



# CITY OF LODI

## COUNCIL COMMUNICATION

**AGENDA TITLE:** Approval of Lease Financing Documents and Sale of \$10,120,000 Certificates of Participation (1996 Public Improvement Financing Project)

**MEETING DATE:** July 17, 1996

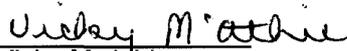
**PREPARED BY:** Finance Director

**RECOMMENDED ACTION:** That the City Council adopt Resolution No. 96-102 approving the execution of lease financing documents and sale of \$10,120,000 Certificates of Participation (1996 Public Improvement Financing Project) to finance the construction of Performing Arts/Convention Center.

**BACKGROUND INFORMATION:** The 1995-97 Financial Plan and Budget expressed the need to finance a number of capital projects over the next several years including the Performing Arts/Convention Center. Past financing programs included the issuance of annual Tax Revenue Anticipation Notes (TRANS) and \$5 million Certificates of Participation (COP) under the Small Issue Arbitrage Financing Program.

In the proposed COP financing, the City would sell a 20 year \$10,120,000 Certificate of Participation to finance the construction of the Performing Arts/Convention Center. The City would transfer the Hutchins Street Square, the City Hall, and Police Facility to the Lodi Public Improvement Corporation which in turn would transfer it back to the City under a lease purchase agreement. An agreement would be entered into by the Old Union High School Site Foundation and the City which would require the Foundation to make a "best effort" to repay the City for the cost of the project. Both parties would be requested to recognize the commitment by the Foundation annually in the amount of the debt service schedule with the understanding that the Foundation would make a best effort to meet their responsibility based on receipts of funds from bequests and/or fund raising activities. To protect the City's interests, the Foundation would be asked to provide the City with an annual audit of its financial records by outside certified public accountants.

**FUNDING:** Annual payments: Capital Outlay Fund

  
Vicky McAthie  
Finance Director

**APPROVED:** \_\_\_\_\_

  
H. Dixon Flynn -- City Manager

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July 8, 1996

Ms. Vicky McAthie  
Finance Director  
City of Lodi  
221 West Pine Street  
Lodi, CA 95240

Re: Certificates of Participation (1996 Public Improvement Financing Project) Evidencing Direct, Undivided Fractional Interests of the Owners Thereof in Lease Payments to be made by the City of Lodi, California, as the Rental for Certain Project Pursuant to a Lease Agreement with the Lodi Public Improvement Corporation

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Dear Vicky:

Enclosed are twenty (20) unmarked copies of each of the following resolutions, for adoption by the City Council and the Corporation Board on July 17:

1. (City Council) RESOLUTION APPROVING, AUTHORIZING AND DIRECTING PREPARATION AND EXECUTION OF CERTAIN LEASE FINANCING DOCUMENTS, APPROVING, AUTHORIZING AND DIRECTING PREPARATION AND DISTRIBUTION OF A PRELIMINARY OFFICIAL STATEMENT IN CONNECTION WITH THE OFFERING AND SALE OF CERTIFICATES OF PARTICIPATION RELATING THERETO, AND AUTHORIZING AND DIRECTING CERTAIN ACTIONS WITH RESPECT THERETO; and
2. (Corporation Board) RESOLUTION APPROVING, AUTHORIZING AND DIRECTING PREPARATION AND EXECUTION OF CERTAIN LEASE FINANCING DOCUMENTS AND AUTHORIZING AND DIRECTING CERTAIN ACTIONS WITH RESPECT THERETO.

Included with the resolutions are copies of the following items:

- a. Site and Facility Lease;
- b. Lease Agreement;
- c. Assignment Agreement; and
- d. Trust Agreement.

Copies of the Preliminary Official Statement and the Certificate Purchase Agreement, also to be approved by the City Council and the Corporation Board on July 17, will be forwarded to you by the Underwriter or by the Underwriter's counsel.

Please be sure that the City Clerk calls and provides public notice of the meeting of the Lodi Public Improvement Corporation (in the same manner that meeting of the City Council are called and noticed).

Unfortunately, I will be *unable* to attend the meetings of the City Council and the Corporation Board on July 17. However, Christopher Lynch of my office will represent us and will be available to answer any questions.

If you have any questions prior to the meetings, please call me.

Very truly yours,



Brian D. Quint

BDQ:kla  
Enclosures

cc: Mr. John C. Fitzgerald, Seidler-Fitzgerald Public Finance (w/o encl.)

CITY OF LODIRESOLUTION NO. 96-102**RESOLUTION APPROVING, AUTHORIZING AND DIRECTING PREPARATION AND EXECUTION OF CERTAIN LEASE FINANCING DOCUMENTS, APPROVING, AUTHORIZING AND DIRECTING PREPARATION AND DISTRIBUTION OF A PRELIMINARY OFFICIAL STATEMENT IN CONNECTION WITH THE OFFERING AND SALE OF CERTIFICATES OF PARTICIPATION RELATING THERETO, AND AUTHORIZING AND DIRECTING CERTAIN ACTIONS WITH RESPECT THERETO**

RESOLVED, by the City Council (the "Council") of the City of Lodi (the "City"), as follows:

WHEREAS, the City, working together with the Lodi Public Improvement Corporation (the "Corporation"), is proposing to proceed with a lease financing;

WHEREAS, in connection therewith, the City proposes to finance the acquisition and construction of certain public improvements within the geographic boundaries of the City (the "Improvements"), and it is in the public interest and for the public benefit that the City authorize and direct execution of the Lease Agreement and certain other financing documents in connection therewith;

WHEREAS, Seidler-Fitzgerald Public Finance (A Division of The Seidler Companies Inc.) (the "Underwriter") has been directed to prepare a preliminary official statement containing information material to the offering and sale of the Certificates described below (the "Preliminary Official Statement"); and

WHEREAS, the documents below specified shall be filed with the City and the members of the Council, with the aid of its staff, shall review said documents;

NOW, THEREFORE, it is hereby ORDERED and DETERMINED, as follows:

*Section 1.* Certificates of Participation (1996 Public Improvement Financing Project) (the "Certificates") are hereby authorized to be executed and delivered pursuant to the provisions of the Trust Agreement, as hereinafter defined.

*Section 2.* The below-enumerated documents be and are hereby approved, and the Mayor, the City Manager or the Finance Director is hereby authorized and directed to execute said documents, with such changes, insertions and omissions as may be approved by such official, and the City Clerk is hereby authorized and directed to attest to such official's signature:

(a) a site and facility lease, by and between the City, as lessor, and the Corporation, as lessee;

(b) a lease agreement, by and between the Corporation, as lessor, and the City, as lessee (the "Lease Agreement"), so long as the principal amount of the Lease Agreement does not

exceed \$10,500,000, so long as the term of the Lease Agreement does not exceed twenty-five (25) years, and so long as the maximum annual lease payments payable by the City under the Lease Agreement (the "Lease Payments") does not exceed \$950,000;

(c) a trust agreement, by and among the Corporation, the City and First Trust of California, National Association, as trustee (the "Trust Agreement"), relating to the financing, and the execution and delivery of the Certificates, representing direct, undivided fractional interests in the Lease Payments; and

(d) a purchase contract, by and among the Underwriter, the City and the Corporation relating to the purchase by the Underwriter of the Certificates, so long as the Underwriter's discount does not exceed 2%, exclusive of any original issue discount which does not represent compensation to the Underwriter.

*Section 3.* The Council hereby approves the Preliminary Official Statement describing the financing, in substantially the form on file with the City Clerk, together with any changes therein or additions thereto deemed advisable by the Mayor, the City Manager or the Finance Director. The Council authorizes and directs the Mayor, the City Manager or the Finance Director, on behalf of the City, to deem "final" pursuant to Rule 15c2-12 under the Securities Exchange Act of 1934 (the "Rule") the Preliminary Official Statement prior to its distribution by the Underwriter.

*Section 4.* The Mayor, the City Manager or the Finance Director is authorized and directed to cause the Preliminary Official Statement to be brought into the form of a final official statement (the "Final Official Statement") and to execute said Final Official Statement, dated as of the date of the sale of the Certificates, and a statement that the facts contained in the Final Official Statement, and any supplement or amendment thereto (which shall be deemed an original part thereof for the purpose of such statement) were, at the time of sale of the Certificates, true and correct in all material respects and that the Final Official Statement did not, on the date of sale of the Certificates, and does not, as of the date of delivery of the Certificates, contain any untrue statement of a material fact with respect to the City or omit to state material facts with respect to the City required to be stated where necessary to make any statement made therein not misleading in light of the circumstances under which it was made. The Mayor, the City Manager or the Finance Director shall take such further actions prior to the signing of the Final Official Statement as are deemed necessary or appropriate to verify the accuracy thereof. The execution of the Final Official Statement, which shall include such changes and additions thereto deemed advisable by the Mayor, the City Manager or the Finance Director and such information permitted to be excluded from the Preliminary Official Statement pursuant to the Rule, shall be conclusive evidence of the approval of the Final Official Statement by the City.

