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TRUST INDENTURE

BETWEEN

MOSAIC DISTRICT  
COMMUNITY DEVELOPMENT AUTHORITY

AND

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,  
AS TRUSTEE

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MOSAIC DISTRICT COMMUNITY DEVELOPMENT AUTHORITY  
REVENUE BONDS  
SERIES 2011A  
AND  
TAXABLE SERIES 2011A-T

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Exhibit A – Form of Series 2011 Bond

## TRUST INDENTURE

THIS TRUST INDENTURE is made as of \_\_\_\_\_ 1, 2011, between MOSAIC DISTRICT COMMUNITY DEVELOPMENT AUTHORITY, a political subdivision of the Commonwealth of Virginia (the “Authority”), and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association, as trustee (in such capacity, the “Trustee”).

The Authority is a duly organized community development authority created pursuant to the Virginia Water and Waste Authorities Act, Chapter 51, Title 15.2, Code of Virginia of 1950, as amended (the “Act”). Pursuant to the Act, the Authority is authorized, among other things, to acquire, establish, construct, equip, operate and maintain certain infrastructure improvements benefiting property within the Authority district and to issue its revenue bonds to pay the costs associated with such improvements. The Act further authorizes the Authority to finance such improvements by special assessments imposed on property within the Authority’s boundaries.

The Authority proposes to issue its revenue bonds in one or more series (the “Bonds”), including \$\_\_\_\_\_ aggregate principal amount of its Revenue Bonds, Series 2011A (the “Series 2011A Bonds”), and \$\_\_\_\_\_ aggregate principal amount of its Revenue Bonds, Taxable Series 2011A-T (the “Series 2011A-T Bonds” and, collectively with the Series 2011A Bonds, the “Series 2011 Bonds”), (i) to finance the costs of certain infrastructure improvements as described herein, (ii) to deposit a certain amount in the Debt Service Reserve Fund for the Series 2011 Bonds, (iii) to pay certain construction period interest on the Series 2011 Bonds, (iv) to fund certain Administrative Expenses, and (v) to pay the costs of issuing the Series 2011 Bonds. The Authority proposes to provide for the collection of certain incremental tax revenues to pay the Bonds and to further provide for a special assessment on the taxable property within the Authority’s boundaries to be imposed and collected if such incremental tax revenues are not sufficient to pay the Bonds.

All things necessary to make the Series 2011 Bonds valid and binding limited obligations of the Authority, when authenticated by the Trustee and issued as provided in this Indenture, and to constitute this Indenture a valid and binding agreement securing the payment of the principal of and premium, if any, and interest on the Series 2011 Bonds have been done and performed. The execution and delivery of this Indenture and the execution and issuance of the Series 2011 Bonds have in all respects been duly authorized.

The Authority covenants and agrees with the Trustee and the owners, from time to time, of the Bonds, as follows:

### ARTICLE I

#### DEFINITIONS AND RULES OF CONSTRUCTION

**Section 1.1** Definitions. The terms set forth below will have the following meanings in this Indenture unless the context clearly requires otherwise:

“Act” means the Virginia Water and Waste Authorities Act, Chapter 51, Title 15.2 of the Code of Virginia of 1950, as amended.

“Additional Bonds” means any Bonds issued pursuant to Section 5.3(b).

“Administrative Expenses” means costs directly related to the administration of the Authority, including the costs of computing the Special Assessments and the Special Taxes and preparing the annual Special Assessment or Special Tax collection schedules and the costs of collecting the Special Assessments, the Special Taxes and the County Advanced Revenues (whether by the County or otherwise); the costs of remitting the Pledged Revenues to the Trustee; the fees and costs of the Trustee (including its legal counsel) in the discharge of the duties required of it under this Indenture; the fees and costs of the Administrator in the discharge of the duties required of it under this Indenture and the Administrator Agreement; any administrative expenses of the Authority (including costs of official meetings of the Authority, fees paid to its board members and to its legal counsel and other consultants and advisors); the costs of the Authority of complying with arbitrage rebate requirements; and the costs of the County or the Administrator related to any appeal of the Special Assessments or the Special Taxes. Administrative Expenses shall also include amounts advanced or costs incurred by the County, the Authority or the Administrator for any administrative purpose of the Authority, including costs in connection with establishing the Authority, costs related to assessing and collecting Pledged Revenues and prepayments of Special Assessments or Special Taxes, recordings or other filings related to such prepayments and satisfaction of Special Assessments or the Special Taxes, amounts paid by the Authority to make rebate payments in accordance with Section 9.10 of this Indenture, costs of complying with securities disclosure requirements, and the costs incurred by the Administrator or the County, if any, in connection with collection or foreclosure of delinquent Special Assessments or Special Taxes.

“Administrative Expense Fund” means the fund by that name established by Section 7.1 hereof.

“Administrator” means the entity selected by the Authority to perform any and all tasks set forth in Section 10.2 hereof and those tasks specified in the Administrator Agreement, initially, MuniCap, Inc., a Maryland corporation.

“Administrator Agreement” means the Agreement for Administrative Services, dated as of \_\_\_\_\_ 1, 2011, by and between the Authority and the Administrator, as such Agreement may be amended from time to time.

“Authority” or “District” means Mosaic District Community Development Authority, a political subdivision of the Commonwealth of Virginia.

“Authorized Authority Representative” means the Chairman or Vice Chairman of the Authority, or any person or persons designated to act on behalf of the Authority by a certificate signed by the Chairman and filed with the Trustee.

“Authority-Owned Facilities” means those Facilities owned by the Authority and financed as a whole or in part with the proceeds of the Bonds.



“Beneficial Owners” means, during any period when the Bonds are held in book entry form, any owner of any Bonds as shown on the records of the participants of DTC or any successor securities depository, and during any period when the Bonds are issued in certificated form, any registered owner of any Bonds.

“Bond” or “Bonds” means the Series 2011 Bonds issued pursuant to this Indenture, and any Additional Bonds issued under this Indenture, but will not include any subordinate debt or any bonds or other evidence of indebtedness of the Authority issued from time to time under any other indenture, trust agreement, resolution or similar instrument and does not include the Series 2011B Bonds.

“Bond Counsel” means Sidley Austin LLP or any other attorney or a firm of attorneys (designated by the Authority) of nationally recognized standing in matters pertaining to the validity of and the tax-exempt nature of interest on bonds issued by states and their political subdivisions, duly admitted to the practice of law before the highest court of any state of the United States of America.

“Bond Fund” means the fund established by Section 7.1.

“Business Day” means any day other than (i) a Saturday or Sunday, (ii) a day on which commercial banks in the Commonwealth, or the jurisdiction in which the designated corporate trust office of the Trustee or the Paying Agent is located, are authorized by law to close, (iii) a day on which the New York Stock Exchange is closed, or (iv) such other days as may be specified in a Supplemental Indenture.

“Capitalized Interest Account” means the Capitalized Interest Account of the Project Fund established by Section 7.1.

“Capitalized Interest Period” means the period of time from the date of issuance of the Series 2011 Bonds through \_\_\_\_\_ 1, \_\_\_\_\_.

“Chairman” means the Chairman of the Authority.

“Closing” means the date the Series 2011 Bonds are issued and delivered by the Authority to the initial purchasers thereof against payment therefor.

“Code” means the Internal Revenue Code of 1986, as amended, including applicable regulations and revenue rulings, and any successor codification.

“Commonwealth” means the Commonwealth of Virginia.

“Completion Date” means the date of completion of the Facilities as determined under Section 6.3.

“Cost” or “Cost of the Facilities” means all costs incurred by or on behalf of the Authority in connection with the acquisition, expansion, construction, development, improvement, equipping, planning and financing of the Facilities or any portion of the Facilities, including, without limitation, the payment or reimbursement of costs of issuance of the Bonds,

including without limitation the reasonable costs of legal and financial consultants incurred by the Authority, the County, the Developer and the Trustee in connection with the creation of the Authority and the issuance of the Bonds, and the funding of such funds and accounts as are provided in this Indenture, the cost of all lands, properties, rights, easements, franchises and permits acquired, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for up to approximately one year after completion of construction, cost of engineering and legal expenses, plans, specifications and other expenses necessary or incident to construction of the Facilities.

“Counsel” means such attorney or firm of attorneys selected or approved by the Authority who are duly admitted to practice law before the highest court of any state of the United States of America, who, unless otherwise provided in this Indenture, may be an employee of the Authority or the County or an employee or officer of the Trustee.

“County” means the County of Fairfax, Virginia.

“County Advanced Revenues” means the County Advanced Revenues, as defined in the Memorandum of Understanding, collected by the County and paid to the Trustee in accordance therewith.

“County Representative” means the County Administrator or such officer’s designee.

“Debt Service Reserve Fund” means the fund established in Section 7.1.

“Debt Service Reserve Requirement” means an amount equal to the least of (i) the maximum principal and interest due on the Bonds in the current or any future Fiscal Year, (ii) ten percent of the original stated principal amount of the Bonds (or ten percent of the issue price of such Bonds if required by the Code), and (iii) 125 percent of the average annual principal and interest due on the Bonds in the current or any future Fiscal Year.

“Delinquent Payments Account” means the Delinquent Payments Account in the Revenue Fund established by Section 7.1.

“Developer” means, collectively, Eskridge (E&A), LLC, a South Carolina limited liability company, or its successors and assigns, and Eskridge Properties (E&A), LLC, a South Carolina limited liability company, or its successors and assigns.

“Development Agreement” means the Development/Acquisition and Financing Agreement, dated as of \_\_\_\_\_ 1, 2011, by and among the Authority, the County and the Developer, as such Agreement may be amended from time to time.

“Disclosure Agreement” means the Continuing Disclosure Agreement, dated as of \_\_\_\_\_ 1, 2011, executed and delivered by the Authority, the Administrator and the Developer, as such Agreement may be amended from time to time.

“District” means the Mosaic District, the portion of the County comprising the Authority.

“DTC” means The Depository Trust Company, New York, New York.

“Engineer” means any independent engineering or architectural firm or individual architect or engineer retained or approved by the Authority as Engineer for purposes of this Indenture, which Engineer may be an employee of the Authority or the County, unless otherwise provided in this Indenture.

“Event of Default” means any Event of Default specified in Section 11.1.

“Facilities” means the Infrastructure, as defined in the Petition and financed with proceeds of the Series 2011 Bonds.

“Fiscal Year” means the period of twelve months beginning each July 1 and ending each June 30 or such other period of twelve months as may be established by the Authority as its annual accounting period.

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

“Government Certificates” mean certificates representing ownership of either United States Treasury bond principal at maturity or coupons for accrued periods of interest, which bonds or coupons are held by a bank or trust company, organized and existing under the laws of the United States of America or any of its states acceptable to the Trustee and the Authority, in the capacity of custodian independent of the seller of the certificates.

“Government Obligations” mean bonds, notes and other obligations of the United States and securities unconditionally guaranteed as to the payment of principal and interest by the United States of America or any agency thereof. Such evidences of indebtedness may be held directly, or in the form of repurchase agreements collateralized by such debt securities, or in the form of securities of any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, as amended, provided that the portfolio of such investment company or investment trust is limited to such evidences of indebtedness, or repurchase agreements collateralized by such debt securities, or securities of other such investment companies or investment trusts whose portfolios are so restricted.

“Indenture” means this Trust Indenture, between the Authority and the Trustee, as it may be modified, altered, amended and supplemented from time to time in accordance with its terms.

“Interest Account” means the Interest Account of the Bond Fund established by Section 7.1.

“Interest Payment Date” means [March] 1 and [September] 1 of each year, commencing [September] 1, 2011.

“Land Owner” means any Person that owns land within the District.

“Letter of Representations” means the letter, dated \_\_\_\_\_, 2011, from the Authority to DTC and any amendment or supplement to it.

“Majority Holders” means the Beneficial Owners of more than 50% of the aggregate principal amount of Bonds Outstanding.

“Mandatory Prepayments” means prepayments of the Special Assessments required by the provisions of Section J of the RMA.

“Memorandum of Understanding” means the memorandum of understanding, dated as of May 12, 2010, as amended and restated as of \_\_\_\_\_, 2011, among the Authority, the Land Owners, the Developer and the County, as such memorandum may be amended from time to time.

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

“Net Proceeds” mean the proceeds from any insurance recovery or condemnation award in respect of Authority-Owned Facilities that are deposited by or on behalf of the Authority with the Trustee and remaining after payment of attorneys’ fees, costs and expenses, fees and expenses of the Authority and the Trustee and all other expenses incurred in collection of the gross proceeds.

“Net Proceeds Account” means the Net Proceeds Account of the Project Fund established by Section 7.1.

“Opinion of Counsel” means a written opinion of any Counsel, in form and substance acceptable to the Trustee.

“Ordinance” means the ordinance adopted by the Board of Supervisors of the County on April 27, 2009, authorizing the creation of the Authority and the District, as amended by ordinance adopted April 27, 2010.

“Outstanding” means, at any date, the aggregate of all Bonds authorized, issued, authenticated and delivered under this Indenture, except:

- (a) Bonds cancelled or surrendered to the Paying Agent for cancellation;
- (b) Bonds deemed to have been paid as provided in Section 15.1 or 15.2; and
- (c) Bonds in lieu of or in substitution for which other Bonds have been authenticated and delivered pursuant to this Indenture unless proof satisfactory to the Paying Agent is presented that any such Bond is held by a bona fide Owner.

Bonds that are owned by the Authority will be disregarded and deemed not to be Outstanding for the purpose of any determination hereunder; provided, however, that for the purpose of determining whether the Trustee will be protected in relying upon any request, demand, authorization, direction, notice, consent or waiver, only Bonds that a Responsible Officer of the Trustee actually knows to be so owned will be disregarded.

“Owner” means the Person in whose name a particular Bond is registered on the records of the Paying Agent.

“Parcel” means a lot or parcel of land with a tax map identification number assigned by the County for real property tax purposes.

“Paying Agent” means any paying agent for the Bonds (and may include the Trustee) and its successor or successors appointed pursuant to the provisions of any Supplemental Indenture. Unless otherwise provided in a Supplemental Indenture, the Trustee will be the Paying Agent.

“Permitted Investments” means, subject to the provisions of Chapter 45, Title 2.2, Code of Virginia of 1950, as amended, entitled “Investment of Public Funds Act” (the “Investment Act”), any obligations listed below, to the extent permitted by law, as such law may be amended from time to time:

(a) Bonds, notes and other evidences of indebtedness to which the full faith and credit of the Commonwealth is pledged for the payment of principal and interest or which are unconditionally guaranteed as to the payment of principal and interest by the Commonwealth;

(b) Government Obligations;

(c) Government Certificates;

(d) Bonds, notes and other evidence of indebtedness of any county, city, town, district, authority or other public body of the Commonwealth upon which there is no default; provided that such bonds, notes and other evidences of indebtedness are either direct obligations of, or unconditionally guaranteed by the county, city, town, district, authority or other public body and revenue bonds issued by agencies or authorities of the Commonwealth or its political subdivisions upon which there is no default that are rated in one of the two highest debt rating categories by both of the Rating Agencies, without regard to any refinement or gradation of such rating category by numerical modifier or otherwise;

(e) Savings accounts and time deposits in any bank, including the Trustee and its affiliates, or savings institution within the Commonwealth, provided that the funds are secured in the manner required by the Virginia Security for Public Deposits Act (Chapter 44 of Title 2.2 of the Code of Virginia of 1950, as amended) or any successor legislation;

(f) Bonds and other obligations issued, guaranteed or assumed by the International Bank for Reconstruction and Development, Asian Development Bank or African Development Bank;

(g) “Prime quality” commercial paper, with a maturity of 270 days or less, of issuing corporations organized under the laws of the United States, or of any state thereof, including paper issued by banks and bank holding companies. “Prime quality” shall be as rated by at least two of the following: Moody’s, within its NCO/Moody’s

rating of prime 1, by S&P, within its rating of A-1, by Fitch, within its rating of F-1, or by their corporate successors, provided that at the time of any such investment:

(1) The issuing corporation, or its guarantor, has a net worth of at least \$50,000,000; and

(2) The net income of the issuing corporation, or its guarantor, has averaged \$3,000,000 per year for the previous five years; and

(3) All existing senior bonded indebtedness of the issuer, or its guarantor, is rated A or better by at least two of the following: Moody's, S&P or Fitch;

provided that, not more than 35% of the total funds held under this Indenture may be invested in commercial paper, and not more than five percent of the total funds held under this Indenture may be invested in commercial paper of any one issuing corporation;

(h) Corporate notes with a rating at least Aa by Moody's and AA by S&P's without regard to any numerical refinement or gradation of such rating category by numerical modifier or otherwise, with a maturity of not more than five years;

provided that, not more than 35% of the total funds held under this Indenture may be invested in corporate notes, and not more than five percent of the total funds held under this Indenture may be invested in corporate notes of any one issuing corporation;

(i) Direct and general obligations of any state of the United States to the payment of principal of and interest on which the full faith and credit of such state is pledged, upon which there is no default and upon which there has been no default for more than 90 days; provided that within the 20 preceding fiscal years such state has not been in default for more than 90 days in the payment of any debt of such state, if at the time of their purchase such obligations are rated in either of the two highest rating categories by either Rating Agency;

(j) Certificates of deposit and negotiable bank deposit notes of domestic banks and domestic offices of foreign banks with a rating of at least A-1 by S&P and P-1 by Moody's for maturities of one year or less and a rating of at least AA by S&P and Aa by Moody's for maturities longer than one year and not exceeding five years;

(k) Banker's acceptances, as permitted by the Investment Act, with banks rated in one of the two highest debt rating categories by both of the Rating Agencies, without regard to any refinement or gradation of such rating category by numerical modifier or otherwise; and

(l) Such other investments as may be permitted by the Investment Act; as certified by the Authority and the Trustee provided they are rated in one of the two highest debt or other rating categories by both of the Rating Agencies without regard to any numerical refinement or other gradation of such rating.

