

ORDINANCE NO. 4773

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MICHIGAN CITY, INDIANA, AUTHORIZING THE CITY OF MICHIGAN CITY, INDIANA, TO ISSUE ONE OR MORE SERIES OF ITS TAXABLE ECONOMIC DEVELOPMENT **EID REVENUE BONDS AND APPROVING AND AUTHORIZING OTHER ACTIONS IN RESPECT THERETO IN CONNECTION WITH THE SOLA PROJECT**

WHEREAS, Indiana Code 36-7-11.9 and 12, as amended from time to time (collectively, the “Act”), declares that the financing and refinancing of economic development facilities constitutes a public purpose; and

WHEREAS, pursuant to the Act, the City of Michigan City, Indiana (the “City”) is authorized to issue revenue bonds for the purpose of financing, reimbursing or refinancing the costs of acquisition, construction, renovation, installation and equipping of economic development facilities in order to foster diversification of economic development and creation or retention of opportunities for gainful employment in or near the City; and

WHEREAS, the Michigan City Redevelopment Commission (the “Redevelopment Commission”), the governing body of the City of Michigan City Department of Redevelopment and the Redevelopment District of the City (the “District”), exists and operates under the provisions of Indiana Code 36-7-14, as amended from time to time (the “Redevelopment Act”); and

WHEREAS, the Redevelopment Commission has previously declared an area within the City as an economic development area and known as the “Consolidated Economic Development Area” (the “Area”) and designated portions of the Area as allocation areas in accordance with Section 39 of the Redevelopment Act for the purposes of capturing *ad valorem* property taxes levied and collected on all taxable real property from the incremental assessed value in such Area; and

WHEREAS, the City, the Redevelopment Commission, and YAB Development Partners, LLC (the “Developer”), have negotiated a Second Amended and Restated Development Agreement, dated as of December 10, 2024, as amended by a First Amendment to Second Amended and Restated Development Agreement, dated as of June 9, 2025 (collectively, the “Development Agreement”) to provide for the acquisition, construction and equipping of a mixed-use development including (i) an approximately 242-room hotel; (ii) approximately 21,000 square feet of retail and/or commercial space; (iii) approximately 188 condos/townhomes and related improvements with a portion of such condos to be owned by the Developer or an affiliate thereof, with the remaining condos to be sold to third parties; and (iv) an approximately 385 parking structure and any supporting areas (collectively, the “Project”) as more fully described in the Development Agreement; and

WHEREAS, the Redevelopment Commission on July 14, 2025, approved and adopted a resolution for the purpose of making certain amendments to the Area and its plan to designate an area, presently part of the Area, as a separate allocation area pursuant to Section 39 of the

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Redevelopment Act to be known as the “SoLa Project Allocation Area” (the “SoLa Project Allocation Area”) for purposes of capturing *ad valorem* property taxes levied and collected on all taxable real property from the incremental assessed value located in the SoLa Project Allocation Area (the “SoLa Project Allocation Area TIF Revenues”); and

WHEREAS, the Common Council of the City (the “Common Council”) has approved and adopted an ordinance for the purpose of establishing an economic improvement district within the City in accordance with Indiana Code 36-7-22, as amended from time to time (the “EID Act”), to be known as the “SoLa Project Economic Improvement District” (the “EID District”) and appointing the EID District’s initial governing board (“EID Board”), for the purpose of levying special assessments on parcels of real property located within the EID District (“EID Assessments”) to be deposited in an economic improvement fund to finance economic development projects in the EID District (the “EID Assessment Revenues”); and

WHEREAS, prior to the issuance of the Bonds, the EID Board will provide notice of, including mailing notice to the owners of property within the EID District, and hold a public hearing on the proposed EID Assessments and thereafter adopt a resolution establishing the EID Assessments and pledging those EID Assessment Revenues to the Bonds; and

WHEREAS, the Developer has advised the City, the City of Michigan City Economic Development Commission (the “Economic Development Commission”) and the Redevelopment Commission concerning the Project, and has requested that the City authorize and issue its economic development revenue bonds in one or more series under the Act, to be designated as the “City of Michigan City, Indiana, Taxable Economic Development EID Revenue Bonds, Series 2025 (SoLa Project)” (with such further series or different series designation as determined to be necessary or appropriate), one or more series of which may be subordinate to one or more series of such Bonds, in an aggregate principal amount not to exceed Eighty Million Dollars (\$80,000,000) provided that such amount shall be reduced by the aggregate principal amount of the Senior TIF Bonds (as defined herein) issued by the City (the “Bonds”), the net proceeds of such Bonds to be used for the purpose of financing a portion of the costs of the Project, capitalized interest on the Bonds, a debt service reserve fund from proceeds of the Bonds or the cost of a reserve surety, if necessary, and costs of issuance of the Bonds; and

WHEREAS, in addition to the Bonds authorized herein, the Common Council has approved and adopted an ordinance authorizing the issuance of economic development tax increment revenue bonds of the City in one or more series under the Act, to be designated as the “City of Michigan City, Indiana, Economic Development Tax Increment Revenue Bonds, Series 2025 (SoLa Project)” (with such further series or different series designation as determined to be necessary or appropriate) in an aggregate principal amount not to exceed Forty-Seven Million Five Hundred Thousand Dollars (\$47,500,000) (the “Senior TIF Bonds”), for the purpose of financing a portion of the costs of the Project, and which Senior TIF Bonds will be payable from a senior pledge of the SoLa Project Allocation Area TIF Revenues (the “Senior TIF Pledge”); and

WHEREAS, the Economic Development Commission, following a public hearing, pursuant to Section 24 of the Act, adopted a resolution which has been transmitted to the Common Council (i) finding that the financing of all or a portion of the costs of the Project will not have an adverse competitive effect on any similar facilities already constructed or operating in or about the

City; (ii) further finding that the proposed financing of all or a portion of the costs of the Project complies with the purposes and provisions of the Act; (iii) further finding that such financing will be of benefit to the health and public welfare of the City; (iv) approving the financing of all or a portion of the costs of the Project, capitalized interest on the Bonds, a debt service reserve fund from proceeds of the Bonds or the cost of a reserve surety, if necessary, and costs of issuance of the Bonds, including the forms and terms of a Financing and Loan Agreement (the "Financing Agreement") by and between the City and the Developer (or an affiliate thereof), a Trust Indenture (the "Trust Indenture") between the City and a bank to be selected to serve as trustee for the Bonds, the Bonds from the City to the bondholders more fully described below, and this Ordinance (the Financing Agreement, the Trust Indenture, the Bonds, and this Ordinance, collectively, the "Financing Documents"), presented to the Economic Development Commission; and (v) recommending that this Common Council find that the proposed financing of the cost of the Project will be of benefit to the health and general welfare of the City and its citizens, and complies with the purposes and provisions of the Act, and that this Common Council adopt an ordinance approving such financings; and

WHEREAS, no member of this Common Council has any pecuniary interest in any employment, financing agreement or other contract made under the provisions of the Act and related to the Bonds authorized herein, which pecuniary interest has not been fully disclosed to the Common Council, and no such member has voted on any such matter, all in accordance with the provisions of Section 16 of the Act;

NOW, THEREFORE, BE IT ORDAINED By the Common Council of the City of Michigan City, Indiana, that:

Section 1. It is hereby found that the Project constitutes an "economic improvement project" within the meaning of the EID Act and constitutes an "economic development project" and "economic development facilities" within the meaning of the Act and the financing of a portion of the costs of the economic development facilities constituting the Project referred to in the Financing Documents previously approved by the Economic Development Commission and presented to this Common Council; the issuance and sale of the Bonds; the use of the proceeds of the Bonds to finance a portion of the costs of the Project, pay capitalized interest on the Bonds, fund a reserve fund from proceeds of the Bonds or by the purchase of a surety policy and pay the costs of issuance of the Bonds, the payment of the Bonds from the Note Payments (as hereinafter defined), a junior pledge of the SoLa Project Allocation Area TIF Revenues on a basis junior to the pledge of the SoLa Project Allocation Area TIF Revenues to the Senior TIF Bonds for a period not to exceed twenty-five (25) years from the earlier of the date of issuance of the Senior TIF Bonds or the Bonds (the "Junior TIF Pledge"), a pledge of the EID Assessment Revenues by the EID District, and other sources described in the Financing Documents, and the securing of the Bonds under the Indenture comply with the purposes and provisions of the Act and will be of benefit to the health, prosperity, economic stability and general welfare of the City and its citizens.

Section 2. At the public hearing held before the Economic Development Commission, the Economic Development Commission considered whether the Project would have an adverse competitive effect on any similar facilities located in or near the City. This Common Council hereby confirms the findings set forth in the Economic Development Commission's resolution,

and concludes that the Project will be of benefit to the health, prosperity, economic stability and general welfare of the citizens of the City.

Section 3. The substantially final forms of the Financing Documents shall be incorporated herein by reference and shall be inserted in the minutes of the Common Council and kept on file by the Clerk of the City (the "Clerk"). In accordance with the provisions of Indiana Code 36-1-5-4, two (2) copies of the Financing Documents are on file in the office of the Clerk for public inspection.

Section 4. The City shall issue the Bonds in one (1) or more series in the maximum aggregate principal amount not to exceed Eighty Million Dollars (\$80,000,000) provided that such amount shall be reduced by the aggregate principal amount of the Senior TIF Bonds issued by the City, which Bonds shall mature no later than September 1, 2060, and shall bear interest at a per annum rate not exceeding ten percent (10%) per annum (determined through a negotiated sale, a private placement, or sale to the Developer or an affiliate thereof, as set forth herein). The Bonds are to be issued for the purpose of procuring funds to (a) pay all or a portion of the costs of acquiring, constructing and equipping the Project, (b) pay capitalized interest on the Bonds, (c) fund a debt service reserve fund or pay the cost of a reserve surety (if necessary), and (d) pay all incidental expenses on account of the issuance of the Bonds and acquiring any credit enhancement with respect thereto. The Bonds shall be issued in one (1) or more series as fully registered bonds in denominations of \$5,000, or any integral multiple thereof not exceeding the aggregate principal amount of the Bonds maturing in any one (1) year (or in denominations of \$100,000 and \$1,000 in excess thereof) (each an "Authorized Denomination") as may be determined by the Mayor of the City (the "Mayor") and the Controller of the City (the "Controller"), shall be dated the date of their delivery as set forth in the Trust Indenture, shall be fully registered without coupons and numbered consecutively from R-1 upward, and shall be payable in the medium and at the place or places as set forth in the Trust Indenture. The Bonds may be issued as serial bonds and/or term bonds subject to mandatory sinking fund redemption. Principal of and interest on the Bonds shall be payable semiannually on March 1 and September 1, commencing not earlier than March 1, 2026, and shall have a final principal payment due not later than September 1, 2060. Interest on the Bonds shall be calculated according to a three hundred sixty (360)-day calendar year containing twelve (12) thirty (30)-day months.

The Mayor and the Controller, upon consultation with the City's municipal advisor (the "Municipal Advisor"), may designate maturities of the Bonds (or a portion thereof in Authorized Denominations) that shall be subject to optional redemption and/or mandatory sinking fund redemption and the corresponding redemption dates, amounts and prices (including premium, if any) and such terms shall be as set forth in the Financing Documents, provided that the Bonds shall not be subject to optional redemption and/or mandatory sinking fund redemption prior to September 1, 2028.

The Bonds shall be executed on behalf of the City by, and bear the manual or facsimile signature of, the Mayor and the Clerk, and the seal of the City shall be thereunto affixed (or imprinted or engraved if in facsimile).

The Bonds shall be in the form set forth in the final form of the Trust Indenture.

The Bonds shall be special and limited obligations of the City, payable solely from the trust estate created and established under the Trust Indenture (the "Trust Estate"), which Trust Estate shall consist of the funds and accounts created under the Trust Indenture together with (i) promissory note payments (the "Note Payments") made by the Developer (or an affiliate thereof) under the Financing Agreement, (ii) the Junior TIF Pledge subject to the terms and conditions of a pledge agreement between the Redevelopment Commission and the City, and (iii) a pledge by the EID District of the EID Assessment Revenues subject to the terms and conditions of a pledge agreement between the EID Board and the City, and upon such terms and conditions as otherwise provided in the Financing Documents and this Ordinance. The Bonds and the interest thereon do not and shall never constitute an indebtedness of, or a charge against the general credit, or taxing power, of the City, but shall be special and limited obligations of the City, payable solely from the sources as described in the Financing Documents.

Section 5. The Mayor and the Controller are authorized to provide for the sale of any series of the Bonds either through a negotiated sale or a private placement, or to the Developer or an affiliate thereof, based upon the advice provided by the Municipal Advisor as set forth herein. The Common Council hereby approves Stifel, Nicolaus & Company, Incorporated to serve as either the underwriter or the placement agent (the "Underwriter" or the "Placement Agent") with respect to the sale of any series of the Bonds through a negotiated sale or a private placement.

The Mayor and the Controller, upon consultation with the Municipal Advisor, may determine to provide for any series of the Bonds to be (i) sold through a negotiated sale in the manner and upon the terms and conditions set forth in a purchase agreement between the City and the Underwriter, (ii) placed through a private placement with a qualified purchaser in the manner and upon the terms and conditions set forth in a placement agent agreement between the City and the Placement Agent, at such prices and on such terms as may be determined at the time of such sale or placement and approved by the Mayor and the Controller, or (iii) sold to the Developer or an affiliate thereof. The Mayor and the Controller are hereby authorized to approve and execute a bond purchase agreement in the event any series of the Bonds are sold by negotiated sale to the Underwriter or sold to the Developer or an affiliate thereof, or a placement agent agreement in the event any series of the Bonds are privately placed by the Placement Agent (each, the "Agreement") for any series of the Bonds, in a form and substance approved by such officers, such approval to be conclusively evidenced by the execution thereof. Such Agreement may set forth the definitive terms and conditions for such sale or placement, but all such terms and conditions must be consistent with the terms and conditions of this Ordinance, including without limitation, the interest rate or rates on the Bonds which shall not exceed the maximum rate of interest for the Bonds authorized pursuant to this Ordinance.

In connection with the sale of the Bonds, the Mayor and the Controller each are authorized to take such actions and to execute and deliver such agreements and instruments as they deem advisable to obtain a rating on the Bonds, if necessary, bond insurance for the Bonds, and/or a surety policy to satisfy any reserve requirement, if necessary, and the taking of such actions and the execution and delivery of agreements and instruments are hereby approved.