*Section 5.* The Final Official Statement, when prepared, is approved for distribution in connection with the offering and sale of the Certificates.

*Section 6.* The Mayor, the City Manager, the Finance Director, the City Clerk and all other appropriate officials of the City are hereby authorized and directed to execute such other agreements, documents and certificates as may be necessary to effect the purposes of this resolution and the financing herein authorized.

*Section 7.* This Resolution shall take effect upon its adoption by this Council.

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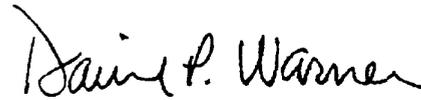
I, the undersigned City Clerk of the City of Lodi, hereby certify that the foregoing is a full, true and correct copy of a resolution duly adopted by the City Council of the City at a meeting thereof on the 17th day of July, 1996, by the following vote of the members thereof:

AYES: Council Members - Davenport, Mann, Pennino, Sieglock and Warner (Mayor)

NOES: Council Members - None

ABSTAIN: Council Members - None

ABSENT: Council Members - None



Mayor

ATTEST:

  
City Clerk

AFTER RECORDATION PLEASE RETURN TO:

Jones Hall Hill & White,  
A Professional Law Corporation  
Four Embarcadero Center, 19th Floor  
San Francisco, CA 94111  
Attention: Brian D. Quint, Esq.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11929 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

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**SITE AND FACILITY LEASE**

**Dated as of August 1, 1996**

**by and between the**

**CITY OF LODI, as Lessor**

**and the**

**LODI PUBLIC IMPROVEMENT CORPORATION, as Lessee**

---

(1996 Public Improvement Financing Project)

## SITE AND FACILITY LEASE

This SITE AND FACILITY LEASE, dated as of August 1, 1996, is by and between the CITY OF LODI, a municipal corporation and general law city duly organized and existing under and by virtue of the laws of the State of California (the "City"), as lessor, and the LODI PUBLIC IMPROVEMENT CORPORATION, a nonprofit, public benefit corporation duly organized and existing under and by virtue of the laws of the State of California (the "Corporation"), as lessee;

### WITNESSETH:

WHEREAS, the Corporation intends to assist the City in undertaking the acquisition, construction and installation of certain public improvements within the geographic boundaries of the City (the "Improvements"), by leasing certain land and improvements to the City pursuant to a Lease Agreement, dated as of August 1, 1996 (the "Lease Agreement"); and

WHEREAS, the City proposes to enter into this Site and Facility Lease with the Corporation as a material consideration for the Corporation's agreement to lease such land and improvements to the City;

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED, as follows:

Section 1. Site and Facility Lease. The City hereby leases to the Corporation and the Corporation hereby leases from the City, on the terms and conditions hereinafter set forth, those certain parcels of real property situated in the City of Lodi, San Joaquin County, State of California, more particularly described in Exhibit A attached hereto and made a part hereof (the "Site"), and those certain improvements on the Site more particularly described in Exhibit B attached hereto and made a part hereof (collectively, the "Facility").

Section 2. Term. The term of this Site and Facility Lease shall commence on the date of recordation of this Site and Facility Lease in the Office of the County Recorder of San Joaquin County, State of California, and shall end on October 1, \_\_\_\_, unless such term is extended or sooner terminated as hereinafter provided. If, on October 1, \_\_\_\_, the aggregate amount of Lease Payments (as defined in and as payable under the Lease Agreement) shall not have been paid, or provision shall not have been made for their payment, then the term of this Site and Facility Lease shall be extended until such Lease Payments shall be fully paid or provision made for such payment. If, prior to October 1, \_\_\_\_, all Lease Payments shall be fully paid or provision made for such payment in accordance with Section 4.2 or 10.1 of the Lease Agreement, the term of this Site and Facility Lease shall end ten (10) days thereafter.

Section 3. Advance Rental Payment. The City agrees to lease the Site and the Facility to the Corporation in consideration of the payment by the Corporation of an advance rental payment of \_\_\_\_\_ dollars (\$\_\_\_\_\_). The City and the Corporation agree that by reason of the sale of the certificates and deposit of proceeds pursuant to the provisions of the Trust Agreement, the advance rental payment referenced in the preceding sentence shall be deemed to have been paid.

Section 4. Purpose. The Corporation shall use the Site and the Facility solely for the purpose of leasing the Site and the Facility to the City pursuant to the Lease Agreement and for such purposes as may be incidental thereto; provided, however, that in the event of default by the City under the Lease Agreement, the Corporation and its assigns may exercise the remedies provided in the Lease Agreement.

Section 5. City's Interest in Site and the Facility. The City covenants that it is the owner of fee title to the Site and the Facility.

Section 6. Assignments and Subleases. Unless the City shall be in default under the Lease Agreement, the Corporation may not assign its rights under this Site and Facility Lease or sublet the Site or the Facility, except as provided in the Lease Agreement, without the written consent of the City.

Section 7. Right of Entry. The City reserves the right, for any of its duly authorized representatives, to enter upon the Site and the Facility at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof.

Section 8. Termination. The Corporation agrees, upon the termination of this Site and Facility Lease, to quit and surrender the Site and the Facility in the same good order and condition as the same were in at the time of commencement of the term hereunder, reasonable wear and tear excepted, and agrees that any permanent improvements and structures existing upon the Site or the Facility at the time of the termination of this Site and Facility Lease shall remain thereon and title thereto shall vest in the City.

Section 9. Default. In the event the Corporation shall be in default in the performance of any obligation on its part to be performed under the terms of this Site and Facility Lease, which default continues for thirty (30) days following notice and demand for correction thereof to the Corporation, the City may exercise any and all remedies granted by law, except that no merger of this Site and Facility Lease and of the Lease Agreement shall be deemed to occur as a result thereof; provided, however, that so long as any Certificates (as defined in the Lease Agreement) are outstanding and unpaid in accordance with the terms thereof, the Lease Payments assigned by the Corporation to the trustee under the Assignment Agreement, dated as of August 1, 1996, by and between the Corporation and First Trust of California, National Association, as trustee (the "Trustee"), shall continue to be paid to the Trustee.

Section 10. Quiet Enjoyment. The Corporation, at all times during the term of this Site and Facility Lease, shall peaceably and quietly have, hold and enjoy the Site and the Facility subject to the provisions of the Lease Agreement and the Trust Agreement, dated as of August 1, 1996, by and among the City, the Corporation and the Trustee.

Section 11. Waiver of Personal Liability. All liabilities under this Site and Facility Lease on the part of the Corporation are solely liabilities of the Corporation and the City hereby releases each and every member, director, officer, employee and agent of the Corporation of and from any personal or individual liability under this Site and Facility Lease. No member, director, officer, employee or agent of the Corporation shall at any time or under any circumstances be individually or personally liable under this Site and Facility Lease for anything done or omitted to be done by the Corporation hereunder.

Section 12. Taxes. The City covenants and agrees to pay any and all assessments of any kind or character and also all taxes, including possessory interest taxes, levied or assessed upon the Site and the Facility (including both land and improvements).

Section 13. Eminent Domain. In the event the whole or any part of the Site or the Facility thereon is taken by eminent domain proceedings, the interest of the Corporation shall be recognized and is hereby determined to be the amount of the then unpaid Certificates including the unpaid principal and interest with respect to any then outstanding such Certificates and, subject to the provisions of the Lease Agreement, the balance of the award, if any, shall be paid to the City.

Section 14. Use of the Proceeds. The City and the Corporation hereby agree that the lease to the Corporation of the City's right, title and interest in the Site and the Facility pursuant to Section 1 serves the public purposes of the City by providing funds to enable the City to finance the Improvements. The City hereby agrees that the proceeds of the Certificates shall be used solely for the purpose of paying the costs of the Improvements, to be owned, held or controlled by the City for its public purposes, on or before the date three years following the date of execution and delivery of the Certificates, or to refinance prior obligations of the City incurred for such purposes.

Section 15. Partial Invalidity. If any one or more of the terms, provisions, covenants or conditions of this Site and Facility Lease shall, to any extent, be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding, order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Site and Facility Lease shall be affected thereby, and each provision of this Site and Facility Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 16. Notices. All notices, statements, demands, consents, approvals, authorizations, offers, designations, requests or other communications hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if delivered personally or if mailed by United States registered mail, return receipt requested, postage prepaid, and, if to the City, addressed to the City in care of the City Manager, City of Lodi, 221 West Pine Street, Lodi, CA 95240, or if to the Corporation, addressed to the Corporation in care of the Executive Director, Lodi Public Improvement Corporation, 221 West Pine Street, Lodi, CA 95240, or to such other addresses as the respective parties may from time to time designate by notice in writing.

Section 17. Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Site and Facility Lease.

Section 18. Applicable Law. This Site and Facility Lease shall be governed by and construed in accordance with the laws of the State of California.