Any money held by the Trustee in the Bond Fund or in the Debt Service Reserve Fund will be separately invested and reinvested by the Trustee, at the written request of and as directed by an Authorized Authority Representative, only in investments described in paragraphs (a), (b), (c), (d), (e) and (f) above, which are at the time legal investments for public sinking funds under the Investment Act, or any subsequent provisions of law applicable to such investments or in repurchase agreements meeting the requirements set forth in this section.

Investment in a money market fund or in the shares of any other management type investment company registered under the Investment Company Act of 1940, the investments of which fund or company are exclusively in obligations or securities described above, will be considered investments in obligations described in such paragraphs, including any such fund maintained by the Trustee (including any proprietary mutual fund of the Trustee or any affiliate of the Trustee for which the Trustee or an affiliate of the Trustee serves as investment advisor or provides other services to such mutual fund and receives reasonable compensation therefor).

The Trustee, at the prior written direction of the Authority, may make Permitted Investments through the Virginia State Non-Arbitrage Program.

Any investments described above may be purchased by the Trustee at the written direction of the Authority pursuant to a repurchase agreement that is collateralized with securities described above, or in the case of any investments of the Bond Fund or Debt Service Reserve Fund collateralized only in investments described in paragraphs (a), (b), (c), (d), (e) and (f) above, with any domestic or foreign bank, insurance company or corporation the long-term debt or claims paying ability of which, or, in the case of a guaranteed corporation the long-term debt, or, in the case of a monoline financial guaranty insurance company, claims paying ability, of the guarantor is rated in at least the double A category by both Rating Agencies. Such repurchase agreement will be considered a purchase of the investments even if title to and/or possession of the investments is not transferred to the Trustee so long as (i) the repurchase obligation is collateralized by the investments themselves, (ii) the investments have a fair market value determined at least weekly at least equal to 101% of the amount invested in the repurchase agreement, and any failure to maintain the fair market value of the investments at such level will require the Trustee to give notice to the other party to the agreement to correct the deficiency and if not corrected to liquidate the collateral, (iii) the investments are held by the Trustee or an agent acting for the Trustee, (iv) the investments are not subject to liens or claims of third parties, and (v) a perfected security interest under the Uniform Commercial Code of Virginia or book entry procedures prescribed at 31 C.F.R. 306.1 et seq. or 31 C.F.R. 350.0 et seq., as amended, in the investments is created for the benefit of the Owners. In the event the fair market value of the investments falls below the amount set forth in clause (ii) of the preceding sentence, and such deficiency is not cured by the next Business Day, the Trustee shall reduce such investments to cash.

If such investments are held by a third-party, they shall be held as agent for the benefit of the Trustee as fiduciary for the Beneficial Owners and not as agent for the bank serving as Trustee in its commercial capacity or any other party and shall be segregated from securities owned generally by such third party or bank.

The Trustee shall not be responsible for determining whether any investment that it is directed to make by the Authority is permitted by law.

“Person” means an individual, a corporation, a partnership, a general partner of a partnership, an association, a joint stock company, a trust, any unincorporated organization, or a governmental entity.

“Petition” means the Petition, dated February 10, 2009, to create the Authority.

“Pledged Revenues” means Special Assessment Revenues, Special Tax Revenues and County Advanced Revenues, including, without limitation, any investment earnings thereon, but not including amounts in the Net Proceeds Account, the Rebate Fund or the Administrative Expense Fund.

“Prepayments” means any Special Assessment, or portion thereof, which is paid to the Authority before such amount becomes due, including Mandatory Prepayments.

“Principal Account” means the Principal Account of the Bond Fund established by Section 7.1.

“Principal Payment Date” means any date on which a payment of principal (including any sinking fund installment) of the Bonds is due.

“Project Fund” means the fund established in Section 7.1.

“Rating Agency” means Moody’s and S&P, or either of them and their successors and assigns. If either Moody’s or S&P does not provide a rating for a certain purpose under this Indenture, Fitch, or its successors and assigns may be used in lieu of Moody’s or S&P, but not both.

“Rebate Amount” means the amount, if any, required to be rebated to the United States pursuant to Section 148(f) of the Code.

“Rebate Fund” means the fund established in Section 7.1.

“Redemption Account” means the Redemption Account of the Bond Fund established by Section 7.1.

“Responsible Officer” means, when used with respect to the Trustee, any vice president, assistant vice president, senior associate or other officer of the Trustee within the corporate trust office specified in Section 16.4 (or any successor corporate trust office) having direct responsibility for the administration of this Indenture.

“Revenue Fund” means the fund established in Section 7.1.

“RMA” means the Rate and Method of Apportionment of Special Assessments, and attached to the Memorandum of Understanding as Exhibit D.



“S&P” means Standard & Poor’s Ratings Group, a division of The McGraw-Hill Companies Inc., its successors and their assigns, and, if such entity shall for any reason no longer perform the functions of a securities rating agency, “S&P” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Authority.

“Series” means any series of Bonds issued under this Indenture.

Series 2011B Administrative Expenses” means Administrative Expenses, as defined in the Series 2011B Indenture, relating to the Series 2011B Bonds.

“Series 2011B Bonds” means the Authority’s \$\_\_\_\_\_ aggregate principal amount of its Revenue Bonds, Taxable Series 2011B issued pursuant to the Series 2011B Indenture.

“Series 2011B Indenture” means the Trust Indenture, dated as of \_\_\_\_\_ 1, 2011, between the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee, relating to the Series 2011B Bonds.

“Special Assessment Agreement” means the Special Assessment Agreement and Declaration of Notice of Special Assessment, dated as of \_\_\_\_\_, 2011, between \_\_\_\_\_, as Landowner, and the Authority.

“Special Assessment Ordinance” means the ordinance adopted by the Board of Supervisors of the County on \_\_\_\_\_, 2011, providing for the levy and collection of the Special Assessments.

“Special Assessment Revenues” means the amounts collected pursuant to the Special Assessments and appropriated by the County to the Authority and paid to the Trustee including any prepayments thereof, interest thereon and proceeds of the redemption or sale of property sold as a result of foreclosure of the Special Assessment lien, penalties and default rate of interest and interest thereon (to the extent such penalties and interest are not retained by the County in accordance with the Memorandum of Understanding). “Special Assessment Revenues” does not include any Administrative Expenses collected by the County in connection with delinquent Special Assessments or other Administrative Expenses payable to the County in accordance with the Memorandum of Understanding.

“Special Assessments” means the special assessments levied within the District pursuant to the Special Assessment Ordinance; provided, however, that such Special Assessments shall only include Special Assessment Part A, as defined in the RMA.

“Special Tax Revenues” means the amounts collected pursuant to the Special Taxes and appropriated by the County to the Authority and paid to the Trustee including any prepayments thereof, interest thereon and proceeds of the redemption or sale of property sold as a result of foreclosure of the Special Tax lien, penalties and default rate of interest and interest thereon (to the extent such penalties and interest are not retained by the County in accordance with the Memorandum of Understanding). “Special Tax Revenues” does not include any Administrative Expenses collected by the County in connection with delinquent Special Taxes or other

Administrative Expenses payable to the County in accordance with the Memorandum of Understanding.

“Special Taxes” means the special taxes, if any, on taxable real property in the District pursuant to Virginia Code Section 15.2-5158(A)(3) as described in the Memorandum of Understanding; provided, however, that such Special Taxes shall only include the portion of Special Taxes relating to Special Assessment Part A, as defined in the RMA.

“Supplemental Indenture” means any indenture supplemental to or amendatory of this Indenture as originally executed, which is duly executed and delivered in accordance with the provisions of this Indenture.

“Surplus” has the meaning set forth in the Memorandum of Understanding.

“Surplus Fund” means the fund established in Section 7.1.

“Taxable Bond Project Account” means the Taxable Bond Project Account of the Project Fund established pursuant to Section 7.1 hereof.

“Taxable Bond Subaccount” means the Taxable Bond Subaccount of the Capitalized Interest Account established pursuant to Section 7.1 hereof.

“Tax-Exempt Bond Project Account” means the Tax-Exempt Bond Project Account of the Project Fund established pursuant to Section 7.1 hereof.

“Tax-Exempt Bond Subaccount” means the Tax-Exempt Bond Subaccount of the Capitalized Interest Account established pursuant to Section 7.1 hereof.

“Tax-Exempt Bonds” means the Series 2011A Bonds and any other Bonds issued under this Indenture the interest on which is intended to be excluded from the gross income of the recipients thereof for federal income tax purposes.

“Trustee” means The Bank of New York Mellon Trust Company, N.A., a national banking association, and its successor or successors under this Indenture.

“2011 Optional Redemption Subaccount” means the Optional Redemption Subaccount of the Redemption Account within the Bond Fund established in Section 7.1 hereof.

“2011 Prepayment Subaccount” means the Prepayment Subaccount of the Redemption Account in the Bond Fund established in Section 7.1 hereof.

**Section 1.2 Rules of Construction.** Except where the context otherwise requires, (i) singular words will connote the plural number as well as the singular and vice versa, and (ii) pronouns inferring the masculine gender will include the feminine and neuter genders and vice versa. All references to particular articles or sections are references to articles or sections of this Indenture unless otherwise indicated. The headings and Table of Contents in this Indenture are solely for convenience of reference and will not constitute a part of this Indenture, nor will they

affect its meaning, construction or effect. All references to the payment of Bonds are references to the payment of the principal of and premium, if any, and interest on Bonds.

## ARTICLE II

### ESTABLISHMENT OF TRUST

**Section 2.1 Establishment of Trust.** In order to provide for the payment of the principal of and the premium, if any, and interest on the Bonds and to secure the performance of all of the obligations of the Authority under the Bonds and subject to the terms of this Indenture, the Authority pledges, assigns and grants to the Trustee a security interest in the following:

- (a) All of the Pledged Revenues;
- (b) The funds, accounts, money and investments held by the Trustee and the Paying Agent pursuant to the terms of this Indenture, other than the Net Proceeds Account, the Rebate Fund, the Surplus Fund and the Administrative Expense Fund; and
- (c) All other property of any kind mortgaged, pledged or hypothecated by the Authority or by anyone on its behalf and with its written consent at any time as and for additional security under this Indenture and any Supplemental Indenture in favor of the Trustee, which is authorized to receive all such property at any time and to hold and apply it subject to the terms of this Indenture and any Supplemental Indenture.

The property described above, which secures the payment of the principal of and premium, if any, and interest on the Bonds in accordance with the provisions of this Indenture, is to be held in trust for the equal and proportionate benefit and security of the Owners from time to time of the Bonds, except as otherwise provided in, and subject to its application in accordance with the terms of, this Indenture.

## ARTICLE III

### GENERAL TERMS AND CONDITIONS OF BONDS

**Section 3.1 Authority for Indenture.** This Indenture has been executed and delivered pursuant to a resolution adopted by the Authority on \_\_\_\_\_, 2011. The Authority has ascertained that the execution of and the transactions contemplated by this Indenture are necessary or convenient in order to provide for infrastructure serving the District and that each covenant or agreement in this Indenture is reasonable and proper for protecting and enforcing the rights and remedies of the Owners.

**Section 3.2 Indenture Constitutes Contract.** In consideration of the purchase and acceptance of the Bonds by the Owners, the provisions of this Indenture will be a part of the contract of the Authority with the Owners of the Bonds and will constitute a contract among the Authority, the Trustee and the Owners from time to time of the Bonds.

### **Section 3.3 Authorization of Series 2011 Bonds; Form and Details of Bonds.**

(a) There are authorized to be issued the Series 2011A Bonds of the Authority in the aggregate principal amount of \$\_\_\_\_\_ and the Series 2011A-T Bonds in the aggregate principal amount of \$\_\_\_\_\_. The Bonds will be issued as fully registered bonds, without coupons. The Series 2011 Bonds will (i) be dated the date of delivery of the Series 2011 Bonds, (ii) be issued in denominations of \$100,000 or any integral multiple of \$1,000 in excess of \$100,000; provided that (i) if the Series 2011 Bonds have at any time been rated at least “Baa3” by Moody’s, “BBB-” by S&P or “BBB-” by Fitch, the Series 2011 Bonds shall thereafter be issuable in denominations of \$5,000 or any integral multiple of \$1,000 in excess of \$5,000, notwithstanding any subsequent downgrade, suspension or withdrawal of any such rating, and (iii) if necessary to effectuate the partial redemption of any Bond pursuant to a Supplemental Indenture or Sections 4.2, 4.3 or 4.4, a Bond or Bonds in the principal amount equal to the unredeemed portion, but not less than \$1,000 (or \$5,000 with respect to any optional redemption under Section 4.2) may be issued, and (iv) be numbered from R-1 upwards, sequentially within each Series.

Each Series 2011 Bond will bear interest from the date of delivery of the Series 2011 Bonds, if it is authenticated before \_\_\_\_\_ 1, 2011, or otherwise, from the [March] 1 or [September] 1 that is, or immediately precedes, the date on which the Series 2011 Bond is authenticated (unless the payment of interest on the Series 2011 Bond is in default, in which case the Series 2011 Bond will bear interest from the date to which interest has been paid). Interest on the Series 2011 Bonds shall be payable each [March] 1 and [September] 1, commencing [September] 1, 2011. Each Series 2011 Bond shall be subject to prior redemption in accordance with the terms thereof and this Indenture.

(b) The principal of and redemption premium, if any, and interest on the Bonds are payable in lawful money of the United States of America, but only from the Pledged Revenues and other sources pledged for such purpose under this Indenture. The principal of and redemption premium, if any, on the Bonds will be payable upon presentation and surrender of the Bonds at the designated corporate trust office of the Paying Agent except that, for so long as Cede & Co. or other nominee of DTC is the sole registered Owner of the Bonds, principal of and redemption premium, if any, on the Bonds will be paid as provided in the Letter of Representations. Interest on the Bonds will be paid by check or draft mailed by the Paying Agent on each interest payment date to the Owners of the Bonds at their addresses as they appear on the registration books of the Authority maintained by the Paying Agent. The registered owners will be determined on the [February] 15 or [August] 15, as appropriate, which next precedes each Interest Payment Date, unless otherwise provided pursuant to a Supplemental Indenture.

Notwithstanding the foregoing, if the Owner of any Bond (i) owns at least \$1,000,000 in aggregate principal amount of Bonds and (ii) has provided satisfactory written notice regarding payment via wire transfer to the Trustee, then interest will be paid to such Owner by wire transfer. Interest on the Bonds will be computed on the basis of a year of 360 days and twelve 30-day months, unless otherwise provided pursuant to a Supplemental Indenture.

(c) The Series 2011 Bonds will be issued in substantially the form set forth in Exhibit A to this Indenture, with appropriate variations, omissions and insertions as permitted or required by this Indenture. Any Additional Bonds will be issued in substantially the form set forth in the related Supplemental Indenture. There may be endorsed on the Bonds such legend or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any usage or requirement of law.

### **Section 3.4 Book Entry Provisions.**

(a) The Bonds will be issued in fully registered form and registered in the name of Cede & Co., a nominee of DTC, and immobilized in the custody of DTC physically or through DTC's FAST System. One fully registered Bond for all fungible bonds of a series and maturity will be registered to Cede & Co. Beneficial Owners will not receive physical delivery of Bonds. Individual purchases of Bonds may be made in book-entry form only in original principal amounts of \$100,000 and integral multiples of \$1,000 over \$100,000. Payments of the principal of and premium, if any, and interest on the Bonds will be made to DTC or its nominee as registered owner of the Bonds on the applicable payment date.

Transfer of the payments of the principal of and redemption premium, if any, and interest on the Bonds to the participants of DTC, which include securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations (the "Participants"), is the responsibility of DTC. Transfer of the payments of the principal of and redemption premium, if any, and interest on the Bonds to their Beneficial Owners by the Participants is the responsibility of the Participants and other nominees of the Beneficial Owners.

Transfer of ownership interest in the Bonds will be made by DTC and its Participants, acting as nominees of the Beneficial Owners of the Bonds, in accordance with rules specified by DTC and its Participants. Neither the Authority nor the Trustee makes any assurances that DTC, its Participants or other nominees of the Beneficial Owners of the Bonds will act in accordance with those rules or on a timely basis. For every transfer and exchange of beneficial ownership interest in the Bonds, the Beneficial Owner may be charged sums sufficient to cover any tax, fee or other governmental charge that may be imposed in relation to it.

THE AUTHORITY AND THE TRUSTEE DISCLAIM ANY RESPONSIBILITY OR OBLIGATIONS TO THE PARTICIPANTS OR THE BENEFICIAL OWNERS WITH RESPECT TO (i) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC OR ANY PARTICIPANT, (ii) THE PAYMENT BY DTC OR ANY PARTICIPANT OF ANY AMOUNT DUE TO ANY BENEFICIAL OWNER IN RESPECT OF THE PRINCIPAL OF AND REDEMPTION PREMIUM, IF ANY, AND INTEREST ON THE BONDS, (iii) THE DELIVERY BY DTC OR ANY PARTICIPANT OF ANY NOTICE TO ANY BENEFICIAL OWNER WHICH IS REQUIRED OR PERMITTED UNDER THE TERMS OF THIS INDENTURE TO BE GIVEN TO BONDHOLDERS, (iv) THE SELECTION OF THE BENEFICIAL OWNERS TO RECEIVE PAYMENT IN THE EVENT OF ANY PARTIAL REDEMPTION OF THE BONDS, OR (v) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC AS BONDHOLDER.