Section 6. In the event the Bonds are sold by negotiated sale to the Underwriter, the Mayor and Controller are hereby authorized to approve the preparation and distribution of a Preliminary Official Statement for the Bonds. The Mayor and Controller are hereby authorized to

deem and determine the Preliminary Official Statement as the near final Official Statement with respect to the Bonds for purposes of Rule 15c2-12 of the Securities and Exchange Commission (the "SEC Rule"), subject to completion in accordance with such SEC Rule and in a manner acceptable to the Mayor and Controller of the City, and to place the Preliminary Official Statement into final form as the Final Official Statement. The Mayor and Controller of the City are hereby authorized to sign the Final Official Statement and by such signature approve of its distribution. In the event that the Bonds are privately placed by the Placement Agent, and a private placement memorandum or term sheet is determined to be necessary or desirable, the Mayor and the Controller are each authorized to approve a form of such document and each are authorized to execute said document as necessary with said execution evidencing their respective approval of such document.

If necessary in order to assist the Underwriter in a negotiated sale of the Bonds in complying with paragraph (b)(5) of the SEC Rule by undertaking to make available appropriate disclosure about the City and the Bonds to participants in the municipal securities market, the City hereby covenants, agrees and undertakes, in accordance with the SEC Rule, unless excluded from the applicability of the SEC Rule or otherwise exempted from the provisions of paragraph (b)(5) of the SEC Rule, that it will comply with and carry out all of the provisions of the continuing disclosure contract. "Continuing disclosure contract" shall mean that certain continuing disclosure contract executed by the City and dated the date of issuance of the Bonds, as originally executed and as it may be amended from time to time in accordance with the terms thereof. The execution and delivery by the City of the continuing disclosure contract, and the performance by the City of its obligations thereunder by or through any employee or agent of the City, are hereby approved, and the City shall comply with and carry out the terms thereof.

Section 7. Each of the Mayor, the Clerk, the Controller and any other officer of the City are authorized and directed to execute the Financing Documents, such other documents approved or authorized herein and any other document which may be necessary, appropriate or desirable to consummate the transaction contemplated by the Financing Documents and this Ordinance, and their execution is hereby confirmed on behalf of the City. The signatures of the Mayor, Clerk, the Controller and any other officer of the City on the Bonds which may be necessary or desirable to consummate the transaction, and their execution is hereby confirmed on behalf of the City. The signatures of the Mayor, the Clerk and any other officer of the City on the Bonds may be facsimile signatures or electronic signatures. The Mayor, the Controller and any other officer of the City are authorized to arrange for the delivery of such Bonds to the purchaser thereof, payment for which will be made in the manner set forth in the Financing Documents. The Mayor, the Clerk, the Controller and any other officer of the City may, by their execution of the Financing Documents requiring their signatures and imprinting of their facsimile signatures thereon, approve any and all such changes therein and also in those Financing Documents which do not require the signature of the Mayor, the Clerk, the Controller or any other officer of the City without further approval of this Common Council or the Economic Development Commission if such changes do not affect terms set forth in Sections 27(a)(1) through and including (a)(10) of the Act.

Section 8. The provisions of this Ordinance and the Financing Documents securing the Bonds of a series shall constitute a contract binding between the City and the holders of the Bonds of such series, and after the issuance of the Bonds, this Ordinance shall not be repealed or amended

in any respect which would adversely affect the rights of such holders so long as the Bonds or the interest thereon remains unpaid.

Section 9. The Common Council hereby finds that (a) the Project and the related financing assistance for the Project provided in the Financing Documents are consistent with the economic development plan for the Area and the SoLa Project Allocation Area; (b) the Developer would not undertake the Project without the financing assistance provided in Financing Documents; and (c) the Project furthers the economic development of the SoLa Project Allocation Area and the Area generally.

Section 10. This Common Council does hereby acknowledge and approve the Junior TIF Pledge to the payment of the Bonds pursuant to the Trust Indenture, junior to the Senior TIF Pledge thereof to the Senior TIF Bonds and any other obligations which by their terms may be payable on a basis senior to the Bonds. Pursuant to Indiana Code 5-1-14-4, the Junior TIF Pledge, junior to the Senior TIF Pledge, pursuant to the Trust Indenture is intended to be binding from the time the pledge is made, with the Junior TIF Pledge so pledged and thereafter received by the City to be immediately subject to the lien of the pledge, junior to the Senior TIF Pledge, without any further act, and the lien of such pledge, junior to the lien of the Senior TIF Pledge, to be binding against all parties having claims of any kind, in tort, contract, or otherwise against the City, regardless of whether the parties have notice of any such lien.

Section 11. This Common Council does hereby acknowledge and approve the pledge of the EID Assessment Revenues to the payment of the Bonds pursuant to the Trust Indenture. Pursuant to Indiana Code 5-1-14-4, the pledge of the EID Assessment Revenues pursuant to the Trust Indenture is intended to be binding from the time the pledge is made, with such EID Assessment Revenues so pledged and thereafter received by the City to be immediately subject to the lien of the pledge without any further act, and the lien of such pledge to be binding against all parties having claims of any kind, in tort, contract, or otherwise against the City, regardless of whether the parties have notice of any such lien.

Section 12. No stipulation, obligation or agreement herein contained or contained in the Financing Documents, the Bonds or in any other agreement or document executed on behalf of the City shall be deemed to be a stipulation, obligation or agreement of any member of the Common Council, or any officer, agent or employee of the City in his or her individual capacity, and no such member of the Common Council, officer, agent or employee shall be personally liable on the Bonds or be subject to personal liability or accountability by reason of the issuance thereof.

Section 13. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

Section 14. It is hereby determined that all formal actions of the Common Council relating to the adoption of this Ordinance were taken in one or more open meetings of the Common Council, that all deliberations of the Common Council and of its committees, if any, which resulted in formal action, were in meetings open to the public, and that all such meetings were convened, held and conducted in compliance with applicable legal requirements, including Indiana Code 5-14-1.5, as amended.

Section 15. The Mayor, the Clerk, the Controller and any other officer of the City are hereby authorized and directed, in the name and on behalf of the City, to execute, attest and deliver such further instruments and documents, and to take such further actions, in the name of the City as in their judgment shall be necessary or advisable in order fully to consummate the transactions described herein and carry out the purposes of this Ordinance, and any such documents heretofore executed and delivered and any such actions heretofore taken, be, and hereby are, ratified and approved.

Section 16. All acts of the officers of the City which are in conformity with the purpose and intent of this Ordinance and in the furtherance of the issuance of the Bonds and the execution, delivery and performance of the documents and agreements authorized hereby are in all respects ratified, approved and confirmed.

Section 17. Any ordinances, resolutions or orders or parts thereof in conflict with this Ordinance are to the extent of such conflict hereby repealed.

Section 18. This Ordinance shall be in full force and effect upon adoption and compliance with Indiana Code 36-4-6.

This Ordinance to be effective upon passage by the Council and approval by the Mayor.

INTRODUCED BY: Tracie Tillman
Tracie Tillman, President
Michigan City Common Council

Passed by the Common Council of the City of Michigan City, Indiana, this 4th day of August, 2025 by a vote of ____ to ____.

Tracie Tillman
Tracie Tillman, President
Michigan City Common Council

(Approved) (Vetoed) by me, this 5 day of August, 2025.

Angie Nelson Deutch
Angie Nelson Deutch, Mayor
City of Michigan City, Indiana

ATTEST:

Gale A. Neulieb
Gale A. Neulieb, Clerk
City of Michigan City, Indiana MS 47973573

NOTE: Not for execution as this time. This document is the form of the Trust Indenture related to the below-referenced bonds that will be used in connection with the issuance of such bonds, with such changes in form or substance as may be authorized by the officers of the City executing the same. All dates and blanks will be filled in and the Trust Indenture will be completed prior to execution thereof following the sale of such bonds.

TRUST INDENTURE

BETWEEN

CITY OF MICHIGAN CITY, INDIANA

AND

**[TRUSTEE],
Indianapolis, Indiana
As Trustee**

[\$XX,XXX,XXX]

**CITY OF MICHIGAN CITY, INDIANA
TAXABLE ECONOMIC DEVELOPMENT EID REVENUE BONDS, SERIES 20 ____A
(SOLA PROJECT)**

[\$XX,XXX,XXX]

**CITY OF MICHIGAN CITY, INDIANA
TAXABLE SUBORDINATE ECONOMIC DEVELOPMENT EID REVENUE BONDS,
SERIES 20 ____B
(SOLA PROJECT)**

Dated as of _____ 1, 20 ____

FILED

AUG 07 2025

**GALE A. NEULIEB
CITY CLERK
CITY OF MICHIGAN CITY**

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TRUST INDENTURE

THIS TRUST INDENTURE dated as of the ____ day of _____, 20____, by and between the CITY OF MICHIGAN CITY, INDIANA (“Issuer”), a municipal corporation duly organized and existing under the laws of the State of Indiana and [TRUSTEE], a [national banking association duly organized, existing and authorized to accept and execute trusts of the character herein set out under the laws of the United States of America with its Indiana corporate trust office in the City of Indianapolis, Indiana], as Trustee (“Trustee”);

WITNESSETH:

WHEREAS, Indiana Code, Title 36, Article 7, Chapters 11.9, 12, 14 and 25 (collectively, “Act”), authorize and empower the Issuer to issue revenue bonds and to provide the proceeds therefrom for the purpose of financing economic development facilities and vests such Issuer with powers that may be necessary to enable it to accomplish such purposes; and

WHEREAS, in accordance with the provisions of the Act, the Issuer has induced YAB Development Partners, LLC (the “Company”), to proceed with the construction of the project described in Exhibit A attached hereto (the “Project”) in the jurisdiction of the Issuer by offering to issue its (i) Taxable Economic Development EID Revenue Bonds, Series 20____A (SoLa Project) in the aggregate principal amount of \$[XX,XXX,XXX] (the “Series 20__A Bonds”) and (ii) Taxable Subordinate Economic Development EID Revenue Bonds, Series 20____B (SoLa Project) in the aggregate principal amount of \$[XX,XXX,XXX] (the “Series 20__B Bonds” and collectively with the Series 20__A Bonds, the “Series 20__ Bonds”) pursuant to this Trust Indenture and to provide the proceeds thereof to the Company pursuant to the Financing and Loan Agreement, dated as of _____ 1, 20____ (“Financing and Loan Agreement”) for the purpose of paying certain costs of the Project, including capitalized interest on the Series 20__ Bonds; and

WHEREAS, the execution and delivery of this Indenture and the issuance of revenue bonds under the Act as herein provided have been in all respects duly and validly authorized by proceedings duly passed on and approved by the Issuer; and

WHEREAS, after giving notice in accordance with the Act and IC 5-3-1-4, the Issuer held a public hearing, and upon finding that the Project and the proposed financing thereof will create additional employment opportunities in the City of Michigan City; will benefit the health, safety, morals, and general welfare of the citizens of the Issuer and the State of Indiana; and will comply with the purposes and provisions of the Act, adopted an ordinance approving the proposed financing; and

WHEREAS, the Act provides that such bonds may be secured by a trust indenture between the Issuer and a corporate trustee; and

WHEREAS, the execution and delivery of this Trust Indenture (“Indenture”), and the issuance of the Series 20__ Bonds hereunder have been in all respects duly and validly authorized by an ordinance duly passed and approved by the Issuer (the “Ordinance”); and

WHEREAS, , the Common Council of the Issuer has approved and adopted an ordinance for the purpose of establishing an economic improvement district within the boundaries of the

Issuer in accordance with Indiana Code 36-7-22, as amended from time to time (the "EID Act"), to be known as the "SoLa Project Economic Improvement District" (the "EID District") and appointing the EID District's initial governing board ("EID Board"), for the purpose of levying special assessments on parcels of real property located within the EID District ("EID Assessments") to be deposited in an economic improvement fund to finance economic development projects in the EID District (the "EID Assessment Revenues"); and

WHEREAS, the EID Board has, by resolution, irrevocably dedicated and pledged to the Issuer the Pledged EID Assessment Revenues (as hereinafter defined) to pay the Series 20__ Bonds; and

WHEREAS, Indiana Code, Title 36, Article 7, Chapter 14 provides that a redevelopment commission of the Issuer may pledge certain incremental property taxes to pay, in whole or in part, amounts due on the Series 20__ Bonds; and

WHEREAS, the Issuer has authorized and issued its Economic Development Tax Increment Revenue Bonds, Series 20____ (SoLa Project) in the aggregate principal amount of \$[XX,XXX,XXX] (the "Senior Bonds")

WHEREAS, the Michigan City Redevelopment Commission has, by resolution, irrevocably dedicated and pledged to the Issuer the Pledged TIF Revenues (as hereinafter defined) to pay the Senior Bonds and, to the extent necessary and available, to the Series 20__ Bonds on a junior and subordinate basis to the Senior Bonds; and

WHEREAS, the Series 20__ Bonds and the Trustee's certificate of authentication to be endorsed thereon are all to be in substantially the following forms, and any Additional Bonds and Trustee's certificate of authentication are also to be in substantially the following forms (except as to redemption, sinking fund and other provisions peculiar to such Additional Bonds), with necessary and appropriate variations, omissions and insertions as permitted or required by this Indenture, to-wit:

(Form of Series 20__ A/B Bond)

R - __

UNITED STATES OF AMERICA

STATE OF INDIANA

COUNTY OF LAPORTE

CITY OF MICHIGAN CITY, INDIANA

TAXABLE ECONOMIC DEVELOPMENT EID REVENUE BOND, SERIES 20__ A/B
(SOLA PROJECT)

<u>MATURITY</u> <u>DATES</u>	<u>INTEREST</u> <u>RATE</u>	<u>ORIGINAL</u> <u>DATE</u>	<u>AUTHENTICATION</u> <u>DATE</u>	<u>[CUSIP</u> <u>NUMBER</u>
As set forth in <u>Exhibit A</u>	____%	____, 20__	____, 20__	_____]
REGISTERED OWNER: _____				

PRINCIPAL AMOUNT:

(\$[XX,XXX,XXX])

DOLLARS

The City of Michigan City, Indiana (“Issuer”), a municipal corporation duly organized and existing under the laws of the State of Indiana, for value received, hereby promises to pay in lawful money of the United States of America to the Registered Owner listed above, but solely from available amounts held in the Trust Estate (including Pledged EID Assessment Revenues and Pledged TIF Revenues to the extent Pledged TIF Revenues remain following payment of the debt service on the Senior Bonds) [and Bond Loan Payments] hereinafter referred to pledged and assigned for the payment hereof, the Principal Amount set forth above, unless this Series 20__A/B Bond shall have previously been called for redemption and payment of the redemption price made or provided for or unless payments shall be accelerated as provided in the Indenture, and to pay interest thereon until the Principal Amount shall be fully paid at the Interest Rate stated above on the unpaid principal amount hereof in like money, but solely from those payments, payable on _____ 1, 20____, and on each March 1 and September 1 thereafter (“Interest Payment Dates”) until the Principal Amount is paid in full.

