior Bonds.

(ii) On the Monthly Calculation Date immediately preceding the first calendar month of each Fiscal Year, the Trustee shall transfer from each subaccount of the Capitalized Interest Account of the Senior Bond Fund established with respect to a Series of Senior Bonds, to the extent of moneys then on deposit therein, to the credit of the Interest Account of the Senior Bond Fund the amount, or so much of such amount as is then on deposit therein, equal to all interest on such Series of Senior Bonds that will become payable during the twelve calendar months of the Fiscal Year.

(iii) Moneys in the Capitalized Interest Account of the Senior Bond Fund shall be used solely for the purpose of making the transfers set forth in (ii) above or any other purpose specified in a Supplemental Indenture.

Section 5.04. Senior Bond Reserve Fund.

(a) There is hereby established with the Trustee a special fund to be designated the “SW Downtown Business Improvement District Senior Bond Reserve Fund” (the “Senior Bond Reserve Fund”) which shall be maintained as a debt service reserve for the payment of the principal of and interest on the Senior Bonds. If required by a Supplemental Indenture, upon issuance of each Series of Senior Bonds, an amount equal to the Reserve Requirement for such Series of Bonds shall be deposited into a separate segregated account within the Senior Bond Reserve Fund for each such Series that shall be established by the Trustee from the sources permitted by Section 3.01(d)(i) hereof. Alternatively, such Reserve Requirement shall be funded from: (i) transfers from the Revenue Fund described in Section 5.02(a)(v) hereof, as provided in Section 5.04(d) hereof; (ii) any moneys received from any other Person with the written direction from the Issuer Representative that they be deposited in such account of the Senior Bond Reserve Fund; or (iii) any combination thereof.

(b) Any moneys at any time in the applicable account of the Senior Bond Reserve Fund in excess of the Reserve Requirement with respect to such Series of Senior Bonds, including investment earnings derived from amounts on deposit in such account of the Senior Bond Reserve Fund, shall be applied as set forth in Section 6.02 hereof.

(c) On any required payment date for any Senior Obligations, if there shall not be on deposit in the Senior Bond Fund, the Surplus Fund or the Project Fund the full amount necessary to pay the debt service requirements on such Senior Bonds becoming due on such date, then an amount shall be transferred from the related account in the Senior Bond Reserve Fund on such date into the Senior Bond Fund equal to the difference between the amount on deposit in the Senior Bond Fund and the full amount so required. The moneys and the proceeds in the Senior Bond Reserve Fund shall be maintained as a continuing reserve to be used only to prevent deficiencies in the payment of such amounts coming due on and with respect to the Senior Obligations resulting from the failure to timely deposit into the Senior Bond Fund sufficient funds to pay such amounts as the same become due.

(d) The Reserve Requirement, if any, for any Series of Senior Bonds may be satisfied by a deposit of moneys. The Reserve Requirement, if any, for the initial Series of Senior Bonds issued hereunder may also be satisfied by an accumulation on a scheduled basis of Senior Bond proceeds, investment earnings or other deposits from the Revenue Fund which will result in an amount equal to such Reserve Requirement being on deposit or available no later than the date set forth in a Supplemental Indenture. If amounts are withdrawn from the Senior Bond Reserve Fund, such amounts shall be replenished with transfers from the Revenue Fund as provided in Section 5.02 hereof until the amount on deposit in the Senior Bond Reserve Fund is equal to the Reserve Requirements for Senior Bonds. Deficiencies in the Senior Bond Reserve Fund may additionally be replenished by any moneys received from any other Person with the written direction from the Issuer Representative that such moneys be deposited in such account of the Senior Bond Reserve Fund.

Section 5.05. Subordinate Bond Fund.

(a) **Establishment; Use.** There is hereby established with the Trustee a special fund to be designated the “SW Downtown Business Improvement District Subordinate Bond Fund” (the “Subordinate Bond Fund”) and, within the Subordinate Bond Fund, three separate and segregated accounts, to be designated the “Principal Account,” the “Interest Account” and the “Capitalized Interest Account.” The Subordinate Bond Fund shall be used solely for the purposes set forth in this Section 5.05.

(b) **Interest Account.**

(i) With respect to each Series of Subordinate Bonds, the Trustee shall, upon delivery to the original purchasers thereof and from the proceeds thereof, credit to the Interest Account of the Subordinate Bond Fund the amount, if any, specified in the Supplemental Indenture providing for the issuance of such Series of Subordinate Bonds. The Trustee shall also deposit in the Interest Account of the Subordinate Bond Fund (A) that portion of the proceeds from the sale of any refunding Bonds to be used to pay interest on the Subordinate Bonds (unless an escrow agreement is used therefor); (B) any moneys received from any other Person with the direction that they be deposited in the Interest Account of the Subordinate Bond Fund; and (C) all amounts required to be transferred thereto from the funds and accounts specified in this subsection (b).

(ii) On each Monthly Calculation Date immediately preceding each of the twelve calendar months of each Fiscal Year, the Trustee shall make transfers to the credit of the Interest Account of the Subordinate Bond Fund from the sources set forth in (iv) below until the amounts so transferred equal all interest on the Subordinate Bonds that will become payable during the current Fiscal Year and when the total amount payable in such Fiscal Year has been deposited to the Interest Account of the Subordinate Bond Fund, no more amounts shall be credited to the Interest Account of the Subordinate Bond Fund during that Fiscal Year.

(iii) In making the transfers required to be made and credited to the Interest Account of the Subordinate Bond Fund from the Revenue Fund pursuant to this Section, all deposits and credits otherwise made or required to be made to the Interest Account of the Subordinate Bond Fund consisting of investment earnings, be credited against such obligation. Each deposit required by this subsection (b) to pay the foregoing amounts shall be made by transfer from the following Funds and Accounts, in the following order of priority: *first*, from the Capitalized Interest Account of the Subordinate Bond Fund; *second*, from the Revenue Fund; *third*, from the Surplus Fund; *fourth*, from any account of the Project Fund created with respect to a Series of Subordinate Bonds; and *fifth*, only on the Monthly Calculation Date immediately preceding any Interest Payment Date for any Subordinate Bonds, from the Subordinate Bond Reserve Fund.

(iv) Moneys in the Interest Account of the Subordinate Bond Fund shall be used solely for the payment of interest on the Subordinate Bonds of any

Series, and shall be applied by the Trustee to the payment of such amounts when due without further authorization or direction.

(c) ***Principal Account.***

(i) The Trustee shall deposit to the credit of Principal Account of the Subordinate Bond Fund: (A) that portion of the proceeds from the sale of any refunding Bonds to be used to pay principal of the Subordinate Bonds (unless an escrow agreement is used therefor); (B) any moneys received from any other Person with the direction that they be deposited in the Principal Account of the Subordinate Bond Fund; and (C) all amounts required to be transferred thereto from the funds and accounts specified in this subsection (c); provided, however, that the principal payment schedule for each Series of Subordinate Bonds shall be as set forth in the respective Supplemental Indenture for such Series of Subordinate Bonds and provided further, however, that no accumulations of principal for such Series of Subordinate Bonds shall begin on a Monthly Calculation Date pursuant to paragraph (ii) below until the first year in which principal is due with respect to such Series of Subordinate Bonds (as set forth in the related Supplemental Indenture).

(ii) On each Monthly Calculation Date immediately preceding each of the twelve calendar months of each Fiscal Year, the Trustee shall make transfers to the credit of the Principal Account of the Subordinate Bond Fund from the sources set forth in paragraph (iii) below until the amounts so transferred equal the total of all principal of all Subordinate Bonds maturing or subject to mandatory or other sinking fund redemption in such Fiscal Year, and when the total amount payable in such Fiscal Year has been deposited to the Principal Account of the Subordinate Bond Fund, no more amounts shall be credited to the Principal Account of the Subordinate Bond Fund during that Fiscal Year; provided, however, that the Trustee shall not make any transfer to the Principal Account of the Subordinate Bond Fund from the sources set forth in paragraph (iii) below until the Trustee has set aside in the Interest Account of the Subordinate Bond Fund the amount required to be transferred by the Trustee pursuant to Section 5.05(b)(ii)(A)-(C) hereof.

(iii) In making the transfers required to be made and credited to the Principal Account of the Subordinate Bond Fund from the Revenue Fund pursuant to this Section, all deposits and credits otherwise made or required to be made to the Principal Account of the Subordinate Bond Fund consisting of investment earnings, be credited against such obligation. Each deposit required by this subsection (c) to pay the foregoing amounts shall be made by transfer from the following funds, in the following order of priority (after transfers therefrom to the Interest Account of the Subordinate Bond Fund required on the date of any such transfer): *first*, from the Revenue Fund; *second*, from the Surplus Fund; *third*, from any account of the Project Fund created with respect to a Series of Subordinate Bonds; and *fourth*, only on the Monthly Calculation Date immediately preceding any date on which principal is due at stated maturity or

upon mandatory sinking fund redemption for any Subordinate Bonds, from the Subordinate Bond Reserve Fund.

(iv) Moneys in the Principal Account shall be used solely for the payment of the principal of Subordinate Bonds at the stated maturity thereof or on a sinking fund payment date therefor and shall be applied by the Trustee to such payment when due without further authorization or direction.

(d) ***Capitalized Interest Account.***

(i) With respect to each Series of Subordinate Bonds, if provided in a Supplemental Indenture, the Trustee shall: (a) create and establish a subaccount of the Capitalized Interest Account of the Subordinate Bond Fund with respect to such Series, identified by the appropriate Series designation, to provide for the receipt and disbursement of the proceeds of such Series; and (b) upon delivery to the original purchasers thereof and from the proceeds thereof, credit to such subaccount of the Capitalized Interest Account of the Subordinate Bond Fund the amount, if any, specified in the Supplemental Indenture providing for the issuance of such Series of Subordinate Bonds.

(ii) On the Monthly Calculation Date immediately preceding the first calendar month of each Fiscal Year, the Trustee shall transfer from each subaccount of the Capitalized Interest Account of the Subordinate Bond Fund established with respect to a Series of Subordinate Bonds, to the extent of moneys then on deposit therein, to the credit of the Interest Account of the Subordinate Bond Fund the amount, or so much of such amount as is then on deposit therein, equal to all interest on such Series of Subordinate Bonds that will become payable during the twelve calendar months of the Fiscal Year.

(iii) Moneys in the Capitalized Interest Account of the Subordinate Bond Fund shall be used solely for the purpose of making the transfers set forth in (ii) above or any other purpose specified in a Supplemental Indenture.

Section 5.06. Subordinate Bond Reserve Fund.