So long as Cede & Co., or its successor, is the registered owner of the Bonds, as nominee of DTC, references in this Indenture to the Owners of the Bonds means Cede & Co. and does not mean the Beneficial Owners of the Bonds.

(b) The Authority will appoint a substitute securities depository in the event that:

(1) DTC determines not to continue to act as securities depository for the Bonds; or

(2) The Trustee (at the direction of the Owners of 100% of the Bonds of the applicable series) or the Authority has determined to use a substitute securities depository.

(c) Replacement Bonds (the “Replacement Bonds”) will be issued directly to Beneficial Owners of the Bonds but only in the event that:

(1) under the circumstances described in (b)(1) or (b)(2) above, the Authority is unable to locate another qualified securities depository; or

(2) The Trustee (at the direction of the Owners of 100% of the Bonds of the applicable series) or the Authority has determined not to continue the book-entry system of transfer.

Replacement Bonds will be substantially in the form set forth in Exhibit A to this Indenture. In the event the Trustee or the Authority makes the determination described in clauses (c)(1) or (c)(2) (the Trustee and the Authority undertake no obligation to make any investigation to determine the occurrence of any events that would permit the Trustee or the Authority to make any such determination) and the Trustee or the Authority has made provisions to notify the Beneficial Owners of Bonds by mailing an appropriate notice to DTC, the Authority will execute and the Trustee and Paying Agent will authenticate and deliver to the Participants the appropriate Replacement Bonds to which the Participants are entitled. The Trustee is entitled to conclusively rely on the records provided by DTC as to the Participants entitled to receive Replacement Bonds.

**Section 3.5 Payment of Bonds; Special Obligations.** The principal of and redemption premium, if any, and interest on the Bonds will be payable in lawful money of the United States of America, but only from the Pledged Revenues and other sources pledged to such payment pursuant to this Indenture. If the date of maturity of the principal of any Bonds or the date fixed for the payment of interest on or the redemption of any Bonds is not a Business Day, then payment of the principal and premium, if any, and interest need not be made on such date, but may be made on the next succeeding Business Day, and, if made on such next succeeding Business Day, no additional interest will accrue for the period after such date of maturity or date fixed for redemption.

The Bonds do not constitute a pledge of the faith and credit of the Authority or the County, and the principal of, redemption premium, if any, and interest on the Bonds are payable

solely from the Pledged Revenues and other sources pledged to such payment pursuant to this Indenture.

**Section 3.6 Execution of Bonds.** The Bonds will be executed on behalf of the Authority by, or bear the facsimile signature of, the Chairman or Vice Chairman, and the seal of the Authority (which may be a facsimile) will be affixed (or reproduced, imprinted or engraved if a facsimile) and attested by the manual or facsimile signature of the Secretary of the Authority.

If any of the officers who have signed or sealed any of the Bonds or whose facsimile signature is on the Bonds ceases to be an officer of the Authority before the Bonds so signed and sealed have been actually authenticated by the Paying Agent or delivered by the Authority, the Bonds nevertheless may be authenticated, issued and delivered with the same force and effect as though the person or persons who signed or sealed the Bonds or whose facsimile signature is on the Bonds had not ceased to be an officer of the Authority. Any Bond may be signed and sealed on behalf of the Authority by those persons who, at the actual date of the execution of the Bond, are proper officers of the Authority, although at the date of the Bond they were not officers of the Authority.

**Section 3.7 Authentication of Bonds.** No Bond will be secured by this Indenture or be valid for any purpose unless there is endorsed on the Bond the Paying Agent's certificate of authentication, substantially in the form provided for in the Form of Bond attached hereto as Exhibit A. The Paying Agent will authenticate each Bond with the signature of an authorized representative of the Paying Agent, but it will not be necessary for the same person to authenticate all of the Bonds. The Paying Agent's certificate of authentication on any Bond issued by the Authority will be conclusive evidence and the only competent evidence that the Bond has been duly authenticated and delivered under this Indenture.

**Section 3.8 Registration, Transfer and Exchange.** The Authority will cause books for the registration and registration of transfer or exchange of the Bonds to be kept at the designated corporate trust office of the Paying Agent. The Authority appoints the Paying Agent as its registrar and transfer agent to keep such books and to make registrations and registrations of transfer or exchange under such reasonable regulations as the Authority or the Paying Agent may prescribe.

Upon surrender for registration of transfer or exchange of any Bond at the designated corporate trust office of the Paying Agent, the Authority will execute and the Paying Agent will authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds of the same Series of like date, tenor and of any authorized denomination for the aggregate principal amount which the Owner is entitled to receive, subject in each case to such reasonable regulations as the Authority or the Paying Agent may prescribe. All Bonds presented for registration of transfer, exchange, redemption or payment will be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and substance reasonably satisfactory to the Authority and the Paying Agent, duly executed by the registered Owner or by the Owner's duly authorized attorney-in-fact or legal representative. No Bond may be registered to bearer.

New Bonds delivered upon any transfer or exchange will be valid limited obligations of the Authority evidencing the same debt as the Bonds surrendered and will be secured by this Indenture and entitled to the benefits of this Indenture to the same extent as the Bonds surrendered. Registrations of transfers or exchange shall be made by the Paying Agent within such time periods as are customary in the municipal securities industry.

**Section 3.9 Charges for Exchange or Transfer.** Except as provided in Section 3.10, no charge will be made for any registration of transfer or exchange of Bonds, but the Authority or the Paying Agent may require payment by the Owner of the Bonds of a sum sufficient to cover any applicable tax or other governmental charge that may be imposed.

**Section 3.10 Mutilated, Lost, Stolen or Destroyed Bonds.** In the event any Outstanding Bond is mutilated, lost, stolen or destroyed, the Authority will execute, and, upon the Authority's request in writing, the Paying Agent will authenticate and deliver, a replacement Bond of the same Series and in the same principal amount and maturity and of like tenor as the mutilated, lost, stolen or destroyed Bond in exchange and substitution for a mutilated Bond, or in lieu of and substitution for a lost, stolen or destroyed Bond.

Application for exchange and substitution of mutilated, lost, stolen or destroyed Bonds will be made to the Paying Agent at its designated corporate trust office and the applicant will furnish to the Authority, the Paying Agent security or indemnification to their satisfaction. In every case of loss, theft or destruction of a Bond, the applicant will also furnish to the Authority and the Paying Agent evidence to their satisfaction of the loss, theft or destruction and of the identity of the applicant, and in every case of mutilation of a Bond, the applicant will surrender the Bond so mutilated for cancellation.

Notwithstanding the foregoing provisions of this Section, in the event any Bond has matured and no default has occurred which is then continuing in the payment of the principal of or premium, if any, or interest on the Bond, the Authority may authorize the payment of the Bond (without surrender except in the case of a mutilated Bond) instead of issuing a substitute Bond, provided the evidence described above and the security or indemnification is furnished as provided in this Section.

The Authority and the Paying Agent may charge the Owner their reasonable fees and expenses (including reasonable attorneys' fees, costs and expenses) in connection with the issuance of any substitute Bond. Every substitute Bond issued pursuant to the provisions of this Section will constitute a contractual limited obligation of the Authority, whether or not the lost, stolen or destroyed Bond is found or delivered at any time, or is enforceable by anyone, and will be entitled to all of the benefits of this Indenture equally and proportionally with any and all other Bonds duly issued under this Indenture to the same extent as the Bond in substitution for which such Bond was issued.

The provisions of this Section are exclusive and will preclude (to the extent lawful) all of the rights and remedies with respect to the payment of mutilated, lost, stolen, or destroyed Bonds, including those granted by any law or statute now existing or hereafter enacted.



**Section 3.11 Destruction of Bonds.** Any temporary or mutilated Bond surrendered to the Paying Agent, or any Bond redeemed or paid at maturity, or any Bond delivered for transfer, exchange or replacement, or purchased pursuant to instructions from the Authority, shall be destroyed or returned to the Authority, and, if destroyed, the Paying Agent shall deliver a certificate of destruction of such Bond to the Authority.

**Section 3.12 Application of Proceeds of Series 2011 Bonds.** The Trustee will apply the proceeds (net of any underwriters' discount and original issue discount) from the sale of the Series 2011 Bonds as follows:

(a) The sum of \$\_\_\_\_\_ of the proceeds of the Series 2011A Bonds will be deposited in the Tax-Exempt Bond Subaccount of the Capitalized Interest Account of the Project Fund, and the sum of \$\_\_\_\_\_ of the proceeds of the Series 2011A-T Bonds will be deposited in the Taxable Bond Subaccount of the Capitalized Interest Account;

(b) The sum of \$\_\_\_\_\_ of the proceeds of the Series 2011A Bonds and the sum of \$\_\_\_\_\_ of the proceeds of the Series 2011A-T Bonds will be deposited in the Debt Service Reserve Fund;

(c) The sum of \$\_\_\_\_\_ of the proceeds of the Series 2011A Bonds will be deposited in the Tax-Exempt Bond Project Account of the Project Fund and the sum of \$\_\_\_\_\_ of the proceeds of the Series 2011A-T Bonds will be deposited in the Taxable Bond Project Account of the Project Fund; and

(d) The sum of \$\_\_\_\_\_ of the proceeds of the Series 2011A Bonds and the sum of \$\_\_\_\_\_ of the proceeds of the Series 2011A-T Bonds will be deposited in the Administrative Expense Fund.

## ARTICLE IV

### REDEMPTION OF BONDS

**Section 4.1 Redemption of Bonds.** The Bonds may not be called for mandatory redemption or redemption at the option of the Authority except as provided in this Article or, solely with respect to Additional Bonds, in a Supplemental Indenture.

**Section 4.2 Optional Redemption of Series 2011 Bonds.** The Series 2011 Bonds are subject to redemption before maturity at the option of the Authority at any time, or from time to time, on or after \_\_\_\_\_ 1, \_\_\_\_, from any money available for such purpose, as a whole or in part in increments of [\$1,000] or any integral multiple of [\$1,000] upon payment of the principal amount of the Series 2011 Bonds to be redeemed, plus accrued interest to the redemption date.

The Authority shall give the Trustee written notice of its option to redeem the Series 2011 Bonds at least 45 days before the date fixed for redemption.

**Section 4.3 Special Mandatory Redemption of Series 2011 Bonds.** The Series 2011 Bonds are subject to special mandatory redemption as a whole or in part in minimum amounts of

\$1,000, at a redemption price equal to the principal amount to be redeemed, together with accrued interest thereon to the date fixed for redemption, on any March 1, June 1, September 1, or December 1, as follows:

(a) from amounts deposited into the 2011 Prepayment Subaccount of the Redemption Account as a result of Prepayments pursuant to Section 7.3(d) hereof and transfers from the Debt Service Reserve Fund pursuant to Sections 7.3(e) and 7.5(c) hereof; and

(b) on or after the Completion Date by application of money remaining in the Project Fund not reserved by the Authority for the payment of any remaining part of the Cost of the Facilities or from any amounts in the Net Proceeds Account which shall be transferred to the Redemption Account of the Bond Fund and applied to the redemption of the Series 2011 Bonds; provided, however, that amounts transferred from the Tax-Exempt Bond Project Account shall be applied solely to the redemption of Tax-Exempt Bonds, and amounts transferred from the Taxable Bond Project Account shall be applied solely to the redemption of Series 2011A-T Bonds.

**Section 4.4 Mandatory Sinking Fund Redemption of Series 2011 Bonds.** The 2011 Bonds are required to be redeemed in part before maturity by the Authority on [March] 1 in the years and amounts set forth below, at a redemption price equal to the principal amount of the 2011 Bonds to be redeemed, plus accrued interest to the redemption date.

Series 2011A Bonds			
<u>Redemption Date</u>	<u>Principal Amount</u>	<u>Redemption Date</u>	<u>Principal Amount</u>
[to come]			

Series 2011A-T Bonds			
<u>Redemption Date</u>	<u>Principal Amount</u>	<u>Redemption Date</u>	<u>Principal Amount</u>
[to come]			

The amount of the Series 2011 Bonds to be redeemed pursuant to mandatory sinking fund redemption may be reduced in accordance with the provisions of Section 7.3(b).

**Section 4.5 Selection of Bonds for Redemption.** If the Authority determines that less than all of the Series 2011 Bonds are to be called for optional or special mandatory redemption the amount, if any, of each maturity of Series 2011 Bonds to be so called for redemption shall be determined by the Authority, subject to the provisions of the Tax Certificate and Section 4.3. If less than all of any maturity of a Series of Series 2011 Bonds are to be called for optional or special mandatory redemption, the amount of Series 2011 Bonds of each maturity of such Series

to be so called for redemption shall generally be determined according to a pro-rata method across sinking fund requirements taking into account all Series 2011 Bonds of such maturity of such Series as determined by the Administrator and accepted by the Authority. No Owner of any Bonds may contest the selection methodology accepted by the Authority. If less than all Series 2011 Bonds of any maturity of a Series are to be called for optional, special mandatory or mandatory redemption, the Bonds to be called will be selected by DTC or the Paying Agent in a manner which DTC or the Paying Agent determines to be appropriate and fair. In selecting Bonds for optional redemption the Paying Agent shall count as one Bond each increment of \$5,000 of principal amount and in selecting Bonds to be called for special mandatory redemption pursuant to Section 4.3 or a Supplemental Indenture or mandatory sinking fund redemption pursuant to Section 4.4 or a Supplemental Indenture, the Paying Agent shall count as one Bond each increment of \$1,000 of principal amount. If a Bond shall be called for partial redemption upon its surrender, a new Bond representing the unredeemed balance of the principal amount shall be issued to the Beneficial Owner of such Bond, unless otherwise provided for in the Bonds.

**Section 4.6 Notice of Redemption.** In the case of any redemption of Bonds, the Paying Agent will give in its own name or in the name of the Authority notice, as provided for in this Section, that the Bonds (which shall be identified by series, maturity and CUSIP numbers) have been called for redemption and, in the case of Bonds of a series and maturity to be redeemed in part only, the principal amount of the Bonds that have been called for redemption, that they will be due and payable on the date fixed for redemption (specifying the date) upon surrender of the Bonds at the designated corporate trust office of the Paying Agent, at the applicable redemption price (specifying the price) together with any accrued interest to such date, and that all interest on the Bonds to be redeemed will cease to accrue on and after such date.

If at the time of the mailing of the notice of optional redemption the Authority shall not have deposited with the Trustee money that together with the maturing principal of and interest on any securities also deposited shall be sufficient to redeem all the Bonds called for optional redemption, such notice may state that it is conditional and subject to the deposit or transfer of the redemption money with the Trustee not later than the opening of business on the redemption date, and that such notice shall be of no effect unless such money is so deposited.

Such notice will be mailed postage prepaid, not less than 30 nor more than 60 days before the date fixed for redemption, to the Owners of the Bonds called for redemption, at their respective addresses as they appear on the registration books maintained by the Paying Agent. The receipt of notice will not be a condition precedent to the redemption, and failure to mail any notice to an Owner will not affect the validity of the proceedings for the redemption of Bonds of any other Owner.

**Section 4.7 Payment of Redeemed Bonds.** If notice of redemption has been given as provided in Section 4.6, the Bonds called for redemption will be due and payable on the date fixed for redemption at a redemption price equal to the principal amount of and premium, if any, on the Bonds, together with accrued interest to the date fixed for redemption. Payment of the redemption price will be made by the Paying Agent upon surrender of the Bonds. If less than the full principal amount of a Bond of a series and maturity is called for redemption, the Authority

will execute and deliver and the Paying Agent will authenticate, upon surrender of the Bond, and without charge to the Owner, Bonds for the unredeemed portion of the principal amount of the Bond so surrendered.

If any Bond has been duly called for redemption and payment of the principal of and premium, if any, and unpaid interest accrued to the date fixed for redemption on the Bond has been made or provided for, then, notwithstanding that the Bond called for redemption has not been surrendered for cancellation, interest on the Bond will cease to accrue from the redemption date, and, from and after the redemption date, the Bond will no longer be entitled to any lien, benefit or security under this Indenture, and its Owner will have no rights in respect of the Bond except to receive payment of the principal of and redemption premium, if any, and unpaid interest accrued to the date fixed for redemption on the Bond.

## **ARTICLE V**

### **ISSUANCE OF BONDS**

#### **Section 5.1 Issuance of Bonds.**

(a) The Authority will not issue any bonds, notes or other evidences of indebtedness or incur any obligation or indebtedness which will be secured by a pledge of Pledged Revenues or other funds pledged by this Indenture to the payment of the Bonds except for Bonds issued under and in accordance with this Indenture; provided, however, that nothing contained in this Indenture will prevent the Authority from issuing or incurring indebtedness payable out of or secured by a pledge of Pledged Revenues to be derived on and after the date the pledge of Pledged Revenues provided in this Indenture is discharged as provided in Section 15.1.

(b) Subject to the provisions set forth in subsection (a) of this Section, the Authority may issue from time to time bonds, notes and other evidences of indebtedness for any lawful purpose, but only after obtaining the prior written consent of the County and the Majority Holders; provided that the consent of the Majority Holders shall not be required for the issuance of the Series 2011B Bonds.

**Section 5.2 Security for Bonds.** This Indenture constitutes a continuing, irrevocable pledge of the Pledged Revenues and certain other funds of the Authority pledged in Article II to secure payment of the principal of and redemption premium, if any, and interest on all Bonds that may, from time to time, be executed, authenticated and delivered under this Indenture. Except as otherwise provided in this Indenture, Bonds will in all respects be equally and ratably secured under this Indenture with other Bonds without preference, priority or distinction on account of the time of their authentication, delivery or maturity, so that Bonds at any time Outstanding under this Indenture will have the same right, lien and preference under this Indenture with like effect as if they had all been executed, authenticated and delivered simultaneously with other Bonds.