Interest on this bond shall be payable from the interest payment date to which interest has been paid next preceding the Authentication Date of this bond unless this bond is authenticated after the fifteenth day of the month immediately preceding the interest payment date (the “Record Date”) and on or before such interest payment date in which case it shall bear interest from such interest payment date, or unless this bond is authenticated on or before _____ 15, 20____, in which case it shall bear interest from the Original Date, which interest is payable semi-annually on March 1 and September 1 of each year, beginning on _____ 1, 20____. Interest shall be calculated on the basis of a 360-day year comprised of twelve 30-day months.

The principal and premium, if any, of this Series 20__A/B Bond are payable at the corporate trust operations office of [Trustee], as Trustee, or at the principal office of any successor trustee or paying agent, or, if payment is made to a depository, by wire transfer of immediately available funds on the payment date. All payments of interest hereon will be made by the Trustee by check mailed on each Interest Payment Date to the Registered Owner hereof at the address shown on the registration books of the Trustee as maintained by the Trustee, as registrar, determined on the Record Date next preceding such Interest Payment Date, or, if payment is made to a depository, by wire transfer of immediately available funds on the Interest Payment Date. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Trustee shall wire transfer payments so such payments are received at the depository by 2:30 p.m. (New York City time). [This Series 20__ Bond only needs to be presented for payment of principal and premium upon redemption in full or final maturity.]

This Series 20__A/B Bond is the only one of the Issuer’s Economic Development Tax Increment Revenue Bonds, Series 20____A/B (SoLa Project) (hereinbefore and hereinafter the “Series 20__A/B Bonds”) which are being issued under the hereinafter described Indenture in the aggregate principal amount of \$[XX,XXX,XXX]. The Series 20__ Bonds are being issued for the purpose of providing funds to finance the construction of certain local public improvements and related economic development improvements (“Project”) located in or directly serving and benefiting the Consolidated Economic Development Area in the City of Michigan City, Indiana, to be constructed by YAB Development Partners, LLC (the “Company”), by providing such funds

to the Company pursuant to the Financing and Loan Agreement dated as of _____ 1, 20__ (“Financing and Loan Agreement”) between the Company and the Issuer. Except as otherwise provided in Section 2.2 of the Indenture, each Series 20__ A/B Bond will be payable on parity with all other Series 20__ A/B Bonds and on a junior and subordinate basis to the Senior Bonds with respect to the TIF Revenues.

The Series 20__ Bonds are issued under and entitled to the security of a Trust Indenture dated as of _____ 1, 20__ (“Indenture”) duly executed and delivered by the Issuer to [Trustee], as Trustee (the term “Trustee” where used herein referring to the Trustee or its successors), pursuant to which Indenture, the Trust Estate including the Pledged EID Assessment Revenues and Pledged TIF Revenues [and Bond Loan Payments](each as defined in the Indenture) and all rights of the Issuer under the Financing and Loan Agreement, except certain rights to payment for expenses, indemnity rights and rights to perform certain discretionary acts as set forth in the Financing and Loan Agreement, are pledged and assigned by the Issuer to the Trustee as security for the Series 20__ Bonds.

THE OWNER OF THIS BOND, BY ACCEPTANCE OF THIS SERIES 20__ A/B BOND, HEREBY AGREES TO ALL OF THE TERMS AND PROVISIONS IN THE INDENTURE AND THIS SERIES 20__ A/B BOND

It is provided in the Indenture that the Issuer may hereafter issue Additional Bonds (as defined in the Indenture) from time to time under certain terms and conditions contained therein (such Additional Bonds and the Series 20__ Bonds are hereinafter collectively referred to as the “Bonds”). Reference is made to the Indenture and to all indentures supplemental thereto and to the Financing and Loan Agreement for a description of the nature and extent of the security, the rights, duties and obligations of the Issuer and the Trustee, the rights of the holders of the Bonds, the issuance of Additional Bonds and the terms on which the Bonds are or may be issued and secured, and to all the provisions of which the holder hereof by the acceptance of this Series 20__ Bond assents.

The Series 20__ Bonds are issuable in registered form without coupons in the denominations of [\$100,000/5,000 or any integral multiple thereof] [and any \$1,000 integral multiples thereafter.] This Series 20__ A/B Bond is transferable by the registered holder hereof in person or by its attorney duly authorized in writing at the corporate trust operations office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture and upon surrender and cancellation of this Series 20__ A/B Bond. Upon such transfer a new registered Bond will be issued to the transferee in exchange therefor.

The Issuer, the Trustee and the Paying Agent may deem and treat the Registered Owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and premium, if any, hereon and interest due hereon and for all other purposes and neither the Issuer nor the Trustee nor the Paying Agent shall be affected by any notice to the contrary.

If sufficient funds are on deposit in the Bond Fund, the Series 20__ Bonds shall be subject to redemption prior to maturity at the option of the Issuer on any date, upon thirty (30) days’ notice, in whole or in part in such order of maturity as the Issuer shall direct and by lot within maturities on any date, from any moneys made available for that purpose, at face value and without premium, plus in each case accrued interest to the date fixed for redemption.

If any of the Series 20__ Bonds are called for redemption as aforesaid, notice thereof identifying the Series 20__ Bonds to be redeemed will be given by mailing a copy of the redemption notice by first class mail not less than thirty (30) days nor more than sixty (60) days prior to the date fixed for redemption to the Registered Owner of the Series 20__ Bonds to be redeemed at the address shown on the registration books; provided, however, that failure to give such notice by mailing, or any defect therein with respect to any registered Series 20__ Bond, shall not affect the validity of any proceedings for the redemption of other Series 20__ Bonds.

All Series 20__ Bonds so called for redemption will cease to bear interest on the specified redemption date, provided funds for their redemption are on deposit at the place of payment at that time, and shall no longer be protected by the Indenture and shall not be deemed to be outstanding under the provisions of the Indenture.

This Series 20__ Bond is transferable by the Registered Owner hereof at the principal corporate trust office of the Trustee upon surrender and cancellation of this Series 20__ Bond and on presentation of a duly executed written instrument of transfer and thereupon a new Series 20__ Bond or Series 20__ Bonds of the same aggregate principal amount and maturity and in authorized denominations will be issued to the transferee or transferees in exchange therefor.

The Series 20__ Bonds, and the interest payable thereon, do not and shall not represent or constitute a debt of the Issuer within the meaning of the provisions of the constitution or statutes of the State of Indiana or a pledge of the faith and credit of the Issuer. The Series 20__ Bonds, as to both principal and interest, are not an obligation or liability of the State of Indiana, or of any political subdivision or taxing authority thereof, but are a special limited obligation of the Issuer and payable solely and only from the trust estate consisting of funds and accounts held under the Indenture and the Pledged EID Assessment Revenues and also the Pledged TIF Revenues on a junior and subordinate basis to the Senior Bonds [and Bond Loan Payments] pledged and assigned for their payment in accordance with the Indenture ("Trust Estate"). Neither the faith and credit nor the taxing power of the Issuer, the State of Indiana or any political subdivision or taxing authority thereof is pledged to the payment of the principal of, premium, if any, or the interest on this Series 20__ A/B Bond. The Series 20__ Bonds do not grant the owners or holders thereof any right to have the Issuer, the State of Indiana or its General Assembly, or any political subdivision or taxing authority of the State of Indiana, levy any taxes or appropriate any funds for the payment of the principal of, premium, if any, or interest on the Series 20__ Bonds. No covenant or agreement contained in the Series 20__ Bonds or the Indenture shall be deemed to be a covenant or agreement of the Redevelopment Commission, the Michigan City Economic Development Commission ("Commission"), the Issuer or of any member, director, officer, agent, attorney or employee of the Redevelopment Commission, the Commission or the Issuer in his or her individual capacity, and neither the Redevelopment Commission, Commission, the Issuer nor any member, director, officer, agent, attorney or employee of the Redevelopment Commission, the Commission or the Issuer executing the Series 20__ Bonds shall be liable personally on the Series 20__ Bonds or be subject to any personal liability or accountability by reason of the issuance of the Series 20__ Bonds.

The holder of this Series 20__ A/B Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. In certain events, on

the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds issued under the Indenture and then outstanding may become or may be declared due and payable before the stated maturity thereof, together with interest accrued thereon. Modifications or alterations of the Indenture, or of any supplements thereto, may be made to the extent and in the circumstances permitted by the Indenture. The Issuer's obligation to pay TIF Revenues shall not be subject to acceleration.

It is hereby certified that all conditions, acts and things required to exist, happen and be performed under the laws of the State of Indiana and under the Indenture precedent to and in the issuance of this Series 20__A/B Bond, exist, have happened and have been performed, and that the issuance, authentication and delivery of this Series 20__A/B Bond have been duly authorized by the Issuer.

This Series 20__A/B Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the certificate of authentication hereon shall have been duly executed by the Trustee.

IN WITNESS WHEREOF, the City of Michigan City, Indiana, in LaPorte County, has caused this Series 20__A/B Bond to be executed in its name and on its behalf by the manual or facsimile signature of its Mayor and its corporate seal to be hereunto affixed manually or by facsimile and attested to by the manual or facsimile signature of its Clerk all as of the Original Date.

CITY OF MICHIGAN CITY, INDIANA

By: _____
Mayor

(SEAL)

Attest:

Clerk

(FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION)

This Series 20__A/B Bond is one of the Series 20__A/B Bonds described in the within mentioned Trust Indenture.

[TRUSTEE], Trustee

By: _____

Authorized Signatory

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____ (Please Print or Typewrite Name and Address) the within Series 20__ Bond and all rights, title and interest thereon, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Series 20__ Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in a Securities Transfer Association recognized signature guarantee program.

NOTICE: The signature of this assignment must correspond with the name of the registered owner as it appears upon the face of the within Series 20__A/B Bond in every particular, without alteration or enlargement or any change whatever.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN. COM. **as tenants in common**

TEN. ENT. **as tenants by the entireties**

JT. TEN. as joint tenants with right of survivorship and not as tenants in common

UNIF. TRANS.
MIN. ACT

(Cust.) Custodian _____
(Minor)

under Uniform Transfers to Minors Act of

(State)

Additional abbreviations may also be used though not in the above list.

Exhibit A

Maturity Date

Amount

(End of Bond Form)

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That in order to secure the payment of the principal of and interest and premium, if any, on the Bonds to be issued under this Indenture according to their tenor, purport and effect, and in order to secure the performance and observance of all the covenants and conditions herein and in the Bonds contained, and in order to declare the terms and conditions upon which the Bonds are issued, authenticated, delivered, secured and accepted by all persons who shall from time to time be or become holders thereof, and for and in consideration of the mutual covenants herein contained, of the acceptance by the Trustee of the trust hereby created, and of the purchase and acceptance of the Bonds by the holders or obligees thereof, the Issuer has executed and delivered this Indenture, and by these presents does hereby convey, grant, assign, pledge and grant a security interest in, unto the Trustee, its successor or successors and its or their assigns forever, with power of sale, all and singular, the property hereinafter described ("Trust Estate"):

GRANTING CLAUSE

All right, title and interest of the Issuer in and to the (i) Pledged EID Assessment Revenues, subject to Section 7.2(b) hereof (such pledge to be effective as set forth in IC 5-1-14-4 and IC 36-7-22 without filing or recording of this Indenture or any other instrument), (ii) the Pledged TIF Revenues, subject to Section 7.2(b) hereof (such pledge to be effective as set forth in IC 5-1-14-4 and IC 36-7-14-39 without filing or recording of this Indenture or any other instrument), the Financing and Loan Agreement (except the rights reserved to the Issuer), including, with respect to the Series 20__A Bonds, the right to the Bond Loan Payments (as defined herein), and (iii) all moneys and the Qualified Investments held by the Trustee from time to time in the Funds and Accounts created hereunder and any and all other real or personal property of every name and nature from time to time hereafter by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned, or transferred as and for additional security hereunder by the Issuer or by anyone on its behalf, or with their written consent to the Trustee which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof;

TO HAVE AND TO HOLD the same unto the Trustee, and its successor or successors and its or their assigns forever;

IN TRUST, NEVERTHELESS, upon the terms and trusts herein set forth, to secure the payment of the Bonds to be issued hereunder, and premium, if any, payable upon redemption or prepayment thereof, and the interest payable thereon, and to secure also the observance and performance of all the terms, provisions, covenants and conditions of this Indenture, and for the benefit and security of all and singular the holders of all Bonds issued hereunder, and it is hereby mutually covenanted and agreed that the terms and conditions upon which the Bonds are to be issued, authenticated, delivered, secured and accepted by all persons who shall from time to time be or become the holders thereof, and the trusts and conditions upon which the pledged moneys and revenues are to be held and disbursed, are as follows:

ARTICLE I.

DEFINITIONS

Section 1.1. Terms Defined. In addition to the words and terms elsewhere defined in this Indenture, the following words and terms as used in this Indenture shall have the following meanings unless the context or use indicates another or different meaning or intent:

“Additional Bonds” shall have the meaning assigned in Section 2.8 of this Indenture.

“Annual Fees” means annual Trustee Fees and any other ongoing fees relating to payment of debt service on the Series 20__ Bonds.

“Allocation Area” means the SoLa Project Allocation Area created within the Consolidated Economic Development Area, as such allocation area may be expanded from time to time.

“Allocation Fund” means the SoLa Project Allocation Fund established under Indiana Code § 36-7-14 for the TIF Revenues collected in the Allocation Area.

“Authorized Representative” means any officer of the Company as evidenced by written certificate furnished to the Trustee containing the specimen signature of such person and signed on behalf of the Company by its President.

“Bond Loan Payments” means the amounts required to be repaid by the Company to the Issuer with respect to the Series 202__A Bonds under the terms of the Financing Agreement.

“Bonds” means any Bonds issued pursuant to this Indenture, including the Series 20__ Bonds and any Additional Bonds.

“Business Day” means a day on which the office of the Trustee is open for business.

“Clerk” means the Clerk of the City.

“Company” means YAB Development Partners, LLC, or its permitted successor or assign, as more fully provided in the Financing and Loan Agreement.

“Controller” means the Controller of the City.