(a) There is hereby established with the Trustee a special fund to be designated the “SW Downtown Business Improvement District Subordinate Bond Reserve Fund” (the “Subordinate Bond Reserve Fund”) which shall be maintained as a debt service reserve for the payment of the principal of and interest on the Subordinate Bonds. If required by a Supplemental Indenture, upon issuance of each Series of Subordinate Bonds, an amount equal to the Reserve Requirement for such Series of Bonds shall be deposited into a separate segregated account within the Subordinate Bond Reserve Fund that shall be established by the Trustee for each such Series from the sources permitted by Section 3.01(d)(i) hereof. Alternatively, such Reserve Requirement shall be funded from: (i) transfers from the Revenue Fund described in Section 5.02(a)(viii) hereof, as provided in Section 5.06(d) hereof; (ii) any moneys received from any other Person with the written direction from the Issuer Representative that they be

deposited in such account of the Subordinate Bond Reserve Fund; or (iii) any combination thereof.

(b) Any moneys at any time in the applicable account of the Subordinate Bond Reserve Fund in excess of the Reserve Requirement with respect to such Series of Subordinate Bonds, including investment earnings derived from amounts on deposit in such account of the Subordinate Bond Reserve Fund, shall be applied as set forth in Section 6.02 hereof.

(c) On any required payment date for any Senior Subordinate Obligations, if there shall not be on deposit in the Subordinate Bond Fund, the Surplus Fund or the Project Fund the full amount necessary to pay the debt service requirements on such Subordinate Bonds becoming due on such date, then an amount shall be transferred from the related account in the Subordinate Bond Reserve Fund on such date into the Subordinate Bond Fund equal to the difference between the amount on deposit in the Subordinate Bond Fund and the full amount so required. The moneys and the proceeds in the Subordinate Bond Reserve Fund shall be maintained as a continuing reserve to be used only to prevent deficiencies in the payment of such amounts coming due on and with respect to the Senior Subordinate Obligations resulting from the failure to timely deposit into the Subordinate Bond Fund sufficient funds to pay such amounts as the same become due.

(d) The Reserve Requirement, if any, for any Series of Subordinate Bonds may be satisfied by a deposit of moneys. The Reserve Requirement, if any, for the initial Series of Subordinate Bonds issued hereunder may also be satisfied by an accumulation on a scheduled basis of Senior Subordinate Bond proceeds, investment earnings, or other deposits from the Revenue Fund which will result in an amount equal to such Reserve Requirement being on deposit or available no later than the date set forth in a Supplemental Indenture. If amounts are withdrawn from the Subordinate Bond Reserve Fund, such amounts shall be replenished with transfers from the Revenue Fund as provided in Section 5.02 hereof until the amount on deposit in the Subordinate Bond Reserve Fund is equal to the Reserve Requirement for Subordinate Bonds. Deficiencies in the Subordinate Bond Reserve Fund may additionally be replenished by any moneys received from any other Person with the written direction from the Issuer Representative that such moneys be deposited in such account of the Subordinate Bond Reserve Fund.

Section 5.07. Disposition of Bond Proceeds. The proceeds of each Series of Bonds, upon the receipt thereof by the Trustee, shall be deposited promptly and shall be accounted for as provided in the Supplemental Indenture pursuant to which such Series of Bonds is issued.

Section 5.08. Project Fund.

(a) There is hereby created and established with the Trustee the “SW Downtown Business Improvement District Project Fund” (the “Project Fund”). The Trustee shall create and establish one or more separate accounts within the Project Fund identified by the appropriate Series designation to provide for the receipt and disbursement of the proceeds of each Series of Bonds and shall further create and

establish any other accounts and subaccounts specified in a Supplemental Indenture, related to the appropriate Series.

(b) The Trustee shall deposit to the credit of each account of the Project Fund established by the Trustee pursuant to subsection (a) of this Section:

(i) the portion of the proceeds of the Series of Bonds with respect to which such account is created specified in the Supplemental Indenture pursuant to which such Series of Bonds is issued; and

(ii) any moneys received from any other Person with the direction that they be deposited in such account of the Project Fund.

(c) Amounts on deposit in any account of the Project Fund shall, unless otherwise provided in a Supplemental Indenture, be used solely to pay Costs of the Project and to make any transfers: (i) if the Series of Bonds with respect to which such account is created is a Series of Senior Bonds, to the Senior Bond Fund, if and to the extent required by Section 5.03 hereof; or (ii) if the Series of Bonds with respect to which such account is created is a Series of Subordinate Bonds, to the Subordinate Bond Fund, if and to the extent required by Section 5.05.

(d) Except as provided in subsections (f), (h), and (i) below, each payment from the Project Fund shall be made to the party requesting the same, but only upon receipt by the Trustee of:

(i) a requisition signed by an Issuer Representative and the Issuer's Engineer in the form set forth in Exhibit A hereto, as the same may be amended or supplemented by any Supplemental Indenture, said requisition to have been provided to the Authority by the Issuer at least ten (10) days prior to submission to the Trustee, and any cost on the requisition not objected to by the Authority shall be deemed to have been approved by the Authority;

(ii) a copy of any invoice relating to the requested payment;

(iii) any certificate, document or other item required to be delivered to the Trustee prior to such payment by any Supplemental Indenture; and

(iv) a copy of each payee's Form W-9 or Form W-8, as applicable (unless previously provided). The Issuer acknowledges that the Trustee cannot process such disbursement request until the Trustee is in receipt of a valid Form W-9 or Form W-8, as applicable, in accordance with the Code and regulations thereunder and the Foreign Account Tax Compliance Act.

(e) The Trustee is hereby authorized and directed to issue its checks on the Project Fund for each payment as requested pursuant this Section and the Trustee may conclusively rely and shall be protected in acting or refraining from acting upon a requisition delivered in accordance with this Section. The Trustee shall not be bound to

make any investigation into the facts or matters stated in any certificate or requisition and shall not be responsible to collect lien waivers.

(f) Following receipt of written notice from the Issuer that an event of default under the Development Agreement has occurred and is continuing, the Trustee shall make no payments from the Project Fund, until it is notified by the Issuer that such Event of Default has been cured by the appropriate party or waived by the Issuer, or the Authority, as the case may be.

(g) The Trustee shall keep and maintain adequate records pertaining to the Project Fund and all payments therefrom. Reports of all disbursements from the Project Fund shall be prepared and distributed by the Trustee no less frequently than quarterly to the Issuer, which reports shall set forth, among other matters, the total disbursements made from the Project Fund. Upon the payment of all Costs of the Project payable from the Project Fund, as evidenced by a certificate of the Issuer filed with the Trustee, the Trustee shall file a statement of income and disbursements with respect to the Project Fund with the Issuer and shall transfer any remaining moneys in the Project Fund to the Revenue Fund except as may otherwise be provided in any Supplemental Indenture.

(h) Upon the occurrence of an Event of Default hereunder and the exercise by the Trustee of the remedies provided in Article IX, any moneys in the Project Fund, shall be used by the Trustee as provided in Section 9.10 hereof.

(i) Notwithstanding anything in here or in any Supplemental Indenture to the contrary, moneys deposited to the Project Fund to pay costs of issuance relating to a Series of Bonds may be disbursed by the Trustee to pay such costs of issuance on and after the applicable Dated Date of such Series of Bonds pursuant to any related closing memorandum and/or closing certificates thereto without utilizing the requisition process described in Section 5.08(d) hereof; the Trustee shall note in its records that such moneys were applied to pay costs of issuance for such Series of Bonds.

Section 5.09. Rebate Fund.

(a) There is hereby created with the Trustee a special fund to be designated the “SW Downtown Business Improvement District Rebate Fund” (the “Rebate Fund”), the moneys in which shall be applied as provided in this Section. The Trustee shall, if so directed by a Issuer Representative, establish separate accounts in the Rebate Fund with respect to any Series of Bonds.

(b) The Issuer shall make all rebate calculations with respect to the applicable Series of Bonds required by the Tax Compliance Certificate for such Series of Bonds, and the Trustee shall deposit the resulting rebate amount from Pledged Revenues into the Rebate Fund in accordance with Section 5.02 hereof.

(c) Amounts in the Rebate Fund relating to any Series of Bonds shall be disbursed and expended in accordance with the provisions hereof and of the Tax Certificate relating to such Series. If a reduction in the amount required to be on deposit

in the Rebate Fund is permitted as a result of any rebate calculations, an amount equal to such reduction shall be withdrawn and deposited in the Revenue Fund.

(d) The Trustee shall make payments to the United States from the moneys on deposit in the Rebate Fund at the times and in the amounts specified in the Tax Certificates. No later than 60 days after the final retirement of any Series of Bonds, the Trustee shall pay to the United States the balance of any payments required from the Rebate Fund, which shall remain in existence for such period of time as is necessary for such final payment to be made. Each payment shall be accompanied by a copy of the Internal Revenue Form 8038G originally filed with respect to such Series of Bonds and a statement summarizing the determination of the amount to be paid to the United States. The Issuer and the Trustee reserve the right, in all events, to pursue such remedies and procedures as are available to it in order to assert any claim of over-payment of any rebated amounts.

(e) The Tax Certificate entered into with respect to any Series of Bonds may be superseded or amended by a new Tax Certificate drafted by, and accompanied by an opinion of, Bond Counsel addressed to the Issuer and the Trustee to the effect that the use of moneys as provided in said new Tax Certificate will not cause the interest on such Series of Bonds to be includable in the gross income of the recipients thereof for purposes of federal income taxation.

(f) Records of the determinations required by this Section 5.09 and the applicable Tax Certificate shall be retained by the Issuer until six years after the final retirement of the respective Series of Bonds, or such longer period as may be required by law.

Section 5.10. Surplus Fund.

(a) There is hereby created with the Trustee a special fund to be designated the “SW Downtown Business Improvement District Surplus Fund” (the “Surplus Fund”). On each Monthly Calculation Date, if amounts on deposit in the Surplus Fund are determined to be in a sufficient amount to redeem Bonds of any Series, then the Issuer shall direct the Trustee to apply such amount to the redemption of Bonds of any Series in inverse order of maturity and as may be further required or permitted by a Supplemental Indenture; provided, however, that the Issuer shall not direct amounts in the Surplus Fund to optionally redeem any Bonds which are not Senior Bonds for so long as any Senior Bonds are Outstanding; provided however, amounts on deposit in the Surplus Fund may also be applied as follows:

- (i) to pay Actual Capital Costs; or
- (ii) to reimburse either Developer for Actual Capital Costs advanced to the Issuer by the Developer.