#### **Section 5.3 Conditions of Issuing Bonds.**

(a) Before the issuance and authentication of the Series 2011 Bonds by the Trustee, the Authority will deliver or cause to be delivered to the Trustee:

(i) An original executed counterpart of this Indenture;

(ii) A certified copy of a resolution of the Authority authorizing the issuance of the Series 2011 Bonds and the execution and delivery of this Indenture;

(iii) A certified copy of the resolution of the Board of Supervisors consenting to the issuance of the Series 2011 Bonds.

(iv) An Opinion or Opinions of Counsel, who is not an employee of the Authority or the Trustee, but who may be an employee of the County, subject to customary exceptions and qualifications, to the effect that this Indenture has been duly authorized, executed and delivered by the Authority;

(v) An opinion of Bond Counsel, subject to customary exceptions and qualifications, to the effect that the issuance of the Series 2011 Bonds has been duly authorized, that the Series 2011 Bonds are valid and binding limited obligations of the Authority entitled to the benefits and security of this Indenture and that the interest on the Series 2011A Bonds is excludable from the gross income of the recipients thereof for federal income tax purposes;

(vi) A request and authorization of the Authority, signed by its Chairman or Vice Chairman, to the Trustee and the Paying Agent to authenticate and deliver the Series 2011 Bonds as directed in the request upon payment to the Trustee for the account of the Authority of the amount specified in the request;

(vii) A certificate of an Authorized Authority Representative that no Event of Default exists under the provisions of the Indenture and that no condition exists, that with the passage of time or the giving of notice would become an Event of Default under the Indenture;

(viii) A fully executed counterpart of the Memorandum of Understanding;

(ix) A certified copy of the Special Assessment Ordinance; and

(x) A certificate of the underwriter for the Series 2011 Bonds as to the Debt Service Reserve Requirement.

(b) Additional Bonds may be issued under this Indenture for the purpose of refunding or defeasing Outstanding Bonds or providing funds to the Authority to purchase Outstanding Bonds. Before the issuance and authentication of any such Additional Bonds, the Authority will deliver or cause to be delivered to the Trustee:

(i) An executed Supplemental Indenture authorizing the issuance of such Additional Bonds and setting forth their terms;

(ii) A certified copy of a resolution of the Authority authorizing the execution and delivery of the Additional Bonds and the Supplemental Indenture;

(iii) An Opinion or Opinions of Counsel, who is not an employee of the Authority or the Trustee, subject to customary exceptions and qualifications, to the effect that the Supplemental Indenture has been duly authorized, executed and delivered by the Authority;

(iv) An opinion of Bond Counsel, subject to customary exceptions and qualifications, to the effect that the issuance of such Additional Bonds has been duly authorized, that the Additional Bonds are valid and binding limited obligations of the Authority entitled to the benefits and security of the Indenture and that the issuance of such Additional Bonds will not adversely affect the exclusion from gross income for federal income tax purposes of the interest on any Tax-Exempt Bond;

(v) A request and authorization of the Authority, signed by its Chairman or Vice Chairman, to the Trustee and the Paying Agent to authenticate and deliver such Additional Bonds upon payment to the Trustee for the account of the Authority of the amount specified in the request;

(vi) A certificate of an Authorized Authority Representative that no Event of Default exists under the provisions of the Indenture and that no condition exists, that with the passage of time or the giving of notice would become an Event of Default;

(vii) Evidence satisfactory to the Trustee that the Authority has made provision as required by the Indenture for the payment or redemption of all Bonds of the Authority to be refunded;

(viii) A written determination by a firm of independent certified public accountants or of financial consultants that the proceeds (excluding accrued interest) of the Additional Bonds, together with any other money deposited with the Trustee for such purpose and the investment income to be earned on funds held by the Trustee for payment or redemption of Bonds of the Authority to be purchased or refunded, will be sufficient to pay, whether upon redemption or at maturity, the principal of and redemption premium, if any, and interest on the Bonds of the Authority to be purchased or refunded and unless otherwise provided for, the estimated expenses incident to the payment or refunding;

(ix) A written determination by a firm of independent certified public accountants or of financial consultants that after the issuance of the Additional Bonds and the provision for payment or redemption of all Bonds of the Authority to be refunded or paid, either (A) the Debt Service for each Fiscal Year in which there will be Outstanding Bonds of any series not to be refunded or paid will not

be more than the Debt Service for such Fiscal Year on all Outstanding Bonds immediately before the issuance of the Additional Bonds, including the Bonds of the Authority to be refunded or paid or (B) net present value savings shall be achieved with respect to the series of Bonds being refunded or paid and Pledged Revenues shall be sufficient to cover debt service on all Outstanding Bonds;

(x) A certified copy of a resolution of the Board of Supervisors of the County consenting to the issuance of Additional Bonds; and

(xi) A certificate of the underwriter for the Additional Bonds as to the Debt Service Reserve Requirement.

## ARTICLE VI

### PROJECT FUND

**Section 6.1 Project Fund; Capitalized Interest Account.** The Trustee will deposit in the Project Fund (i) the portion of the proceeds of the Series 2011 Bonds specified in Sections 3.12(a) and 3.12(c) and (ii) any Net Proceeds to be used to repair, reconstruct or restore any portion of the Authority-Owned Facilities as directed by the Authority.

The portion of the proceeds of the Series 2011 Bonds to be deposited in the Capitalized Interest Account pursuant to Section 3.12(a) will be deposited in this Account. The Trustee will transfer money in the Capitalized Interest Account to the Interest Account of the Bond Fund on or before each Interest Payment Date in accordance with Section 7.2 hereof.

Interest earned on and any profit realized from the investment of money in this Account will be retained in the Capitalized Interest Account and used to make the transfers described above. Any amounts remaining after the Interest Payment Date on \_\_\_\_\_, shall be transferred first to the Project Fund to pay Costs of the Facilities if the Completion Date has not occurred, then to the Bond Fund to be applied to the payment of interest on Bonds, subject to the delivery of an opinion of Bond Counsel that such application does not adversely affect the exclusion from gross income for federal income tax purposes of interest on any Tax-Exempt Bond or, if required by Bond Counsel, to the Redemption Account of the Bond Fund to be used to redeem Series 2011 Bonds in accordance with Section 4.3(b).

**Section 6.2 Payments from Project Fund.** The Trustee will use money in the Project Fund solely to pay Costs of the Facilities, as evidenced by the requisitions and certificates provided for in this Section. As conditions precedent to each disbursement from the Project Fund and the Net Proceeds Account, the Authority will file or cause to be filed with the Trustee an executed copy of a requisition in substantially the form of Exhibit [B] to the Development Agreement. [Note – Requisition should govern use of taxable vs. tax-exempt proceeds.]

Upon receipt of each requisition and statement the Trustee will make payment from the Project Fund in accordance with the requisition.

Interest accruing on and any profit realized from the investment of money in the Project Fund will be retained in the Project Fund as part of the account in which the investment is held.

**Section 6.3 Disposition of Balance in Project Fund.** Upon the completion of the Facilities and upon the Trustee's receipt of a certificate, signed by an Authorized Authority Representative, stating the date of completion and which items of the Cost of the Facilities, if any, have not been paid and for the payment of which money should be reserved in the Project Fund, the balance of any money remaining in the Project Fund in excess of the amount to be reserved for payment of unpaid items of the Cost of the Facilities will, at the written direction of the Authority, be deposited in the Redemption Account of the Bond Fund to be used to redeem Series 2011 Bonds in accordance with Section 4.3(b).

Any excess money will either be used before the expiration of the applicable temporary period under Section 148 of the Code during which it may be invested at an unrestricted yield or will be invested in order to comply with any limitations imposed by the Code, all as directed in writing by the Authority. The Authority may direct the Trustee in writing to invest gross proceeds at an unrestricted yield after the expiration of the applicable temporary period in an amount permitted by the minor portion provisions set forth in Treas. Regs Section 1.148-2(g) of the Code provided that the Authority delivers to the Trustee an opinion of Bond Counsel that such action will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Tax-Exempt Bonds.

**Section 6.4 Net Proceeds Account.** Amounts on deposit in the Net Proceeds Account shall not be commingled with any other account or fund established under this Indenture. No sale or investment proceeds of any Bonds and no Pledged Revenues may be deposited to the Net Proceeds Account. The Authority hereby assigns to the Trustee its rights in any Net Proceeds deposited with the Trustee. The Authority agrees to have any such Net Proceeds paid directly to the Trustee. The Authority agrees to notify the Trustee immediately in writing in the case of damage, destruction or loss of all or any material portion of the Authority-Owned Facilities as a result of fire or other casualty or condemnation or loss of title but only to the extent the Authority has actual knowledge of any such damage, destruction or loss. The Trustee shall hold any such Net Proceeds paid to or for the benefit of the Authority in the Net Proceeds Account subject to further instructions of the Authority. Unless the Authority makes the election described in the following paragraph, the Net Proceeds may be disbursed in accordance with Section 6.2 of this Indenture to promptly repair, reconstruct and restore the Authority-Owned Facilities to substantially the same condition as before the damage, destruction, loss of title or condemnation with such alterations and additions as the Authority may determine and which will not impair the capacity or character of the Authority-Owned Facilities for their intended use. If the Net Proceeds are not sufficient to pay in full the costs of such repair, reconstruction and restoration, the Authority may, but shall not be obligated to, pay any excess costs from other available funds or make the election described in the following paragraph. Any balance of Net Proceeds remaining after payment of the cost of any such repair or restoration shall be transferred to the Redemption Account of the Bond Fund and used to redeem Series 2011 Bonds in accordance with Section 4.3. The Authority shall deliver to the Trustee a certificate indicating the completion of such repair or restoration executed by an Engineer prior to such transfer.

The Authority may, with the prior written consent of the Developer, elect not to restore the Authority-Owned Facilities in full or part but to apply Net Proceeds in full or part to the optional redemption or other redemption or defeasance of the Bonds in the manner otherwise permitted by the Indenture; provided, however, that (i) if available insurance proceeds are



insufficient to pay the full cost to repair or replace the portion of such Authority-Owned Facilities, such amounts may, at the sole option of the Authority, be applied to the redemption or defeasance of the Bonds, unless sufficient funds are available from other sources to make up such insufficiency and (ii) neither the County nor the Authority shall be required to expend any of its own funds (other than any available insurance proceeds as provided above) to make up any such insufficiency. The Net Proceeds shall be transferred to the Redemption Account of the Bond Fund or an escrow account, at the written direction of the Authority. The Authority at the time of such election shall deliver to the Trustee an opinion of nationally recognized bond counsel that the proposed application of Net Proceeds will not adversely affect the exclusion of interest on the Tax-Exempt Bonds from gross income for federal income tax purposes.

## **ARTICLE VII**

### **FUNDS AND ACCOUNTS**

**Section 7.1 Establishment of Funds.** The following funds are hereby established under this Indenture and shall be held by the Trustee:

(a) Project Fund, in which there are established a separate Tax-Exempt Bond Project Account, a separate Taxable Bond Project Account, a separate Capitalized Interest Account (and within the Capitalized Interest Account a Tax-Exempt Bond Subaccount and a Taxable Bond Subaccount) and a separate Net Proceeds Account;

(b) Revenue Fund, in which there is established a separate Delinquent Payments Account;

(c) Bond Fund, in which there are established an Interest Account, a Principal Account and a Redemption Account, and within the Redemption Account there are established a 2011 Optional Redemption Subaccount and a 2011 Prepayment Subaccount;

(d) Administrative Expense Fund;

(e) Debt Service Reserve Fund;

(f) Rebate Fund; and

(g) Surplus Fund.

**Section 7.2 Revenue Fund.** Except as set forth in Section 7.7 hereof, the Authority will cause Special Assessment Revenues, Special Tax Revenues and County Advanced Revenues to be collected and deposited in the Revenue Fund in accordance with the Memorandum of Understanding and will collect and immediately deposit in the Revenue Fund as received all other Pledged Revenues, and such other money as the Authority may determine, except as otherwise provided for in this Indenture for investment income on certain funds and accounts created by this Indenture and except for Prepayments, which will be deposited in the 2011 Prepayment Subaccount in the Redemption Account of the Bond Fund. The Trustee shall deposit in the Delinquent Payments Account only payments of Special Assessments or Special Taxes designated in writing by the Administrator, on behalf of the Authority and the County, as

delinquent, and any penalties and interest thereon. Amounts in the Delinquent Payments Account shall be used for transfers to the Debt Service Reserve Fund as set forth in (c) below after making the transfers described in Sections 7.2(a) and (b). Except as set forth below, on the Business Day preceding each Interest Payment Date, the Trustee will make transfers from the Revenue Fund in the following order of priority:

(a) To the Administrative Expense Fund, the amount of any Special Assessments, Special Tax Revenues and County Advanced Revenues collected to pay Administrative Expenses and not retained by the County pursuant to the Memorandum of Understanding as provided in a written notice by the Authority or the Administrator, on behalf of the Authority, to the Trustee and any other Pledged Revenues necessary to pay Administrative Expenses;

(b) To the appropriate accounts in the Bond Fund, the amount necessary to make the following deposits:

(1) first, in the Interest Account an amount which, together with other amounts, if any, on deposit therein will equal the amount of interest due on the Bonds on such Interest Payment Date; and

(2) then, in the Principal Account an amount which, together with other amounts, if any, on deposit therein, will equal the principal amount (including any sinking fund installment), if any, due with respect to the Bonds on such Interest Payment Date;

(c) To the Debt Service Reserve Fund, if the amount in the Debt Service Reserve Fund is less than the Debt Service Reserve Requirement, the amount of money necessary, in addition to amounts on deposit therein, to equal the Debt Service Reserve Requirement; provided that such payments shall be made only from money in the Delinquent Payments Account of the Revenue Fund or from County Advanced Revenues; and

(d) To the Rebate Fund, the amount, if any, equal to any Rebate Amount accrued (based on the most recent report of the Administrator filed with the Trustee and the Authority pursuant to Section 10.2(a)(vi) hereof), but not previously paid or provided for in the Rebate Fund.

Notwithstanding the foregoing, so long as money is on deposit in the Capitalized Interest Account on the date required for any transfer into the Interest Account as set forth above, the Trustee shall, prior to making any transfer into the Interest Account from the Revenue Fund, transfer to the Interest Account from the Capitalized Interest Account, the lesser of (x) the interest on such Bonds coming due on the next succeeding Interest Payment Date, net of amounts then on deposit in the Interest Account and (y) the amount remaining on deposit in the Capitalized Interest Account; provided, however, that amounts on deposit in the Tax-Exempt Bond Subaccount of the Capitalized Interest Account shall only be transferred to pay interest on the Series 2011A Bonds, and amounts on deposit in the Taxable Bond Subaccount of the Capitalized Interest Account shall only be transferred to pay interest on the Series 2011A-T Bonds. In making the foregoing transfers from the Revenue Fund, the Trustee shall conclusively

rely on a report furnished by the Administrator filed with the Trustee pursuant to Section 10.2(a)(i) setting forth the amount of County Advanced Revenues, Special Assessment Revenues and Special Tax Revenues to be applied as set forth above.

**Section 7.3 Bond Fund.**

(a) The Trustee will pay from the Principal Account the principal (including sinking fund installments) of the Bonds when due. The Trustee will pay from the Interest Account the interest on the Bonds when due. The Trustee will use money in the Redemption Account to redeem Bonds pursuant to any optional redemption provision exercised by the Authority or special mandatory redemption provisions or, if directed by an Authorized Authority Representative, to purchase Bonds on the open market; provided, however, (i) no money will be used to purchase Bonds to the extent it is required to pay the redemption price of any Bonds for which notice of redemption has been given as provided in Section 4.6, and (ii) Bonds will not be purchased at a price in excess of the applicable optional redemption price plus accrued interest.

(b) There shall, at the option of the Authority, be applied or credited against any sinking fund requirement for Bonds of a Series and maturity the principal amount of any Bonds of such Series and maturity that have been previously defeased or redeemed (other than by mandatory sinking fund redemption) before each such mandatory sinking fund redemption date or that have been purchased by the Authority or the Trustee on behalf of the Authority and delivered to the Trustee for cancellation at least seventy (70) days before each such mandatory sinking fund redemption date, provided such Bonds have not previously been applied as a credit against any mandatory sinking fund redemption payment. The credit will be applied against payments required to be made on mandatory sinking fund redemption dates on a generally pro-rata basis within such Series and maturity of Bonds as may be determined by the Administrator and accepted by the Trustee, unless the Trustee receives written instructions from the Authority at least seventy (70) days before such dates to apply the credit in some other order.

(c) On the Business Day immediately preceding a Principal or Interest Payment Date but after the transfers from the Revenue Fund required pursuant to Section 7.2, the Trustee will determine if the balance on deposit in the Principal Account and the Interest Account will be sufficient (after taking into consideration any amount to be transferred from the Capitalized Interest Account) to pay the principal and interest due and payable on the Principal or Interest Payment Date, and if a deficiency exists, will promptly notify the Authority of such fact. If on any Principal or Interest Payment Date following the required transfers from the Revenue Fund, the balance on deposit in the Principal Account or the Interest Account is insufficient to pay the principal and interest due and payable on Outstanding Bonds, the Trustee will transfer the amount of the deficiency from the Debt Service Reserve Fund to the appropriate account in the Bond Fund.