“Costs of Construction” means the following categorical costs of providing for an “economic development project” as defined and set forth in the Act:

(i) the “Bond Issuance Costs”, namely the costs, fees and expenses incurred or to be incurred by the Issuer and the Company in connection with the issuance and sale of the Series 20__ Bonds, including placement or other financing fees (including applicable counsel fees), the fees and disbursements of bond counsel, fees of the Issuer’s financial advisor, the acceptance fee and first year annual administration fee of the Trustee, application fees and expenses, publication costs, the filing and recording fees in connection with any filings or recording necessary under the Indenture or to perfect the lien thereof, the out-of-pocket costs of the Issuer, the fees and disbursements of counsel to the Company, the fees and disbursements of the Company’s accountants and advisers, the fees and disbursements of counsel to the Issuer, the fees and disbursements of counsel to the purchaser of the Bonds, the costs of preparing or printing the Series 20__ Bonds and the documentation supporting the issuance of the Series 20__ Bonds, the costs of reproducing documents, and any other costs of a similar nature reasonably incurred;

(ii) the “Capitalized Interest Costs”, namely a portion of the interest on the Series 20__ Bonds from the date of their original delivery through and including _____ 1, 20__;

(iii) the cost of insurance of all kinds that may be required or necessary in connection with the construction of the Project;

(iv) all costs and expenses which Issuer or Company shall be required to pay, under the terms of any contract or contracts (including the architectural and engineering, development, and legal services with respect thereto), for the construction of the Project; and

(v) any sums required to reimburse Issuer or Company for advances made by either of them subsequent to the date of inducement by the Issuer for any of the above items or for any other costs incurred and for work done by either of them which are properly chargeable to the Project.

“EID Assessment Revenues” means the special assessment revenue received from special assessments levied by the EID Board on parcels of property located in the EID District and deposited by the EID Board into an economic development fund pursuant to Indiana Code § 36-7-22.

“EID Board” means the governing body of the EID District appointed by the Issuer pursuant to Indiana Code § 36-7-22.

“EID District” means the SoLa Project Economic Improvement District created by the Issuer for the purpose of levying special assessments on parcels of real property located in the EID District pursuant to Indiana Code § 36-7-22.

“EID Pledge Resolution” means Resolution No. _____ adopted by the EID Board on _____, 20__, irrevocably dedicating, pledging and assigning the Pledged EID Revenues to the Issuer to pay debt service on the Series 20__A Bonds and on a junior basis to pay debt service on the Series 20__B Bonds.

“Event of Default” means those events of default specified in and defined by Section 7.1 hereof.

“Financing and Loan Agreement” means the Financing and Loan Agreement, dated as of _____ 1, 20____, between the Company and the Issuer and all amendments and supplements thereto.

“Fiscal Year” shall mean a period of twelve consecutive months constituting the fiscal year of the Company commencing on the first day of January of any year and ending on the last day of December of such year, both inclusive, or such other period as hereafter may be established from time to time for budgeting and accounting purposes by the Company or by the governing body of any successor entity to the Company.

“Indenture” means this instrument as originally executed or as it may from time to time be amended or supplemented pursuant to Article IX.

“Interest Payment Date” on the Series 20__ Bonds means each March 1 and September 1, commencing _____ 1, 20____.

“Interest Period” has the meaning set forth in the form of Series 20__ Bond set forth in the recitals to this Indenture.

“Issuer” means the City of Michigan City, Indiana, a municipal corporation organized and validly existing under the laws of the State of Indiana or any successor to its rights and obligations under the Financing and Loan Agreement and the Indenture.

“Opinion of Counsel” shall mean an opinion in writing signed by legal counsel who may be an employee of or counsel to the Company.

“Ordinance” means Ordinance No. _____ adopted by the Common Council of the Issuer on _____, 20__ authorizing the issuance of the Bonds in or more series in the aggregate principal amount not to exceed \$ _____.

“Outstanding” or **“Bonds outstanding”** means all Bonds which have been duly authenticated, and delivered by the Trustee under this Indenture, except:

(b) Bonds canceled after purchase in the open market or because of payment at or redemption prior to maturity;

(c) Bonds for the redemption of which cash or investments (but only to the extent that the full faith and credit of the United States of America are pledged to the timely payment thereof) shall have been theretofore deposited with the Trustee (whether upon or prior to the maturity or redemption date of any such Bonds); provided that if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given or arrangements satisfactory to the Trustee shall have been made therefor, or waiver of such notice satisfactory in form to the Trustee, shall have been filed with the Trustee; and

(d) Bonds in lieu of which others have been authenticated under Section 2.9.

“Paying Agent” means [Trustee], in its capacity as paying agent hereunder, and any successor paying agent or co-paying agent.

“Pledged EID Assessment Revenues” means one hundred percent of the EID Assessment Revenues received by the EID District and deposited into an economic improvement fund pursuant to the EID Pledge Resolution.

“Pledged TIF Revenues” means one hundred percent (100%) of the TIF Revenues received by the Redevelopment Commission and deposited into the Allocation Fund in accordance with the terms of the Pledge Resolution and with respect to the Series 20__ Bonds on a basis junior and subordinate to the Senior Bonds.

“Pledge Resolution” means Resolution No. _____ adopted by the Redevelopment Commission on _____, 20__, irrevocably dedicating, pledging and assigning the Pledged TIF Revenues to the Issuer to pay debt service on the Bonds on a basis junior and subordinate to the Senior Bonds.

“Project” shall have the meaning assigned thereto in Exhibit A hereof.

“Qualified Investments” shall have the meaning assigned in the Financing and Loan Agreement.

“Record Date” means the fifteenth day of the month immediately preceding any Interest Payment Date.

“Redevelopment Commission” means the City of Michigan City Redevelopment Commission.

“Requisite Bondholders” means the holders of a majority in aggregate principal amount of Bonds.

“Senior Bonds” means the City of Michigan City, Indiana Economic Development Tax Increment Revenue Bonds, Series 20_____ (SoLa Project) in the aggregate principal amount of \$[XX,XXX,XXX].

“Series 20__A Bonds” means the City of Michigan City, Indiana Taxable Economic Development EID Revenue Bonds, Series 20_____ (SoLa Project) in the aggregate principal amount of \$[XX,XXX,XXX].

“Series 20__B Bonds” means the City of Michigan City, Indiana Taxable Subordinate Economic Development EID Revenue Bonds, Series 20_____ (SoLa Project) in the aggregate principal amount of \$[XX,XXX,XXX] which by their terms are junior and subordinate to the Series 20__A Bonds.

“TIF Revenues” means one hundred percent (100%) of all property taxes derived each year from the assessed valuation of real property in the Allocation Area in excess of the base assessed valuation for the Allocation Area described in Indiana Code § 36-7-14-39(b)(1), as such statutory provision exists on the date of execution of this Indenture, and deposited into the Allocation Fund.

“Trust Estate” means the funds and accounts created hereunder and includes the Pledged EID Revenues and the Pledged TIF Revenues and other assets described in the Granting Clauses of this Indenture.

“Trustee” means [Trustee], Indianapolis, Indiana, in its capacity as trustee hereunder, the party of the second part hereto, and any successor trustee or co-trustee.

Section 1.2. Rules of Interpretation. For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) “This Indenture” means this instrument as originally executed and as it may from time to time be supplemented or amended pursuant to the applicable provisions hereof.

(b) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

(c) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular and the singular as well as the plural.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as consistently applied.

(e) Any terms not defined herein but defined in the Financing and Loan Agreement shall have the same meaning herein.

(f) The terms defined elsewhere in this Indenture shall have the meanings therein prescribed for them.

Section 1.3. Exhibits. The following Exhibits are attached to and by reference made a part of this Indenture:

Exhibit A: Description of Project

(End of Article I)

ARTICLE II.

THE BONDS

Section 2.1. Authorized Amount of Series 20__ Bonds. No Bonds may be issued under the provisions of this Indenture except in accordance with this Article. The principal amount of the Series 20__ A Bonds (other than Bonds issued in substitution therefor pursuant to Section 2.8 hereof) that may be issued is hereby expressly limited to \$[XX,XXX,XXX]. The principal amount of the Series 20__ B Bonds (other than Bonds issued in substitution therefor pursuant to Section 2.8 hereof) that may be issued is hereby expressly limited to \$[XX,XXX,XXX]. Additional Bonds may be issued as provided in Section 2.8 hereof.

Section 2.2. Issuance of Series 20__ Bonds. The Series 20__ A Bonds shall be designated "City of Michigan City, Indiana Taxable Economic Development EID Revenue Bonds, Series 20____ A (SoLa Project)." The Series 20__ B Bonds shall be designated "City of Michigan City, Indiana Taxable Subordinate Economic Development EID Revenue Bonds, Series 20____ A (SoLa Project)." The Series 20__ Bonds shall be originally issuable as fully registered Bonds without coupons in denominations of [\$100,000/5,000 and any integral multiple thereof] and any \$1,000 integral multiples thereof and shall be lettered and numbered R-1 and upward.

Interest on the Series 20__ Bonds shall be paid to the owners of such Bonds determined as of the close of business of the Record Date next preceding each Interest Payment Date at the registered addresses of such owners as they shall appear on the registration books of the Trustee notwithstanding the cancellation of any such Bonds upon any exchange or transfer thereof subsequent to the Record Date and prior to such Interest Payment Date, except that, if and to the extent that there shall be a default in the payment of the interest due on such interest payment date, such defaulted interest shall be paid to the owners in whose name any such Bonds (or any Bond issued upon transfer or exchange thereof) are registered at the close of business of the Special Record Date (defined below) next preceding the date of payment of such defaulted interest. Payment of interest to all Bondholders shall be by check drawn on the main office of the Paying Agent and mailed to such Bondholder on each Interest Payment Date. The "Special Record Date" shall be the date established by the Trustee for the payment of defaulted interest. The Series 20__ Bonds shall be dated as of the date of their delivery. Interest shall be computed on the basis of a 360 day year consisting of twelve 30-day months. The interest on the Series 20__ A Bonds shall be payable on each March 1 and September 1, commencing on _____ 1, 20 _____. The interest on the Series 20__ B Bonds shall be payable on each March 1 and September 1, commencing on _____ 1, 20 _____.

The Series 20__ Bonds shall bear interest from the Interest Payment Date next preceding the date of authentication thereof, unless such date of authentication shall be subsequent to a Record Date in which case they shall bear interest from the Interest Payment Date with respect to such Record Date, provided, however that if, as shown by the records of the Trustee, interest on the Series 20__ Bonds shall be in default, Series 20__ Bonds issued in exchange for Series 20__ Bonds surrendered for transfer or exchange shall bear interest from the date to which interest has been paid in full on the Series 20__ Bonds or, if no interest has been paid on the Series 20__ Bonds, from the date of issuance and delivery of the Series 20__ Bonds. Series 20__ Bonds authenticated on or prior to _____ 15, 20 ____ shall bear interest from the date of delivery of the Series 20__ Bonds.

The Series 20__A Bonds shall mature on the dates set forth below, beginning on ____ 1, 20__, and ending on ____ 1, 20__, in the amounts set forth below at the interest rate of ____% per annum:

Payment Date

Amount

Payment Date

Amount

The Series 20__B Bonds shall mature on the dates set forth below, beginning on ____ 1, 20__, and ending on ____ 1, 20__, in the amounts set forth below at the interest rate of ____% per annum:

Payment Date

Amount

Payment Date

Amount

Section 2.3. Payment on Bonds. The principal of and interest on the Bonds shall be payable in any coin or currency of the United States of America which, at the respective dates of payment thereof, is legal tender for the payment of public and private debts. The final payments on the Series 20__ Bonds shall be payable at the designated corporate trust operations office of the Trustee. All other payments on the Series 20__ Bonds shall be made to the person appearing on the Bond registration books of the Trustee as the registered owner of the Series 20__ Bonds by check mailed to the registered owner thereof as shown on the registration books of the Trustee, or, if payment is made to a depository, by wire transfer of immediately available funds on the interest payment date. If the payment date occurs on a date when financial institutions are not open for business, the wire transfer shall be made on the next succeeding business day. The Trustee shall be instructed to wire transfer payments so that such payments are received at the depository by 2:30 p.m. (New York City time).

Section 2.4. Execution; Limited Obligation. The Bonds shall be executed on behalf of the Issuer with the manual or facsimile signature of its Mayor and attested with the manual or the facsimile signature of its Clerk and shall have impressed or printed thereon the corporate seal of the Issuer. Such facsimiles shall have the same force and effect as if such officer had manually signed each of the Bonds. If any officer whose signature or facsimile signature shall appear on the Bonds shall cease to be such officer before the delivery of such Bonds, such signature or such facsimile shall, nevertheless, be valid and sufficient for all purposes, the same as if he had remained in office until delivery.

The Bonds, and the interest payable thereon, do not and shall not represent or constitute a debt of the Issuer, the State of Indiana or any political subdivision or taxing authority thereof within the meaning of the provisions of the constitution or statutes of the State of Indiana or a pledge of the faith and credit of the Issuer, the State of Indiana or any political subdivision or taxing authority thereof. The Bonds, as to both principal and interest, are not an obligation or liability of the State of Indiana, or of any political subdivision or taxing authority thereof, but are a special limited obligation of the Issuer and are payable solely and only from the trust estate consisting of funds and accounts held under the Indenture, the Pledged EID Assessment Revenues, the Pledged TIF Revenues, and with respect to the Series 202__A Bonds, the Bond Loan Payments pledged and assigned for their payment in accordance with the Indenture ("Trust Estate"). Neither the faith and credit nor the taxing power of the Issuer, the State of Indiana or any political subdivision or taxing authority thereof is pledged to the payment of the principal of, premium, if any, or the interest on the Bond. The Bonds do not grant the owners or holders thereof any right to have the Issuer, the State of Indiana or its General Assembly, or any political subdivision or taxing authority of the State of Indiana, levy any taxes or appropriate any funds for the payment of the principal of, premium, if any, or interest on the Bonds. No covenant or agreement contained in the Bonds or the Indenture shall be deemed to be a covenant or agreement of the EID Board, the Redevelopment Commission, the Michigan City Economic

Development Commission (“Commission”), or of any member, director, officer, agent, attorney or employee of the Redevelopment Commission, the Commission or the Issuer in his or her individual capacity, and neither the EID Board, the Redevelopment Commission, the Commission nor any member, director, officer, agent, attorney or employee of the Redevelopment Commission, the Commission or the Issuer executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

Section 2.5. Authentication. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Indenture unless and until the certificate of authentication on such Bond substantially in the form hereinabove set forth shall have been duly executed by the Trustee, and such executed certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture. The Trustee’s certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized signatory of the Trustee, but it shall not be necessary that the same person sign the certificate of authentication on all of the Bonds issued hereunder.

Section 2.6. Form of Bonds. The Bonds issued under this Indenture shall be substantially in the form hereinabove set forth with such appropriate variations, omissions and insertions as are permitted or required by this Indenture.