Section 5.11. Termination upon Deposits to Maturity. No payment is required to be made into (a) with respect to the Senior Bonds, the Senior Bond Fund or the Senior Bond Reserve Fund, or (b) with respect to the Subordinate Bonds, the Subordinate Bond Fund or the

Subordinate Bond Reserve Fund if no amounts are owed with respect to prior payments of principal (whether at maturity or pursuant to mandatory or other sinking fund payment dates) of or interest on the Bonds of the applicable Tier, and the amounts on deposit for the payment of such Tier of Bonds in such funds applicable to such Tier total a sum at least equal to all debt service requirements of the Outstanding Bonds of such Tier to their maturity or mandatory redemption dates, or to any date for which the Issuer shall have exercised or shall have obligated itself to exercise its option to redeem all such Bonds prior to their maturity or mandatory redemption dates (in which event the amounts on deposit must also include any redemption premium payable in connection with such optional redemption). In such event, such moneys in the Senior Bond Reserve Fund or Subordinate Bond Reserve Fund, as applicable, first, and then in the Senior Bond Fund, or the Subordinate Bond Fund, as applicable, for the payment of such Bonds, in amounts equal to such debt service requirements as they become due, shall be used solely to pay such debt service requirements. Any moneys in excess thereof for the payment of such Series of Bonds in such funds applicable to such Tier shall be used to pay Obligations of such Tier and then shall be transferred to the Revenue Fund.

ARTICLE VI

GENERAL ADMINISTRATION

Section 6.01. Places and Times of Deposits. The Funds established under this Indenture shall be separately maintained as trust accounts by the Trustee for the purposes established. Each such fund (including all accounts therein) shall be continuously secured to the extent required by law and shall be irrevocable and not withdrawable by anyone for any other purpose. Each periodic payment shall be made into the proper account not later than the date therefor herein designated, except that when any such date shall be a Saturday, Sunday or a legal holiday, then such payment shall be made on or before the next succeeding Business Day.

Section 6.02. Investment of Moneys. Any moneys in any fund not needed for immediate use may be invested by the Trustee in such Permitted Investments as the Trustee is directed in writing by the Issuer Representative. The Trustee may conclusively rely on such written direction as being a Permitted Investment of the Issuer under then current state statutes and any associated investment policy of the Issuer. If no written instruction is provided to the Trustee by the Issuer, the Trustee will invest such moneys in any money market fund which qualifies as a Permitted Investment. Such investments shall be deemed to be a part of said fund, and any loss shall be charged thereto. Any profit and earnings from investments of moneys in the Rebate Fund shall be retained therein. Any profit and earnings from investments of moneys in the Surplus Fund shall be credited to the Revenue Fund as the same is received. Any profit and earnings from investments of moneys in any account of the Senior Bond Fund, the Subordinate Bond Fund, shall be retained therein unless otherwise provided in a Supplemental Indenture. Any profit and earnings from investments of moneys in any account of the Senior Bond Reserve Fund, of the Subordinate Bond Reserve Fund, shall, if the amount on deposit therein is less than the applicable Reserve Requirement, be retained therein until there shall be on deposit therein an amount equal to the applicable Reserve Fund Requirement, and thereafter, shall be credited to the fund or account provided for in the Supplemental Indenture, as the same may be amended or supplemented, establishing such account of such fund. Any profit and earnings from investments of moneys in any account of the Project Fund shall be credited to the

fund or account provided for in the Supplemental Indenture, as the same may be amended or supplemented, establishing such account of the Project Fund. In computing the amount in any such fund for any purpose hereunder, except as otherwise expressly provided herein, such obligation shall be valued at the cost thereof, exclusive of the accrued interest or other gain; provided however, that any obligation purchased at a premium may initially be valued at the cost thereof, but in each year after such purchase shall be valued at a lesser amount determined by ratably amortizing the premium over the remaining term of the obligation. The Trustee shall present for redemption or sale on the prevailing market at the best price obtainable any investments in any Fund whenever it shall be necessary to do so in order to provide moneys to meet any withdrawal, payment or transfer from such Fund. The Trustee shall not be liable for any loss resulting from any such investment, if diligently executed, made in accordance with this Indenture and at the direction of the Issuer Representative. Additionally, the Trustee may implement its automated cash investment system, to assure that cash on hand is invested and to charge reasonable cash management fees, which may be deducted from income earned on investments. Investments authorized under this Section may be made by the Trustee through its own investment department or that of its affiliates or subsidiaries and may charge its ordinary and customary fees for such trades, including cash sweep account fees.

The Issuer acknowledges that, to the extent regulations of the Comptroller of the Currency or any other regulatory entity grant the Issuer the right to receive brokerage confirmations of the security transactions as they occur, the Issuer specifically waives receipt of such confirmations to the extent permitted by law. The Trustee will furnish the Issuer with periodic cash transaction statements that include the detail for all investment transactions made by the Trustee. Unless otherwise confirmed or directed in writing, the account statement delivered periodically by the Trustee to the Issuer shall confirm that the investment transactions identified therein accurately reflect the investment directions of the Issuer, unless the Issuer notifies the Trustee in writing to the contrary within thirty (30) days of the date of such statement.

Section 6.03. Tax Covenant.

(a) The Issuer hereby covenants for the benefit of each Owner of any Bond that it shall not (a) make any use of the proceeds of any Bonds, any fund reasonably expected to be used to pay the principal of or interest on any Bonds, or any other funds of the Issuer; (b) make any use of the facilities comprising the Project; or (c) take, or omit to take, any other action with respect to any Bonds, the proceeds thereof, or otherwise, if such use, action or omission would under the Code, cause the interest on any Bonds to be included in gross income for federal income tax purposes or be treated as an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals, trusts, estates and, for taxable years beginning before January 1, 2018, corporations (except, with respect to corporations, for taxable years beginning before January 1, 2018, as such interest is required to be taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax imposed on such corporations).

(b) In particular, the Issuer hereby covenants for the benefit of each Owner of any Bonds that it shall not take, or omit to take, or permit or suffer any action to be taken

if the result of the same would cause the Bonds to be (a) “arbitrage bonds” within the meaning of Section 148 of the Code, including for such purposes, to the extent applicable, the rebate requirements of Section 148(f) of the Code; or (b) “private activity bonds” within the meaning of Section 141 of the Code. Such covenants of the Issuer shall survive the payment of the Bonds until all rebate requirements related to the Bonds have been satisfied.

(c) The covenants set forth in this Section shall not apply to any Series of Bonds if, at the time of issuance, the Issuer intends the interest on such Series of Bonds to be included in gross income for federal income tax purposes.

ARTICLE VII

REDEMPTION AND PURCHASE OF BONDS

Section 7.01. Selection of Bonds to Be Called for Redemption or Purchase. Except as otherwise provided herein or in the Bonds, if less than all of any Series of Bonds are to be redeemed or purchased by the Issuer, the particular Bonds to be called for redemption or purchase, as applicable, shall be selected by any method determined by the Trustee to be fair and reasonable. The Trustee shall treat any Bond of a denomination greater than the minimum Authorized Denomination as representing that number of separate Bonds each of that minimum Authorized Denomination (and, if any Bond is not in a denomination that is an integral multiple of the minimum Authorized Denomination, one separate Bond of the remaining principal amount of the Bond) as can be obtained by dividing the actual principal amount of such Bond by that minimum Authorized Denomination; provided that no Bond shall be redeemed or purchased in part if it results in the unredeemed or unpurchased, as applicable, portion of the Bond being in a principal amount other than an Authorized Denomination.

Section 7.02. Notice of Redemption.

(a) Unless otherwise provided in a Supplemental Indenture authorizing the issuance of a Series of Bonds, any notice of the call for redemption of Bonds and any notice of purchase of Bonds shall identify (i) the complete official name of the issue; (ii) the Bonds or portions thereof to be redeemed or purchased, as applicable, by designation, letters, CUSIP numbers, numbers or other distinguishing marks, interest rate, maturity date and principal amount; (iii) the redemption price or purchase price, as applicable, to be paid; (iv) the date fixed for redemption or purchase, as applicable; (v) the place or places, by name and address, where the amounts due upon redemption or purchase, as applicable, are payable; and (vi) the name and telephone number of the person to whom inquiries regarding the redemption or purchase, as applicable, may be directed; provided, however, that the failure to identify a CUSIP number for said Bonds in such notice, or the inclusion of an incorrect CUSIP number, shall not affect the validity of such notice. Such notice shall be given by the Trustee on behalf of the Issuer by mailing a copy of the notice by first-class mail, postage prepaid, or by Electronic Means if to a Securities Depository, at least 30 days (or such shorter period as may be provided in a Supplemental Indenture) prior to the date fixed for redemption or purchase, as applicable, to the Owner of each Bond subject to redemption or purchase, as applicable,

in whole or in part at the Owner's address shown on the Bond Register on the fifteenth day preceding that mailing. Failure by the Owner of a Bond to receive notice pursuant to this Section, or any defect in that notice, as to any Bond shall not affect the validity of the proceedings for the redemption or purchase of any other Bond. Each such notice shall also be mailed to the Paying Agents.

(b) If at the time of mailing of notice of any optional redemption the Issuer shall not have deposited with the Trustee moneys sufficient to redeem all the Bonds called for redemption, if the Issuer shall so direct, such notice may state that it is conditional in that it is subject to the deposit of sufficient moneys with the Trustee not later than the redemption date, and such notice shall be of no effect unless such moneys are so deposited.

Section 7.03. Bonds Redeemed in Part. Any Bond which is to be redeemed only in part shall be surrendered at a place stated for the surrender of Bonds called for redemption in the notice provided for in Section 7.02 (with due endorsement by, or a written instrument of transfer in form satisfactory to the Trustee duly executed by, the Owner thereof or its attorney duly authorized in writing) and the Issuer shall execute and the Trustee shall authenticate and deliver to the Owner of such Bond without service charge, a new Bond or Bonds, of the same Series, of any Authorized Denomination as requested by such Owner in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Bond so surrendered.

Section 7.04. Effect of Redemption. Notice of redemption having been duly given as aforesaid, and moneys for payment of the redemption price of, together with interest accrued to the date fixed for redemption on, the Bonds (or portions thereof) so called for redemption being held by the Trustee, on the date fixed for redemption designated in such notice, the Bonds (or portions thereof) so called for redemption shall become due and payable at the redemption price specified in such notice plus interest accrued thereon to the date fixed for redemption, interest on the Bonds so called for redemption shall cease to accrue, said Bonds (or portions thereof) shall cease to be entitled to any benefit or security under this Indenture, and the Owners of said Bonds shall have no rights in respect thereof except to receive payment of said redemption price and accrued interest.

Section 7.05. Payment of Redemption Price or Purchase Price. If (a) unconditional notice of redemption or purchase by the Issuer has been duly given or duly waived by the Owners or Consent Parties of all Bonds called for redemption or proposed to be purchased; or (b) conditional notice of redemption has been so given or waived and the redemption moneys have been duly deposited with the Trustee, then in either such case the redemption price or purchase price, as applicable, of such Bonds shall be payable on the redemption date or purchase date, as applicable. Payment of the redemption price or purchase price, as applicable, together with accrued interest, shall be, unless otherwise provided by a Supplemental Indenture, made by the Trustee, out of Pledged Revenues or other funds deposited for the purpose, to the Owners of the Bonds called for redemption or purchase, as applicable, upon surrender of such Bonds for redemption or tender of such Bonds for purchase, as applicable.