(d) Prepayments shall be deposited into the 2011 Prepayment Subaccount and shall be applied to the special mandatory redemption of the 2011 Bonds pursuant to Section 4.3(a) hereof.

(e) Transfers from the Debt Service Reserve Fund pursuant to Section 7.5(c) hereof shall be deposited into the 2011 Prepayment Subaccount of the Redemption Account and

shall be applied to the special mandatory redemption of the Series 2011 Bonds pursuant to Section 4.3(a) hereof.

(f) Interest received on and any profit realized from the investment of money in the Bond Fund will become a part of the account and subaccount in which the investment is held.

**Section 7.4 Administrative Expense Fund.** Money deposited in the Administrative Expense Fund shall be held in trust by the Trustee and shall be applied by the Trustee to pay Administrative Expenses or Series 2011B Administrative Expenses upon receipt by the Trustee of a written request signed by an Authorized Authority Representative specifying (i) the amount to be withdrawn, (ii) the Person to whom such amount is to be paid, (iii) the nature of such Administrative Expense and (iv) that such amount is a proper charge against the Administrative Expense Fund. Notwithstanding the foregoing, no proceeds of the Tax-Exempt Bonds may be used to pay Series 2011B Administrative Expenses or Administrative Expenses allocable to the Series 2011A-T Bonds. Interest received on and any profit realized from the investment of money in the Administrative Expense Fund will become a part of such Fund. Amounts in the Administration Expense Fund are not pledged to the payment of principal of, redemption premium, if any, and interest on the Bonds.

**Section 7.5 Debt Service Reserve Fund.**

(a) If amounts on deposit in the Bond Fund and the Surplus Fund are insufficient to make payments of principal of or interest on the Bonds when due, the Trustee will transfer money from the Debt Service Reserve Fund to the Bond Fund to the extent necessary to pay principal (including sinking fund installments) of and interest on the Bonds when due. If the amount on deposit in the Debt Service Reserve Fund is less than the Debt Service Reserve Requirement, the Trustee will transfer funds from the Surplus Fund and then from the Revenue Fund, but only from the Delinquent Payments Account or from County Advanced Revenues, to the Debt Service Reserve Fund to restore the Debt Service Reserve Requirement, to the extent and in the manner provided in Section 7.2(c).

(b) Within 10 days after each Principal Payment Date and Interest Payment Date and at such other times as the Authority may request in writing, the Trustee will determine if the balance on deposit in the Debt Service Reserve Fund is at least equal to the Debt Service Reserve Requirement. In making such determination, (i) the Trustee may take into account any reduction in the Debt Service Reserve Requirement that will result from any principal payment to be made on such Principal Payment Date or Interest Payment Date and (ii) securities in which money in the Debt Service Reserve Fund is invested will be valued in the manner set forth in Section 8.2. If a deficit exists in the Debt Service Reserve Fund, the Trustee will promptly notify the Authority of the deficit. If the amount on deposit in the Debt Service Reserve Fund exceeds the Debt Service Reserve Requirement, the Trustee will transfer the excess to the Interest Account of the Bond Fund, or upon the written request of the Authorized Authority Representative to the Administrative Expense Fund within five Business Days after such determination, provided that before the end of the Capitalized Interest Period the Trustee will transfer the excess to the Capitalized Interest Account within five Business Days after such determination.

(c) Whenever a Prepayment is made and the Series 2011 Bonds are redeemed with the proceeds of such Prepayment pursuant to Section 4.3(a) hereof, a proportionate amount in the Debt Service Reserve Fund (determined by the Administrator and accepted by the Trustee on the basis of the principal of the Series 2011 Bonds to be redeemed and the original principal of the Series 2011 Bonds), shall be transferred to the 2011 Prepayment Subaccount of the Redemption Account to be applied to the special mandatory redemption of the Series 2011 Bonds pursuant to Sections 4.3(a) and 7.3(e) hereof; provided that such transfer will be made only to the extent that an amount at least equal to the Debt Service Reserve Requirement will remain in the Debt Service Reserve Fund after such transfer.

**Section 7.6 Rebate Fund.** The Trustee shall hold money in the Rebate Fund in trust to be applied to pay any Rebate Amount. The Trustee shall pay to the Authority or to such place as the Authority may direct, upon written request of an Authorized Authority Representative, the Rebate Amount required to be paid to the United States at the times, in the manner and as calculated in accordance with Section 148(f) of the Code. The Trustee shall have no responsibility for computation of the Rebate Amount and the Authority shall cause the Rebate Amount to be calculated in accordance with the requirements of Section 148(f) of the Code.

The Authority may direct the Trustee in writing to use money in the Administrative Expense Fund in such amounts as the Authority may specify, in order to deposit the Rebate Amount in the Rebate Fund. The Administrator shall compute any Rebate Amount annually and, if necessary to provide sufficient money to pay the Rebate Amount, shall increase the Administrative Expenses as appropriate to have funds available in the Administrative Expense Fund to pay the Rebate Amount. Amounts in the Rebate Fund are not pledged to the payment of principal of, redemption premium, if any, and interest on the Bonds

**Section 7.7 Surplus Fund.** The Trustee will deposit in the Surplus Fund amounts received from the County as Surplus in accordance with the provisions of the Memorandum of Understanding after providing the Trustee with the funds to make the deposits described in Section 7.2(a) through (d) above. At the written request of the Authority, the Trustee will make such payments or transfers of amounts on deposit in the Surplus Fund as may be authorized by the Memorandum of Understanding. Any amounts remaining in the Surplus Fund after the Bonds have been paid in full or are no longer Outstanding shall be paid to the County. Amounts in the Surplus Fund are not pledged to the payment of principal of, redemption premium, if any, and interest on the Bonds.

**Section 7.8 Disposition of Balances in Funds.** When the balances on deposit in the Bond Fund, the Debt Service Reserve Fund and the Surplus Fund are sufficient to pay or redeem all the Bonds then Outstanding, the Authority may direct the Trustee in writing to transfer the balances in such Funds to a special account in the Bond Fund to be held by the Trustee for the payment or redemption of Bonds at the earliest practicable date and for no other purpose.

## ARTICLE VIII

### INVESTMENT OF FUNDS

**Section 8.1 Investment of Funds.**

(a) Any money held in any funds and accounts established by this Indenture may be separately invested and reinvested by the Trustee, at the written request of and as directed by an Authorized Authority Representative in Permitted Investments.

(b) All investments will be held by or under the control of the Trustee and while so held will be deemed a part of the fund or account in which the money was originally held. Any loss resulting from such investments shall be charged to the fund or account in which the money was held. The Trustee and the Authority will sell and reduce to cash a sufficient amount of investments whenever the cash balance in any fund or account is insufficient for its purposes.

(c) Investments of money in the Debt Service Reserve Fund must mature or be payable at the option of the Trustee not more than ten years after the date of their purchase.

(d) Money in funds and accounts held by the Trustee in the Project Fund may be pooled and commingled for purposes of investment.

(e) The Trustee may conclusively rely upon the Authority's written instructions as to both the suitability and legality of all directed investments. Ratings of investments shall be determined at the time of purchase of such investments and without regard to ratings subcategories. The Trustee shall have no responsibility to monitor the ratings of investments after the initial purchase of such investments. Confirmations of investments are not required to be issued by the Trustee for each month in which a monthly statement is rendered to the Authority or the Administrator.

### **Section 8.2 Valuation of Investments.**

(a) In computing the amount in any fund created by this Indenture, obligations purchased as an investment of money will be valued at their cost or market value, whichever is lower.

(b) Investments (except repurchase agreements) in funds and accounts shall be valued (i) not less often than annually nor more often than monthly, provided, however, the investments in the Debt Service Reserve Fund shall be valued at least 10 days after each Interest Payment Date and Principal Payment Date and at any time upon request by the Authority and (ii) upon any draw upon the Debt Service Reserve Fund.

**Section 8.3 Security for Deposits.** All non-invested money held in the funds created by this Indenture that is on deposit with any bank will be continuously secured in the manner required by the Virginia Security for Public Deposits Act (Chapter 44 of Title 2.2 of the Code of Virginia of 1950, as amended) or any successor provision of law.

**Section 8.4 Investments through Trustee's Bond Department.** The Trustee may make investments permitted by Section 8.1 through its own bond department or commercial banking department or those of its affiliates as directed in writing by the Authority and may change its customary fees for such trades.

## ARTICLE IX

### GENERAL COVENANTS OF THE AUTHORITY

**Section 9.1 Payment of Bonds.** The Authority will promptly pay the principal of and premium, if any, and interest on every Bond issued under and secured by this Indenture at the places, on the dates and in the manner specified in this Indenture and the Bonds; provided, however, that such obligations are limited obligations of the Authority and are payable solely from the Pledged Revenues and other property pledged and assigned by this Indenture to secure payment of the Bonds. Nothing in this Indenture or the Bonds shall be deemed to pledge the full faith and credit of the Authority or the County to the payment of the Bonds.

**Section 9.2 Covenants and Representations.** The Authority will faithfully observe and perform all of its covenants, conditions and agreements contained in this Indenture and in every Bond executed, authenticated and delivered under this Indenture; provided that the pecuniary liability of the Authority under any such covenant, condition or agreement for any default or breach by the Authority will be limited solely to and satisfied solely from the sources of payment described in Section 9.1. The Authority represents that (i) it is duly authorized under the Constitution and laws of the Commonwealth to issue the Bonds and to execute this Indenture and to pledge the Pledged Revenues and funds in the manner and to the extent set forth in this Indenture; (ii) all action on its part necessary for the execution and delivery of this Indenture has been duly and effectively taken; and (iii) the Bonds in the hands of the Owners are and will be valid and enforceable limited obligations of the Authority.

**Section 9.3 Collection of Pledged Revenues.** The Authority shall comply with all requirements of the Act and the Memorandum of Understanding so as to assure the timely collection of Pledged Revenues, including without limitation, the enforcement of delinquent Special Assessments and Special Taxes.

The Authority shall not agree to any amendments to, or termination of, the Memorandum of Understanding that may materially and adversely affect the amount of Pledged Revenues received or the time such amounts are received unless the Majority Holders have consented in accordance with procedures substantially identical to those employed for Supplemental Indentures contemplated by Section 14.2 hereof. Without limiting the scope of any other permissible amendments to the Memorandum of Understanding, the Memorandum of Understanding may be amended without the consent of any Owner for purposes substantially analogous to those enumerated for Supplemental Indentures entered into pursuant to Section 14.1 hereof.

Not later than the 15<sup>th</sup> day of each month, the Trustee shall provide the Administrator with a notice stating the amount then on deposit in all funds and accounts held by the Trustee hereunder. Each year by [April 5], the Administrator shall inform the Authority, in writing, of the amount of Pledged Revenues collected or to be collected in accordance with the Memorandum of Understanding, including the installments of Special Assessments or Special Taxes, if any, needed to be collected pursuant to the Memorandum of Understanding to provide for payment of the Bonds and Administrative Expenses. The receipt of or failure to receive such notice by the Administrator from the Trustee shall in no way affect the obligations of the

Administrator under this Section 9.3. Upon receipt of such notice, the Administrator shall ascertain the relevant parcels on which the Special Assessments or Special Taxes are to be collected, taking into account any parcel splits during the preceding and then current Fiscal Year. On or before the date immediately preceding the date determined pursuant to the next sentence of each year, the Authority shall approve the amount of the Special Assessments or Special Taxes to be collected for such calendar year in the District. Each year by [April 5], unless another date is specified for such year by the County by notice from the County Representative, the Authority shall request the County to collect the amount of the Special Assessments or Special Taxes to be collected pursuant to the Memorandum of Understanding.

The Special Assessments and Special Taxes shall be payable in the same manner and at the same time as the ad valorem real estate taxes on real property are payable, and become delinquent at the same time and bear the same penalties and interest after delinquency as do the ad valorem taxes on real property in the County. The Authority shall request the County to forward payments of such Special Assessments and Special Taxes to the Trustee in accordance with the Memorandum of Understanding.

**Section 9.4 Covenant to Collect Delinquent Amounts.** Pursuant to the Memorandum of Understanding, the County has agreed to pursue collection of delinquent Special Assessments and Special Taxes (unless such delinquency is theretofore brought current) in a manner similar to its collection efforts expended to collect any ad valorem tax or installment thereof when not paid when due.

**Section 9.5 No Encumbrances.** The Authority will not encumber, pledge or place any charge or lien upon any of the Pledged Revenues or other amounts pledged to the Bonds or the Administrative Expense Fund superior to, on a parity with or subordinate to the pledge and lien herein created for the benefit of the Bonds, except as expressly permitted by this Indenture.

**Section 9.6 Trustee May Enforce Authority's Rights to Pledged Revenues.** The Trustee, subject to the provisions of this Indenture reserving certain rights to the Authority and respecting actions by the Trustee in its name or in the name of the Authority, may enforce for and on behalf of the Owners all rights of the Authority under the Memorandum of Understanding and all rights of the Authority providing for the delivery and receipt of Pledged Revenues whether or not the Authority is in default under this Indenture.

**Section 9.7 Further Assurances.** Subject to the provisions of Section 9.1, the Authority will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such Supplemental Indentures and such further acts, instruments and transfers as the Trustee may reasonably require to further assure the effective transfer, conveyance, pledge and assignment to the Trustee of all the rights and funds assigned by this Indenture to secure the payment of the principal of and premium, if any, and interest on the Bonds. The Authority will fully cooperate with the Trustee and the Owners in protecting the rights and security of the Owners.

**Section 9.8 Financial Records and Statements.** The Authority will maintain proper books and records in which full and correct entries will be made in accordance with generally accepted accounting principles of all of its business and affairs. The Authority will have an



annual audit made by an independent certified public accountant or accountants and, promptly upon completion of such audit, will furnish the Trustee copies of such audit certified by such accountant. The Authority will provide to the Trustee, at the Trustee's request, such financial information as the Authority is required to provide the County under the Memorandum of Understanding. The reports, statements, audits and other documents required to be furnished by the Authority to the Trustee and by the Trustee to the Authority pursuant to any provision hereof shall be available for inspection by any Beneficial Owner or by the County at the corporate trust office designated by the Trustee upon giving at least five days' prior written notice to the Trustee. The Trustee shall act only as a repository for, and shall have no obligation to review, take any action in respect of, or be deemed to have knowledge of any Event of Default disclosed in, any financial statements or other documents submitted to the Trustee pursuant to this Section 9.8.

**Section 9.9 Compliance with Laws.** The Authority will at all times comply with all laws of the United States of America and of the Commonwealth applicable to it.

**Section 9.10 Arbitrage and Tax Covenants.** The Authority will not take any action, or direct the Trustee to make any investment or use of the proceeds of any Bonds, or of any other amounts, that would cause any Tax-Exempt Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code. The Authority will not engage in any activities or take any action that might result in the interest on the Tax-Exempt Bonds becoming includable in gross income of the recipients thereof for federal income tax purposes. The Authority will make all rebate payments required pursuant to Section 148(f) of the Code to the extent money in the Rebate Fund is insufficient.

**Section 9.11 Rating.** At the Request of Holders of at least 10% of the Outstanding principal amount of the Bonds, the Authority shall seek to obtain a rating on the Bonds from Moody's, S&P or Fitch, provided that the Administrator provides to the Authority its opinion, based upon its review of published criteria or discussions with Moody's, S&P and Fitch, that the Bonds are likely to receive a rating in a rating category not lower than "Baa3", "BBB-" or "BBB-", respectively. The costs for obtaining such a rating by the Authority will constitute an Administrative Expense and will be payable solely from money available for such purpose under this Indenture; provided, however, that the Authority shall have no obligation to seek any such rating unless the Authority shall have determined, in its reasonable discretion, that it will have sufficient amounts available for such purpose under this Indenture to pay or reimburse the costs of obtaining such rating.

## ARTICLE X

### THE ADMINISTRATOR

**Section 10.1 Appointment of Administrator.** MuniCap, Inc., a Maryland corporation, is hereby appointed by the Authority as Administrator hereunder. The Administrator undertakes to perform such duties, and only such duties, as are specifically set forth in this Indenture and as are set forth in this Article X, and no implied covenants or obligations shall be read into this Indenture against the Administrator.

**Section 10.2 Duties of Administrator.**

(a) The Administrator by its acceptance hereof agrees to perform the following in connection with the Bonds:

(i) determine and calculate County Advanced Revenues, the annual Special Assessments or Special Taxes and report such amounts to the County, the Authority and the Trustee with a request to the County to collect such Special Assessments or Special Taxes;

(ii) review and reconcile account statements delivered to the Administrator pursuant to Sections 9.3 and 12.11;

(iii) calculate Prepayment amounts and coordinate with the Trustee and maintain records in connection with any prepayment of Special Assessments or Special Taxes;

(iv) prepare an annual report for submission to the Authority containing a budget showing all Pledged Revenues collected or to be collected and an explanation of the methodology employed to calculate the amount of Special Assessments or Special Taxes to be levied;

(v) respond to inquiries from Land Owners or other interested parties regarding the amount of the Special Assessments or Special Taxes;

(vi) prepare calculations annually in accordance with Section 148 of the Code and provide a report thereon to the Trustee and the Authority by [April] 5 each year and not later than at least 90 days before any rebate payments are due;

(vii) determine the amount of delinquent Special Assessments or Special Taxes (including penalties and interest thereon) and the parcels to which such delinquent Special Assessments or Special Taxes apply and report such amounts to the County, the Authority and the Trustee; and

(viii) perform such other duties as are set forth in this Indenture.

(b) The Administrator agrees to promptly notify all Owners of any information required under the Disclosure Agreement.