Section 2.7. Delivery of Series 20__ Bonds. Upon the execution and delivery of this Indenture, the Issuer shall execute and deliver to the Trustee the Series 20__A Bonds and the Series 20__B in the aggregate principal amounts of \$[XX,XXX,XXX] and \$[XX,XXX,XXX], respectively. The Trustee shall authenticate such Series 20__ Bonds and deliver them to the purchasers thereof upon receipt of:

- (i) A copy, duly certified by the Clerk of the Issuer, of the Ordinance adopted and approved by the Issuer authorizing the execution and delivery of the Financing and Loan Agreement and this Indenture and the issuance of the Series 20__ Bonds.
- (ii) A copy, duly certified by the Secretary of the Redevelopment Commission, of the Pledge Resolution adopted and approved by the Redevelopment Commission pledging the Pledged TIF Revenues to the payment of the Series 20__ Bonds.
- (iii)
- (iv) Executed counterparts of the Financing and Loan Agreement and Indenture.
- (v) A written request of the Issuer to the Trustee requesting the Trustee to authenticate, or cause to be authenticated, and deliver the Series 20__ Bonds in the principal amount of \$[XX,XXX,XXX] to the purchasers thereof.
- (vi) Such other documents as shall be required by the Requisite Bondholders.

The proceeds of the Series 20__ Bonds shall be paid over to the Trustee and deposited to the credit of various Funds as hereinafter provided under Section 3.1 hereof.

Section 2.8. Issuance of Additional Bonds. One or more series of Bonds payable from the Pledged EID Assessment Revenues and the Pledged TIF Revenues in addition to the Series 20__ Bonds (“Additional Bonds”), may be authenticated and delivered from time to time for one or more of the purposes of (i) refunding entirely one or more series of Bonds outstanding hereunder, if such Bonds may otherwise be refunded, (ii) advance refunding entirely one or more series of Bonds outstanding hereunder, regardless of whether such Bonds may otherwise be refunded, if the same is then permitted by law by depositing with the Trustee, in trust for the sole benefit of such series of Bonds, cash or investments (but only to the extent that the full faith and credit of the United States of America are pledged to the timely payment thereof) in a principal amount which will, together with the income or increment to accrue thereon, be sufficient to pay and redeem (when redeemable) and discharge such series of Bonds at or before their respective maturity dates, and (iii) financing the cost or estimated cost incurred or to be incurred by the Company in completing the Project or acquiring and/or constructing additional improvements, but not otherwise, and, in each case, obtaining additional funds to pay the costs to be incurred in connection with the issuance of such Additional Bonds, to establish reserves with respect thereto and to pay interest during the estimated construction period of completing the additional improvements, if any.

Prior to the delivery by the Issuer of any such Additional Bonds there shall be filed with the Trustee:

- (i) A supplement to this Indenture executed by the Issuer and the Trustee authorizing the issuance of such Additional Bonds, specifying the terms thereof and providing for the disposition of the proceeds of the sale thereof.
- (ii) The supplement or amendment to the Financing and Loan Agreement and the other instruments, documents, certificates, and opinions referred to in Section 6.1 of the Financing and Loan Agreement.
- (iii) A copy, duly certified by the Clerk of the Issuer, of the Ordinance, and, if necessary, any amendments or supplements theretofore adopted and approved by the Issuer authorizing the execution and delivery of such supplemental indenture and such supplement to the Financing and Loan Agreement and the issuance of such Additional Bonds.
- (iv) A written request of the Issuer to the Trustee to authenticate and deliver such Additional Bonds.
- (v) Satisfaction of the provisions of the EID Pledge Resolution and the Pledge Resolution for the issuance of Additional Bonds.

Any Additional Bonds issued in accordance with the terms of this Section 2.8 shall be secured by this Indenture, but such Additional Bonds may bear such date or dates, such interest rate or rates, and with such maturities, redemption dates and premiums as may be agreed upon by the Issuer, at the direction of the Company, and the purchaser of such Additional Bonds. Notwithstanding anything in this Indenture or the Bonds to the contrary, no Additional Bonds shall be issued under this Indenture without the prior consent of the Requisite Bondholders and the Company.

Section 2.9. Mutilated, Lost, Stolen, or Destroyed Bonds. If any Bond is mutilated, lost, stolen or destroyed, then, in the absence of notice to the Trustee that such Bond has been acquired by a bona fide purchaser, the Issuer may execute and the Trustee may authenticate a new Bond of like date, maturity and denomination as that mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Issuer, and in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee, together with indemnity satisfactory to it.

If any such Bond shall have matured, instead of issuing a duplicate Bond the Issuer may pay the same without surrender thereof; provided, however, that in the case of a lost, stolen or destroyed Bond, there shall be first furnished to the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee, together with indemnity satisfactory to it. The Trustee may charge the holder or owner of such Bond with their reasonable fees and expenses in this connection. Any Bond issued pursuant to this Section 2.9 shall be deemed part of the original series of Bonds in respect of which it was issued and an original additional contractual obligation of the Issuer.

Section 2.10. Registration and Exchange of Bonds; Persons Treated as Owners. The Issuer shall cause books for the registration and for the transfer of the Bonds as provided in this Indenture to be kept by the Trustee which is hereby constituted and appointed the registrar of the Issuer. Upon surrender for transfer of any fully registered Bond at the principal office of the Trustee, duly endorsed by, or accompanied by a written instrument or instruments of transfer in form satisfactory to the Trustee and duly executed by the registered owner or his attorney duly authorized in writing, the Issuer shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new fully registered Bond or Bonds of the same series and the same maturity for a like aggregate principal amount. The execution by the Issuer of any fully registered Bond without coupons of any denomination shall constitute full and due authorization of such denomination, and the Trustee shall thereby be authorized to authenticate and deliver such registered Bond. The Trustee shall not be required to transfer or exchange any fully registered Bond during the period between the Record Date and any interest payment date of such Bond, nor to transfer or exchange any Bond after the mailing of notice calling such Bond for redemption has been made, nor during a period of fifteen (15) days next preceding mailing of a notice of redemption of any Bonds.

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

(End of Article II)

ARTICLE III.

APPLICATION OF SERIES 20__ BONDS PROCEEDS

Section 3.1. Deposit of Funds. The initial amount of principal drawn on the Series 20__ Bonds at closing shall be in the amount of \$_____, of which \$_____ shall be deposited with the Trustee in the Bond Interest Account of the Construction Fund and be used to pay Capitalized Interest Costs, and \$_____ shall be deposited with the Trustee in the Construction Account of the Construction Fund and used to pay Costs of Construction, including the Bond Issuance Costs set forth in Exhibit B which the Trustee is hereby authorized to pay. The deposit of the proceeds of any Additional Bonds shall be as set forth in a supplement to this Indenture in connection with the issuance of such series of Additional Bonds.

(End of Article III)

ARTICLE IV.

REVENUE AND FUNDS

Section 4.1. Source of Payment of Bonds. The Bonds herein authorized and all payments to be made by the Issuer hereunder are not general obligations of the Issuer but are limited obligations payable solely from the Trust Estate as authorized by the Act and as provided herein. No covenant or agreement contained in the Bonds or this Indenture shall be deemed to be a covenant or agreement of the Issuer or of any member, director, officer, agent, attorney or employee of the Issuer in his or her individual capacity, and neither the Issuer nor any member, director, officer, agent, attorney, or employee of the Issuer executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

Section 4.2. Bond Fund. The Trustee shall establish and maintain, so long as any of the Bonds are outstanding, a separate fund to be known as the "Bond Fund." Money in the Bond Fund shall be applied as provided in this Section 4.2.

There shall be deposited in the Bond Fund, as and when received, (a) Pledged EID Assessment Revenues and Pledged TIF Revenues and, if necessary, the Bond Loan Payments (with respect to the Series 202__A Bonds only) in an amount not to exceed first the payments due on the Series 20__A Bonds on the next March 1 or September 1 plus Annual Fees coming due in the following six months and then secondly, the payments due on the Series 20__B Bonds on the next March 1 and September 1; (b) proceeds of the Series 20__ Bonds to be used to pay interest thereon; (c) any amount remaining in the Construction Fund to be transferred to the Bond Fund pursuant to Section 4.4 of the Indenture, and any amount remaining in the Construction Fund to be transferred to the Bond Fund pursuant to the Indenture upon acceleration of the maturity of the Series 20__ Bonds; and (d) all interest and other income derived from investments of Bond Fund moneys as provided herein. The Issuer hereby covenants and agrees that so long as any of the Bonds issued hereunder are outstanding it will deposit, or cause to be paid to Trustee for deposit in the Bond Fund for its account, all revenues and receipts derived from the Pledged EID Assessment Revenues and the Pledged TIF Revenues and, if necessary, the Bond Loan Payments (with respect to the Series 202__A Bonds only) promptly to meet and pay the principal of, premium, if any, and interest on the Bonds as the same become due and payable. Nothing herein should be construed as requiring Issuer to deposit or cause to be paid to Trustee for deposit in the Bond Fund, funds from any source other than receipts derived from the Pledged Assessment Revenues and the Pledged TIF Revenues and, if necessary, the Bond Loan Payments (with respect to the Series 202__A Bonds only).

The Controller of the Issuer, acting on behalf of the EID Board, shall set aside immediately upon receipt (i) the Pledged EID Assessment Revenues into the economic development fund established by the EID Board and transfer the Pledged EID Assessment Revenues to the Trustee as set forth in Section 4.5. The Controller of the Issuer shall set aside immediately upon receipt the Tax Increment Revenues into the Issuer's Allocation Fund as created by IC 36-7-14 and transfer the Pledged TIF Revenues to the Trustee as set forth in Section 4.5. The Trustee is hereby directed to deposit the Pledged EID Assessment Revenues and the Pledged TIF Revenues into the Bond Fund in the manner prescribed in this Section 4.2 and in Section 4.5.

Moneys in the Bond Fund shall be used by the Trustee to pay interest, premium, if any, and principal on the Bonds as they become due at maturity, redemption or upon acceleration. The Trustee shall transmit such funds to the Paying Agent for any series of Bonds in sufficient time to insure that such interest will be paid as it becomes due. Any Pledged EID Assessment Revenues and Pledged TIF Revenues not needed to pay debt service on the Series 20__ Bonds on the next March 1 or September 1, plus any Annual Fees coming due in the following six months, shall be transferred to the Surplus Fund.

Section 4.3. Surplus Fund. The Trustee shall establish and maintain a separate fund to be known as the "Surplus Fund." Money in the Surplus Fund shall be applied as provided in this Section 4.3.

The Trustee shall deposit in the Surplus Fund, as and when received, all Pledged EID Assessment Revenues and TIF Revenues in excess of payments due on the Series 20__ Bonds on the next March 1 or September 1, plus any Annual Fees coming due in the following six months, as provided in Section 4.2 hereof. Funds in the Surplus Fund shall, without further authorization, be used (i) first to pay overdue amounts on the Series 20__ Bonds, (ii) secondly to redeem or defease the Series 202__A Bonds in whole or in part, and (iii) thirdly, to redeem or defease the Series 202__B Bonds in whole or in part.

Section 4.4. Construction Fund. The Issuer shall establish with the Trustee a separate fund to be known as the "Construction Fund," to the credit of which the deposits are to be made as required by Section 3.1 hereof. The Construction Fund shall consist of the Construction Account and the Bond Interest Account. The Bond Interest Account shall be used to pay Capitalized Interest Costs, and the Construction Account shall be used to pay Costs of Construction (other than Capitalized Interest Costs, except to the extent moneys in the Bond Interest Account are insufficient to pay Capitalized Interest Costs when due).

(a) Bond Issuance Costs of the Series 20__ Bonds (other than those identified in Exhibit B hereto, for which the execution of this Indenture provides authorization to the Trustee to pay) shall only be paid or reimbursed upon submission of a requisition signed by the Issuer and the Company.

(b) Except as set forth in subparagraph (a) of this Section 4.4, moneys on deposit in the Construction Account shall be paid out from time to time by the Trustee to or upon the order of the Company to pay or reimburse costs of issuance of the Series 20__ Bonds and to or upon the order of the Company in order to pay, or as reimbursement to the Company for payment made, for the Costs of Construction, upon receipt by the Trustee of the written request signed by the Authorized Representative of the Company:

(1) stating that the costs of an aggregate amount set forth in such written request have been made or incurred and were necessary for the construction of the Project and were made or incurred in accordance with the construction contracts, plans and specifications, or purchase contracts therefor then in effect or that the amounts set forth in such written request are for allowable Costs of Construction of the Project;

(2) stating that the amount paid or to be paid, as set forth in such written request, is reasonable and represents a part of the amount payable for the Costs of

Construction of the Project all in accordance with the cost budget; and that such payment was not paid in advance of the time, if any, fixed for payment and was made in accordance with the terms of any contracts applicable thereto and in accordance with usual and customary practice under existing conditions;

(3) stating that no part of the said costs was included in any written request previously filed with the Trustee under the provisions hereof;

(4) stating that such costs are appropriate for the expenditure of proceeds of the Bonds under the Act; and

(5) stating a recap of vendors and the amount paid .

(c) The Trustee shall rely fully on any such request delivered pursuant to this Section and shall not be required to make any investigation in connection therewith.

(d) The Issuer shall deliver to the Trustee within fifteen (15) days of completion of the Project, in addition to the items required by (b) above, a certificate of its Authorized Representative of the Company:

(i) stating the date that the Project was completed; and

(ii) stating that it has made such investigation of such sources of information as are deemed by him to be necessary, including pertinent records of the Issuer, and is of the opinion that the Project have been fully paid for, and that no claim or claims exist against the Issuer or against the properties of either out of which a lien based on furnishing labor or material for the Project exists or might ripen; provided, however, there may be excepted from the foregoing statement any claim or claims out of which a lien exists or might ripen if the Company intends to contest such claim or claims, in which event such claim or claims shall be described; provided, further, however, that it shall be stated that funds are on deposit in the Construction Fund sufficient to make payment of the full amount which might in any event be payable in order to satisfy such claim or claims.

If such certificate shall state that there is a claim or claims in controversy which create or might ripen into a lien, there shall be filed with the Issuer and the Trustee a certificate of the Company when and as such claim or claims shall have been fully paid.

If, after payment by the Trustee of all orders theretofore tendered to the Trustee under the provisions of subparagraph (b) of this Section 4.4 and after receipt of the statement mentioned in subparagraph (d)(i) and (ii) of this Section 4.4, there shall remain any balance of moneys in the Construction Fund, Trustee shall transfer all moneys then in the Construction Fund (except any disputed claims described in the completion certificate required in Section 4.3(d) hereof) to the Bond Fund. The Trustee, as directed in writing by the Issuer, shall use any amount transferred to the Bond Fund to prepay the Series 20__ Bonds at the earliest redemption date.