Section 7.06. Redemption of Tax-Exempt Bonds from Certain Unused Proceeds of such Tax-Exempt Bonds. In connection with the issuance of any Tax-Exempt Bonds, any

Supplemental Indenture authorizing such Tax-Exempt Bonds shall contain a provision requiring mandatory redemption of such Tax-Exempt Bonds from excess proceeds after three years from the date of issuance of such Tax-Exempt Bonds.

ARTICLE VIII

COVENANTS OF THE ISSUER

Section 8.01. General. The Issuer makes the following covenants for the benefit of the Owners of the Bonds, which covenants shall be a part of its contract with such Owners to the effect and with the purpose set forth in the following provisions and sections of this Article.

Section 8.02. Performance of Duties. The Issuer will perform or cause to be performed all its duties required hereunder, including, but not limited to, the collection of the Pledged Revenues and application thereof in accordance with this Indenture.

Section 8.03. Covenant to Impose and Require Imposition of the Mill Levies. For the purpose of paying the principal of, premium if any, and interest on Bonds and, if necessary, replenishing any Senior Reserve Fund or Subordinate Reserve Fund to the respective reserve requirement as set forth in any Supplemental Indenture, and funding the Surplus Fund if so provided in any Supplemental Indenture, the Board covenants and agrees to (a) impose the District Debt Service Mill Levy and to remit, or cause to be remitted to the Trustee all revenues resulting from the imposition of such District Debt Service Mill Levy annually at the time and in the manner provided by law for the levying of the taxes and (b) require the Metropolitan District to impose the Metropolitan District Required Mill Levy as provided for in this Indenture and the Pledge Agreement and to cause to be remitted to the Trustee all revenues resulting from the imposition of such Metropolitan District Required Mill Levy annually at the time and in the manner provided by law for the levying of the taxes. The Board shall require the officers of the District to determine the amount of the District Debt Service Mill Levy and to cause the appropriate officials of El Paso County, to levy, extend and collect the District Debt Service Mill Levy in the manner provided by law for the purpose of providing funds for the payment of the amounts to be paid hereunder promptly as the same, respectively, become due. The District Debt Service Mill Levy shall be levied, assessed, collected, and enforced at the time and in the form and manner and with like interest and penalties as other general taxes in the State. When collected, the taxes levied for the foregoing purposes shall be deposited with the Trustee in the Revenue Fund and applied in accordance with Section 5.02 hereof.

Section 8.04. Further Assurances. At any and all times, the Issuer shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver all and every such further indentures, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning and confirming all and singular the rights, Pledged Revenues and other moneys hereby pledged or assigned, or intended so to be, or which the Issuer may hereafter become bound to pledge or to assign, or as may be reasonable and required to carry out the purposes of this Indenture and to comply with law. The Issuer shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Pledged Revenues and other moneys pledged hereunder and all the rights of every Owner of the Bonds against all claims and demands of all persons whomsoever. The Issuer shall

take all actions to enforce, and shall cooperate fully with the Trustee in enforcing, the rights to receive payments under the Development Agreement. The Issuer shall cause true and correct copies of the Pledge Agreement to be delivered to the Trustee and shall remit or cause to be remitted all revenue generated by the District Debt Service Mill Levy, the Metropolitan District Required Mill Levy, and by the Development Agreement directly to the Trustee for deposit in the Revenue Fund.

Section 8.05. Compliance with Certain Agreements. The Issuer hereby covenants that it will at all times, comply with all material provisions of the Development Agreement and Pledge Agreement and will take no action which may result in, nor fail to take any action necessary to prevent, any noncompliance with or default by the Issuer under any material provision of such agreements. The Issuer also hereby covenants that it currently is not in default under any existing Outstanding Obligation or any agreement in connection therewith.

Section 8.06. Use of Proceeds. The Issuer covenants and agrees that the proceeds of the sale of the Bonds will be deposited and used as provided in this Indenture.

Section 8.07. Certain Deposits into Bond Funds. The Issuer shall make no deposit in the Senior Bond Fund, or the Subordinate Bond Fund, or otherwise apply funds for the payment of any debt service requirement on any Bonds, which are not derived from the Trust Estate, other than expressly permitted herein, unless the Issuer shall first obtain an opinion of Bond Counsel substantially to the effect that such deposit or application of funds shall not adversely affect the exclusion from gross income for purposes of federal income taxation of interest paid or payable on any of the Bonds.

Section 8.08. Eminent Domain Proceedings. The Issuer covenants and agrees that if all or any part of the Project should be taken by eminent domain proceedings or other proceedings authorized by law, for any public or other use under which the property will be tax exempt, any net proceeds realized by the Issuer therefrom shall be deposited in the Revenue Fund.

Section 8.09. Issuer Records. So long as any of the Bonds remain Outstanding, proper books of record and account will be kept by the Issuer showing complete and correct entries of all transactions relating to the Bonds, the Pledged Revenues, the Trust Estate and the Project.

Section 8.10. Right to Inspect. The Trustee and any Owner of any of the Bonds, or any duly authorized agent or agents of the Trustee or such Owner, shall have the right at all reasonable times to inspect all public records, accounts and data which the Issuer may have relating to the Bonds, the Pledged Revenues, the Trust Estate and the Project and all properties appertaining thereto.

Section 8.11. Annual Statements and Audits; Other Information.

(a) The Issuer, while any Bonds are Outstanding and unpaid, will cause an annual audit of its revenues and expenditures to be made by an independent accountant. The Issuer agrees to deliver without request a copy of such audits promptly after completion, and in all events within 180 days after the end of the Fiscal Year to which such audit relates, to the Trustee, who shall deliver copies to any beneficial owner of any

Bond who requests the same. The Issuer also covenants that, to the extent any Bonds are subject to the provisions of the Rule 15c2-12, promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended, the Issuer will take all necessary action to enable compliance with the applicable provisions of such Rule 15c2-12, including entering into an undertaking to provide continuing disclosure as and if required by such Rule 15c2-12 with respect to such Bonds. In addition, the Trustee shall deliver, via Electronic Means, to any beneficial owner, at the beneficial owner's expense, who requests the same a copy of the most recent monthly Trustee statement with respect to the Trust Estate and an annual statement at the end of the calendar year with respect to the Trust Estate which in each case shall show deposits of the Pledged Revenues to the Revenue Fund for such period. The Trustee shall have no duty to review or examine any financial statements received.

(b) The Issuer shall, promptly following receipt by the Issuer, file with the Trustee any notification of any material failure to comply with the Development Agreement or the Pledge Agreement.

Section 8.12. No Other Liens. Other than as specifically provided herein or in a Supplemental Indenture, there are no liens or encumbrances of any nature whatsoever on or against the Pledged Revenues.

Section 8.13. Issuer Existence. The Issuer will maintain its legal identity and existence so long as any of the Bonds remain Outstanding, unless another legal entity by operation of law succeeds to the liabilities and rights of the Issuer hereunder and under the Bonds without materially adversely affecting the privileges and rights of any Owner of any Bonds.

Section 8.14. Protection of Security. The Issuer or any officers, Board members, agents or employees of the Issuer shall not take any action in such manner or to such extent as might materially prejudice the security for the payment of the Bonds and the interest thereon according to the terms thereof, including, without limitation, the giving of consents to actions by others and material amendments to the Development Agreement and the Pledge Agreement. The Trustee, on behalf of the Issuer and at the direction of the Issuer, shall cause all financing statements and continuation statements, if any, related to this Indenture and the Pledged Revenues hereunder, and such other documents as may be necessary, in the opinion of Counsel acceptable to the Trustee, to be kept and filed in manner and such places as may be required by law in order to preserve and protect fully the security of the Owners of the Bonds and the rights of the Trustee hereunder.

Section 8.15. Notices to Trustee. The Issuer shall notify the Trustee in writing of any failure to receive any revenues required to be remitted under the Development Agreement, specifying the reason or reasons for such failure of payment by the Authority or other responsible party. Such notice shall be provided by the Issuer as soon as practicable following the Issuer's learning of such failure.

Section 8.16. Metropolitan District and Pledge Agreement. The Issuer agrees that, without the prior written consent of a Majority Interest, it will not cause or consent to (a) the issuance of any financial obligations by the Metropolitan District secured on a parity lien basis

with revenues generated by the Metropolitan District from the Metropolitan District Required Mill Levy, or (b) any amendment of or modification of the Metropolitan District Service Plan or the Pledge Agreement that would in any manner adversely impact the pledge of revenue for payment of the Bonds. In addition, the Issuer will enforce the collection of all amounts payable by the Metropolitan District under the Pledge Agreement in accordance with the terms and provisions thereof, and will diligently pursue all remedies available to it with regards to such enforcement, whether at law or in equity.

ARTICLE IX

EVENTS OF DEFAULT AND REMEDIES

Section 9.01. Events of Default. Except as otherwise provided in a Supplemental Indenture, if any of the following events occur, it is hereby defined as and declared to be and to constitute an Event of Default, whatever the reason therefor and whether voluntary or involuntary or effected by operation of law:

(a) the Issuer fails to impose its District Debt Service Mill Levy in accordance with the Indenture, or apply the revenue resulting from imposition of the District Debt Service Mill Levy as required by the Indenture; or

(b) the Issuer fails to apply any other component of the Pledged Revenue as required by the Indenture; or

(c) default by the Issuer of its obligations under the Development Agreement;
or

(d) the Metropolitan District fails or refuses to impose the Metropolitan District Required Mill Levy or fails to comply with any other obligation under the Pledge Agreement; or

(e) default in the performance of any of the Issuer's obligations with respect to the transmittal of moneys required by Article V hereof, and such default shall have continued for a period of thirty days; or

(f) the Issuer fails to observe or perform any covenant or agreement on its part under the Indenture, excepting Article V which is provided for in subsection (e) for a period of 60 days after the date on which written notice of such failure, requiring the same to be remedied, shall have been given to the Issuer by the Trustee, or to the Issuer and the Trustee by the Tier Representative for, or the Owners or Consent Parties representing at least twenty five percent (25%) in aggregate principal amount of all Bonds of, the highest priority Tier of which any Bonds are then Outstanding; provided that, if the breach of covenant or agreement is one which cannot be completely remedied within the 60 days after written notice has been given, it shall not be an Event of Default with respect to such Tier as long as the Issuer has taken active steps within the 60 days after written notice has been given to remedy the failure and is diligently pursuing such remedy; or

(g) the Issuer or the Metropolitan District institutes proceedings to be adjudicated a bankrupt or insolvent, or shall consent to the institution of bankruptcy or insolvency proceedings against it, or shall file a petition or answer or consent seeking reorganization or relief under the Bankruptcy Code or any other similar applicable federal or state law, or shall consent to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee or sequestrator (or other similar official) of the Issuer or of any substantial part of its property, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due.