(c) In the event of a failure by the Administrator to comply with any provisions of this Section 10.2, any Owner or the Trustee may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the Administrator to comply with its obligations under this Section 10.2. The sole remedy in the event of any failure by the Administrator to comply with the provisions of Section 10.2(b) shall be an action to compel performance.

**Section 10.3 Qualifications, Resignation, Removal and Appointment of Successor Administrator.** Any successor Administrator appointed pursuant to the provisions of this Section 10.3 shall be an individual or entity with the ability, as determined by the Authority, to perform the duties of the Administrator under this Indenture and as more particularly set forth in the Administrator Agreement. Such successor Administrator shall enter into an agreement with the Authority substantially in the form of the Administrator Agreement.

The Authority may remove the Administrator initially appointed and any successor thereto upon sixty (60) days' written notice to the Administrator, and shall appoint a successor or successors thereto. The Authority shall provide prior written notice to the Owners and the Trustee of any intention to remove or replace, including replacement as a result of resignation, the Administrator and the identity of any proposed successor thereto. The Owners shall have thirty (30) days from the date of such notice to provide the Authority in writing of the rejection of the proposed successor, the failure of which will be deemed acceptance, and unless the Majority Holders disapprove in writing, then the successor shall be appointed. The Authority shall also provide notice to the Trustee of the removal of the Administrator and the appointment of any successor Administrator.

The Administrator may resign from its obligations hereunder and under the Administrator Agreement upon completion of the services to be rendered for any year upon sixty (60) days' written notice to the Authority and the Trustee. Any resignation or removal of the Administrator shall become effective upon acceptance of appointment by the successor Administrator.

If no appointment of a successor Administrator shall be made pursuant to the provisions of this Section 10.3 within 60 days following receipt by the Authority or the Trustee of the written notice of the resignation of the Administrator, the Authority shall assume the obligations of the Administrator hereunder.

**Section 10.4 Rights of Administrator.** The Administrator shall be afforded the same rights with respect to limitation of responsibilities, liability, notice, compensation and indemnification given to the Trustee pursuant to Section 12.2, 12.4 and 12.8.

## ARTICLE XI

### DEFAULTS AND REMEDIES

**Section 11.1 Events of Default.** Each of the following will be an Event of Default:

- (a) Payment of interest on any Bond is not made when due and payable;
- (b) Payment of the principal of or premium, if any, on any Bond is not made when due and payable;
- (c) Subject to Section 11.11, default in the observance or performance of any other covenant, condition or agreement on the part of the Authority under this Indenture or in the Bonds; or

(d) Appointment by a court of competent jurisdiction of a receiver for all or any substantial part of the Pledged Revenues and other funds of the Authority pledged pursuant to this Indenture, or the filing by the Authority of any petition for reorganization of the Authority or rearrangement or readjustment of the obligations of the Authority under provisions of any applicable bankruptcy or insolvency law.

**Section 11.2 No Acceleration.** The principal of the Bonds is not subject to acceleration upon the occurrence and continuation of an Event of Default.

**Section 11.3 Other Remedies; Rights of Owners.**

(a) Except as set forth in Section 11.2, upon the occurrence and continuation of an Event of Default, the Trustee may pursue any available remedy, at law or in equity, to enforce the payment of the principal of and premium, if any, and interest on the Bonds, to enforce any covenant or condition under this Indenture or to remedy any Event of Default.

(b) Upon the occurrence and continuation of an Event of Default, and if requested so to do in writing by the Majority Holders and having been indemnified as provided in Section 12.7, the Trustee will exercise such of the rights and powers conferred by this Section as the Trustee, being advised by Counsel, deems most effective to enforce and protect the interests of the Owners.

**Section 11.4 Effect of Discontinuance or Abandonment.** If any proceeding taken by the Trustee on account of any Event of Default has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee, then the Authority, the Trustee and the Owners will be restored to their former positions and rights under this Indenture and all rights, remedies and powers of the Trustee will continue as though no such proceeding had been taken.

**Section 11.5 Rights of Owners.** Anything in this Indenture to the contrary notwithstanding, upon the occurrence and continuation of any Event of Default, the Majority Holders will have the right, upon providing the Trustee security and indemnity reasonably satisfactory to it against the costs, expenses and liabilities to be incurred (including reasonable attorneys' fees, costs and expenses), by an instrument in writing executed and delivered to the Trustee, to direct the method and place of conducting all remedial proceedings to be taken by the Trustee under this Indenture.

**Section 11.6 Restriction on Owners' Action.** In addition to the other restrictions on the rights of Owners to request action upon the occurrence of an Event of Default and to enforce remedies set forth in this Article, no Owner of any of the Bonds will have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or any remedy under this Indenture or the Bonds, unless (i) the Owner has given to the Trustee written notice of an Event of Default; (ii) the Majority Holders also have made written request of the Trustee to institute the suit, action, proceeding or other remedy, after the right to exercise the powers or rights of action, as the case may be, has accrued, and have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers granted in this Indenture or to institute the action, suit or proceeding in its or their name; (iii) there has been offered to the Trustee security and indemnity reasonably satisfactory to it against the costs, expenses and

liabilities (including reasonable attorneys' fees, costs and expenses) to be incurred; and (iv) the Trustee has not complied with the request within a reasonable time. Such notification, request and offer of indemnity are declared, at the option of the Trustee, to be conditions precedent to the execution of the trusts of this Indenture or for any other remedy under this Indenture. It is intended that no one or more Owners of the Bonds secured by this Indenture will have any right to affect, disturb or prejudice the security of this Indenture, or to enforce any right under this Indenture or the Bonds, except in the manner provided for in this Indenture, and that all proceedings at law or in equity will be instituted, had and maintained in the manner provided in this Indenture and for the benefit of all Owners of Outstanding Bonds. Nothing in this Indenture will affect or impair the right of the Owners to enforce payment of the Bonds in accordance with their terms.

**Section 11.7 Power of Trustee to Enforce.** All rights of action under this Indenture or under any of the Bonds secured by it which are enforceable by the Trustee may be enforced without the possession of any of the Bonds, or their production at the trial or other related proceedings. Any suit, action or proceedings instituted by the Trustee may be brought in its own name, as trustee, for the equal and ratable benefit of the Owners of the Bonds subject to the provisions of this Indenture. When the Trustee incurs costs or expenses (including attorneys' fees, costs and expenses) or renders services after the occurrence of an Event of Default, such costs and expenses and the compensation for such services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law.

**Section 11.8 Remedies Not Exclusive.** No remedy in this Indenture conferred on or reserved to the Trustee or to the Owners is intended to be exclusive of any other remedy, and each remedy is cumulative, and is in addition to every other remedy given under this Indenture or now or hereafter existing at law, in equity or by statute.

**Section 11.9 Waiver of Events of Default; Effect of Waiver.** The Trustee will waive any Event of Default and its consequences at the written request of the Majority Holders. If any Event of Default with respect to the Bonds has been waived as provided in this Indenture, the Trustee will promptly give written notice of the waiver to the Authority and by first class mail, postage prepaid, to all Owners of Outstanding Bonds if the Owners had previously been given notice of the Event of Default. No waiver, rescission and annulment will extend to or affect any subsequent Event of Default or impair any right, power or remedy available under this Indenture.

No delay or omission of the Trustee or of any Owner to exercise any right, power or remedy accruing upon any default or Event of Default will impair any such right, power or remedy or will be construed to be a waiver of or acquiescence in any such default or Event of Default. Every right, power and remedy given by this Article to the Trustee and to the Owners, respectively, may be exercised from time to time and as often as may be deemed expedient.

**Section 11.10 Application of Money.** Any money received by the Trustee pursuant to this Article will, after payment of the costs and expenses of the proceedings resulting in the collection of the money, the expenses, liabilities and advances incurred or made by the Trustee or the Authority (including reasonable attorneys' fees, costs and expenses) and the fees (whether ordinary or extraordinary) of the Trustee, be deposited in the Bond Fund and applied as follows:

(a) Unless the principal of all of the Outstanding Bonds is due and payable, all money will be applied:

First - To the payment of the persons entitled to it of all installments of interest then due on the Bonds, in order of the maturity of the installments of such interest and, if the money available is not sufficient to pay in full any particular installment, then ratably, according to the amounts due on such installment, to the persons entitled to it, without any discrimination or privilege;

Second - To the payment of the persons entitled to it of the unpaid principal of and premium, if any, on any of the Bonds that has become due (other than Bonds matured or called for redemption for the payment of which money is held pursuant to the provisions of this Indenture), in the order of their due dates and, if the amount available is not sufficient to pay in full such Bonds and the premium, if any, due on any particular date, then ratably, according to the amount of principal due on such date, to the persons entitled to it without any discrimination or privilege; and

Third - To be held for the payment of the persons entitled to it when due of the principal of and premium, if any, and interest on the Bonds that may thereafter become due either at maturity or upon call for redemption before maturity and, if the amount available is not sufficient to pay in full the Bonds due on any particular date, together with interest and premium, if any, then due and owing, then ratably, according to the amount of principal due on such date, to the persons entitled to it without any discrimination or privilege.

(b) If the principal of all of the Outstanding Bonds is due and payable, to the payment of the principal of and interest then due and unpaid on the Outstanding Bonds without preference or priority of any principal over interest or interest over principal or of any installment of interest over any other installment of interest, or of any such Outstanding Bond over any other such Outstanding Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled to it without any discrimination or preference except as to any difference in the respective amounts of interest specified in the Outstanding Bonds.

(c) Whenever money is to be applied pursuant to the provisions of this Section, it will be applied at such times, and from time to time, as the Trustee determines, in its sole discretion, having due regard to the amount of money available for application and the likelihood of additional money becoming available for application in the future. If subsection (b) of this Section is applicable, the Trustee will apply promptly to the payment of the Bonds any money it receives under this Article. Whenever the Trustee applies such money, it will fix the date on which payment is to be made, and interest on the amount of principal to be paid on such date will cease to accrue. The Trustee will give, by mailing by first class mail as it may deem appropriate, notice of the deposit with it of any such money and of the fixing of any such date.

**Section 11.11 Notice of Certain Defaults; Opportunity to Cure Such Defaults.** Anything in this Indenture to the contrary notwithstanding, no default under subsection (c) of Section 11.1 will constitute an Event of Default until actual notice of the default is given to the Authority by the Trustee or by the Owners of not less than twenty-five percent in aggregate

principal amount of all Outstanding Bonds, and the Authority has had (i) 30 days after receipt of the notice with respect to any default in the payment of money or (ii) 90 days after receipt of the notice of any other default to correct the default or to cause the default to be corrected; provided, however, that if the default cannot be corrected within the applicable period, it will not constitute an Event of Default if corrective action is instituted by the Authority within the applicable period and diligently pursued until the default is corrected.

## ARTICLE XII

### TRUSTEE AND PAYING AGENT

**Section 12.1 Appointment and Acceptance of Duties.** The Trustee accepts and agrees to the trusts created by this Indenture, but only upon the additional terms set forth in this Article, to all of which the Authority, and the Owners, by their purchase and acceptance of the Bonds, agree.

**Section 12.2 Responsibilities.** The recitals, statements and representations contained in this Indenture and the Bonds will be taken and construed as made by and on the part of the Authority, and not by the Trustee, and the Trustee does not assume, and will not have, any responsibility or obligation for the correctness of any such recitals, statements and representations. The Trustee makes no representation as to (i) the validity of the execution by the Authority of this Indenture or the Bonds, (ii) the sufficiency of the security for the Bonds, (iii) the right, title or interest of the Authority therein, (iv) the technical or financial feasibility of the Facilities, (v) the compliance of the Facilities with the Act or (vi) the tax-exempt status of the Tax-Exempt Bonds. The Trustee will have no responsibility for any funds other than those funds actually paid to or received or held by it under this Indenture. The Trustee, prior to the occurrence of the Event of Default and after curing all Events of Default, need perform only those duties that are specifically set forth in this Indenture and no implied covenants or obligations will be read into this Indenture against the Trustee. No provision of this Indenture will require the Trustee to expend or risk the Trustee's own funds or otherwise incur any financial liability in the performance of any of the Trustee's duties or in the exercise of any of the Trustee's rights or powers. The Trustee will not be responsible or liable for any loss suffered in connection with any investments made in accordance with this Indenture. During the existence of an Event of Default as set forth in Section 12.19, the Trustee will use the same degree of skill and care in performing its duties under this Indenture as a prudent person would use and exercise under the circumstances in the conduct of his or her own affairs.

The Trustee is not accountable for the use or application by the Authority of any of the Bonds or the proceeds of the Bonds, or the use or application of any money paid over by the Trustee in accordance with any provision of this Indenture.

**Section 12.3 Powers.** The Trustee may execute any of the trusts or powers of, and perform the duties required of it under, this Indenture by or through attorneys, agents, receivers, or employees, and will be entitled to obtain and conclusively rely on advice of counsel concerning all matters of trust and the Trustee's duty under this Indenture. As a condition to the taking, omission or suffering of any action under this Indenture, the Trustee may demand and act on an Opinion of Counsel and will not be responsible for any loss or damage resulting from any

action or nonaction by it taken or omitted to be taken in good faith in reliance on such Opinion of Counsel.

The rights, privileges, protections, immunities and benefits given to the Trustee, including (without limitation) its rights to be indemnified, are extended to, and shall be enforceable by the Trustee in each of its capacities hereunder and by the Trustee's officers, directors, agents, attorneys and employees. Such immunities and protections and right to indemnification, together with the Trustee's right to compensation, shall survive the Trustee's resignation or removal, the discharge of this Indenture and final payment of the Bonds.

The Trustee is under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Owners unless such holders have offered to the Trustee security or indemnity satisfactory to the Trustee as to its terms, coverage, duration, amount and otherwise with respect to the costs, expenses and liabilities (including reasonable attorneys' fees, costs and expenses) which may be incurred by it in compliance with such request or direction.

In the event the Trustee receives inconsistent or conflicting requests and indemnity from two or more groups of holders of Bonds, each representing less than a majority in aggregate principal amount of the Bonds Outstanding, pursuant to the provisions of this Indenture, the Trustee, in its sole discretion, may determine what action, if any, shall be taken.

The permissive right of the Trustee to take the actions permitted in this Indenture shall not be construed as an obligation or duty to do so.

The Trustee shall have no responsibility for any information in any offering memorandum or other disclosure material distributed with respect to the Bonds, and the Trustee shall have no responsibility for compliance with any state or federal securities laws in connection with the Bonds.

Notwithstanding the effective date of this Indenture or anything to the contrary in this Indenture, the Trustee shall have no liability or responsibility for any act or event relating to this Indenture which occurs prior to the date the Trustee formally executes this Indenture and commences acting as Trustee hereunder.

The Trustee shall not be responsible or liable for any failure or delay in the performance of its obligation under this Indenture arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; hurricanes or other storms; wars; terrorism; similar military disturbances; sabotage; epidemic; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications services; accidents; labor disputes; acts of civil or military authority or governmental action; it being understood that the Trustee shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture or any other document reasonably related to the Series 2011 Bonds sent by the Authority by unsecured e-mail, facsimile transmission or other similar unsecured electronic



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

**Section 12.4 Compensation; Indemnification.** The Authority will pay to the Trustee compensation for all services rendered by the Trustee under this Indenture, including extraordinary fees and expenses relating to performance of services by the Trustee upon the occurrence or continuation of an Event of Default or the occurrence of any condition or event which with notice or lapse of time, or both, may constitute an Event of Default.

To the extent permitted by law and only to the extent of available Pledged Revenues, the Authority shall indemnify and hold the Trustee (in its several capacities hereunder) harmless from and against any loss, liability or expenses (including reasonable attorneys' fees, costs and expenses) incurred without negligence or willful misconduct on its part, arising out of or in connection with the acceptance or administration of the office of Trustee under this Indenture and related documents, including the costs of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder or thereunder.

**Section 12.5 No Duty to Maintain Insurance.** The Trustee will have no obligation to effect or renew any policies of insurance and will have no liability for the failure of the Authority to effect or renew insurance or to report or file claims or proofs of loss for any loss or damage insured against or which may occur.

**Section 12.6 Notice of Event of Default.** The Trustee will not be required to take notice, or be deemed to have notice, of, any default or Event of Default other than a default or Event of Default under subsections (a) or (b) of Section 11.1, or unless a Responsible Officer of the Trustee is specifically notified in writing of the default or Event of Default by the Authority or the Majority Holders and in the absence of such notice the Trustee may conclusively assume that no such default or Event of Default exists (other than under subsections (a) or (b) of Section 11.1). The Trustee may, however, require of the Authority full information and advice at any time as to the performance of any of the covenants, conditions and agreements contained in this Indenture.

**Section 12.7 Action Upon Default.** The Trustee will be under no obligation to take any action in respect of any default or Event of Default, or toward the execution or enforcement of any of the trusts created by this Indenture or to institute, appear in or defend any related suit or other proceeding, unless requested in writing to do so by the Authority or the Majority Holders,

and if in the Trustee's opinion the action may tend to involve the Trustee in expense or liability, unless furnished, from time to time as often as the Trustee may require, with reasonable security and indemnity satisfactory to the Trustee.

**Section 12.8 Limitation of Liability.** The Trustee may conclusively rely upon, and will be fully protected and will incur no liability in acting, refraining from acting or proceeding in good faith upon any resolution, notice, request, consent, waiver, certificate, statement, affidavit, voucher, bond, requisition or other paper or document which the Trustee in good faith believes to be genuine and to have been authorized or signed by the proper board or person or to have been prepared and furnished pursuant to any of the provisions of this Indenture, and the Trustee will be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may accept and rely upon them as conclusive evidence of the truth and accuracy of the statements. The Trustee will not be bound to recognize any Person as an Owner of any Bond or to take any action at an Owner's request unless the Bond is deposited with the Trustee or evidence satisfactory to the Trustee of the ownership of the Bond is furnished to the Trustee. Before the Trustee acts or refrains from acting, the Trustee may require a certificate of an appropriate officer or officers of the Authority or an Opinion of Counsel (who may be an employee of the Authority only if consented to by the Trustee) or Bond Counsel, as appropriate. The Trustee will not be answerable for other than its negligence or willful misconduct; however no provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct.