Section 19. Execution in Counterparts. This Site and Facility Lease may be executed in any number of counterparts, each of which shall be deemed to be an original but all together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the City and the Corporation have caused this Site and Facility Lease to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

CITY OF LODI, as Lessor

By \_\_\_\_\_  
City Manager

(S E A L)

Attest:

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

LODI PUBLIC IMPROVEMENT CORPORATION, as Lessee

By \_\_\_\_\_  
Executive Director

(S E A L)

Attest:

\_\_\_\_\_  
Secretary

APPROVED:

By \_\_\_\_\_  
City Attorney

NOTARY ACKNOWLEDGMENT FORMS TO BE ATTACHED

## EXHIBIT A

### DESCRIPTION OF THE SITE

Those parcels of land in the City of Lodi, San Joaquin County, State of California, described as follows:

#### Parcel One

Lots 1, 2, 3, 4, 5, 6, 7 and 8, of Block 3 of the City of Lodi, as said Lots and Block are delineated and designated upon on the Official Map entitled, "Mokelumne" now known as the City of Lodi filed August 25, 1869, in Book of Maps and Plats, Vol. 2 at page 12 in the Office of the County Recorder of the County of San Joaquin, State of California.

TOGETHER WITH that portion of Pleasant Avenue and the alley between Pine Street and Elm Street, as described in the order vacating same, a certified copy of which recorded October 11, 1966 in Book 2988 of Official Records page 411.

EXCEPTING THEREFROM the North 65 feet of the East 72.5 feet of Lot 5, as conveyed to the City of Lodi, recorded May 1, 1992, Instrument No. 92050418.

#### Parcel Two

The North 65 feet of the East 72.5 feet of Lot 5, Block 3 as said Lots and Block are delineated and designated upon on the Official Map entitled, "Mokelumne" now known as the City of Lodi filed August 25, 1869, in Book of Maps and Plats, Vol. 2 Page 12, in the Office of the County Recorder of the County of San Joaquin, State of California.

#### Parcel Three

Commencing at the center line of Oak Street at the intersection of the center line of Hutchins Street according to the Official Map or Plat of Hutchins Addition to Lodi as filed for record in the Office of the County Recorder of San Joaquin County on April 10th, 1897, and running thence Westerly along the Center Line of Oak Street 760 feet; running thence at right angles Southerly 687.79 feet; running thence at right angles Easterly 760 feet to the Center Line of Hutchins Street; running thence at right angles Northerly along the Center line of Hutchins Street 687.79 feet to the Point of Beginning.

EXCEPTING THEREFROM for road or street purposes the East 30 feet thereof; the West 30 feet thereof; the North 30 feet thereof and the South 30 feet thereof, and being all of Lots number Eight (8) and Nine (9) and portion of Lots Number Seven (7), Ten (10), Eleven (11) and Twelve (12) in Block Number Fourteen (14) of Hutchins Addition to Lodi according to the Official Map or Plat of said Addition filed for record in the Office of the County Recorder of San Joaquin County on April 10th, 1897.

## EXHIBIT B

### DESCRIPTION OF THE FACILITY

The Facility consists of:

(a) the *City Hall building*, located at 221 West Pine Street, which is an approximately 18,425 square foot two story building constructed in 1927. The City Hall building houses the City administrative offices, the City Clerk, the City Attorney and the Personnel, Risk Management, Public Works and Community Development departments.

(b) the *Public Safety building*, located 230 West Elm Street, which is an approximately 40,151 square foot two story building with basement of brick construction constructed in 1967. The Public Safety building houses the Police and Fire departments and the municipal court.

(c) the *Hutchins Street Square building*, located at 125 South Hutchins Street, is the old Tokay High School, located four blocks from downtown acquired by the City in 1975. The Hutchins Street Square building houses a community center, senior complex, a pool and a small fine arts center.

AFTER RECORDATION RETURN TO:

JONES HALL HILL & WHITE,  
A PROFESSIONAL LAW CORPORATION  
Four Embarcadero Center, 19th Floor  
San Francisco, California 94111  
Attention: Brian D. Quint, Esq.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11929 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

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**LEASE AGREEMENT**

**Dated as of August 1, 1996**

**by and between the**

**LODI PUBLIC IMPROVEMENT CORPORATION, as Lessor**

**and the**

**CITY OF LODI, as Lessee**

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(1996 Public Improvement Financing Project)

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EXHIBIT A:	Definitions
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## LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease Agreement"), dated as of August 1, 1996, is by and between the LODI PUBLIC IMPROVEMENT CORPORATION, a nonprofit, public benefit corporation organized and existing under the laws of the State of California, as lessor (the "Corporation"), and the CITY OF LODI, a municipal corporation and general law city duly organized and existing under the laws of the State of California, as lessee (the "City");

### WITNESSETH:

WHEREAS, pursuant to that certain Site and Facility Lease, dated as of August 1, 1996 (the "Site and Facility Lease"), the City has leased those certain parcels of real property situated in the City of Lodi, San Joaquin County, State of California, more particularly described in Exhibit B attached hereto and made a part hereof (collectively, the "Site"), and those certain improvements on the Site more particularly described in Exhibit C attached hereto and made a part hereof (the "Facility" and, with the Site, the "Property"), all for the purpose of enabling the City to undertake the acquisition and construction of certain public improvements within the geographic boundaries of the City (the "Improvements");

WHEREAS, the Corporation proposes to lease the Property back to the City pursuant to this Lease Agreement and to assign its right to receive lease payments under this Lease Agreement (the "Lease Payments"), its right to enforce payment of the Lease Payments and otherwise to enforce its interest and rights under this Lease Agreement in the event of a default hereunder by the City, to First Trust of California, National Association, as trustee (the "Trustee"), pursuant to that certain Assignment Agreement, dated as of August 1, 1996, by and between the Corporation and the Trustee;

WHEREAS, pursuant to that certain Trust Agreement, dated as of August 1, 1996, by and among the City, the Corporation and the Trustee, the Trustee will execute and deliver certificates of participation (the "Certificates") in the Lease Payments; and

WHEREAS, the proceeds of the Certificates, together with other available moneys, will be applied by the City to (i) finance the Improvements, and (ii) fund a reserve fund, and (iii) pay delivery costs incurred in connection with the execution, delivery and sale of the Certificates;

ARTICLE I  
DEFINITIONS AND EXHIBITS

Section 1.1. Definitions. The terms defined in Exhibit A attached hereto and by this reference incorporated herein, as used and capitalized herein, shall, for all purposes of this Lease Agreement, have the meanings ascribed to them in said Exhibit A unless the context clearly requires some other meaning.

Section 1.2. Exhibits. The following exhibits are attached to, and by this reference made a part of, this Lease Agreement:

Exhibit A: Definitions

Exhibit B: The description of the Site

Exhibit C: The description of the Facility

Exhibit D: The schedule of Lease Payments to be paid by the City hereunder with respect to the Property, showing the Lease Payment Date and amount of each such Lease Payment

## ARTICLE II

### REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1. Representations, Covenants and Warranties of the City. The City represents, covenants and warrants to the Corporation as follows:

(a) *Due Organization and Existence*. The City is a public body, duly organized and existing under the laws of the State.

(b) *Authorization*. The laws of the State authorize the City to enter into the Site and Facility Lease, this Lease Agreement and the Trust Agreement and to enter into the transactions contemplated by and to carry out its obligations under all of the aforesaid agreements, the City has duly authorized and executed all of the aforesaid agreements and such agreements constitute the legal, valid and binding agreements of the City, enforceable against the City in accordance with their respective terms.

(c) *No Violations*. Neither the execution and delivery of the Site and Facility Lease, this Lease Agreement or the Trust Agreement, the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction, agreement or instrument to which the City is now a party or by which the City is bound, constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrances whatsoever upon any of the property or assets of the City, or upon the Property, except Permitted Encumbrances.

(d) *Execution and Delivery*. The City has duly authorized and executed this Lease Agreement in accordance with the laws of the State.

Section 2.2. Representations, Covenants and Warranties of Corporation. The Corporation represents, covenants and warrants to the City as follows:

(a) *Due Organization and Existence*. The Corporation is a nonprofit, public benefit corporation, duly organized and existing under and by virtue of the laws of the State; has power to enter into the Site and Facility Lease, this Lease Agreement, the Assignment Agreement and the Trust Agreement; is possessed of full power to own and hold, improve and equip real and personal property and to lease and sell the same; has duly authorized the execution and delivery of all of the aforesaid agreements and such agreements constitute the legal, valid and binding agreements of the Corporation, enforceable against the Corporation in accordance with their respective terms.

(b) *No Encumbrances*. The Corporation will not pledge the Lease Payments or other amounts derived from the Property and from its other rights under this Lease Agreement and will not mortgage or encumber the Property, except as provided under the terms of this Lease Agreement and the Trust Agreement.