Section 4.5. Pledged EID Assessment Revenues and Pledged TIF Revenues. On or before each January 15 and July 15, commencing _____ 15, 20 __, the Issuer shall transfer

to the Trustee, for deposit into the Bond Fund and the Surplus Fund as appropriate, the Pledged EID Assessment Revenues and the Pledged TIF Revenues for the payment of the Series 20__ Bonds. The balance of any such revenues in excess of such requirements of the Bond Fund shall be deposited into the Surplus Fund.

Section 4.6. Trust Funds. All moneys and securities received by the Trustee under the provisions of this Indenture, shall be trust funds under the terms hereof and shall not be subject to lien or attachment of any creditor of the Issuer or of the Company. Such moneys shall be held in trust and applied in accordance with the provisions of this Indenture.

Section 4.7. Investment. Moneys on deposit in the Funds established in this Article IV hereof shall be invested as provided in Section 6.8 hereof.

(End of Article IV)

ARTICLE V.

REDEMPTION OF SERIES 20__ BONDS BEFORE MATURITY

Section 5.1. Redemption Dates and Prices.

(a) Optional Redemption. The Series 20__ A Bonds maturing on or after _____, 20__ are subject to optional redemption by the Issuer, prior to maturity, on any date, on or after _____, 20__, in whole or in part, in such order of maturity as the Issuer shall direct and within maturities, at face value, without premium, plus in each case accrued interest to the date fixed for redemption. The Series 20__ B Bonds maturing on or after _____, 20__ are subject to optional redemption by the Issuer, prior to maturity, on any date, on or after _____, 20__, in whole or in part, in such order of maturity as the Issuer shall direct and within maturities, at face value, without premium, plus in each case accrued interest to the date fixed for redemption.

(b) Mandatory Sinking Redemption. The Series 20__ A Bonds are issued as Term Bonds subject to mandatory sinking fund redemption prior to maturity, without notice, at a redemption price equal to the purchase amount thereof plus accrued interest to the date of redemption in accordance with the following schedule:

20__ A Term Bond

PAYMENT DATE

PRINCIPAL AMOUNT

The Trustee shall credit against the mandatory sinking fund requirement for the Bonds, and corresponding mandatory redemption obligation, in the order determined by the Issuer, any Bonds which have been previously redeemed (otherwise than as a result of a previous mandatory redemption requirement) or delivered to the Trustee for cancellation or purchased for cancellation by the Trustee and not theretofore applied as a credit against any redemption obligation. Each Bond so delivered or cancelled shall be credited by the Trustee at one hundred percent (100%) of the principal amount thereof against the mandatory sinking fund obligation on such mandatory redemption date, and any excess of such amount shall be credited on future redemption obligations, and the principal amount of the bonds to be redeemed by operation of the mandatory sinking fund requirement shall be accordingly reduced. Principal payments in connection with mandatory sinking fund redemption hereunder shall not require presentation of the Bonds for payment.

Section 5.2. Notice of Redemption. In the case of redemption of Series 20__ Bonds pursuant to Section 5.1(a) hereof, notice of the call for any such redemption identifying the Series 20__ Bonds, or portions of fully registered Series 20__ Bonds, to be redeemed shall be given by mailing a copy of the redemption notice by first class mail not less than thirty (30) days nor more than sixty (60) days prior to the date fixed for redemption to the registered Owner of each Series 20__ Bond to be redeemed at the address shown on the registration books. Such notice of redemption shall specify the CUSIP number, if any, and, in the event of a partial redemption the Series 20__ Bond numbers and called amounts of each Series 20__ Bond, the redemption date, principal amount, interest rate, maturity date and the name and address of the Trustee and the Paying Agent; provided, however, that failure to give such notice by mailing, or any defect therein, with respect to any such registered Series 20__ Bond shall not affect the validity of any proceedings for the redemption of other Series 20__ Bonds.

On and after the redemption date specified in the aforesaid notice, such Series 20__ Bonds, or portions thereof, thus called shall not bear interest, shall no longer be protected by this Indenture and shall not be deemed to be outstanding under the provisions of this Indenture, and the holders thereof shall have the right to receive only the redemption price thereof plus accrued interest thereon to the date fixed for redemption.

Section 5.3. Cancellation. All Bonds which have been redeemed in whole shall be canceled or otherwise destroyed by the Trustee in accordance with the customary practices of the Trustee and applicable record retention requirements and shall not be reissued.

Section 5.4. Redemption Payments. Prior to the date fixed for redemption in whole, funds shall be deposited with Trustee to pay, and Trustee is hereby authorized and directed to apply such funds to the payment of the Bonds or portions thereof called, together with accrued interest thereon to the redemption date. Upon the giving of notice and the deposit of funds for redemption, interest on the Bonds thus called shall no longer accrue after the date fixed for redemption. No payment shall be made by the Paying Agent upon any Bond until such Bond shall have been delivered for payment or cancellation or the Trustee shall have received the items required by Section 2.8 hereof with respect to any mutilated, lost, stolen or destroyed Bond.

Section 5.5. Partial Redemption of Bonds. If fewer than all of the Series 20__ Bonds at the time outstanding are to be called for redemption, the maturities of Series 20__ Bonds or portions thereof to be redeemed shall be selected by the Trustee at the written direction of the Company. If fewer than all of the Series 20__ Bonds within a maturity are to be redeemed, the Trustee shall select in such equitable manner as the Trustee may determine, the Series 20__ Bonds or portions of Series 20__ Bonds within such maturity that shall be redeemed. The Trustee shall call for redemption in accordance with the foregoing provisions as many Series 20__ Bonds or portions thereof as will, as nearly as practicable, exhaust the moneys available therefor. Particular Series 20__ Bonds or portions thereof shall be redeemed only in the minimum principal amount of \$100,000 and any \$1 integral multiples thereafter.

If less than the entire principal amount of any registered Series 20__ Bond then outstanding is called for redemption, then upon notice of redemption given as provided in Section 5.2 hereof, the owner of such registered Series 20__ Bond shall surrender such Series 20__ Bond to the Paying Agent in exchange for (a) payment of the redemption price of, plus accrued interest on the principal amount called for redemption and (b) a new Series 20__ Bond or Series 20__ Bonds of like series in an aggregate principal amount equal to the unredeemed balance of the principal amount of such registered Series 20__ Bond, which shall be issued without charge therefor.

(End of Article V)

ARTICLE VI.

GENERAL COVENANTS

Section 6.1. Payment of Principal and Interest. The Issuer covenants that it will promptly pay the principal of, premium, if any, and interest on every Bond issued under this Indenture at the place, on the dates and in the manner provided herein and in the Bonds according to the true intent and meaning thereof. The principal, interest and premium, if any, on the Bonds are payable solely and only from the Trust Estate including the Pledged EID Assessment Revenues and the Pledged TIF Revenues which are hereby specifically pledged and assigned to the payment thereof in the manner and to the extent herein specified, and nothing in the Bonds or in this Indenture should be considered as pledging any other funds or assets of the Issuer. **The Bonds, and the interest payable thereon, do not and shall not represent or constitute a debt of the Issuer within the meaning of the provisions of the constitution or statutes of the State of Indiana or a pledge of the faith and credit of the Issuer. The Bonds, as to both principal and interest, are not an obligation or liability of the State of Indiana, or of any political subdivision or taxing authority thereof, but are a special limited obligation of the Issuer and are payable solely and only from the Trust Estate including the Pledged EID Assessment Revenues and the Pledged TIF Revenues and the Bond Loan Payments (with respect to the Series 202__A Bonds only) pledged and assigned for their payment in accordance with the Indenture. Neither the faith and credit nor the taxing power of the Issuer, the State of Indiana or any political subdivision or taxing authority thereof is pledged to the payment of the principal of, premium, if any, or the interest on the Bonds. The Bonds do not grant the owners or holders thereof any right to have the Issuer, the State of Indiana or its General Assembly, or any political subdivision or taxing authority of the State of Indiana, levy any taxes or appropriate any funds for the payment of the principal of, premium, if any, or interest on the Bonds. The Issuer has no taxing power with respect to the Bonds. No covenant or agreement contained in the Bonds or this Indenture shall be deemed to be a covenant or agreement of the EID Board, the Redevelopment Commission, the Commission, or of any member, director, officer, agent, attorney or employee of the EID Board, the Redevelopment Commission, the Commission or the Issuer in his or her individual capacity, and neither the EID Board, the Redevelopment Commission, the Commission nor any member, director, officer, agent, attorney or employee of the EID Board, the Redevelopment Commission, Commission or the Issuer executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.**

Section 6.2. Performance of Covenants. The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all proceedings of its members pertaining thereto. The Issuer represents that it is duly authorized under the constitution and laws of the State of Indiana to issue the Bonds authorized hereby and to execute this Indenture, and to pledge the Pledged EID Assessment Revenues and the Pledged TIF Revenues and, if necessary the Bond Loan Payments (with respect to the Series 202__A Bonds only) in the manner and to the extent herein set forth; that all action on its part for the issuance of the Bonds and the execution and delivery of this Indenture has been duly and effectively taken, and that the Bonds in the hands of the holders and owners thereof are and will be valid and enforceable obligations of the Issuer according to the import thereof, subject to bankruptcy,

insolvency, reorganization, moratorium and other similar laws, judicial decisions and principles of equity relating to or affecting creditors' rights generally and subject to the valid exercise of the constitutional powers of the Issuer, the State of Indiana and the United States of America.

Section 6.3. Reserved.

Section 6.4. Ownership; Instruments of Further Assurance. The Issuer covenants that it will defend its interest in the Financing and Loan Agreement to the Trustee, for the benefit of the holders and owners of the Bonds against the claims and demands of all persons whomsoever. The Issuer covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such indentures supplemental hereto and such further acts, instruments and transfers as the Trustee may reasonably require for the better assuring, transferring, mortgaging, conveying, pledging, assigning and confirming unto the Trustee, the Financing and Loan Agreement.

Section 6.5. Filing of Indenture, Financing and Loan Agreement and Security Instruments. The Issuer, upon the written direction and at the sole expense of the Company, shall cause this Indenture, the Financing and Loan Agreement and all supplements thereto as well as such other security instruments, financing statements and all supplements thereto and other instruments (other than continuation statements, which, if applicable, will be filed by the Trustee) as may be required from time to time to be filed in such manner and in such places as may be required by law in order to fully preserve and protect the lien hereof and the security of the holders and owners of the Bonds and the rights of the Trustee hereunder. This Section 6.4 shall impose no duty to record or file the instruments noted above where filing or recordation is not required by law in order to perfect a security interest. Continuation of financing statements may be filed without consent of the debtor parties thereto.

Section 6.6. Inspection of Books. The Issuer covenants and agrees that all books and documents in its possession relating to the Project and the revenues derived from the Project shall at all times be open to inspection by such accountants or other agents as the Trustee may from time to time designate.

Section 6.7. List of Bondholders. The Trustee will keep on file at the corporate trust office of the Trustee a list of names and addresses of the holders of all Bonds. At reasonable times and under reasonable regulations established by the Trustee, said list may be inspected and copied by the Company or by holders and/or owners (or a designated representative thereof) of 25% or more in principal amount of Bonds then outstanding, such ownership and the authority of any such designated representative to be evidenced to the satisfaction of the Trustee.

Section 6.8. Rights Under Financing and Loan Agreement. The Issuer agrees that the Trustee in its name or in the name of the Issuer may enforce all rights of the Issuer and all obligations of the Company under and pursuant to the Financing and Loan Agreement for and on behalf of the Bondholders, whether or not the Issuer is in default hereunder.

Section 6.9. Investment of Funds. Moneys in the Funds established hereunder may be invested in Qualified Investments to the extent and in the manner provided for in Section 3.9 of the Financing and Loan Agreement. The Trustee shall not be liable or responsible for any loss resulting from any such investment. The interest accruing thereon and any profit realized from

such investments shall be credited, and any loss resulting from such investments shall be charged to the fund in which the money was deposited.

Section 6.10. Non-presentment of Bonds. If any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity, or at the date fixed for redemption thereof, or otherwise, if funds sufficient to pay any such Bond shall have been made available to Paying Agent for the benefit of the holder or holders thereof, all liability of Issuer to the holder thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of Paying Agent to hold such funds for four (4) years without liability for interest thereon, for the benefit of the holder of such Bond, who shall thereafter be restricted exclusively to such funds, for any claim of whatever nature on his part under this Indenture or on, or with respect to, such Bond.

(End of Article VI)

ARTICLE VII.

DEFAULTS AND REMEDIES

Section 7.1. Events of Default. Each of the following events is hereby declared an “event of default,” that is to say, if:

(a) payment of any amount payable on the Bonds shall not be made when the same is due and payable, unless the Requisite Bondholders shall have consented thereto, however, if the Issuer is unable to pay to the Trustee any or sufficient Pledged EID Assessment Revenues or Pledged TIF Revenues with which to make payment to the Bondholders, it shall not constitute an Event of Default; or; or

(b) any event of default as defined in Section 4.1 of the Financing and Loan Agreement shall occur and be continuing, unless the Requisite Bondholders shall have consented thereto; or

(c) the Issuer shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Bonds or in this Indenture or any agreement supplemental hereof on the part of the Issuer to be performed, and such default shall continue for thirty (30) days after written notice specifying such default and requiring the same to be remedied shall have been given to the Issuer and the Company by the Trustee, which may give such notice in its discretion and shall give such notice at the written request of the holders of all of the Bonds then outstanding hereunder; or

(d) the Issuer shall fail to apply collected Pledged EID Assessment Revenues or Pledged TIF Revenues as required by Article IV of this Indenture.

Section 7.2. Acceleration. Upon the happening of any event of default specified in clause (a), (b) or (c) of Section 7.1 and the continuance of the same for the period, if any, specified in that Section, and with the prior consent of Requisite Bondholders, the Trustee, by notice in writing delivered to the Issuer and the Company may declare the entire unpaid principal amount of the Bonds and Parity TIF Obligations then outstanding, and the interest accrued thereon, to be immediately due and payable. The Issuer’s obligation to pay Pledged EID Assessment Revenues or Pledged TIF Revenues shall not be subject to acceleration.

Section 7.3. Remedies; Rights of Bondholders.