Section 9.02. No Acceleration. Except as may be provided in a Supplemental Indenture applicable to a Series of Bonds Outstanding hereunder, there shall be no rights of acceleration with respect to the Bonds.

Section 9.03. Other Remedies. Following the occurrence of an Event of Default, the Trustee may enforce each and every right granted to the Issuer or the Trustee hereunder. In exercising such rights and the rights given the Trustee under this Article IX, the Trustee shall take such action as, in the judgment of the Trustee applying the standards described in Section 10.06 hereof, would best serve the interests of the Owners.

Section 9.04. Legal Proceedings by Trustee.

(a) If any Event of Default has occurred and is continuing, the Trustee in its discretion may, and upon the written request of the Tier Representative for, or the Owners or Consent Parties of twenty five percent (25%) in aggregate principal amount of all Bonds of, the highest priority Tier of which any Bonds are then Outstanding and receipt of indemnity to its satisfaction, shall, in its own name:

(i) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Owners including the right to require the Issuer to enforce any rights under the Development Agreement, and the Pledge Agreement and to require the Issuer to carry out any other provisions of this Indenture for the benefit of the Owners, subject to such limitations;

(ii) bring suit upon the Bonds; and

(iii) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Owners.

Section 9.05. Discontinuance of Proceedings by Trustee. If any proceeding commenced by the Trustee on account of any Event of Default is discontinued or is determined adversely to the Trustee, then the Issuer, the Trustee, and the Owners shall be restored to their former positions and rights hereunder as though no such proceedings had been commenced.

Section 9.06. Owners May Direct Proceedings. The Tier Representative of the highest priority Tier of which any Bonds are then Outstanding hereunder or the Consent Parties representing at least twenty five percent (25%) of the Owners of the highest priority Tier shall have the right, after furnishing indemnity satisfactory to the Trustee and subject to the last

sentence of this Section 9.06, to direct the method and place of conducting all remedial proceedings by the Trustee hereunder; provided that such direction shall not be in conflict with any rule of law or with this Indenture or unduly prejudice the rights of minority Owners of such Tier; and provided further that the Trustee may decline to follow such directions if the Trustee, upon advice of Counsel, determines that the taking of the action specified in such directions would involve it in personal liability against which indemnity would not be satisfactory.

Section 9.07. Limitations on Actions by Owners. No Owner shall have any right to pursue any remedy hereunder unless:

- (a) the Trustee shall have been given written notice of an Event of Default;
- (b) the Tier Representative for, or the Consent Parties representing at least twenty five percent (25%) in aggregate principal amount of all Bonds of, the highest priority Tier of which any Bonds are then Outstanding shall have requested the Trustee, in writing, to exercise the powers hereinabove granted or to pursue such remedy in its or their name or names;
- (c) the Trustee shall have been offered indemnity satisfactory to it against costs, expenses and liabilities; and
- (d) the Trustee shall have failed to comply with the request described in subsection (b) of this Section 9.07 within a reasonable time and such notification, request, and offer of indemnity are declared in every case at the option of the Trustee to be conditions precedent to any action or cause of action for the enforcement of this 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 Bonds shall have any right in any manner whatsoever to affect, disturb, or prejudice the lien of this 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.

Notwithstanding the foregoing provisions of this Section 9.07 or any other provision of this Indenture, the obligation of the Issuer shall be absolute and unconditional to pay hereunder, but solely from the Pledged Revenues and the remainder of the Trust Estate pledged under this Indenture, the principal or redemption price of, purchase price of and interest on, the Bonds to the respective Owners thereof on the respective due dates thereof, and nothing herein shall affect or impair the right of action, which is absolute and unconditional, of such Owners to enforce such payment.

Section 9.08. Trustee May Enforce Rights Without Possession of Bonds. All rights of Owners under the Indenture and the Bonds may be enforced by the Trustee without the possession of any Bonds or the production thereof at the trial or other proceedings relative thereto, and any proceeding instituted by the Trustee shall be brought in its name for the ratable benefit of the Owners subject to the limitations of this Article IX, including, without limitation, Section 9.10 hereof.

Section 9.09. Delays and Omissions Not To Impair Rights. No delays or omissions in respect of exercising any right or power accruing upon any Event of Default shall impair such right or power or be a waiver of such Event of Default, and every remedy given by this Article IX may be exercised from time to time and as often as may be deemed expedient.

Section 9.10. Application of Moneys in Event of Default. Notwithstanding any provision of Article V hereof, during the continuance of an Event of Default, all moneys held and received by the 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 which result in the collection of such moneys and of the fees, expenses and advances incurred or made by the Trustee (including attorney's fees and expenses) with respect thereto, be applied as follows; provided, however, that any moneys and Defeasance Obligations held by the Trustee pursuant to Section 13.01 hereof with respect to Bonds deemed no longer Outstanding hereunder, and any moneys on deposit in the Rebate Fund, shall not be available and shall not be applied to the purposes set forth in this Section:

(a) *first*, to the payment to the Senior Beneficiaries of all installments of principal and interest then due on the Senior Bonds and all Other Senior Obligations, and if the amount available shall not be sufficient to pay all such amounts in full, then to the payment ratably, in proportion to the amounts due, without regard to due date, to the Owners of the Senior Bonds and to each Other Senior Beneficiary, without any discrimination or preference (provided, that the Trustee shall apply the amount so apportioned to the Owners of the Senior Bonds), as follows:

(A) to the payment of all installments of interest (other than interest on overdue principal) then due and payable in the order in which such installments became due and payable, 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 and other amounts, to the Owners of the Senior Bonds entitled thereto, without any discrimination or preference; and

(B) to the payment of the unpaid principal of any of the Senior Bonds which shall have become due and payable (other than Senior Bonds called for redemption for the payment of which money is held pursuant to the provisions of this Indenture), including, without limitation, the entire principal amount of any Senior Bonds which the Issuer is then currently obligated to purchase, in the order of their stated payment dates, with interest on the principal amount of such Bonds at the respective rates specified therein from the respective dates upon which such Senior Bonds became due and payable, and, if the amount available shall not be sufficient to pay in full the principal of the Senior Bonds by their stated terms due and payable on any particular date, then to the payment of such principal, ratably, according to the amount of such principal then due on such date, to the Owners of the Senior Bonds entitled thereto without any discrimination or preference; and

(b) *second*, to the payment to the Subordinate Beneficiaries of all installments of principal and interest then due on the Subordinate Bonds and all Other Subordinate Obligations, and if the amount available shall not be sufficient to pay all such amounts in full, then to the payment ratably, in proportion to the amounts due, without regard to due date, to the Owners of the Subordinate Bonds and to each Other Subordinate Beneficiary, without any discrimination or preference (provided, that the Trustee shall apply the amount so apportioned to the Owners of the Subordinate Bonds), as follows:

(A) to the payment of all installments of interest (other than interest on overdue principal) then due and payable in the order in which such installments became due and payable, 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 and other amounts, to the Owners of the Subordinate Bonds entitled thereto, without any discrimination or preference; and

(B) to the payment of the unpaid principal of any of the Subordinate Bonds which shall have become due and payable (other than Subordinate Bonds called for redemption for the payment of which money is held pursuant to the provisions of this Indenture), including, without limitation, the entire principal amount of any Subordinate Bonds which the Issuer is then currently obligated to purchase, in the order of their stated payment dates, with interest on the principal amount of such Bonds at the respective rates specified therein from the respective dates upon which such Subordinate Bonds became due and payable, and, if the amount available shall not be sufficient to pay in full the principal of the Subordinate Bonds by their stated terms due and payable on any particular date, then to the payment of such principal, ratably, according to the amount of such principal then due on such date, to the Owners of the Subordinate Bonds entitled thereto without any discrimination or preference.

Section 9.11. Trustee's Right to Receiver. The Trustee shall be entitled as of right to the appointment of a receiver.

ARTICLE X

THE TRUSTEE

Section 10.01. Acceptance of Trust. The Trustee accepts and agrees to execute the trusts hereby created, but only upon the additional terms set forth in this Article, to all of which the parties hereto and the Owners agree.

Section 10.02. No Responsibility for Recitals, Etc. The recitals, statements and representations in the Indenture, in the Bonds, excepting the Trustee's Certificate upon the Bonds, and in any official statement or other disclosure document relating to the Bonds, have been made by the Issuer and not by the Trustee; and the Trustee shall be under no responsibility

for the correctness thereof, or for the validity, priority, or for insuring the Project or collecting any insurance moneys, or for the validity of the execution by the Issuer of this Indenture or of any supplements thereto or instruments of further assurance, or for the validity or sufficiency of the security afforded by this Indenture or the Bonds or intended to be secured hereby, or as to the maintenance of the security hereof. The Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions or agreements on the part of the Issuer hereunder, except as expressly provided herein. With respect to the Trustee's Certificate, the Trustee shall have no responsibility for the opinion of Bond Counsel referred to therein, except to confirm that the text of said opinion is identical to the text of the written opinion delivered to it. The Trustee shall not be accountable for the application of the proceeds of any Bonds authenticated or delivered hereunder which has been made by or on behalf of the Issuer. The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty.

Section 10.03. Trustee May Act Through Agents; Answerable Only for Willful Misconduct or Negligence. The Trustee may exercise any powers hereunder and perform any duties required of it through attorneys, agents, officers or employees, and shall be entitled to advice or opinion of counsel concerning all questions hereunder. The Trustee shall not be answerable for the default or misconduct of any attorney or agent selected by it with reasonable care. The Trustee may act upon the opinion or advice of Counsel selected by it in the exercise of reasonable care, and may in all cases pay such reasonable compensation to any such Counsel in connection therewith. The Trustee shall not be responsible for any loss or damage resulting from any action or nonaction based on its good faith reliance upon such opinion or advice. Except as otherwise provided herein, the Trustee shall not be answerable for the exercise of any discretion or power under the Indenture nor for anything whatever in connection with the trust hereunder, except only its own willful misconduct or negligence.

Section 10.04. Compensation. The Issuer shall pay the Trustee reasonable compensation for its ordinary services hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) and also all advances, agent counsel fees, and other reasonable ordinary expenses and disbursements. In the event that it should become necessary for the Trustee to perform extraordinary services, the Trustee shall be entitled to reasonable additional compensation therefor and to reimbursement for reasonable and necessary extraordinary expenses in connection therewith; provided that if such extraordinary services or extraordinary expenses are occasioned by the negligence or willful misconduct of the Trustee it shall not be entitled to compensation or reimbursement therefor. The Trustee shall be entitled to payment and reimbursement for the reasonable fees, costs and charges of the Trustee as Paying Agent for the Bonds. To the extent permitted by law, the Issuer agrees to indemnify the Trustee against any claims arising out of the exercise and performance of its powers and duties hereunder in good faith and without negligence; provided that this agreement shall not act as a waiver of immunity of the Issuer under the Colorado Governmental Immunity Act. If the Issuer shall have failed to make any such payment, the Trustee shall have, in addition to any other rights hereunder, a claim, prior to the Owners, for the payment of its compensation and indemnification and the reimbursement of its expenses.