(c) *No Violations*. Neither the execution and delivery of the Site and Facility Lease, this Lease Agreement, the Assignment Agreement or the Trust Agreement, the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Corporation is now a party or by which the Corporation is bound, constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance

whatsoever upon any of the property or assets of the Corporation, or upon the Property, except Permitted Encumbrances.

(d) *No Assignments.* Except as provided herein, the Corporation will not assign this Lease Agreement, its right to receive Lease Payments from the City or its duties and obligations hereunder to any other person, firm or Corporation so as to impair or violate the representations, covenants and warranties contained in this Section 2.2.

(e) *Title to Site and the Facility.* The Corporation warrants that it has, pursuant to the Site and Facility Lease, acquired, and is owner of, leasehold title to the Site and the Facility.

(f) *Execution and Delivery.* The Corporation has duly authorized and executed this Lease Agreement in accordance with the laws of the State.

### ARTICLE III

#### DEPOSIT OF MONEYS

Section 3.1. Deposit of Moneys. On the Closing Date, the Corporation shall cause to be deposited with the Trustee the proceeds of sale of the Certificates. Accrued interest received with respect to the Certificates shall be deposited with the Trustee in the Lease Payment Fund, amounts estimated to be required to pay Delivery Costs shall be deposited in the Delivery Costs Fund, an amount equal to the Reserve Requirement shall be deposited in the Reserve Fund and the remaining balance of said amount required to pay Acquisition and Construction Costs shall be deposited in the Acquisition and Construction Fund.

## ARTICLE IV

### AGREEMENT TO LEASE; TERM OF THIS LEASE AGREEMENT; LEASE PAYMENTS

Section 4.1. Lease. The Corporation hereby leases the Property to the City, and the City hereby leases the Property from the Corporation, upon the terms and conditions set forth in this Lease Agreement.

Section 4.2. Term of Agreement. The Term of the Lease Agreement shall commence on the date hereof, and shall end on October 1, \_\_\_\_, unless such term is extended as hereinafter provided. If, on October 1, \_\_\_\_, the Trust Agreement shall not be discharged by its terms or if the Lease Payments payable hereunder shall have been abated at any time and for any reason, then the Term of the Lease Agreement shall be extended until there has been deposited with the Trustee an amount sufficient to pay all obligations due under the Lease Agreement, but in no event shall the Term of the Lease Agreement extend beyond October 1, \_\_\_\_. If, prior to October 1, \_\_\_\_, the Trust Agreement shall be discharged by its terms, the Term of the Lease Agreement shall thereupon end.

Notwithstanding the foregoing, the Term of the Lease Agreement shall not end so long as any amounts are owed to the Municipal Bond Insurer with respect to the Municipal Bond Insurance Policy or with respect to the Surety Bond.

Section 4.3. Possession. The City agrees to take possession of the Property on the Closing Date.

#### Section 4.4. Lease Payments.

(a) *Obligation to Pay*. Subject to the provisions of Articles VI and X hereof, the City agrees to pay to the Corporation, its successors and assigns, as rental for the use and occupancy of the Property during each Rental Period, the Lease Payments (denominated into components of principal and interest) in the respective amounts specified in Exhibit D hereto, to be due and payable on the respective Lease Payment Dates specified in Exhibit D hereto. Any amount held in the Lease Payment Fund on any Lease Payment Date (other than amounts resulting from the prepayment of the Lease Payments in part but not in whole pursuant to Article X hereof and other than amounts required for payment of Certificates not yet surrendered) shall be credited towards the Lease Payment then due and payable; and no Lease Payment need be made on any Lease Payment Date if the amounts then held in the Lease Payment Fund are at least equal to the Lease Payment then required to be paid. The Lease Payments for the Property payable in any Rental Period shall be for the use of the Property for such Rental Period.

(b) *Effect of Prepayment*. In the event that the City prepays all remaining Lease Payments in full pursuant to Article X hereof, the City's obligations under this Lease Agreement shall thereupon cease and terminate including, but not limited to, the City's obligation to pay Lease Payments under this Section 4.4; subject however, to the provisions of Section 10.1 hereof in the case of prepayment by application of a security deposit. In the event that the City optionally prepays the Lease Payments in part but not in whole pursuant to Section 10.2 hereof or pursuant to Section 10.3 hereof as a result of any insurance or condemnation award with respect to any portion of the Property, such prepayment shall be credited entirely towards the prepayment of the Lease Payments as follows: (i) the principal components of each remaining such Lease Payments shall be reduced in such order of payment date as shall be designated by the City to the Trustee, and if the City shall fail to so designate, pro rata among such payment

dates, in integral multiples of \$5,000; and (ii) the interest component of each remaining such Lease Payments shall be reduced by the aggregate corresponding amount of interest which would otherwise be payable with respect to the Certificates thereby redeemed pursuant to Sections 4.01(a) or (b), as the case may be, of the Trust Agreement.

(c) *Rate on Overdue Payments.* In the event the City should fail to make any of the payments required in this Section 4.4, the payment in default shall continue as an obligation of the City until the amount in default shall have been fully paid, and the City agrees to pay the same with interest thereon, to the extent permitted by law, from the date of corresponding Certificate default to the date of payment at the rate of twelve percent (12%) per annum. Such interest, if received, shall be deposited in the Lease Payment Fund.

(d) *Fair Rental Value.* The Lease Payments for the Property for each Rental Period shall constitute the total rental for the Property for each such Rental Period and shall be paid by the City in each Rental Period for and in consideration of the right of the use and occupancy, and the continued quiet use and enjoyment, of the Property during each Rental Period. The parties hereto have agreed and determined that the total Lease Payments for the Property do not exceed the fair rental value of the Property. In making such determination, consideration has been given to the obligations of the parties under this Lease Agreement, the uses and purposes which may be served by the Property, the total amounts which have been expended on the Property, the value of the Site and the benefits therefrom which will accrue to the City and the general public.

(e) *Source of Payments; Budget and Appropriation.* Lease Payments shall be payable from any source of available funds of the City, subject to the provisions of Articles VI and X hereof.

The City covenants to take such action as may be necessary to include all Lease Payments due hereunder in each of its budgets during the Term of the Lease Agreement and to make the necessary annual appropriations for all such Lease Payments. The covenants on the part of the City herein contained shall be deemed to be and shall be construed to be duties imposed by law and it shall be the duty of each and every public official of the City to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements in this Lease Agreement agreed to be carried out and performed by the City.

The City Manager and all other officers charged with the duty of preparing and submitting the annual budget of the City to the City Council are hereby irrevocably directed, following any draw on the Reserve Fund Surety Bond because the value of the Property has been reduced below the total unpaid principal component of Lease Payments and the City is permitted to pay less than the total scheduled Lease Payment, all in accordance with Section 6.3 (an "Abatement Period"), to include in the proposed budget and to request that the City Council include in the final approved budget, and thereby appropriate, any amounts necessary to reinstate the Reserve Fund Surety Bond, including interest due and any other amounts payable to the Municipal Bond Insurer under the terms of the Guaranty Agreement (collectively, the "Reinstatement Amount"). Such officers shall use their best efforts to obtain such appropriations.

The request for inclusion in the final approved budget and appropriation shall be made in each Fiscal Year following any Abatement Period so long as reimbursement amounts are owed to the Municipal Bond Insurer. Failure by the City Manager and other officers to request such inclusion and appropriation shall constitute an Event of Default under this Lease Agreement and the Municipal Bond Insurer may exercise remedies accordingly.

The decision of the City Council as to whether or not to approve and appropriate any Reinstatement Amount in any given Fiscal Year during any Abatement Period is in the sole discretion of the City Council; the failure of the City Council to approve and appropriate the Reinstatement Amount in any given Fiscal Year during any Abatement Period shall not constitute an Event of Default under this Lease Agreement or the Trust Agreement.

(f) *Assignment*. The City understands and agrees that all Lease Payments have been assigned by the Corporation to the Trustee in trust, pursuant to the Assignment Agreement, for the benefit of the Owners of the Certificates, and the City hereby assents to such assignment. The Corporation hereby directs the City, and the City hereby agrees to pay to the Trustee at the Principal Corporate Trust Office, all payments payable by the City pursuant to this Section 4.4 and all amounts payable by the City pursuant to Article X hereof.

Section 4.5. Quiet Enjoyment. During the Term of the Lease Agreement, the Corporation shall provide the City with quiet use and enjoyment of the Property and the City shall, during such Term, peaceably and quietly have and hold and enjoy the Property without suit, trouble or hindrance from the Corporation, except as expressly set forth in this Lease Agreement. The Corporation will, at the request of the City and at the City's cost, join in any legal action in which the City asserts its right to such possession and enjoyment to the extent the Corporation may lawfully do so. Notwithstanding the foregoing, the Corporation shall have the right to inspect the Property as provided in Section 7.2 hereof.