**Section 12.9 Ownership of Bonds.** The Trustee and any affiliate under common control with the Trustee may in good faith buy, sell, own, hold and deal in any of the Bonds issued under this Indenture, and may join in or take any action which any Owner may be entitled to take with like effect as if the Trustee were not a party to this Indenture. The Trustee and any affiliate under common control with the Trustee, as principal or agent, may also engage in or be interested in any financial or other transaction with the Authority and may act as depository, trustee, or agent for any committee or body of Owners of the Bonds or other obligations of the Authority as freely as if it were not Trustee under this Indenture.

**Section 12.10 No Duty to Invest.** Absent specific instructions of the Authority pursuant to Article VIII, the Trustee will be under no duty to invest money held by it pursuant to this Indenture. The Trustee will be under no liability for interest on any money which the Trustee may at any time receive under any of the provisions of this Indenture, except such as the Trustee may agree with the Authority to pay.

**Section 12.11 Reports by Trustee.** The Trustee will provide written reports to the Authority and the Administrator by the 15<sup>th</sup> day of each month of (i) the balances in all funds held by the Trustee under this Indenture as required by Section 9.3, and (ii) all money received and expended by it under the terms of this Indenture. The Trustee shall also provide to the Authority such information in its possession as may be reasonably requested in writing by the Authority to enable it to calculate any amounts required to be rebated to the United States of America pursuant to, and otherwise to maintain compliance with, Section 148 of the Code and any other federal or Commonwealth law or regulation applicable to the Authority or its affairs.

**Section 12.12 Resignation.** The Trustee may at any time and for any reason resign and be discharged of the trusts created by this Indenture by executing an instrument in writing resigning the trust and specifying the date when the resignation will take effect, and filing the instrument with the Authority not less than 30 days before the effective date of the resignation. The resignation will take effect on the day specified in the instrument, unless a successor Trustee has not been appointed and accepted such appointment by that date as provided for in this Article, in which event the resignation will take effect immediately on the appointment of and acceptance by a successor Trustee of the trusts under this Indenture.

**Section 12.13 Removal.** The Trustee at any time and for any reason may be removed by an instrument in writing, filed with the Authority and the Trustee so removed and executed by the Majority Holders. In addition, provided no Event of Default or event which, with notice would become an Event of Default has occurred and is continuing, the Authority at any time may remove the Trustee by an instrument in writing filed with the Trustee so removed and the Owners.

**Section 12.14 Appointment of Successor Trustee.** If at any time the Trustee resigns, is removed, or is dissolved, or if the Trustee's property or affairs are taken under the control of any state or federal court or administrative body because of insolvency or bankruptcy, or for any other reason a vacancy exists in the office of the Trustee, then unless an Event of Default has occurred and is continuing, a successor may be appointed by the Authority by an instrument in writing filed with the Chairman, signed by an Authorized Authority Representative. Copies of the instrument will be promptly delivered by the Authority to the predecessor Trustee and to the Trustee so appointed and notice given to the Owners. If an Event of Default has occurred and is continuing, a successor may be appointed by the Owners of a majority in aggregate principal amount of the Bonds then Outstanding, by an instrument or instruments in writing filed with the Chairman, signed by such Owners or their attorneys-in-fact duly authorized in writing. Copies of each instrument will be promptly delivered by the Authority to the predecessor Trustee and to the Trustee so appointed and notice given to the Owners.

**Section 12.15 Successor to be Bank or Trust Company.** Any successor to the Trustee under this Indenture appointed pursuant to Section 12.14 must be (i) a bank or trust company organized and doing business under the laws of the United States of America or any of its states with trust powers, in good standing and having a reported capital, surplus and undivided profits of not less than \$50,000,000, or (ii) a subsidiary trust company under the provisions of [Section 6.1-32.7(a) of the Trust Subsidiary Act], or any successor provision of law, and whose capital, surplus and undivided profits, together with that of its parent bank or bank holding company, as the case may be, is not less than \$50,000,000, if such a bank, trust company or subsidiary trust company, willing and able to accept the trust on reasonable or customary terms can, with reasonable effort, be located.

**Section 12.16 Failure to Appoint a Successor Trustee.** If at any time the Trustee resigns and no appointment of a successor Trustee is made pursuant to the provisions of this Article before the effective date of the resignation specified in the notice, then the Trustee or any Owner may apply to any court of competent jurisdiction to appoint a successor Trustee. The court may, after such notice, if any, as the court may deem proper and prescribe, appoint a successor Trustee.

**Section 12.17 Acceptance by Successor Trustee.** Any successor Trustee appointed under this Article will execute, acknowledge and deliver to the Authority an instrument accepting the appointment under this Indenture, and thereupon the successor Trustee, without any further act, deed or conveyance, will become duly vested with all the estates, property, rights, powers, trusts, duties and obligations of the successor Trustee's predecessor in trust under this Indenture, with like effect as if originally named Trustee. Upon request of the successor Trustee, the Trustee ceasing to act and the Authority will execute and deliver an instrument transferring to the successor Trustee all of the property, rights, powers and trusts under this Indenture of the Trustee so ceasing to act, and the Trustee so ceasing to act will pay over to the successor Trustee all money and other assets held by the Trustee under this Indenture.

**Section 12.18 Merger or Consolidation.** Any corporation or association into which any Trustee is merged or with which the Trustee is consolidated, or any corporation or association resulting from any merger or consolidation to which any Trustee is a party, or any corporation or association to which any Trustee transfers substantially all of the Trustee's assets or corporate trust business, will be the successor Trustee under this Indenture, without the execution or filing of any paper or any further act on the part of the parties to this Indenture, anything in this Indenture to the contrary notwithstanding.

**Section 12.19 Action Upon Event of Default.** The Trustee will, provided the Trustee is indemnified to its satisfaction, during the existence of an Event of Default known to the Trustee in accordance with Section 12.6, exercise such of the rights and powers vested in the Trustee by this Indenture and use the same degree of skill and care in their exercise as a prudent person would use and exercise under the circumstances in the conduct of his or her own affairs.

**Section 12.20 Notice of Occurrence of Event of Default.** Upon the occurrence of an Event of Default actually known to a Responsible Officer of the Trustee in accordance with Section 12.6, the Trustee will, within 30 days of the Event of Default becoming known to the Trustee, give written notice of it by first class mail to each Owner of the Bonds then Outstanding, unless a Responsible Officer of the Trustee has actual knowledge that the Event of Default has been cured before then.

**Section 12.21 Intervention by Trustee.** In any judicial proceeding to which the Authority is a party and which in the opinion of the Trustee has a substantial bearing on the interests of the Owners of the Bonds, the Trustee may, in the Trustee's own name, intervene on behalf of the Owners and will, upon receipt of indemnity satisfactory to it, do so if requested in writing by the Owners of at least 25 percent in aggregate principal amount of Bonds then Outstanding, if permitted by the court having jurisdiction.

**Section 12.22 Appointment of and Acceptance of Paying Agent.** The Authority may at any time or from time to time appoint one or more Paying Agents for the Bonds, in the manner and subject to the conditions set forth in Section 12.23 for the appointment of a successor Paying Agent. Unless another Paying Agent is appointed for the Bonds, the Trustee will serve as Paying Agent. Each Paying Agent (other than the Trustee) will signify its acceptance of the duties and obligations imposed on it under this Indenture by written instrument of acceptance deposited with the Authority and the Trustee. The Paying Agent shall be afforded the same rights with

respect to limitation of responsibilities, liability, notice, compensation and indemnification given to the Trustee pursuant to this Article XII.

**Section 12.23 Resignation or Removal of Paying Agent; Appointment of Successor.**

Any Paying Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least 30 days' written notice to the Authority and the Trustee. Any Paying Agent may be removed at any time by an instrument signed by the Authority and filed with the Paying Agent and the Trustee. Any successor Paying Agent will be appointed by the Authority, with the approval of the Trustee, and will be a bank or trust company duly organized under the laws of the United States or any of its states, having a capital stock and surplus aggregating at least \$50,000,000, and willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon the Paying Agent by this Indenture.

In the event of the resignation or removal of any Paying Agent, the Paying Agent will pay over, assign and deliver any money held by it as Paying Agent to its successor or to the Trustee. In the event that for any reason there is a vacancy in the office of any Paying Agent, the Trustee will act as such until a new Paying Agent is appointed.

**ARTICLE XIII**

**EXECUTION OF INSTRUMENTS BY OWNERS  
AND PROOF OF OWNERSHIP OF BONDS**

**Section 13.1 Execution of Consents, Etc.** Any request, direction, consent or other instrument required or permitted by this Indenture and any Supplemental Indenture to be signed or executed by Owners may be in any number of concurrent instruments of similar tenor and may be signed or executed by the Owners in person or by an agent appointed by an instrument in writing. Proof of the execution of any instrument and of the ownership of Bonds will be sufficient for any purpose of this Indenture and any Supplemental Indenture and will be conclusive in favor of the Trustee and any Paying Agent with regard to any action taken, suffered or omitted by any of them under the instrument if made in the following manner:

(a) The fact and date of the execution by any Person of any instrument may be proved by the certificate of any officer in any jurisdiction who, by its laws, has power to take acknowledgments within the jurisdiction, to the effect that the Person signing the instrument acknowledged before such officer its execution, or by an affidavit of a witness to such execution.

(b) The fact of the ownership of Bonds by any Owner and the serial numbers of the Bonds and the date of ownership will be proved by the bond register maintained by the Paying Agent.

**Section 13.2 Other Evidence.** Nothing contained in this Article will be construed as limiting the Trustee to such proof, it being intended that the Trustee may accept any other evidence of the matters stated in this Article which the Trustee may deem sufficient. Any request or consent of the Owner of any Bond will bind every future Owner of the same Bond and

any Bond or Bonds issued in exchange or substitution for it or upon the registration of transfer of it in respect of anything done by the Trustee in pursuit of such request or consent.

## ARTICLE XIV

### MODIFICATION OF INDENTURE AND SUPPLEMENTAL INDENTURES

**Section 14.1 Supplemental Indentures Without Consent of Owners.** Subject to Section 14.4, the Authority and the Trustee may, without the consent of the Owners, unless the consent of the Owners is required by Section 14.2, enter into a Supplemental Indenture or Supplemental Indentures which thereafter will form a part of this Indenture, for any one or more of the following purposes:

(a) To add to the covenants and agreements of the Authority contained in this Indenture and any Supplemental Indentures other covenants and agreements, and to surrender any right or power in this Indenture and any Supplemental Indentures reserved to or conferred upon the Authority;

(b) To cure any ambiguity, to supply any omission or to cure, correct or supplement any defect in the Indenture or any Supplemental Indenture;

(c) To grant to the Trustee for the benefit of the Owners additional rights, remedies, powers or authority;

(d) To subject to this Indenture and the Supplemental Indentures additional collateral;

(e) To modify this Indenture, any Supplemental Indenture, or the Bonds to permit qualification under the Trust Indenture Act of 1939 or any similar federal statute at the time in effect, or to permit the qualification of the Bonds for sale under the securities laws of any state of the United States;

(f) To provide for certificated Bonds;

(g) To evidence the succession of a new Trustee or Paying Agent or the appointment by the Trustee or the Authority of a Co-Trustee or a Co-Paying Agent and to specify the rights and obligations of such Co-Trustee or Co-Paying Agent;

(h) To make any change (including but not limited to a change to comply with the Code or interpretations of it by the Treasury Department or the Internal Revenue Service) that does not materially adversely affect the rights of any Owner of any Bonds then Outstanding;

(i) To provide for the issuance of Additional Bonds; and

(j) To obtain or maintain a rating for the Bonds.

The Authority covenants that it will perform or cause to be performed all the requirements of any Supplemental Indenture which may be in effect from time to time. Nothing

in this Article will affect or limit the right or obligation of the Authority to execute and deliver or cause to be delivered to the Trustee any instrument of further assurance or other instrument provided for in this Indenture.

**Section 14.2 Supplemental Indentures With Consent of Owners.** Unless the consent of the Owners is not required pursuant to Section 14.1, any modification or alteration of this Indenture and any Supplemental Indentures or of the rights and obligations of the Authority or of the Owners of the Bonds may be made by the Authority and the Trustee with the consent of (i) the Majority Holders, or (ii) in case less than all of the Bonds then Outstanding are affected by the modifications or amendments, the Owners of a majority in aggregate principal amount of the Bonds so affected then Outstanding. However, without the consent of each Owner affected, no modification or alteration may (a) extend the maturity of the principal of or interest on any Bond, (b) reduce the principal amount of, or rate of interest on, any Bond, (c) effect a privilege or priority of any Bond or Bonds over any other Bond or Bonds, (d) reduce the percentage of the principal amount of the Bonds required for consent to such modification or alteration, (e) impair the exclusion of interest on any Tax-Exempt Bond from gross income for purposes of federal income taxation, (f) eliminate or extend the mandatory redemption date of any Bonds or reduce the redemption price of Bonds, (g) create a lien ranking prior to or on a parity with the lien of this Indenture on the property described in Article II, except for Additional Bonds, or (h) deprive any Owner of the lien created by this Indenture on such property. In addition, if money has been deposited or set aside with the Trustee pursuant to Article XV for the payment of Bonds and those Bonds shall not have in fact actually been paid in full, no amendment to the provisions of that Article will be made without the consent of the Owner of each of those Bonds affected.

If at any time the Authority requests the Trustee in writing to enter into a Supplemental Indenture for any of the purposes of this Section, the Trustee will, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of the Supplemental Indenture to be mailed to each Owner of Bonds then Outstanding by first-class mail to the address of Owner as it appears on the registration books; provided, however, any failure to give the notice by mailing, or any defect, in it, will not affect the validity of any proceedings pursuant to this Section. The notice will briefly set forth the nature of the proposed Supplemental Indenture and will state that copies of it are on file at the designated corporate trust office of the Trustee for inspection by all Owners. If, within six months or such longer period as is prescribed by the Authority at or following the giving of the notice, the Owners of the requisite percentage in aggregate principal amount of Bonds then Outstanding have consented to and approved in writing the execution of the Supplemental Indenture, no Owner will have any right to object to any of the terms and provisions contained in the Supplemental Indenture, or the operation of it, or in any manner to question the propriety of its execution, or to enjoin or restrain the Trustee or the Authority from executing the Supplemental Indenture or from taking any action pursuant to its provisions.

**Section 14.3 Trustee Authorized to Enter Into Supplemental Indenture.** The Trustee is authorized to enter into with the Authority any Supplemental Indenture authorized or permitted by the terms of this Indenture. Upon the execution of any Supplemental Indenture as permitted by this Article, this Indenture will be deemed to be modified and amended in accordance with it, and the Trustee is authorized to carry out the agreements and stipulations contained in the Supplemental Indenture. The Trustee will not unreasonably refuse to enter into

any Supplemental Indenture permitted by this Article unless the Trustee believes in good faith that the Supplemental Indenture will adversely affect the rights and immunities of or increase the duties of the Trustee.

**Section 14.4 Opinion of Counsel.** The Trustee will not execute any Supplemental Indenture amending this Indenture or any Supplemental Indenture unless there has been filed with it an Opinion of Counsel (who may be an employee of the Authority only with the Trustee's consent) stating that the proposed Supplemental Indenture is authorized or permitted by this Indenture and complies with its terms and that upon execution it will be a valid and binding limited obligation of the party or parties executing it and that the execution and delivery of the proposed Supplemental Indenture will not adversely affect the exclusion from gross income for federal income tax purposes of the interest on any Tax-Exempt Bond.

## ARTICLE XV

### DISCHARGE OF INDENTURE

**Section 15.1 Discharge of Indenture.** If (i) all Bonds secured by this Indenture have become due and payable or irrevocable instructions to redeem the Bonds or pay them at maturity have been given by the Authority to the Trustee, and (ii) the Trustee holds cash or noncallable Government Obligations or Government Certificates the principal of and interest on which at maturity will be sufficient (A) if Bonds have been called for redemption, to redeem in accordance with the relevant Sections of this Indenture all such Bonds on the date set for such redemption, (B) to pay at maturity all Outstanding Bonds not called for redemption, (C) to pay interest accruing on all Bonds until their redemption or payment at maturity, and (D) unless otherwise provided for, to pay the Trustee its reasonable fees and expenses, including the costs and expenses of canceling and discharging this Indenture, the Trustee will cancel and discharge the lien of this Indenture and execute and deliver to the Authority such instruments in writing as will be required to release such lien, and assign and deliver to the Authority any property subject to this Indenture which may then be in its possession, except funds or securities in which such funds are invested which are held by the Trustee for the payment of the principal of and premium, if any, and interest on the Bonds.

In the event that all of the Bonds secured by this Indenture are paid or deemed paid in accordance with the terms of this Indenture, then the right and interest of the Trustee in and to the trust estate created by this Indenture and all covenants, agreements and other obligations of the Authority to the Owners will cease and be discharged and satisfied. In the event any Bonds are paid or deemed paid in accordance with the terms of this Indenture, then such Bonds will cease to be entitled to any lien, benefit or security under this Indenture (other than the right to receive payment and certain rights regarding registration and transfer) and all covenants, agreements and other obligations of the Authority to the Owners of such Bonds will cease and be discharged and satisfied.