Section 10.05. Notice of Default; Right to Investigate. The Trustee shall, within 30 days after the occurrence thereof, give written notice by first-class mail to the Owners or by

Electronic Means to the Securities Depository of an Event of Default of which the Trustee has actual knowledge, unless such Event of Default has been remedied; provided that the Trustee may withhold such notice so long as it in good faith determines that such withholding is in the interest of the Owners. The Trustee may at any time require of the Issuer full information as to the performance of any covenant hereunder and, if information satisfactory to it is not forthcoming, the Trustee may make or cause to be made an investigation into the affairs of the Issuer related to this Indenture and the properties covered thereby.

Section 10.06. Obligation to Act on Defaults. Except during the continuance of an Event of Default, the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee. If any Event of Default shall have occurred and be continuing, the Trustee shall exercise such of the rights and remedies vested in it by this Indenture and shall use the same degree of care in their exercise as a prudent person would exercise or use in the circumstances in the conduct of such person's own affairs in exercising any rights or remedies or performing any of its duties hereunder; provided, that if in the opinion of the Trustee such action may tend to involve expense or liability, it shall not be obligated to take such action unless it is furnished with indemnity satisfactory to it.

Section 10.07. Reliance.

(a) The Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any requisition, resolution, notice, request, consent, waiver, certificate, statement, affidavit, voucher, bond or other paper or document which it in good faith believes to be genuine and to have been passed or signed by the proper persons or to have been prepared and furnished pursuant to any of the provisions of the Indenture; and the Trustee shall be under no duty to make any investigation as to any statement contained in any such instrument, but may accept and rely upon the same as conclusive evidence of the accuracy of such statement. Any action taken by the Trustee pursuant to the 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 registered Bondholder of an Bonds shall be conclusive and binding upon all future owners of the same Bond and upon Bonds issued in place thereof.

(b) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instruments, paper or proceeding, or whenever in the administration of the trusts imposed upon it by this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking, omitting or suffering any action hereunder, the Trustee may request and such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a certificate of the Issuer signed in the name of the Issuer by an authorized officer of the Issuer and such certificate shall be full warrant to the Trustee for any action taken or suffered in good faith under the provisions of this Indenture in reliance upon such certificate, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as it may deem reasonable.

(c) The Trustee will be entitled to conclusively rely upon advice or opinions of Counsel and will not be responsible for any loss or damage resulting from reliance in good faith thereon, except for its own negligence or willful misconduct.

(d) At any and all reasonable times the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right, but shall not be required, to inspect any and all books, papers and records of the Issuer pertaining to the public improvements financed with Bond proceeds and the Bonds, and to take such memoranda from and in regard thereto as may be desired.

(e) The Trustee shall not be required to give any Bond or surety in respect to the execution of its trusts and powers hereunder or otherwise with respect to the premises.

Section 10.08. Trustee May Deal in Bonds. The Trustee may in good faith buy, sell, own, hold and deal in any of the Bonds and may join in any action which any Owners may be entitled to take with like effect as if the Trustee were not a party to this Indenture. The Trustee may also engage in or be interested in any financial or other transaction with the Issuer; provided that if the Trustee determines that any such relation is in conflict with its duties under this Indenture, it shall eliminate the conflict or resign as Trustee.

Section 10.09. Construction of Ambiguous Provisions. The Trustee may construe any ambiguous or inconsistent provisions of the Indenture, and any construction by the Trustee shall be binding upon the Owners. In construing any such provision, the Trustee will be entitled to rely upon opinions of Counsel and will not be responsible for any loss or damage resulting from reliance in good faith thereon except for its own negligence or willful misconduct.

Section 10.10. Resignation of Trustee. The Trustee may resign and be discharged of the trusts created by the Indenture by written resignation filed with the Issuer not fewer than 60 days before the date when it is to take effect; provided notice of such resignation is sent by Electronic Means or mailed to registered owners of the Bonds not fewer than three weeks prior to the date when the resignation is to take effect. Such resignation shall take effect only upon the appointment of a successor trustee.

Section 10.11. Removal of Trustee. Any Trustee hereunder may be removed at any time by an instrument appointing a successor to the Trustee so removed, executed by the Tier Representative of the highest priority Tier of which any Bonds are then Outstanding and filed with the Trustee and the Issuer or, so long as no Event of Default has occurred and is continuing, executed by the Issuer and filed with the Trustee. Such removal shall take effect only upon the appointment of a successor trustee.

Section 10.12. Appointment of Successor Trustee. If the Trustee or any successor trustee resigns or is removed or dissolved, or if its property or business is taken under the control of any state or federal court or administrative body, a vacancy shall forthwith exist in the office of the Trustee, and the Issuer shall appoint a successor and shall mail notice of such appointment to registered owners of the Bonds. If the Issuer fails to make such appointment promptly, the Tier Representative of the highest priority Tier of which any Bonds are then Outstanding may do

so. If the Issuer or the Owners shall fail to appoint a successor Trustee within 90 days after the Trustee has given notice of its resignation, the Trustee shall have the right to petition a court of competent jurisdiction to appoint a successor trustee hereunder.

Section 10.13. Qualification of Successor. A successor trustee shall be a national banking association with trust powers or a bank and trust company or a trust company having capital and surplus of at least \$50,000,000, if there be one able and willing to accept the trust on reasonable and customary terms.

Section 10.14. Instruments of Succession. Any successor trustee shall execute, acknowledge and deliver to the Issuer an instrument accepting such appointment hereunder; and thereupon such successor trustee, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor in the trust hereunder, with like effect as if originally named Trustee herein. The Trustee ceasing to act hereunder shall pay over to the successor trustee all moneys held by it hereunder; and, upon request of the successor trustee, the Trustee ceasing to act, upon payment of its fees and expenses which are owed, and the Issuer shall execute and deliver an instrument transferring to the successor trustee all the estates, properties, rights, powers and trusts hereunder of the Trustee ceasing to act.

Section 10.15. Merger of Trustee. Any corporation into which any Trustee hereunder may be merged or with which it may be consolidated, any corporation to which substantially all the business and assets of the Trustee may be transferred, any corporation to which substantially all the Trustee's corporate trust business may be transferred, or any corporation resulting from any merger or consolidation to which any Trustee hereunder shall be a party, shall be the successor trustee under the Indenture, without the execution or filing of any paper or any further act on the part of the parties hereto, anything herein to the contrary notwithstanding.

Section 10.16. Appointment of Co-Trustee.

(a) It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the laws of the State of Colorado) denying or restricting the right of banking corporations or associations to transact business as Trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture and in particular in case of the enforcement of such document after an Event of Default, or in case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties, in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an additional individual or institution as a separate or Co-Trustee. The following provisions of this Section are adopted to these ends.

(b) The Trustee may appoint an additional individual or institution as a separate or Co-Trustee, in which event each and every remedy, power, right, claim, demand, cause of action, indemnity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in such separate or Co-Trustee but only to the

extent necessary to enable such separate or Co-Trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or Co-Trustee shall run to and be enforceable by either of them.

(c) Should any deed, conveyance or instrument in writing from the Issuer be required by the separate or Co-Trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties and obligations, any and all such deeds, conveyances and instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. In case any separate or Co-Trustee, or a successor to either, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate or Co-Trustee, so far as permitted by law, shall vest in and be exercisable by the Trustee until the appointment of a new Trustee or successor to such separate or Co-Trustee.

Section 10.17. Intervention by Trustee. In any judicial proceeding to which the Issuer is a party and which in the opinion of the Trustee and its Counsel has a substantial bearing on the interests of the Owners, the Trustee may intervene on behalf of Owners and shall do so if requested in writing by the Tier Representative for, or the Consent Parties representing at least twenty five percent (25%) in aggregate principal amount of Bonds of, the highest Tier of which any Bonds are then Outstanding and such Owners or Consent Parties have furnished indemnity satisfactory to the Trustee. The rights and obligations of the Trustee under this Section are subject to the approval of a court of competent jurisdiction.

Section 10.18. Privileges and Immunities of Paying Agent and Authenticating Agent. The Paying Agents and the Authenticating Agents shall, in the exercise of their duties hereunder, be afforded the same rights, discretions, privileges and immunities as the Trustee in the exercise of such duties.

Section 10.19. Expenditure of Trustee Funds. No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers under this Indenture. The Trustee may require that satisfactory indemnity be furnished to it for the reimbursement of all costs and expenses (including, without limitation, attorney's fees and expenses) to which it may be put and to protect it against all liability which it may incur in or by reason of such action, except liability which is adjudicated to have resulted from its negligence or willful misconduct by reason of any action so taken.

Section 10.20. Application of Article X. Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Article.

Section 10.21. Consultation with Counsel. The Trustee may consult with counsel and the written advice of such counsel or any opinion of Counsel or Bond Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

ARTICLE XI

ACTS OF OWNERS; EVIDENCE OF OWNERSHIP OF BONDS

Section 11.01. Acts of Owners; Evidence of Ownership. Any action to be taken by Owners or Consent Parties may be evidenced by one or more concurrent written instruments of similar tenor signed or executed by such Owners or Consent Parties in person or by agent appointed in writing. The fact and date of the execution by any person of any such instrument may be proved by acknowledgment before a notary public or other officer empowered to take acknowledgments or by an affidavit of a witness to such execution. Where such execution is by an officer of a corporation or a member of a partnership, on behalf of such corporation or partnership, such certificate or affidavit shall also constitute sufficient proof of authority. The fact and date of the execution of any such instrument or writing, or the authority of the person executing the same, may also be proved in any other manner which the Trustee deems sufficient. The ownership of Bonds shall be proved by the Bond Register. Any action by the Owner of any Bond shall bind all future Owners of the same Bond in respect of anything done or suffered by the Issuer or the Trustee in pursuance thereof.