Section 4.6. Title. During the Term of the Lease Agreement, the Corporation shall hold fee title to those portions of the Property which are newly acquired or constructed (excluding real property acquired) and any and all additions which comprise fixtures, repairs, replacements or modifications to the Property, except for those fixtures, repairs, replacements or modifications which are added to the Property by the City at its own expense and which may be removed without damaging the Property and except for any items added to the Property by the City pursuant to Section 5.9 hereof.

If the City prepays the Lease Payments in full pursuant to Article X hereof (and the Certificates are paid in full) or makes the security deposit permitted by Section 10.1 hereof, or pays all Lease Payments during the Term of the Lease Agreement as the same become due and payable, all right, title and interest of the Corporation in and to the Property shall be transferred to and vested in the City. The Corporation agrees to take any and all steps and execute and record any and all documents reasonably required by the City to consummate any such transfer of title.

Section 4.7. Additional Payments. In addition to the Lease Payments, the City shall pay when due all costs and expenses incurred by the City and the Corporation to comply with the provisions of the Trust Agreement, or otherwise arising from the leasing of the Property, including without limitation all delivery costs (to the extent not paid from amounts on deposit in the Delivery Costs Fund), compensation and indemnification due to the Trustee, amounts representing interest owed to the Municipal Bond Insurer following a draw on the Reserve Fund Surety Bond prior to reimbursement thereof from delinquent Lease Payments received by the Trustee in accordance with Section 6.02(b)(iv) of the Trust Agreement, costs and expenses of the Municipal Bond Insurer and all costs and expenses of auditors, engineers, attorneys and accountants.

## ARTICLE V

### MAINTENANCE; TAXES; INSURANCE; USE LIMITATIONS; AND OTHER MATTERS

Section 5.1. Maintenance, Utilities, Taxes and Assessments. Throughout the Term of the Lease Agreement, as part of the consideration for the rental of the Property, all improvement, repair and maintenance of the Property shall be the responsibility of the City and the City shall pay, or otherwise arrange for the payment of, all utility services supplied to the Property which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, water and all other utility services, and shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Property resulting from ordinary wear and tear or want of care on the part of the City or any assignee or sublessee thereof. In exchange for the Lease Payments herein provided, the Corporation agrees to provide only the Property, as hereinbefore more specifically set forth. The City waives the benefits of subsections 1 and 2 of section 1932 of the California Civil Code, but such waiver shall not limit any of the rights of the City under the terms of this Lease Agreement.

The City shall also pay or cause to be paid all taxes and assessments of any type or nature, if any, charged to the Corporation or the City affecting the Property or the respective interests or estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as are required to be paid during the Term of the Lease Agreement as and when the same become due.

The City may, at the City's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Corporation shall notify the City that, in the opinion of Independent Counsel, by nonpayment of any such items, the interest of the Corporation in the Property will be materially endangered or the Property or any part thereof will be subject to loss or forfeiture, in which event the City shall promptly pay such taxes, assessments or charges or provide the Corporation with full security against any loss which may result from nonpayment, in form satisfactory to the Corporation.

Section 5.2. Modification of Property. The City shall, at its own expense, have the right to remodel the Property or to make additions, modifications and improvements to the Property. All additions, modifications and improvements to the Property, but not any additional buildings or improvements, shall thereafter comprise part of the Property and be subject to the provisions of this Lease Agreement. Such additions, modifications and improvements shall not in any way damage the Property, substantially alter its nature, cause the interest component of Lease Payments to be subject to federal income taxes or cause the Property to be used for purposes other than those authorized under the provisions of State and federal law; and the Property, upon completion of any additions, modifications and improvements made thereto pursuant to this Section 5.2, shall be of a value which is not substantially less than the value of the Property immediately prior to the making of such additions, modifications and improvements. The City will not permit any mechanic's or other lien to be established or remain against the Property for labor or materials furnished in connection with any remodeling, additions, modifications, improvements, repairs, renewals or replacements made by the City pursuant to this Section 5.2; provided that if any such lien is established and the City shall first notify the Corporation of the City's intention to do so, the City may in good faith contest any lien filed or established against the Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any

appeal therefrom and shall provide the Corporation with full security against any loss or forfeiture which might arise from the nonpayment of any such item, in form satisfactory to the Corporation. The Corporation will cooperate fully in any such contest, upon the request and at the expense of the City.

Section 5.3. Public Liability and Property Damage Insurance. The City shall maintain or cause to be maintained, throughout the Term of the Lease Agreement, insurance policies, including a standard comprehensive general insurance policy or policies in protection of the City, the Corporation and the Trustee, including their respective members, officers, agents and employees. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the Property. Said policy or policies shall provide coverage in the minimum liability limits of \$1,000,000 for personal injury or death of each person and \$3,000,000 for personal injury or deaths of two or more persons in each accident or event, and in a minimum amount of \$100,000 (subject to a deductible clause of not to exceed \$5,000) for damage to property resulting from each accident or event. Such public liability and property damage insurance may, however, be in the form of a single limit policy in the amount of \$3,000,000 covering all such risks. Such liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried by the City, and may be maintained in the form of insurance maintained through a joint exercise of powers authority created for such purpose or in the form of self-insurance by the City. The Net Proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the insurance proceeds shall have been paid.

Section 5.4. Fire and Extended Coverage Insurance. The City shall procure and maintain, or cause to be procured and maintained, throughout the Term of the Lease Agreement, insurance against loss or damage to any structures constituting part of the Property by fire and lightning, with extended coverage and vandalism and malicious mischief insurance. Said extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance. Such insurance shall be in an amount equal to the greater of (a) one hundred percent (100%) of the replacement cost of the Property, or (b) the aggregate principal amount of the Outstanding Certificates. Such insurance may be subject to deductible clauses of not to exceed \$100,000 for any one loss. Such insurance may be maintained as part of or in conjunction with any other fire and extended coverage insurance carried by the City and may be maintained in whole or in part in the form of insurance maintained through a joint exercise of powers authority created for such purpose or in the form of self-insurance by the City. The Net Proceeds of such insurance shall be applied as provided in Sections 5.7 and 6.2(a) hereof.

The City agrees to procure and maintain, or cause to be procured and maintained, throughout the Term of the Lease Agreement, insurance against earthquake loss or damage to the Property in such amounts as an independent insurance consultant shall annually determine is necessary to protect the City for such risk. Such insurance may be subject to a deductible clause of not to exceed ten percent (10%) for any one loss. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City. If the City cannot purchase such insurance on the open market from reputable insurers at reasonable cost, the City agrees to self-insure for such coverage. The Net Proceeds of such insurance shall be applied as provided in Sections 5.7 and 6.2(a) hereof.

Section 5.5. Rental Interruption Insurance. The City shall procure and maintain through the Term of the Lease Agreement, rental interruption or use and occupancy insurance, if commercially available, to cover loss, total or partial, of the use of any part of the Property during the Term of the Lease Agreement as a result of any of the hazards covered in the insurance required by Section 5.4 hereof, in an amount at least equal to two times the Reserve

Requirement. The Net Proceeds of such insurance shall be paid to the Trustee and deposited in the Lease Payment Fund, and shall be credited towards the payment of the Lease Payments in the order in which such Lease Payments would otherwise come due and be payable; *provided, however,* that any amounts so received shall first be applied to reimburse the Municipal Bond Insurer for any draw on the Reserve Fund Surety Bond provided no Event of Default has occurred under Section 4.4(a) hereof.

Section 5.6. Title Insurance. The City shall provide, at its own expense, on the Closing Date, a CLTA owner's title insurance policy in the amount of not less than the aggregate original principal amount (but not maturity amount) of the Certificates insuring the City's leasehold estate in the Property, subject only to Permitted Encumbrances. The Net Proceeds of such insurance shall be applied as provided in Section 6.2(c) hereof. A copy of such policy shall be delivered to the Municipal Bond Insurer.

Section 5.7. Insurance Net Proceeds; Form of Policies. Each policy of insurance required by Sections 5.4, 5.5 and 5.6 hereof shall provide that all proceeds thereunder shall be payable to the Trustee as and to the extent required hereunder and shall name the Municipal Bond Insurer as an additional insured. Notice of cancellation of any such policy shall be filed with the Municipal Bond Insurer. All required insurance policies shall be provided by a commercial insurer rated "A" or better by A.M. Best & Company or rated in one of the two highest rating categories by Moody's and S&P. The City shall pay or cause to be paid when due the premiums for all insurance policies required by this Lease Agreement. The Trustee shall not be responsible for the sufficiency of any insurance herein required, including any forms of self-insurance and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss. The City shall cause to be delivered annually on or before each October 1 to the Trustee and the Municipal Bond Insurer a certification, signed by a City Representative, stating compliance with the provisions of Section 5.3 through 5.7 of this Lease Agreement. The Trustee shall be entitled to rely on such certification without independent investigation. The City shall have the adequacy of any insurance reserves maintained by the City or by a joint exercise of powers authority, if applicable, for purposes of the insurance required by Section 5.3 and 5.4 hereof reviewed at least annually, on or before each November 1, by an independent insurance consultant and shall maintain reserves in accordance with the recommendations of such consultant to the extent moneys are available for such purpose and not otherwise appropriated. The results of such review shall be filed with the Trustee and the Municipal Bond Insurer.