- (i) If an event of default occurs, with the consent of Requisite Bondholders, the Trustee may pursue any available remedy by suit at law or in equity to enforce the payment of the principal of, premium, if any, and interest on the Bonds then outstanding, to enforce any obligations of the Issuer hereunder, and of the Company under the Financing and Loan Agreement.
- (ii) Upon the occurrence of an event of default, if directed to do so by the Requisite Bondholders and if indemnified as provided in Section 8.1 hereof, the Trustee shall be obliged to exercise such one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Bondholders.

- (iii) No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Bondholders) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Bondholders hereunder or now or hereafter existing at law or in equity or by statute.
- (iv) No delay or omission to exercise any right or power accruing upon any event of default shall impair any such right or power or shall be construed to be a waiver of any event of default or acquiescence therein, and every such right and power may be exercised from time to time as may be deemed expedient.
- (v) No waiver of any event of default hereunder, whether by the Trustee or by the Bondholders, shall extend to or shall affect any subsequent event of default or shall impair any rights or remedies consequent thereon.

Section 7.4. Right of Bondholders to Direct Proceedings. Anything in this Indenture to the contrary notwithstanding, except as provided in Section 7.2(b) hereof, the Requisite Bondholders shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the time, the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder; provided, that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture, and provided that the Trustee is obligated to pursue its remedies under the provisions of Section 7.2 hereof before any other remedies are sought.

Section 7.5. Application of Moneys. Notwithstanding anything herein to the contrary, all moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article and any other moneys held as part of the Trust Estate shall, after payment of the cost and expenses of the proceedings resulting in the collection of such moneys and of the outstanding fees, expenses, liabilities and advances incurred or made by the Trustee or the Issuer, and the creation of a reasonable reserve for anticipated fees, costs and expenses, be deposited in the Bond Fund and all moneys in the Bond Fund shall be applied as follows:

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

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

Second: To the payment to the persons entitled thereto of the unpaid principal of and premium, if any, of the Bonds which shall have become due (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates, with interest on such Bonds from the respective dates upon which they become due, and if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the

payment ratably, according to the amount of principal due on such date, to the persons entitled thereto without any discrimination or privilege.

Third: To the payment of the balance, if any, to the Issuer or to whomsoever may be lawfully entitled to receive the same upon its written request, or as any court of competent jurisdiction may direct, except for any remaining TIF Revenues which shall be paid to the Redevelopment Commission.

(b) If the principal of all the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest or of interest over any other installment of interest, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or privilege.

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

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

Section 7.6. Remedies Vested In Trustee. All rights of action (including the right to file proof of claims) under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any holders of the Bonds, and any recovery of judgment shall, subject to the provisions of Section 7.5 hereof, be for the equal benefit of the holders of the outstanding Bonds. However, the Trustee may only act with the consent and direction of the Requisite Bondholders.

Section 7.7. Rights and Remedies of Bondholders. No holder of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust thereof or for the appointment of a receiver or any other remedy hereunder, unless a default has occurred of which the Trustee has been notified as provided in subsection (g) of Section 8.1, or of which by said subsection it is deemed to have notice, nor unless also such default shall have become an Event of Default and the holders of all Bonds then outstanding shall have made written request to the Trustee and shall have offered reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, nor unless also they have offered to the Trustee

indemnity as provided in Section 8.1 hereof, nor unless the Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its, his, or their own name or names. Such notification, request and offer of indemnity are hereby declared in every case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Indenture, and 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 holders of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by its, his 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 holders of all Bonds then outstanding. Nothing in this Indenture contained shall, however, affect or impair the right of any Bondholder to enforce the covenants of the Issuer to pay the principal of and interest on each of the Bonds issued hereunder to the respective holders thereof at the time, place, from the source and in the manner in said Bonds expressed.

Section 7.8. Termination of Proceedings. In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver, or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer, the Company and the Trustee shall be restored to their former positions and rights hereunder, respectively, with respect to the Trust Estate, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 7.9. Waivers of Events of Default. At the direction of the Requisite Bondholders, the Trustee may in its discretion waive any event of default hereunder and its consequences and rescind any declaration of maturity of principal of and interest on the Bonds, and shall do so upon the written request of the holders of (1) all the Bonds then outstanding in respect of which default in the payment of principal and/or premium, if any, and/or interest exists, or (2) all Bonds then outstanding in the case of any other default; provided, however, that there shall not be waived (a) any event of default in the payment of the principal of any outstanding Bonds at the date of maturity specified therein, or (b) any default in the payment when due of the interest on any such Bonds unless prior to such waiver or rescission, arrears of interest, with interest (to the extent permitted by law) at the rate borne by the Bonds in respect of which such default shall have occurred on overdue installments of interest or all arrears of payments of principal and premium, if any, when due, as the case may be, and all expenses of the Trustee in connection with such default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon.

(End of Article VII)

ARTICLE VIII.

THE TRUSTEE AND PAYING AGENT

Section 8.1. Acceptance of the Trusts. The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts as a corporate trustee ordinarily would perform said trusts under a corporate indenture, but only upon the terms and conditions set forth herein, and no implied covenants or obligations shall be read into this Indenture against the Trustee. The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations should be read into this Indenture against the Trustee. If any Event of Default under this Indenture shall have occurred and be continuing, to which the Trustee has knowledge, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and shall use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such prudent person's own affairs in exercising any rights or remedies or performing any of its duties hereunder. The Trustee agrees to perform such trusts only upon and subject to the following expressed terms and conditions:

(a) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or if appointed through attorneys, agents, receivers or employees but shall not be answerable for the conduct of the same if appointed with due care, and shall be entitled to the opinion and advice of counsel concerning all matters of trusts hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorney (who may be the attorney or attorneys for the Issuer or the Company). The Trustee shall not be responsible for any loss or damage resulting from any action or non-action in good faith in reliance upon such opinion or advice.

(b) The Trustee shall not be responsible for any recital herein, or in the Bonds (except in respect to the certificate of the Trustee endorsed on the Bonds), or for the recording or re-recording, filing or re-filing of this Indenture or any financing statements (other than continuation statements, if applicable) in connection therewith, or for insuring the property herein conveyed 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 sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, or for the value, condition or title of the property herein conveyed or otherwise as to the maintenance of the security hereof or as to the validity or sufficiency of this Indenture or of the Bonds; and 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 or on the part of the Company under the Financing and Loan Agreement; but the Trustee may require of the Issuer or the Company full information and advice as to the performance of the covenants, conditions and agreements aforesaid as to the condition of the property herein conveyed. The Trustee shall have no obligation to perform any of the duties of the Issuer under the Financing and Loan Agreement, and the Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with the provisions of this Indenture.

(c) The Trustee shall not be accountable for the use of any Bonds, or the proceeds thereof, authenticated by it or the Paying Agent or delivered hereunder or for any money paid to

or upon the order of the City under any provision of this Indenture or of the Financing and Loan Agreement. The Trustee, in its individual or any other capacity, may become the owner of Bonds secured hereby with the same rights which it would have if not Trustee.

(d) The Trustee may rely and shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the owner of any Bond, shall be conclusive and binding upon all future owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(e) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, or whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee shall be entitled to rely upon a certificate signed on behalf of the Issuer or the Company by its duly authorized officers as sufficient evidence of the facts therein contained and prior to the occurrence of a default of which the Trustee has been notified as provided in subsection (g) of this Section, or of which said subsection it is deemed to have notice, shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of the Issuer or the Company under its seal to the effect that an ordinance or resolution in the form therein set forth has been adopted by the Issuer or the Company as conclusive evidence that such ordinance or resolution has been duly adopted, and is in full force and effect.

(f) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its gross negligence or willful misconduct; provided, however, that the provisions of this subsection shall not affect the duties of the Trustee hereunder, including the provisions of Article VII hereof.

(g) The Trustee shall not be required to take notice or be deemed to have notice of any event of default hereunder (other than payment of the principal and interest on the Bonds) unless the Trustee shall be specifically notified in writing of such default by the Issuer or by the holders of at least twenty-five percent (25%) in aggregate principal amount of all Bonds then outstanding and all notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered at the corporate trust office of the Trustee, and in the absence of such notice so delivered, the Trustee may conclusively assume there is no default except as aforesaid.

(h) The Trustee shall not be personally liable for any debts contracted or for damages to persons or to personal property injured or damaged, or for salaries or nonfulfillment of contracts during any period in which it may be in possession of or managing the Trust Estate.

(i) At any and all reasonable times and upon reasonable prior written notice, the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right, but shall not be required, to fully inspect the Trust Estate, and to take such memoranda from and in regard thereto as may be desired.

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

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

(l) Before taking any action under this Indenture, the Trustee may require that a satisfactory indemnity bond be furnished for the reimbursement of all costs and expenses to which it may be put (including without limitation attorney's fees and expenses) and to protect it against all liability, except liability which is adjudicated to have resulted from its gross negligence or willful misconduct in connection with any action so taken. Such indemnity shall survive the termination of this Indenture.

(m) All moneys received by the Trustee or the Paying Agent shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required by law. Neither the Trustee nor the Paying Agent shall be under any liability for interest on any moneys received hereunder.

(n) The Trustee shall have no responsibility with respect to any information, statement or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Bonds and shall have no responsibility for compliance with any state or federal securities laws in connection with the Bonds

(o) The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail or other similar unsecured electronic methods, provided, however, that the Issuer and the Company shall provide to the Trustee an incumbency certificate listing designated persons authorized to provide such instructions, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If the Issuer and the Company elect to give the Trustee e-mail instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Issuer and the Company agree to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 8.2. Fees, Charges and Expenses of Trustee and Paying Agent. The Trustee and Paying Agent shall be entitled to payment and/or reimbursement for reasonable fees for its services rendered 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 all advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Trustee or Paying Agent in connection with such services. 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 gross negligence or willful misconduct of the Trustee it shall not be entitled to compensation or reimbursement therefore. The Trustee shall have a first lien with right of payment prior to payment on account of interest or principal of, or premium, if any, on any Bond for the foregoing advances, fees, costs and expenses incurred. The Trustee shall be entitled to payment and reimbursement for the reasonable fees and charges of the Trustee as Paying Agent for the Bonds.

Section 8.3. Notice to Bondholders if Default Occurs. If an Event of Default occurs of which the Trustee is by subsection (g) of Section 8.1 hereof required to take notice or if notice of an Event of Default be given as in said subsection (g) provided, then the Trustee shall give written notice thereof by registered or certified mail to the Company and the last known holders of all Bonds then outstanding shown by the list of Bondholders required by the terms of this Indenture to be kept at the office of the Trustee, unless such Event of Default has been cured or waived; provided, however, that the Trustee shall be protected in withholding such notice if and so long as the Trustee in good faith determines that the withholding of such notices is in the interests of the Bondholders.

Section 8.4. 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 holders of the Bonds, the Trustee may intervene on behalf of Bondholders and, subject to the provisions of Section 8.1(l), shall do so if requested in writing by the owners of at least twenty-five percent (25%) in aggregate principal amount of all Bonds then outstanding. The rights and obligations of the Trustee under this Section are subject to the approval of a court of competent jurisdiction.

Section 8.5. Successor Trustee. Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, ipso facto, shall be and become successor Trustee hereunder and vested with all of the title to the whole property or trust estate and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 8.6. Resignation by the Trustee. The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving thirty days' written notice to the Issuer and the Company and by first class mail to each registered owner of Bonds then outstanding and to each holder of Bonds as shown by the list of Bondholders required by this Indenture to be kept at the office of the Trustee, and such resignation shall take effect at the end of such thirty (30) days, or upon the earlier appointment of a successor Trustee by the Bondholders or by the Issuer. Such notice to the Issuer and the Company may be served personally or sent by registered or certified mail.

Section 8.7. Removal of the Trustee. The Trustee may be removed at any time by an instrument or concurrent instruments in writing delivered to the Trustee and to the Issuer and signed by the Requisite Bondholders.

Section 8.8. Appointment of Successor Trustee by the Bondholders; Temporary Trustee. In case the Trustee hereunder shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by the owners of a majority in aggregate principal amount of Bonds then outstanding, by an instrument or concurrent instruments in writing signed by such owners, or by their attorneys-in-fact, duly authorized; provided, nevertheless, that in case of such vacancy, the Issuer, by an instrument executed by one of its duly authorized officers, may appoint a temporary Trustee to fill such vacancy until a successor Trustee shall be appointed by the Bondholders in the manner above provided; and any such temporary Trustee so appointed by the Issuer shall immediately and without further act be superseded by the Trustee so appointed by such Bondholders. Every such Trustee appointed pursuant to the provisions of this Section shall be a trust company or bank, having a reported capital and surplus of not less than One Hundred Million Dollars (\$100,000,000) if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

Section 8.9. Concerning Any Successor Trustees. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Issuer and the Company an instrument in writing accepting such appointment hereunder, and thereupon such successor, 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 and thereupon the duties and obligations of the predecessor shall cease and terminate; but such predecessor shall, nevertheless, on the written request of the Issuer, or of its successor, and upon approval by the Issuer of the records and accounts of the predecessor Trustee, a release of the predecessor Trustee by the Issuer, and the payment of the fees and expenses owed to the predecessor Trustee, execute and deliver an instrument transferring to such successor Trustee all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its successor. Should any instrument in writing from the Issuer be required by any successor Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties hereby vested or intended to be vested in the predecessor any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article shall be filed by the successor Trustee in each office, if any, where the Indenture shall have been filed.

Section 8.10. Trustee Protected in Relying Upon Resolutions, etc. Subject to the conditions contained herein, the resolutions, ordinances, opinions, certificates and other instruments provided for in this Indenture may be accepted by the Trustee as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection and authority to the Trustee for the release of property and the withdrawal of cash hereunder.

Section 8.11. Appointment of Paying Agent and Registrar; Resignation or Removal of Paying Agent. The Trustee is hereby appointed "Paying Agent" under this Indenture. Any Paying Agent may at any time resign and be discharged of the duties and obligations created by this instrument and any supplemental indenture by giving at least 30 days' written notice to the Issuer, the Company and the Trustee. Any Paying Agent may be removed at any time by an instrument, filed with such Paying Agent and the Trustee and signed by the Issuer and the Company. Any

successor Paying Agent shall be appointed by the Issuer at the direction of the Company and shall be a bank or trust company duly organized under the laws of any state of the United States or a national banking association, in each case having a capital stock and surplus aggregating at least \$100,000,000, willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Indenture.

In the event of the resignation or removal of any Paying Agent, such Paying Agent shall pay over, assign and deliver any moneys or securities held by it as Paying Agent to its successors, or if there is no successor, to the Trustee.

(End of Article VIII)

ARTICLE IX.