ARTICLE XII

AMENDMENTS AND SUPPLEMENTS

Section 12.01. Amendments and Supplements to Indenture without Owners' Consent. Except as provided in this Section 12.01, this Indenture may be amended or supplemented at any time and from time to time, without the consent of the Owners or Other Beneficiaries, by a Supplemental Indenture between the Issuer and the Trustee, for one or more of the following purposes:

- (a) to add additional covenants of the Issuer or to surrender any right or power herein conferred upon the Issuer;
- (b) to cure any ambiguity or formal defect or omission herein;
- (c) for any purpose not inconsistent with the terms of this Indenture or to cure any ambiguity or to correct or supplement any provision contained herein or in any Supplemental Indenture which may be defective or inconsistent with any other provision contained herein or in any Supplemental Indenture, or to make such other provisions in regard to matters or questions arising under this Indenture which shall not be inconsistent with the provisions of this Indenture and which shall not materially adversely affect the interests of the Owners, including the appointment and duties of a Co-Paying Agent, Bond Registrar or Authenticating Agent;
- (d) to modify, eliminate or add to the provisions of this Indenture to such extent as shall be necessary to effect the qualification of this Indenture under the Trust Indenture Act of 1939 or under any similar federal statute hereafter enacted, and to add to this Indenture such other provisions as may be expressly permitted by the Trust Indenture Act of 1939, as from time to time amended;

(e) to provide details in connection with the issuance of any Series of Bonds under Section 3.01 hereof;

(f) to modify, eliminate or add to the provisions of this Indenture to such extent as shall be necessary to maintain any then-existing rating on any Bonds;

(g) to grant to or confer or impose upon the Trustee for the benefit of the Owners of the Bonds any additional rights, remedies, powers, authority, security, liabilities or duties which may lawfully be granted, conferred or imposed and which are not contrary to or inconsistent with this Indenture as theretofore in effect;

(h) to permit the appointment of a Co-Trustee under this Indenture;

(i) to modify, alter, supplement or amend this Indenture to comply with changes in the Code affecting the status of interest on the Bonds as excluded from gross income for federal income tax purposes or the obligations of the Issuer in respect of Section 148 of the Code;

(j) to make any amendments appropriate or necessary to provide for any insurance policy, irrevocable transferable letter of credit, guaranty, surety bond, line of credit, revolving credit agreement or other agreement or security device delivered to the Trustee and providing for (i) payment of the principal, interest and redemption premium on the Bonds or a portion thereof; (ii) payment of the purchase price of the Bonds; or (iii) both clauses (i) and (ii);

(k) to remove the Trustee in accordance with the Section 10.11 hereof;

(l) to add requirements the compliance with which are required by a Rating Agency in connection with issuing a rating with respect to any Series of Bonds;

(m) to accommodate the technical, operational and structural features of Bonds which are issued or are proposed to be issued or changes needed to accommodate bond anticipation notes, commercial paper, Capital Appreciation Bonds and other discounted or compound interest Bonds or other forms of indebtedness which the Issuer from time to time deems appropriate to incur;

(n) to confirm to the Trustee amounts pledged hereunder as Pledged Revenues;

(o) to make other changes permitted or required by this Indenture; and

(p) to modify, alter, amend or supplement this Indenture in any other respect which is not materially adverse to the Owners of any other Obligations secured hereunder.

Before the Issuer and the Trustee shall enter into any Supplemental Indenture pursuant to this Section 12.01, there shall have been delivered to the Trustee an opinion of Bond Counsel stating that such Supplemental Indenture is authorized or permitted by law and is authorized

under this Indenture, that such Supplemental Indenture will, upon the execution and delivery thereof, be valid and binding upon the Issuer in accordance with its terms and will not adversely affect the exclusion from gross income of the interest on the Bonds for federal income tax purposes.

Section 12.02. Amendments to Indenture with Owners' Consent. This Indenture may be amended from time to time, except with respect to (a) the principal or interest payable upon any Bonds, (b) the Interest Payment Dates, the dates of maturity or the redemption or purchase provisions of any Bonds, and (c) this Article XII, by a Supplemental Indenture approved by the Tier Representative of each Tier of the Bonds then Outstanding and by any Other Beneficiaries which would be affected by the action proposed to be taken. This Indenture may be amended in writing with respect to the matters enumerated in clauses (a) through (c) of the preceding sentence with the unanimous written consent of all Owners or Consent Parties and Other Beneficiaries of the Tier or Tiers affected.

Before the Issuer and the Trustee shall enter into any Supplemental Indenture pursuant to this Section 12.02, there shall have been delivered to the Trustee an opinion of Bond Counsel stating that such Supplemental Indenture is authorized or permitted by law and is authorized under this Indenture, that such Supplemental Indenture will, upon the execution and delivery thereof, be valid and binding upon the Issuer in accordance with its terms and will not adversely affect the exclusion from gross income of interest on the Bonds for federal income tax purposes.

Section 12.03. Amendments to the Development Agreement and Pledge Agreement. The Development Agreement and Pledge Agreement may be supplemented and amended as deemed necessary or desirable by the Issuer, except that no amendment of the Development Agreement or the Pledge Agreement shall be made which would materially adversely affect the interests of the Owners, as determined by the Issuer, without: (a) an opinion of counsel to the Issuer and acceptable to the Trustee to the effect that such amendment would not result in a failure of the Development Agreement or the Pledge Agreement, as so amended, to comply with the requirements of this Indenture or adversely affect the security for the Bonds; and (b) the written consent of the Tier Representative of each Tier then Outstanding. The Issuer shall provide written notice of any such amendment to the Trustee. Notwithstanding anything in this Indenture to the contrary, no such amendment which affects the rights, duties, obligations or immunities of the Trustee may be affected without the express written consent of the Trustee.

Section 12.04. Trustee Authorized To Join in Amendments and Supplements; Reliance on Counsel. The Trustee is authorized to join with the Issuer in the execution and delivery of any Supplemental Indenture or amendment permitted by this Article XII and in so doing shall be fully protected by an opinion of Counsel that such Supplemental Indenture or amendment is so permitted and has been duly authorized by the Issuer and that all things necessary to make it a valid and binding agreement have been done. The Trustee may, but shall not be required to, enter into any Supplemental Indenture which affects the Trustee's own rights, duties, obligations or immunities under the Indenture or otherwise.

ARTICLE XIII

DEFEASANCE

Section 13.01. Defeasance.

(a) When the principal or redemption price, as the case may be, of, and interest on, all Bonds and all amounts due with respect to Other Senior Obligations or Other Subordinate Obligations have been paid, or provision has been made for payment of the same, together with the compensation of the Trustee and all other sums payable hereunder by the Issuer, the right, title and interest of the Trustee shall thereupon cease, and the Trustee, on demand of the Issuer, shall release this Indenture and shall execute such documents to evidence such release as may be reasonably required by the Issuer and shall turn over to the Issuer or to such person, body or authority as may be entitled to receive the same all balances then held by it hereunder, not required for the payment of the Bonds. If payment or provision therefor is made with respect to less than all of the Bonds, the particular Bonds, or portion thereof, for which provision for payment shall have been considered made shall be selected by lot by the Trustee, and thereupon the Trustee shall take similar action for the release of this Indenture with respect to such Bonds; provided, however, that prior to the release of this Indenture with respect to such Bonds, the Trustee shall also have received (i) a report of an independent public accounting firm that the moneys and Defeasance Obligations set aside exclusively for such payment are sufficient to meet all payments of principal, interest or purchase price on the Bonds; and (ii) an opinion of Counsel that the conditions precedent to such release have been met.

(b) Provision for the payment of Bonds shall be deemed to have been made when the Trustee holds in trust and irrevocably set aside exclusively for such payment, any combination of (i) moneys sufficient to make such payment; and (ii) Defeasance Obligations maturing as to principal and interest in such amounts and at such times as will provide sufficient moneys (without consideration of any reinvestment thereof) to make such payment, and which Defeasance Obligations are not subject to prepayment, redemption or call prior to their stated maturity; provided that the Trustee shall have received an opinion of Bond Counsel to the effect that such deposit will not adversely affect the exclusion from gross income of the interest on any of the Bonds or cause any of such Bonds to be classified as “arbitrage bonds” within the meaning of the Code. No Bonds in respect of which a deposit under clause (i) or (ii) above, or any combination thereof, has been made shall be deemed paid within the meaning of this Article unless the Trustee is satisfied that the amounts deposited are sufficient to make all payments that might become due on the Bonds. Notwithstanding the foregoing, no delivery to the Trustee under this paragraph (b) shall be deemed a payment of any Bonds which are to be redeemed prior to their stated maturity until such Bonds shall have been irrevocably called or designated for redemption on a date thereafter on which such Bonds may be redeemed in accordance with the provisions of this Indenture and the applicable Supplemental Indenture and prior notice of such redemption shall have been given in accordance with Article VII or the Issuer shall have given the Trustee, in form satisfactory to the Trustee, irrevocable instructions to give, in the manner and at the times

prescribed by Article VII, notice of redemption. Neither the obligations nor moneys deposited with the Trustee pursuant to this Section shall be withdrawn or used for any purpose other than, and shall be segregated and held in trust for, the payment of the principal of, redemption price of and interest on the Bonds with respect to which such deposit has been made.

(c) Anything in Article XII to the contrary notwithstanding, if moneys or Defeasance Obligations have been deposited or set aside with the Trustee pursuant to this Article for the payment of the principal or redemption price of the Bonds and the interest thereon and the principal or redemption price of such Bond and the interest thereon shall not have in fact been actually paid in full, no amendment to the provisions of this Article shall be made without the consent of the Owner of each of the Bonds affected thereby.

(d) Notwithstanding the foregoing, those provisions relating to the Bonds, the maturity of Bonds, interest payments and dates thereof, and the Trustee's remedies with respect thereto, and provisions relating to exchange, transfer and registration of Bonds, replacement of mutilated, destroyed, lost or stolen Bonds, the safekeeping and cancellation of Bonds, nonpresentment of Bonds, the holding of moneys in trust, if any, and the duties of the Trustee in connection with all of the foregoing and the fees, expenses and indemnities of the Trustee, shall remain in effect and shall be binding upon the Trustee, the Issuer and the Owners notwithstanding the release and discharge of the lien of this Indenture.

Section 13.02. Discharge After 40 Years. Notwithstanding any other provision in this Indenture, in the event that any amount of principal of or interest on any Series of Bonds remains unpaid after the application of all Pledged Revenue available therefor on the date which is forty (40) years after the date of issuance of such Series of Bonds, such Series of Bonds and the lien of this Indenture securing payment thereof shall be deemed discharged, the estate and rights hereby granted shall cease, terminate, and be void, and thereupon the Trustee shall cancel and discharge the lien of this Indenture with respect to such Series of Bonds. Upon such discharge, the Owners of such Series of Bonds will have no recourse to the Issuer or any property of the Issuer for the payment of any amount of principal of or interest on the Series of Bonds remaining unpaid.

ARTICLE XIV

MISCELLANEOUS PROVISIONS

Section 14.01. No Personal Recourse. No recourse shall be had for any claim based on the Indenture or the Bonds against any member of the Board, officer, agent or employee, past, present or future, of the Issuer or of any successor body as such, either directly or through the Issuer or any such successor body, under any constitutional provision, statute or rule of law or by the enforcement of any assessment or penalty or otherwise.