Section 5.8. Advances. If the City shall fail to perform any of its obligations under this Article V, the Corporation may, but shall not be obligated to, take such action as may be necessary to cure such failure, including the advancement of money, and the City shall be obligated to repay all such advances as soon as possible, with interest at the rate of twelve percent (12%) per annum from the date of the advance to the date of repayment.

Section 5.9. Installation of City's Equipment. The City may, at any time and from time to time in its sole discretion and at its own expense, install or permit to be installed items of equipment or other personal property in or upon any portion of the Property. All such items shall remain the sole property of the City in which neither the Corporation nor the Trustee shall have any interest and may be modified or removed by the City at any time provided that the City shall repair and restore any and all damage to the Property resulting from the installation, modification or removal of any such items. Nothing in this Lease Agreement shall prevent the City from purchasing or leasing items to be installed pursuant to this Section 5.9 under a lease or conditional sale agreement, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Property.

Section 5.10. Liens. The City shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Property, other than the respective rights of the Corporation and the City as provided herein and Permitted Encumbrances. Except as expressly provided in this Article V, the City shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim, for which it is responsible, if the same shall arise at any time. The City shall reimburse the Corporation for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

Section 5.11. Private Activity Bond Limitation. The City shall assure that the proceeds of the Certificates are not so used as to cause the Certificates or the Lease Agreement to satisfy the private business tests of section 141(b) of the Code or the private loan financing test of section 141(c) of the Code.

Section 5.12. Federal Guarantee Prohibition. The City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause any of the Certificates or the Lease Agreement to be “federally guaranteed” within the meaning of section 149(b) of the Code.

Section 5.13. Rebate Requirement. The City shall take any and all actions necessary to assure compliance with section 148(f) of the Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the Certificates or the Lease Agreement.

Section 5.14. No Arbitrage. The City shall not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Certificates which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date would have caused the Certificates or the Lease Agreement to be “arbitrage bonds” within the meaning of section 148 of the Code.

Section 5.15. Maintenance of Tax Exemption. The City shall take all actions necessary to assure the exclusion of interest with respect to the Certificates from the gross income of the Owners of the Certificates to the same extent as such interest is permitted to be excluded from gross income under the Code as in effect on the Closing Date.

## ARTICLE VI

### DAMAGE, DESTRUCTION AND EMINENT DOMAIN; USE OF NET PROCEEDS

Section 6.1. Eminent Domain. If all of the Property shall be taken permanently under the power of eminent domain or sold to a government threatening to exercise the power of eminent domain, the Term of this Lease Agreement shall cease as of the day possession shall be so taken. If less than all of the Property shall be taken permanently, or if all of the Property or any part thereof shall be taken temporarily under the power of eminent domain, (1) this Lease Agreement shall continue in full force and effect and shall not be terminated by virtue of such taking and the parties waive the benefit of any law to the contrary, and (2) there shall be a partial abatement of Lease Payments as a result of the application of the Net Proceeds of any eminent domain award to the prepayment of the Lease Payments hereunder, in an amount to be agreed upon by the City and the Corporation, and so certified by such parties to the Trustee, such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining usable portion of the Property.

#### Section 6.2. Application of Net Proceeds.

(a) *From Insurance Award*. The Net Proceeds of any insurance award resulting from any damage to or destruction of any portion of the Property by fire or other casualty shall be paid by the City to the Trustee, as assignee of the Corporation under the Assignment Agreement, deposited in the Insurance and Condemnation Fund by the Trustee and applied as set forth in Section 7.01 of the Trust Agreement.

(b) *From Eminent Domain Award*. The Net Proceeds of any eminent domain award resulting from any event described in Section 6.1 hereof shall be paid by the City to the Trustee, as assignee of the Corporation under the Assignment Agreement, deposited in the Insurance and Condemnation Fund and applied as set forth in Section 7.02 of the Trust Agreement.

(c) *From Title Insurance*. The Net Proceeds of any title insurance award shall be paid to the Trustee, as assignee of the Corporation under the Assignment Agreement, deposited in the Insurance and Condemnation Fund and applied as set forth in Section 7.03 of the Trust Agreement.

Section 6.3. Abatement of Lease Payments in the Event of Damage or Destruction. Lease Payments shall be abated during any period in which, by reason of damage or destruction, there is substantial interference with the use and occupancy by the City of the Property or any portion thereof (other than any portions of the Property described in Section 5.2 hereof) to the extent to be agreed upon by the City and the Corporation. The parties agree that the amounts of the Lease Payments under such circumstances shall not be less than the amounts of the unpaid Lease Payments as are then set forth in Exhibit D, unless such unpaid amounts are determined, upon consultation with the Municipal Bond Insurer, to be greater than the fair rental value of the portions of the Property not damaged or destroyed (giving due consideration to the factors identified in the last sentence of Section 4.4(d)), based upon the opinion of an MAI appraiser with expertise in valuing such properties or other appropriate method of valuation, in which event the Lease Payments shall be abated such that they represent said fair rental value. Such abatement shall continue for the period commencing with such damage or destruction and ending with the substantial completion of the work of repair or reconstruction. In the event of any such damage or destruction, this Lease Agreement shall continue in full force and effect and the City waives any right to terminate this Lease Agreement by virtue of any such damage and destruction. Notwithstanding the foregoing, there shall be no abatement of Lease Payments

under this Section 6.3 to the extent that (a) the proceeds of rental interruption insurance or (b) amounts in the Reserve Fund (including amounts drawn upon the Reserve Fund Surety Bond) and/or the Insurance and Condemnation Fund and/or the Lease Payment Fund are available to pay Lease Payments which would otherwise be abated under this Section 6.3, it being hereby declared that such proceeds and amounts constitute special funds for the payment of the Lease Payments.

## ARTICLE VII

### DISCLAIMER OF WARRANTIES; ACCESS; INDEMNIFICATION

Section 7.1. Disclaimer of Warranties. THE CORPORATION MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE CITY OF THE PROPERTY OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE PROPERTY. IN NO EVENT SHALL THE CORPORATION BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THE SITE AND FACILITY LEASE, THIS LEASE AGREEMENT OR THE TRUST AGREEMENT FOR THE EXISTENCE, FURNISHING, FUNCTIONING OR THE CITY'S USE OF THE PROPERTY.

Section 7.2. Access to the Property. The City agrees that the Corporation and any Corporation Representative, and the Corporation's successors or assigns, shall have the right at all reasonable times to enter upon and to examine and inspect the Property. The City further agrees that the Corporation, any Corporation Representative, and the Corporation's successors or assigns shall have such rights of access to the Property as may be reasonably necessary to cause the proper maintenance of the Property in the event of failure by the City to perform its obligations hereunder; *provided, however,* the Corporation's assigns shall not be required to cause such proper maintenance.

Section 7.3. Release and Indemnification Covenants. The City shall and hereby agrees to indemnify and save the Corporation and its officers, agents, successors and assigns harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of (i) the use, maintenance, condition or management of, or from any work or thing done on the Property by the City, (ii) any breach or default on the part of the City in the performance of any of its obligations under this Lease Agreement, (iii) any act or omission of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Property, (iv) any act or omission of any sublessee of the City with respect to the Property, or (v) the payment of Acquisition and Construction Costs or Delivery Costs. No indemnification is made under this Section 7.3 or elsewhere in this Lease Agreement for willful misconduct, negligence or breach of duty under this Lease Agreement by the Corporation, its officers, agents, employees, successors or assigns.

## ARTICLE VIII

### ASSIGNMENT, SUBLEASING AND AMENDMENT

Section 8.1. Assignment by the Corporation. The Corporation's rights under this Lease Agreement, including the right to receive and enforce payment of the Lease Payments to be made by the City under this Lease Agreement, have been assigned to the Trustee pursuant to the Assignment Agreement and the City hereby consents to such assignment.

Section 8.2. Assignment and Subleasing by the City. This Lease Agreement may not be assigned by the City. The City may sublease the Property or any portion thereof, but only with the prior written consent of the Corporation and the Municipal Bond Insurer and subject to all of the following conditions:

(a) This Lease Agreement and the obligation of the City to make Lease Payments hereunder shall remain obligations of the City;

(b) The City shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to the Corporation and the Trustee a true and complete copy of such sublease;

(c) No such sublease shall cause the Property to be used for a purpose other than as may be authorized under the provisions of the Constitution and laws of the State; and

(d) The City shall furnish the Corporation and the Trustee with a written opinion of Bond Counsel, which shall be an Independent Counsel, stating that such sublease does not cause the interest components of the Lease Payments to become subject to federal income taxes or State personal income taxes.