SUPPLEMENTAL INDENTURES

Section 9.1. Supplemental Indentures Not Requiring Consent of Bondholders. With the prior consent of the Company, the Issuer and the Trustee may without the consent of, or notice to, any of the Bondholders, enter into an indenture or indentures supplemental to this Indenture, as shall not be inconsistent with the terms and provisions hereof, for any one or more of the following purposes:

- (a) To cure any ambiguity or formal defect or omission in this Indenture;
- (b) To grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Bondholders or the Trustee or any of them;
- (c) To subject to this Indenture additional security, revenues, properties or collateral;
or
- (d) To make any other change in this Indenture which, in the judgment of the Trustee, who may rely on the advice and opinion of counsel, is not to the material prejudice of the Trustee, the Company, the Issuer or the holders of the Bonds; or
- (e) To modify, amend or supplement the Indenture in such manner as required to permit the qualification thereof under the Trust Indenture Act of 1939, as amended, or any similar Federal statute hereafter in effect, and, if they so determine, to add to the Indenture such other terms, conditions and provisions as may be required by said Trust Indenture Act of 1939, as amended, or similar federal statute.

Section 9.2. Supplemental Indentures Requiring Consent of Bondholders. Exclusive of supplemental indentures covered by Section 9.1 hereof, and subject to the terms and provisions contained in this Section, and not otherwise, the Requisite Bondholders shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and approve the execution by the Issuer and the Trustee of such other indenture or indentures supplemental hereto as shall be deemed necessary and desirable by the Issuer for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture; provided however, that no such supplemental indenture may be entered into without the prior consent of the Company; and provided further that nothing in this section contained shall permit or be construed as permitting (except as otherwise permitted in this Indenture) (a) an extension of the stated maturity or reduction in the principal amount of, or reduction in the rate or extension of the time of paying of interest on, or reduction of any premium payable on the redemption of, any Bonds, without the consent of the holder of such Bond, or (b) a reduction in the amount or extension of the time of any payment required by any sinking fund applicable to any Bonds without the consent of the holders of all the Bonds which would be affected by the action to be taken, or (c) the creation of any lien prior to or, except for the lien of Parity Obligations (including Additional Bonds), on a parity with the lien of this Indenture without the consent of the holders of all the Bonds at the time outstanding, or (d) a reduction in the aforesaid aggregate principal amount of Bonds the holders of which are required to consent to any such supplemental indenture, without the consent of the

holders of all the Bonds at the time outstanding which would be affected by the action to be taken, or (e) a modification of the rights, duties or immunities of the Trustee, without the written consent of the Trustee, or (f) a privilege or priority of any Bond over any other Bonds, or (g) a derivation of the Owners of any Series 20__ Bonds then Outstanding of the lien thereby created.

Anything herein to the contrary notwithstanding, a supplemental indenture under this Article which affects any rights of the Company shall not become effective unless and until the Company shall have consented in writing to the execution and delivery of such supplemental indenture. In this regard, the Trustee shall cause notice of the proposed execution and delivery of any such supplemental indenture together with a copy of the proposed supplemental indenture to be mailed by certified or registered mail to the Company at least fifteen (15) days prior to the proposed date of execution and delivery of any such supplemental indenture.

Section 9.3. Opinion. The Trustee shall be entitled to receive, and shall be fully protected in relying upon, the opinion of any counsel approved by it, as conclusive evidence that any such proposed supplemental indenture complies with the provisions of this Indenture, and that it is proper for the Trustee, under the provisions of this Article, to join in the execution of such supplemental indenture.

(End of Article IX)

ARTICLE X.

AMENDMENTS TO THE FINANCING AND LOAN AGREEMENT

Section 10.1. Amendments, etc. to Financing and Loan Agreement Not Requiring Consent of Bondholders. The Issuer and the Trustee with the consent of the Company shall, without the consent of or notice to the Bondholders, consent to any amendment, change or modification of the Financing and Loan Agreement as may be required (i) by the provisions of the Financing and Loan Agreement and this Indenture, or (ii) for the purpose of curing any ambiguity or formal defect or omission, or (iii) in connection with any other change therein which, in the judgment of the Trustee (who may rely upon the advice and opinion of counsel), is not to the prejudice of the Trustee, the Issuer or the holders of the Bonds.

Section 10.2. Amendments, etc. to Financing and Loan Agreement Requiring Consent of Bondholders. Except for the amendments, changes or modifications as provided in Section 10.1 hereof, neither the Issuer nor the Trustee shall consent to any other amendment, change or modification of the Financing and Loan Agreement without the written approval or consent of the Requisite Bondholders given and procured as in Section 9.2 provided.

Section 10.3. Opinion. The Trustee shall be entitled to receive, and shall be fully protected in relying upon, the opinion of any counsel approved by it, as conclusive evidence that any such proposed amendment complies with the provisions of this Indenture and Financing and Loan Agreement, and that it is proper for the Trustee, under the provisions of this Article, to join in the execution of such amendment.

(End of Article X)

ARTICLE XI.

MISCELLANEOUS

Section 11.1. Satisfaction and Discharge. All rights and obligations of the Issuer and the Company under the Financing and Loan Agreement and this Indenture shall terminate, and such instruments shall cease to be of further effect, and the Trustee shall execute and deliver all appropriate instruments evidencing and acknowledging the satisfaction of this Indenture, and shall assign and deliver to the Company any moneys and investments in all Funds established hereunder when

- (a) all fees and expenses of the Trustee and the Paying Agent shall have been paid;
- (b) the Issuer and the Company shall have performed all of their covenants and promises in the Financing and Loan Agreement and in this Indenture; and
- (c) all Bonds theretofore authenticated and delivered (i) have become due and payable, or (ii) are to be retired or called for redemption under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee at the expense of the Company, or (iii) have been delivered to the Trustee canceled or for cancellation; and, in the case of (i) and (ii) above, there shall have been deposited with the Trustee either cash in an amount which shall be sufficient, or investments (but only to the extent that the full faith and credit of the United States of America are pledged to the timely payment thereof) the principal of and the interest on which when due will provide moneys which, together with the moneys, if any, deposited with the Trustee, shall be sufficient, to pay when due the principal or redemption price, if applicable, and interest due and to become due on the Bonds and prior to the redemption date or maturity date thereof, as the case may be.

Section 11.2. Defeasance of Bonds. Any Bond shall be deemed to be paid and no longer Outstanding within the meaning of this Article and for all purposes of this Indenture when (a) payment of the principal and interest of and premium, if any, on such Bond either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by irrevocably depositing with the Trustee in trust and irrevocably set aside exclusively for such payment, (1) moneys sufficient to make such payment or (2) Governmental Obligations maturing as to principal and interest in such amounts and at such times as will insure the availability of sufficient moneys to make such payment, and (b) all necessary and proper fees, compensation, indemnities and expenses of the Trustee and the Issuer pertaining to the Bonds with respect to which such deposit is made shall have been paid or the payment thereof provided for. At such time as a Bond shall be deemed to be paid hereunder, as aforesaid, such Bond shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of any such payment from such moneys or Governmental Obligations.

Notwithstanding the foregoing, no deposit under clause (a)(ii) of the immediately preceding paragraph shall be deemed payment of such Bonds as aforesaid until (a) proper notice of redemption of such Bonds shall have been previously given in accordance with Section 5.2 of this Indenture, or if the Bonds are not by their terms subject to redemption within the next succeeding sixty (60) days, until the Company shall have given the Trustee in form satisfactory to the Trustee irrevocable instructions to notify, as soon as practicable, the owners of the Bonds, that the deposit required by the preceding paragraph has been made with the Trustee and that the Bonds

are deemed to have been paid in accordance with this Section 11.2 and stating the maturity or redemption date upon which moneys are to be available for the payment of the principal of and the applicable redemption premium, if any, on said Bonds, plus interest thereon to the due date thereof; or (b) the maturity of such Bonds.

All moneys so deposited with the Trustee as provided in this Section 11.2 may also be invested and reinvested, at the written direction of the Company, in Governmental Obligations, maturing in the amounts and at the times as hereinbefore set forth, and all income from all Governmental Obligations in the hands of the Trustee pursuant to this Section 11.2 which is not required for the payment of principal of the Bonds and interest and premium, if any, thereon with respect to which such moneys shall have been so deposited shall be deposited in the Bond Fund as and when realized and collected for use and application as are other moneys deposited in the Bond Fund.

Notwithstanding any provision of any other Article of this Indenture which may be contrary to the provisions of this Section 11.2, all moneys or Governmental Obligations set aside and held in trust pursuant to the provisions of this Section 11.2 for the payment of Bonds (including premium thereon, if any) shall be applied to and used solely for the payment of the particular Bonds (including the premium thereon, if any) with respect to which such moneys or Governmental Obligations have been so set aside in trust.

Anything in Article 9 hereof to the contrary notwithstanding, if moneys or Governmental Obligations have been deposited or set aside with the Trustee pursuant to this Section 11.2 for the payment of Bonds and such Bonds shall not have in fact been actually paid in full, no amendment to the provisions of this Section 11.2 shall be made without the consent of the owner of each Bond affected thereby.

The right to register the transfer of or to exchange Bonds shall survive the discharge of this Indenture.

Section 11.3. Cancellation of Series 20__ Bonds. If the owner of any Series 20__ Bonds presents that Bond to the Trustee with an instrument satisfactory to the Trustee waiving all claims for payment of that Bond, the Trustee shall cancel that Series 20__ Bond and the Bondholder shall have no further claim against the Trust Estate, the Issuer or the Company with respect to that Series 20__ Bond.

Section 11.4. Application of Trust Money. All money or investments deposited with or held by the Trustee pursuant to Section 11.1 shall be held in trust for the holders of the Bonds, and applied by it, in accordance with the provisions of the Bonds and this Indenture, to the payment, either directly or through the Paying Agent, to the persons entitled thereto, of the principal (and premium, if any) and interest for whose payment such money has been deposited with the Trustee; but such money or obligations need not be segregated from other funds except to the extent required by law.

Section 11.5. Consents, etc., of Bondholders. Any consent, request, direction, approval, objection or other instrument required by this Indenture to be executed by the Bondholders may be in any number of concurrent writings of similar tenor and may be executed by such Bondholders in person or by agent appointed in writing. Provided, however, that wherever this Indenture or the Financing and Loan Agreement requires that any such consent or other action be taken by the

holders of a specified percentage, fraction or majority of the Bonds outstanding, any such Bonds held by or for the account of the following persons shall not be deemed to be outstanding hereunder for the purpose of determining whether such requirement has been met: the Issuer, any of its members, the Company, or the directors, trustees, officers or members of the Company. For all other purposes, Bonds held by or for the account of such person shall be deemed to be outstanding hereunder. Proof of the execution of any such consent, request, direction, approval, objection or other instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken under such request or other instrument, namely:

(a) The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him the execution thereof, or by affidavit of any witness to such execution.

(b) The fact of the holding by any person of Bonds transferable by delivery and the amounts and numbers of such Bonds, and the date of the holding of the same, may be proved by a certificate executed by any trust Company, bank or bankers, wherever situated, stating that at the date thereof the party named therein did exhibit to an officer of such trust Company or bank or to such banker, as the property of such party, the Bonds therein mentioned if such certificate shall be deemed by the Trustee to be satisfactory. The Trustee may, in its discretion, require evidence that such Bonds have been deposited with a bank, bankers or trust Company, before taking any action based on such ownership. In lieu of the foregoing, the Trustee may accept other proofs of the foregoing as it shall deem appropriate.

For all purposes of this Indenture and of the proceedings for the enforcement hereof, such person shall be deemed to continue to be the holder of such Bond until the Trustee shall have received notice in writing to the contrary.

Section 11.6. Limitation of Rights. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture, or the Bonds is intended or shall be construed to give to any person other than the parties hereto, and the Company, and the holders of the Bonds, any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions herein contained, this Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto and the Company and the holders of the Bonds as herein provided.

Section 11.7. Severability. If any provision of this Indenture shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or Sections in this Indenture contained, shall not affect the remaining portions of this Indenture, or any part thereof.

Section 11.8. Notices. All notices, demands, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, with proper address as indicated below; however, notices to the Trustee shall be deemed given upon receipt by the Trustee. The Issuer, the Company, and the Trustee may, by written notice given by each to the others, designate any address or addresses to which notices, demands, certificates or other communications to them shall be sent when required as contemplated by this Indenture. Until otherwise provided by the respective parties, all notices, demands, certificates and communications to each of them shall be addressed as provided in Section 7.3 of the Financing and Loan Agreement.

Section 11.9. Counterparts. This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. 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 11.10. Applicable Law. This Indenture shall be governed exclusively by the applicable laws of the State of Indiana.

Section 11.11. Immunity of Officers and Directors. No recourse shall be had for the payment of the principal of or premium or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement in this Indenture contained against any past, present or future members, officer, directors, agents, attorneys or employees of the Issuer, or any incorporator, member, officer, director, agents, attorneys, employees or trustee of any successor corporation, as such, either directly or through the Issuer or any successor corporation, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporator, members, officers, directors, agents, attorneys, employees or trustees as such is hereby expressly waived and released as a condition of and consideration for the execution of this Indenture and issuance of such Bonds.

Section 11.12. Holidays. If any date for the payment of principal or interest on the Bonds is not a business day then such payment shall be due on the first business day thereafter.

(End of Article XI)

IN WITNESS WHEREOF, the City of Michigan City, Indiana, has caused these presents to be signed in its name and behalf by its Mayor and its corporate seal to be hereunto affixed and attested by its Clerk, and to evidence its acceptance of the trusts hereby created, [Trustee], in Indianapolis, Indiana has caused these presents to be signed in its name and behalf by, its official seal to be hereunto affixed, and the same to be attested by, its duly authorized officers, all as of the day and year first above written.

CITY OF MICHIGAN CITY, INDIANA

By: _____
Mayor

(SEAL)

Attest:

Clerk

[TRUSTEE], as Trustee

By: _____
(Written Signature)

(Printed Signature)

EXHIBIT A

DESCRIPTION OF THE PROJECT

All or any portion of the engineering, design, acquisition and/or construction of improvements to provide for the acquisition, construction and equipping of a mixed-use development including (i) an approximately 242-room hotel; (ii) approximately 21,000 square feet of retail and/or commercial space; (iii) approximately 188 condos/townhomes and related improvements with a portion of such condos to be owned by the Company or an affiliate thereof, with the remaining condos to be sold to third parties; and (iv) an approximately 385 parking structure and any supporting areas or other local public improvements, located in, physically connected to, or directly serving or benefitting the Allocation Area.

EXHIBIT B

COSTS OF ISSUANCE

Payee

Amount

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

[\$ _____]

\$ _____

\$ _____

TOTAL:

\$ _____