Section 14.02. Application of Supplemental Act. The Board specifically elects to apply all of the provisions of Title 11, Article 57, Part 2, C.R.S. (as previously defined, the "Supplemental Act"), to the Bonds.

Section 14.03. Pledged Revenue Subject to Immediate Lien. The creation, perfection, enforcement, and priority of the pledge of revenues to secure or pay Bonds issued pursuant to this Indenture shall be governed by Section 11-57-208 of the Supplemental Act, this Indenture, and any applicable Supplemental Indenture and Bond Resolution. The Trust Estate pledged to the payment of Bonds issued pursuant to this Indenture shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge shall have the priority described herein. The lien of such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the Issuer irrespective of whether such persons have notice of such liens.

Section 14.04. Conclusive Recital. Pursuant to Section 11-57-210 of the Supplemental Act, Bonds issued pursuant to this Indenture shall contain a recital in the applicable Supplemental Indenture and the form of Bond that they are issued pursuant to certain provisions of the Supplemental Act. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of such Bonds after their delivery for value.

Section 14.05. Limitation of Actions. Pursuant to Section 11-57-212, C.R.S., no legal or equitable action brought with respect to any legislative acts or proceedings in connection with the authorization or issuance of Bonds issued pursuant to this Indenture shall be commenced more than thirty days after the authorization of the Bonds.

Section 14.06. Electronic Execution and Storage. The parties hereto agree that the transaction 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.

Section 14.07. Provision of Information to Owners. Upon the written request of the Tier Representative for, or the Consent Parties representing not less than twenty five percent (25%) in principal amount of the Bonds of, any Tier at the time Outstanding, the Trustee shall provide to such Owners or Consent Parties (via Electronic Means or at the expense of the requesting party or parties) copies of documents, reports or other information filed with or delivered to the Trustee or otherwise in the possession of the Trustee pursuant to the provisions of this Indenture.

Section 14.08. Deposit of Funds for Payment of Bonds. If the principal or redemption price of any Bonds becoming due, either at maturity or by call for redemption or otherwise, together with all interest accruing thereon to the due date, has been paid or provision therefor made in accordance with Section 13.01, all interest on such Bonds shall cease to accrue on the due date and all liability of the Issuer with respect to such Bonds shall likewise cease, except as hereinafter provided. Thereafter the Owners of such Bonds shall be restricted exclusively to the funds so deposited for any claim of whatever nature with respect to such Bonds, and the Trustee shall hold such funds in trust for such Owners. Moneys so deposited with the Trustee which remain unclaimed two years after the date payment thereof becomes due shall, at the request of the Issuer and if (a) the Issuer is not at the time to the knowledge of the Trustee in default with respect to any covenant in the Indenture or the Bonds; and (b) the Issuer has provided adequate

indemnification, the Trustee shall pay such moneys to the Issuer; and the Owners of the Bonds for which the deposit was made shall thereafter be limited to a claim against the Issuer but only to the extent of amounts so transferred to the Issuer.

Section 14.09. Action of Owners of Majority in Principal Amount of Tier. Notwithstanding any provision hereof granting any right to any Tier Representative, the Owners of a majority in principal amount of the Outstanding Bonds of such Tier may act to exercise or opt not to exercise such right at any time prior to the exercise thereof by such Tier Representative or if no Tier Representative has been appointed, and later action of such Tier Representative contrary to the act of such majority shall be without effect.

Section 14.10. No Rights Conferred on Others. Nothing herein contained shall confer any right upon any person other than the parties hereto, the Owners of the Bonds, and any Other Beneficiaries.

Section 14.11. Illegal, Etc. Provisions Disregarded. In case any provision in this Indenture or the Bonds shall for any reason be held invalid, illegal or unenforceable in any respect, this Indenture shall be construed as if such provision had never been contained herein.

Section 14.12. Substitute Notice. If for any reason it shall be impossible to make publication of any notice required hereby in a newspaper or newspapers, then such publication or other notice in lieu thereof as shall be made with the approval of the Trustee shall constitute a sufficient giving of such notice.

Section 14.13. Notices.

(a) Unless otherwise expressly specified or permitted by the terms hereof, all notices, consents or other communications required or permitted hereunder shall be deemed sufficiently given or served if given in writing, mailed by first-class mail, postage prepaid and addressed as follows or if given in writing via Electronic Means:

If to the Issuer: SW Downtown Business Improvement District
c/o Spencer Fane LLP
1700 Lincoln Street, Suite 3800
Denver, CO 80203
Attention: Russell W. Dykstra
Telephone: (303) 839-3845
Email: rdykstra@spencerfane.com

If to the Trustee: UMB Bank, n.a.
1670 Broadway
Denver, CO 80202
Attention: Leigh Lutz
Telephone: (303) 839-2220
Email: leigh.lutz@umb.com

If to the Owner of a Bond, addressed to such Owner at the address shown on the books of the Registrar kept pursuant hereto.

(b) The Issuer and the Trustee may from time to time by notice in writing to each other designate a different address or addresses for notice hereunder.

Section 14.14. Successors and Assigns. All the covenants, promises and agreements in this Indenture contained by or on behalf of the Issuer, or by or on behalf of the Trustee, shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

Section 14.15. Headings for Convenience Only. The descriptive headings in this Indenture are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

Section 14.16. Counterparts. This Indenture may be executed in any number of counterparts, each of which when so executed and delivered shall be an original; but such counterparts shall together constitute but one and the same instrument.

Section 14.17. Applicable Law. This Indenture shall be governed by and construed in accordance with the laws of the State of Colorado.

Section 14.18. Payments Due on Days Which Are Not Business Days. In any case where the date of maturity of interest on or principal of the Bonds or the date fixed for redemption or purchase of any Bonds shall be a day which is not a Business Day, then payment of interest or principal or redemption or purchase price need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption or purchase, and no interest on such payment shall accrue for the period after such date.

Section 14.19. Notice of Change. The Trustee, as a matter of courtesy and accommodation, shall give notice to the Rating Agencies then rating the Bonds, of any of the following events:

- (a) a change in the Trustee;
- (b) a material amendment to the Indenture; and
- (c) payment or provision therefor of all the Bonds.

The Trustee shall have no liability or obligation to the Rating Agencies or to any other person if it shall fail to give such notice.

Section 14.20. Patriot Act Notice. The Trustee hereby notifies the Issuer that pursuant to the requirements of the Patriot Act it is required to obtain, verify, and record information that identifies the Issuer, which information includes the name and address of the Issuer and other information that will allow the Trustee to identify the Issuer in accordance with the Patriot Act. The Issuer hereby agrees that it shall promptly provide such information upon request by the Trustee.

Section 14.21. Limitation of Liability of Issuer. No covenant, provision or agreement of the Issuer herein or in the Bonds or in any other document executed by the Issuer in connection with the issuance, sale and delivery of the Bonds, or any obligation herein or therein imposed upon the Issuer or breach thereof, shall give rise to a pecuniary liability of the Issuer or a charge against its general credit or taxing powers or shall obligate the Issuer financially in any way except with respect to this Indenture and the application of Pledged Revenues and the remainder of the Trust Estate. No failure of the Issuer to comply with any term, condition, covenant or agreement therein shall subject the Issuer to liability for any claim for damages, costs or other financial or pecuniary charges except to the extent that the same can be paid or recovered from the Pledged Revenues or remainder of the Trust Estate. No execution on any claim, demand, cause of action or judgment shall be levied on or collected from the general credit or general funds of the Issuer.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Issuer and the Trustee have caused this Indenture to be executed by their duly authorized officers all as of the day and year first above written.

SW DOWNTOWN BUSINESS
IMPROVEMENT DISTRICT

By _____, President

Attest:

By _____, Secretary

UMB BANK, N.A., as Trustee

By _____

[Signature Page to Master Indenture of Trust]

EXHIBIT A

FORM OF

SW DOWNTOWN BUSINESS IMPROVEMENT DISTRICT PROJECT FUND DISBURSEMENT REQUEST

I, _____, the duly qualified and acting Issuer Representative of SW Downtown Business Improvement District (the “Issuer”), and I, _____, the representative of _____, the Issuer’s Engineer, hereby approve, on behalf of the Issuer, pursuant to Section 5.08 of the Trust Indenture dated as of _____, 2020, as amended and supplemented (the “Indenture”), between the Issuer and UMB Bank, N.A. (the “Trustee”), the disbursement from the Project Fund (as described in the Indenture) be made to the Payee specified in the attachment hereto (which Payee may be the Issuer) under the Indenture in the amount and for the payment or reimbursement of Actual Capital Costs described herein. All capitalized terms not otherwise defined herein shall be defined as in the Indenture.

In connection with this request, each of the undersigned represents as follows:

1. The Issuer Representative hereby certifies that no event has occurred and is continuing which constitutes an Event of Default, as defined in the Indenture, or would constitute an event of Default but for the requirement that notice be given or time elapse, or both. The Issuer Representative hereby further certifies that no Event of Default has occurred and is continuing under the Development Agreement. The Issuer Representative hereby further certifies that a form of this requisition has been provided to the Authority at least ten (10) days prior to the date hereto, and that the Authority has not objected to the payment of any item included in this requisition.

2. The Issuer’s Engineer representative hereby certifies that he/she: (i) is an independent licensed engineer experienced in the design and construction of public improvements in the Colorado Springs or Denver metropolitan areas; and (ii) has reviewed all information, including bills, statements, pay request forms from first-tier contractors and suppliers, conditional lien waivers, and copies of each check issued by the Issuer or the Developer for each item of Project Costs listed on the statement submitted for payment. The Issuer’s Engineer hereby approves such payment, and certifies that such Project Costs were actually incurred and not previously reimbursed to the Developer or the Issuer and the items for which such Project Costs relate were constructed in compliance with all applicable laws, ordinances and regulations.

3. Each representative signing below certifies that the information contained herein is true and accurate to the best of each individual’s information and belief and, to the best knowledge of such individual, the payment requested qualifies as either Pre-Financing Costs, or Actual Capital Costs under the Indenture.

4. A copy of each payee’s Form W-9 or Form W-8, as applicable, has been provided to the Trustee by the payee or the Issuer (unless previously provided). The Issuer acknowledges that the Trustee cannot process such disbursement request until the Trustee is

in receipt of a valid Form W-9 or Form W-8, as applicable, in accordance with the Code and regulations thereunder and the Foreign Account Tax Compliance Act.

ATTACH PAYMENT AMOUNT AND PAYEE DETAILS

[additional certifications, if any, required of Issuer by an Supplemental Indenture to be inserted here and attached hereto]

Date: _____

SW DOWNTOWN BUSINESS
IMPROVEMENT DISTRICT

By _____
Issuer Representative

[ADD SIGNATURE BLOCK FOR ISSUER
ENGINEER]

**EXHIBIT B
BALLOT QUESTIONS**