#### Section 8.3. Amendment of this Lease Agreement.

(a) *Substitution of Site or Facility.* The City shall have, and is hereby granted, the option at any time and from time to time during the Term of the Lease Agreement to substitute other land (a "Substitute Site") and/or a substitute facility or substitute facilities (a "Substitute Facility") for the Site (the "Former Site"), or a portion thereof, and/or the Facility (the "Former Facility"), or a portion thereof, provided that the City shall satisfy all of the following requirements which are hereby declared to be conditions precedent to such substitution:

(i) The City shall file with the Corporation and the Trustee an amended Exhibit A to the Site and Facility Lease which adds thereto a description of such Substitute Site and deletes therefrom the description of the Former Site;

(ii) The City shall file with the Corporation and the Trustee an amended Exhibit B to this Lease Agreement which adds thereto a description of such Substitute Site and deletes therefrom the description of the Former Site;

(iii) The City shall file with the Corporation and the Trustee an amended Exhibit B to the Site and Facility Lease which adds thereto a description of such Substitute Facility and deletes therefrom the description of the Former Facility;

(iv) The City shall file with the Corporation and the Trustee an amended Exhibit C to this Lease Agreement which adds thereto a description of such Substitute Facility and deletes therefrom the description of the Former Facility;

(v) The City shall certify in writing to the Corporation and the Trustee that such Substitute Site and/or Substitute Facility serve the purposes of the City, constitutes property that is unencumbered, subject to Permitted Encumbrances, and constitutes property which the City is permitted to lease under the laws of the State;

(vi) The City delivers to the Trustee and the Corporation evidence that the Substitute Site and/or Substitute Facility are of equal or greater value than the Former Site and Former Facility;

(vii) The Substitute Site and/or Substitute Facility shall not cause the City to violate any of its covenants, representations and warranties made herein and in the Trust Agreement;

(viii) The City shall obtain an amendment to the title insurance policy required pursuant to Section 5.6 hereof which adds thereto a description of the Substitute Site and deletes therefrom the description of the Former Site;

(ix) The City shall certify that the Substitute Site and/or the Substitute Facility is of the same or greater essentially to the City as was the Former Site and/or the Former Facility; and

(x) The City shall obtain the prior written consent of the Municipal Bond Insurer of such substitution and notice of such consent shall be given by the City to any rating agency then rating the Certificates.

(b) *Release of Site.* The City shall have, and is hereby granted, the option at any time and from time to time during the Term of the Lease Agreement to release any portion of the Site, provided that the City shall satisfy all of the following requirements which are hereby declared to be conditions precedent to such release:

(i) The City shall file with the Corporation and the Trustee an amended Exhibit A to the Site and Facility Lease which describes the Site, as revised by such release;

(ii) The City shall file with the Corporation and the Trustee an amended Exhibit B to this Lease Agreement which describes the Site, as revised by such release;

(iii) The City delivers to the Trustee and the Corporation evidence that the Site, as revised by such release, is of a value at least equal to the value of the Site as of the Closing Date;

(iv) The City shall obtain an amendment to the title insurance policy required pursuant to Section 5.6 hereof which describes the Site, as revised by such release; and

(v) The City shall obtain the prior written consent of the Municipal Bond Insurer of such release and notice of such consent shall be given by the City to any rating agency then rating the Certificates.

(c) *Generally.* Neither the City nor the Corporation will alter, modify or cancel, or agree or consent to alter, modify or cancel this Lease Agreement, except in connection with a substitution or release permitted by this Section 8.3 and as may be permitted by Article X of the Trust Agreement .

## ARTICLE IX

### EVENTS OF DEFAULT AND REMEDIES

Section 9.1. Events of Default Defined. The following shall be "Events of Default" under this Lease Agreement and the terms "Events of Default" and "Default" shall mean, whenever they are used in this Lease Agreement, any one or more of the following events:

(a) Failure by the City to pay any Lease Payment or other payment required to be paid hereunder at the time specified herein.

(b) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Lease Agreement or under the Trust Agreement including, but not limited to, Section 4.4(e) hereof, other than as referred to in clause (a) of this Section 9.1, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Corporation, the Trustee, or the Owners of not less than five percent (5%) in aggregate principal amount of Certificates then outstanding; *provided, however*, if the failure stated in the notice can be corrected, but not within the applicable period, the Corporation, the Trustee and such Owners shall not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the City within the applicable period and diligently pursued until the Default is corrected.

(c) The filing by the City of a voluntary petition in bankruptcy, or failure by the City promptly to lift any execution, garnishment or attachment, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of the Federal Bankruptcy Act, as amended, or under any similar acts which may hereafter be enacted.

(d) An event of default under that certain lease agreement, dated as of October 1, 1995, by and between the Corporation and the City, relating to the City's \$5,000,000 Certificates of Participation (1995 Public Improvement Financing Project).

Section 9.2. Remedies on Default. Whenever any Event of Default referred to in Section 9.1 hereof shall have happened and be continuing, it shall be lawful for the Corporation to exercise any and all remedies available pursuant to law or granted pursuant to this Lease Agreement; *provided, however*, that notwithstanding anything herein or in the Trust Agreement to the contrary, there shall be no right under any circumstances to accelerate the Lease Payments or otherwise declare any Lease Payments not then in Default to be immediately due and payable. Each and every covenant hereof to be kept and performed by the City is expressly made a condition and upon the breach thereof the Corporation may exercise any and all rights of entry and re-entry upon the Property, and also, at its option, with or without such entry, may terminate this Lease Agreement; *provided*, that no such termination shall be effected either by operation of law or acts of the parties hereto, except only in the manner herein expressly provided. In the event of such Default and notwithstanding any re-entry by the Corporation, the City shall, as herein expressly provided, continue to remain liable for the payment of the Lease Payments and/or damages for breach of this Lease Agreement and the performance of all conditions herein contained and, in any event such rent and/or damages shall be payable to the Corporation at the time and in the manner as herein provided, to wit:

(a) In the event the Corporation does not elect to terminate this Lease Agreement in the manner hereinafter provided for in subparagraph (b) hereof, the City agrees to and shall remain

liable for the payment of all Lease Payments and the performance of all conditions herein contained and shall reimburse the Corporation for any deficiency arising out of the re-leasing of the Property, or, in the event the Corporation is unable to re-lease the Property, then for the full amount of all Lease Payments to the end of the Term of the Lease Agreement, but said Lease Payments and/or deficiency shall be payable only at the same time and in the same manner as hereinabove provided for the payment of Lease Payments hereunder, notwithstanding such entry or re-entry by the Corporation or any suit in unlawful detainer, or otherwise, brought by the Corporation for the purpose of effecting such re-entry or obtaining possession of the Property or the exercise of any other remedy by the Corporation. The City hereby irrevocably appoints the Corporation as the agent and attorney-in-fact of the City to enter upon and re-lease the Property in the Event of Default by the City in the performance of any covenants herein contained to be performed by the City and to remove all personal property whatsoever situated upon the Property, to place such property in storage or other suitable place in San Joaquin County, California, for the account of and at the expense of the City, and the City hereby exempts and agrees to save harmless the Corporation from any costs, loss or damage whatsoever arising or occasioned by any such entry upon and re-leasing of the Property and the removal and storage of such property by the Corporation or its duly authorized agents in accordance with the provisions herein contained. The City hereby waives any and all claims for damages caused or which may be caused by the Corporation in re-entering and taking possession of the Property as herein provided and all claims for damages that may result from the destruction of or injury to the Property and all claims for damages to or loss of any property belonging to the City that may be in or upon the Property. The City agrees that the terms of this Lease Agreement constitute full and sufficient notice of the right of the Corporation to re-lease the Property in the event of such re-entry without effecting a surrender of this Lease Agreement, and further agrees that no acts of the Corporation in effecting such re-leasing shall constitute a surrender or termination of this Lease Agreement irrespective of the term for which such re-leasing is made or the terms and conditions of such re-leasing, or otherwise, but that, on the contrary, in the event of such Default by the City the right to terminate this Lease Agreement shall vest in the Corporation to be effected in the sole and exclusive manner hereinafter provided for in paragraph (b) hereof. The City further waives the right to any rental obtained by the Corporation in excess of the Lease Payments and payments due pursuant to Section 4.7 hereof and hereby conveys and releases such excess to the Corporation as compensation to the Corporation for its services in re-leasing the Property.

(b) In an Event of Default hereunder, the Corporation at its option may terminate this Lease Agreement and re-lease all or any portion of the Property. In the event of the termination of this Lease Agreement by the Corporation at its option and in the manner hereinafter provided on account of Default by the City (and notwithstanding any re-entry upon the Property by the Corporation in any manner whatsoever or the re-leasing of the Property), the City nevertheless agrees to pay to the Corporation all costs, loss or damages howsoever arising or occurring payable at the same time and in the same manner as is herein provided in the case of payment of Lease Payments. Any surplus received by the Corporation from such re-leasing shall be credited towards the Lease Payments next coming due and payable. Neither notice to pay rent or to deliver up possession of the premises given pursuant to law nor any proceeding in unlawful detainer taken by the Corporation shall of itself operate to terminate this Lease Agreement, and no termination of this Lease Agreement on account of Default by the City shall be or become effective by operation of law, or otherwise, unless and until the Corporation shall have given written notice to the City of the election on the part of the Corporation to terminate this Lease Agreement. The City covenants and agrees that no surrender of the Property and/or of the remainder of the Term of the Lease Agreement or any termination of this Lease Agreement shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Corporation by such written notice.