**Section 15.2 Bonds Deemed to be Paid.** Bonds will be deemed paid and no longer Outstanding for the purposes of this Indenture when there has been deposited with the Trustee cash or noncallable Government Obligations or Government Certificates the principal of and/or interest on which will be sufficient to pay or redeem such Bonds and to pay interest accruing on



such Bonds to their payment or redemption date (whether on or before their maturity or redemption date); provided, however, that if such Bonds are to be redeemed before their maturity, notice of the redemption must have been duly given or irrevocable instructions to redeem such Bonds must have been given by the Authority to the Trustee. The Authority shall deliver or cause to be delivered to the Trustee a verification report of a firm of independent certified public accountants or of financial consultants acceptable to the Trustee to the effect that such cash or noncallable Government Obligations or Government Certificates and investment income to be earned on such funds held by the Trustee for payment or redemption of Bonds of the Authority, will be sufficient to pay, whether upon redemption or at maturity, the principal of and premium, if any, and interest on the Bonds of the Authority to be refunded.

## ARTICLE XVI

### MISCELLANEOUS

**Section 16.1 Limitation of Liability of Directors, Officers, etc., of Authority and the Trustee.** No covenant, agreement or obligation contained in this Indenture or in any Supplemental Indenture will be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee or agent of the Authority, the Trustee or the Paying Agent in his or her individual capacity, and neither the officers of the Authority, the Trustee or the Paying Agent nor any of their directors, employees or agents executing or authenticating the Bonds will be liable personally on the Bonds or be subject to any personal liability or accountability by reason of their issuance. No director, officer, employee, agent or adviser of the Authority, the Trustee or the Paying Agent will incur any personal liability with respect to any action taken by him or her pursuant to this Indenture, any Supplemental Indenture provided such director, officer, employee, agent or adviser acts in good faith.

**Section 16.2 Interested Parties.** Nothing in this Indenture expressed or implied is intended or will be construed to confer upon any Person other than the Authority, the Trustee and the Owners of the Bonds, any right, remedy or claim under or by reason of this Indenture, this Indenture being intended to be for the sole and exclusive benefit of the Authority, the Trustee and the Owners of the Bonds.

**Section 16.3 Severability of Invalid Provisions.** If any clause, provision or section of this Indenture or any Supplemental Indenture is held to be illegal or invalid by any court, the invalidity of the clause, provision or section will not affect any of the remaining clauses, provisions or sections, and this Indenture or the Supplemental Indenture will be construed and enforced as if the illegal or invalid clause, provision or section had not been contained in it.

**Section 16.4 Notice.** All notices, certificates, requests or other communications under this Indenture will be in writing and will be deemed given, unless otherwise required, when mailed by first-class mail, postage prepaid, or by facsimile to the addresses set forth below:

If to the Authority: Mosaic District Community Development Authority  
c/o Fairfax County Office of Community Revitalization and  
Reinvestment  
12055 Government Center Parkway, Suite 1048  
Fairfax, Virginia 22035  
Attention: Director

With a copy to: Fairfax County Attorney  
12000 Government Center Parkway, Suite 549  
Fairfax, Virginia 22035

If to the Trustee:  
or Paying Agent: The Bank of New York Mellon Trust Company, N.A.  
919 East Main Street, Suite 1602  
Richmond, VA 23219  
Attention: Corporate Trust

If to the Administrator: MuniCap, Inc.  
8965 Guilford Road, Suite 210  
Columbia, Maryland 21046  
Attention: Keenan Rice

The Authority, the Trustee, the Paying Agent and the Administrator may, by notice given under this Section, designate any further or different addresses to which subsequent notices, certificates, requests or other communications will be sent. Unless the Trustee provides notice to the contrary, the address provided above is its designated corporate trust office for the administration of this Indenture and the Bonds.

If, by reason of the suspension of or irregularities in regular mail service, it is impractical to mail to the Owners of Bonds notice of any event when notice is required to be given pursuant to any provision of this Indenture or any Supplemental Indenture, then any manner of giving notice satisfactory to the Trustee will be deemed to be sufficient. Any notice given by facsimile shall be confirmed by telephone.

**Section 16.5 Counterparts.** This Indenture may be executed in any number of counterparts, each of which, when executed and delivered, will be an original, and the counterparts will together constitute one and the same instrument.

**Section 16.6 Governing Law.** This Indenture and each Supplemental Indenture will be governed by the laws of the Commonwealth without regard to conflicts of law principles.

**Section 16.7 Successors and Assigns.** This Indenture will be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

**IN WITNESS WHEREOF**, the parties have caused this Trust Indenture to be executed on their behalf by their duly authorized officers.

**MOSAIC DISTRICT COMMUNITY  
DEVELOPMENT AUTHORITY**

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

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

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

ACKNOWLEDGED AND ACCEPTED:

**MUNICAP, INC.,**  
as Administrator

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

UNITED STATES OF AMERICA  
COMMONWEALTH OF VIRGINIA

MOSAIC DISTRICT COMMUNITY DEVELOPMENT AUTHORITY  
REVENUE BOND  
[TAXABLE] SERIES 2011[A] [A-T]

<b>INTEREST RATE</b>	<b>MATURITY DATE</b>	<b>DATED DATE</b>
%		_____, 2011

**REGISTERED OWNER:**

**PRINCIPAL AMOUNT:**

**MOSAIC COMMUNITY DEVELOPMENT AUTHORITY** (the “Authority”), for value received, promises to pay, solely from the revenues and other property pledged to the payment of this Bond, to the registered owner of this Bond or legal representative, the principal sum stated above on the maturity date stated above, and to pay solely from such source, interest on the principal amount of this Bond at the annual rate stated above, payable on each [March] 1 and [September] 1, commencing on [September] 1, 2011, all subject to prior redemption as described in this Bond. This Bond will bear interest (i) from its date if this Bond is authenticated before [September] 1, 2011, or (ii) otherwise, from the [March] 1 or [September] 1 that is, or immediately precedes, the date on which this Bond is authenticated (unless the payment of interest on this Bond is in default, in which case this Bond will bear interest from the date to which interest has been paid). The principal of and redemption premium, if any, on this Bond is payable upon presentation and surrender of this Bond at the corporate trust office of The Bank of New York Mellon Trust Company, N.A., as Trustee under the Indenture (as hereinafter defined), or its successor in trust (the “Trustee”). Interest on this Bond will be paid by check or draft mailed to the person registered on the [February] 15 or [August] 15, as appropriate, next preceding the interest payment date as the registered owner of this Bond at the address of such person as it appears on the registration books of the Authority maintained by the Paying Agent. Interest on this Bond will be computed on the basis of a year of 360 days and twelve 30-day months. Notwithstanding the foregoing, if (i) the registered owner of this Bond owns at least \$1,000,000 in aggregate principal amount of Bonds and (ii) such owner has provided satisfactory prior notice of a wire address to the Trustee, then interest on this Bond will be paid by wire transfer. So long as Cede & Co. or any other nominee of DTC, as defined in the Indenture (as defined herein), is the registered owner of this Bond, principal of and premium, if any, and interest on this Bond shall be paid as provided in the Indenture. Principal of and premium, if any, and interest on this Bond are payable in lawful money of the United States of America. In

case the date of maturity of the principal of this Bond or the date fixed for the payment of interest on or the redemption of this Bond is not a Business Day (as defined in the Indenture), then payment of the principal and redemption premium, if any, and interest need not be made on such date, but may be made on the next succeeding date which is a Business Day, and if made on such next succeeding Business Day no additional interest will accrue for the period after such date of maturity or date fixed for redemption.

This Bond and the issue of which it is a part and the redemption premium, if any, and interest on this Bond are limited obligations of the Authority and payable solely from the revenues and other property pledged and assigned to the Trustee under the terms of the Indenture to secure payment of this Bond. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE COMMONWEALTH OF VIRGINIA OR ANY POLITICAL SUBDIVISION OF THE COMMONWEALTH INCLUDING THE COUNTY OF FAIRFAX IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR REDEMPTION PREMIUM, IF ANY, OR INTEREST ON THIS BOND. THE ISSUANCE OF THIS BOND DOES NOT DIRECTLY, INDIRECTLY, OR CONTINGENTLY OBLIGATE THE COMMONWEALTH OF VIRGINIA OR ANY POLITICAL SUBDIVISION OF THE COMMONWEALTH OF VIRGINIA INCLUDING THE COUNTY OF FAIRFAX TO LEVY ANY TAXES OR MAKE ANY APPROPRIATION FOR THE PAYMENT OF THIS BOND EXCEPT FROM PLEDGED REVENUES.

This Bond is one of an issue of \$\_\_\_\_\_ Revenue Bonds, [Taxable] Series 2011[A] [A-T] (the "Bonds"). The Bonds are of like tenor, except as to [series], number, denomination, interest rate, maturity date and privilege of redemption and are authorized and issued by the Authority pursuant to the Act for the purpose of providing funds to pay the cost of acquiring and constructing certain infrastructure benefiting property within the boundaries of the Authority (the "Project"). The Bonds are issued under and are equally and ratably secured by a Trust Indenture, dated as of \_\_\_\_\_ 1, 2011 (the "Indenture"), between the Authority and the Trustee. The Bonds are payable from revenues derived from special assessments levied on taxable property within the Authority's boundaries and certain other incremental tax revenues. Reference is made to the Indenture for a description of the revenues and property pledged and assigned and the provisions, among other things, with respect to the nature and extent of the security for the Bonds, the rights and obligations of the Authority and the Trustee, the terms on which the Bonds are issued, the rights of the registered owners of the Bonds and the provisions for defeasance of such rights. Additional bonds ranking equally with the Bonds may be issued on the terms provided in the Indenture.

The Bonds may not be called for redemption except as provided in the Indenture and described in the succeeding numbered paragraphs.

(1) The Bonds are subject to redemption before maturity at the option of the Authority at any time, or from time to time, on or after \_\_\_\_\_, from any money available for such purpose, in whole or in part in increments of [\$1,000] or any integral multiple of [\$1,000] upon payment of the principal amount of the Bonds to be redeemed, plus accrued interest to the redemption date.

(2) The Bonds are required to be redeemed in part before maturity by the Authority on the dates and in the amounts set forth below, at a redemption price equal to the principal amount of the Bonds to be redeemed, plus accrued interest to the redemption date:

<u>Redemption Date</u>	<u>Principal Amount</u>	<u>Redemption Date</u>	<u>Principal Amount</u>
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There shall, at the option of the Authority, be applied or credited against any sinking fund requirement for Bonds the principal amount of any Bonds that have been previously defeased or redeemed (other than by mandatory sinking fund redemption) before each such mandatory sinking fund redemption date or that have been purchased by the Authority or the Trustee on behalf of the Authority and delivered to the Trustee for cancellation at least seventy (70) days before each such mandatory sinking fund redemption date, provided such Bonds have not previously been applied as a credit against any mandatory sinking fund redemption payment.

(3) The Bonds are subject to special mandatory redemption in whole or in part in minimum amounts of [\$1,000], at a redemption price equal to the principal amount to be redeemed together with accrued interest thereon to the date fixed for redemption on any March 1, June 1, September 1, or December 1 as follows:

(i) from amounts deposited into the 2011 Prepayment Subaccount of the Redemption Account as a result of Prepayments pursuant to Section 7.3(d) of the Indenture and transfers from the Debt Service Reserve Fund pursuant to Sections 7.3(e) and 7.5(c) of the Indenture; and

(ii) on or after the Completion Date (as defined in the Indenture) by application of money remaining in the Project Fund (as defined in the Indenture) not reserved by the Authority for the payment of any remaining part of the Cost of the Facilities which shall be transferred to the Redemption Account of the Bond Fund (as defined in the Indenture), and applied to the redemption of the Bonds ratably or from any Net Proceeds transferred to the Redemption Account in accordance with Section 6.4 of the Indenture.

If any of the Bonds are called for redemption, the Paying Agent will cause a notice of redemption to be mailed postage prepaid, not less than 30 nor more than 60 days before the date fixed for redemption, to the registered owners of the Bonds called for redemption, at their respective addresses as they appear on the registration books maintained by the Trustee. The receipt of notice is not to be a condition precedent to the redemption and failure to mail a notice to a registered owner will not affect the validity of the proceedings for the redemption of the Bonds of any other registered owners. If this Bond is duly called for redemption and payment of the principal of and premium, if any, and unpaid interest accrued to the date fixed for redemption has been made or provided for, then, notwithstanding that this Bond has not been surrendered for

cancellation, interest on this Bond will cease to accrue from the redemption date, and, from and after the redemption date, this Bond will no longer be entitled to any lien, benefit or security under the Indenture, and the registered owner of this Bond will have no rights in respect of this Bond except to receive payment of the principal of and redemption premium, if any, and unpaid interest accrued to the date fixed for redemption on this Bond.

Whenever this Bond shall be maintained in book-entry form with a securities depository in accordance with Section 3.4 of the Indenture, in the event that part, but not all, of this Bond shall be called for redemption, the holder of this Bond may elect not to surrender this Bond in exchange for a new Bond and in such event shall make a notation indicating the principal amount of such redemption and the date thereof on the Payment Grid attached hereto. For all purposes, the principal amount of this Bond outstanding at any time shall be equal to the lesser of (A) the Principal Amount shown on the face hereof and (B) such Principal Amount reduced by the principal amount of any partial redemption of this Bond following which the holder of this Bond has elected not to surrender this Bond. The failure of the holder hereof to note the principal amount of any partial redemption on the Payment Grid attached hereto, or any inaccuracy thereon, shall not affect the payment obligation of the Authority hereunder. **THEREFORE, IT CANNOT BE DETERMINED FROM THE FACE OF THIS BOND WHETHER A PART OF THE PRINCIPAL OF THIS BOND HAS BEEN PAID.**

The registered owner of this Bond has no right to enforce the provisions of the Indenture 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 proceeding with respect to the Indenture, except as provided in the Indenture. Modifications or alterations in the Indenture, or any supplements to it, may be made to the extent and under the circumstances provided by the Indenture.

The Bonds are issued as registered bonds without coupons in denominations of \$100,000 or any integral multiple of \$1,000 in excess of \$100,000, provided that if the Series 2011 Bonds have at any time been rated at least “Baa3” by Moody’s, “BBB-” by S&P or “BBB-” by Fitch, the Series 2011 Bonds shall thereafter be issuable in denominations of \$5,000 or any integral multiple of \$1,000 in excess of \$5,000, notwithstanding any subsequent downgrade, suspension or withdrawal of any such rating, and upon partial redemption of any Bond, a Bond or Bonds in the principal amount equal to the unredeemed portion, but not less than \$1,000 (or \$5,000 with respect to any optional redemption) may be issued. Upon surrender of this Bond at the designated corporate trust office of the Trustee, in the manner and subject to the limitations and conditions provided for in the Indenture, this Bond may be exchanged for an equal aggregate principal amount of Bonds of like date and tenor and of authorized denominations.

The transfer of this Bond may be registered by the registered owner in person or by his or her duly authorized attorney or legal representative at the principal office of the Paying Agent, but only in the manner and subject to the limitations and conditions provided for in the Indenture and upon surrender and cancellation of this Bond. Upon the registration of any transfer, the Authority will execute and the Paying Agent will authenticate and deliver in exchange for this Bond a new Bond or Bonds, registered in the name of the transferee, of like series, date and tenor, bearing interest at the same rate and in the same manner and of authorized denominations for the aggregate principal amount which the registered owner is entitled to receive. Before due registration of any transfer of this Bond, the Trustee will treat the registered owner shown on the

registration books maintained by the Paying Agent as the person exclusively entitled to payment of principal of and redemption premium, if any, and interest on this Bond, and the exercise of all other rights and powers of the owner.

All acts and conditions required to happen, exist or be performed precedent to and in connection with the issuance of this Bond have happened, exist and have been performed.

This Bond will not become obligatory for any purpose or be entitled to any security or benefit under the Indenture or be valid until the Trustee has executed the Certificate of Authentication appearing on this Bond.

[SIGNATURE PAGE FOLLOWS]



**IN WITNESS WHEREOF**, Mosaic District Community Development Authority has caused this Bond to be executed by the manual or facsimile signature of its Chairman, its seal or a facsimile thereof to be printed on this Bond and attested by the manual or facsimile signature of its Secretary.

**MOSAIC DISTRICT COMMUNITY  
DEVELOPMENT AUTHORITY**

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

[SEAL]

ATTEST:

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

\* \* \* \* \*

AUTHENTICATION DATE: \_\_\_\_\_,

**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds described in the within-mentioned Indenture.

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

By: \_\_\_\_\_  
Authorized Signature

**ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto

PLEASE INSERT SOCIAL SECURITY OR OTHER  
IDENTIFYING NUMBER OF TRANSFEREE

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(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING ZIP CODE OF  
TRANSFEREE)

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this Bond and all rights hereunder, and hereby irrevocably constitutes and appoints

\_\_\_\_\_, attorney, to transfer this  
Bond on the books kept for its registration, with full power of substitution.

Dated: \_\_\_\_\_ Tax I.D. No. \_\_\_\_\_

Signature Guaranteed:

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(NOTICE: Signature(s) must be guaranteed by an “eligible guarantor institution” meeting the requirements of the Trustee which requirements will include membership or participation in STAMP or such other “signature guarantee program” as may be determined by the Trustee in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.)

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Registered Owner  
(NOTE: The signature above must correspond exactly with the name of the registered owner as it appears on the front of this Bond.)

PAYMENT GRID

<u>Date of Payment</u>	<u>Principal Amount Paid</u>	<u>Principal Amount Outstanding</u>	<u>Holder Signature</u>