Section 9.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Corporation is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease Agreement now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Corporation to exercise any remedy reserved to it in this Article IX it shall not be necessary to give any notice, other than such notice as may be required in this Article IX or by law.

Section 9.4. Agreement to Pay Attorneys' Fees and Expenses. In the event either party to this Lease Agreement should Default under any of the provisions hereof and the non-defaulting party should employ attorneys or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the non-defaulting party the reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party.

Section 9.5. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Lease Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 9.6. Application of Proceeds. All net proceeds received from the re-lease or other disposition of the Property under this Article IX, and all other amounts derived by the Corporation or the Trustee as a result of an Event of Default hereunder, shall be transferred to the Trustee promptly upon receipt thereof and after payment of all fees and expenses of the Trustee, including attorneys fees, shall be deposited by the Trustee in the Lease Payment Fund to be applied to the Lease Payments in order of payment date.

Section 9.7. Trustee and Certificate Owners to Exercise Rights. Such rights and remedies as are given to the Corporation under this Article IX have been assigned by the Corporation to the Trustee under the Trust Agreement, to which assignment the City hereby consents. Such rights and remedies shall be exercised by the Trustee and the Owners of the Certificates as provided in the Trust Agreement and herein.

ARTICLE X

PREPAYMENT OF LEASE PAYMENTS

Section 10.1. Security Deposit. Notwithstanding any other provision of this Lease Agreement, the City may, on any date, secure the payment of all or a portion of the Lease Payments remaining due by an irrevocable deposit with the Trustee or an escrow holder under an escrow deposit and trust agreement as referenced in Section 14.01(b) of the Trust Agreement, of: (a) in the case of a security deposit relating to all Lease Payments, either (i) cash in an amount which, together with amounts on deposit in the Lease Payment Fund, the Insurance and Condemnation Fund and the Reserve Fund, is sufficient to pay all unpaid Lease Payments, including the principal and interest components thereof, in accordance with the Lease Payment schedule set forth in Exhibit D, or (ii) Defeasance Obligations in such amount as will, in the written opinion of an independent certified public accountant or other firm of recognized experts in such matters, together with interest to accrue thereon and, if required, all or a portion of moneys or Federal Securities or cash then on deposit and interest earnings thereon in the Lease Payment Fund, the Insurance and Condemnation Fund and the Reserve Fund, be fully sufficient to pay all unpaid Lease Payments on their respective Lease Payment Dates; or (b) in the case of a security deposit relating to a portion of the Lease Payments, a certificate executed by a City Representative designating the portion of the Lease Payments to which the deposit pertains, and either (i) cash in an amount which is sufficient to pay the portion of the Lease Payments designated in such City Representative's certificate, including the principal and interest components thereof, or (ii) Defeasance Obligations in such amount as will, together with interest to be received thereon, if any, in the written opinion of an independent certified public accountant or other firm of recognized experts in such matters, be fully sufficient to pay the portion of the Lease Payments designated in the aforesaid a City Representative's certificate.

In the event of a deposit pursuant to this Section 10.1 as to all Lease Payments and the payment of all fees, expenses and indemnifications owed to the Trustee, all obligations of the City under this Lease Agreement shall cease and terminate, excepting only the obligation of the City to make, or cause to be made, all payments from the deposit made by the City pursuant to this Section 10.1, and title to the Property shall vest in the City on the date of said deposit automatically and without further action by the City or the Corporation. Said deposit and interest earnings thereon shall be deemed to be and shall constitute a special fund for the payments provided for by this Section 10.1 and said obligation shall thereafter be deemed to be and shall constitute the installment purchase obligation of the City for the Property. Upon said deposit, the Corporation will execute or cause to be executed any and all documents as may be necessary to confirm title to the Property in accordance with the provisions hereof. In addition, the Corporation hereby appoints the City as its agent to prepare, execute and file or record, in appropriate offices, such documents as may be necessary to place record title to the Property in the City.

Section 10.2. Prepayment Option. The Corporation hereby grants an option to the City to prepay the principal component of the Lease Payments attributable to the Certificates in full, or in part, together, in any event, with a premium represented by a percentage of the portion of such principal component of Lease Payments attributable to the Certificates prepaid equal to the percentages set forth below:

<u>Prepayment Period</u>	<u>Premium</u>
September 15, ____ through September 14, ____	2%
September 15, ____ through September 14, ____	1
September 15, ____ and thereafter	0

Said option may be exercised with respect to Lease Payments attributable to the Certificates due on and after September 15, \_\_\_\_, in whole on any date or in part on any Lease Payment Date commencing September 15, \_\_\_\_. Said option shall be exercised by the City by giving written notice to the Corporation and the Trustee of the exercise of such option at least sixty (60) days prior to said Lease Payment Date. Such option shall be exercised in the event of prepayment in full, by depositing with said notice cash in an amount, which, together with amounts then on deposit in the Reserve Fund, the Insurance and Condemnation Fund and the Lease Payment Fund, will be sufficient to pay the aggregate unpaid component of the Lease Payments attributable to the Certificates on said Lease Payment Date as set forth in Exhibit D hereto, together with any Lease Payments attributable to the Certificates then due but unpaid, or, in the event of prepayment in part, by depositing with said notice cash in an amount divisible by \$5,000 equal to the amount desired to be prepaid together with any Lease Payments attributable to the Certificates then due but unpaid. In the event of prepayment in part, the partial prepayment shall be applied against Lease Payments in such manner as the City shall determine and if the City shall fail to make such determination, pro rata among their payment dates. Lease Payments attributable to the Certificates due after any such partial prepayment shall be in the amounts set forth in a revised Lease Payment schedule which shall be provided by, or caused to be provided by, the City to the Trustee and which shall represent an adjustment to the schedule set forth in Exhibit D attached hereto taking into account said partial prepayment.

Notwithstanding the foregoing, the City shall not be permitted to prepay any Lease Payments if any amounts are owed to the Municipal Bond Insurer with respect to the Municipal Bond Insurance Policy or with respect to the Surety Bond.

Section 10.3. Mandatory Prepayment From Net Proceeds of Insurance, Title Insurance or Eminent Domain. The City shall be obligated to prepay the Lease Payments allocable to the Property, in whole on any date or in part on any Lease Payment Date, from and to the extent of any Net Proceeds of an insurance, title insurance or condemnation award with respect to the Property theretofore deposited in the Lease Payment Fund for such purpose pursuant to Article VI hereof and Article VII of the Trust Agreement. The City and the Corporation hereby agree that such Net Proceeds shall be applied first to the payment of any delinquent Lease Payments, and thereafter shall be credited towards the City's obligations under this Section 10.3. Lease Payments due after any such partial prepayment shall be in the amounts set forth in a revised Lease Payment schedule which shall be provided by, or caused to be provided by, the City to the Trustee and which shall represent an adjustment to the schedule set forth in Exhibit D attached hereto taking into account said partial prepayment.

Section 10.4. Credit for Amounts on Deposit. In the event of prepayment of the principal components of the Lease Payments in full under this Article X, such that the Trust Agreement shall be discharged by its terms as a result of such prepayment, remaining amounts on deposit in the Lease Payment Fund, if any, or the Reserve Fund shall be credited towards the amounts then required to be so prepaid.

ARTICLE XI

MISCELLANEOUS

Section 11.1. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received 48 hours after deposit in the United States mail in first-class form with postage fully prepaid:

If to the Corporation:	Lodi Public Improvement Corporation 221 West Pine Street Lodi, CA 95240 Attention: Executive Director
If to the City:	City of Lodi 221 West Pine Street Lodi, CA 95240 Attention: City Manager
If to the Trustee:	First Trust of California, National Association One California Street, 4th Floor San Francisco, CA 94111 Attention: Corporate Trust Department
If to the Municipal Bond Insurer:	MBIA Insurance Corporation 113 King Street Armonk, NY 10504 Attention: Insured Portfolio Management

The Corporation, the City and the Trustee, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

Section 11.2. Binding Effect. This Lease Agreement shall inure to the benefit of and shall be binding upon the Corporation and the City and their respective successors and assigns.

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

Section 11.4. Net-net-net Lease. This Lease Agreement shall be deemed and construed to be a "net-net-net lease" and the City hereby agrees that the Lease Payments shall be an absolute net return to the Corporation, free and clear of any expenses, charges or set-offs whatsoever.

Section 11.5. Further Assurances and Corrective Instruments. The Corporation and the City agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Property hereby leased or intended so to be or for carrying out the expressed intentions of this Lease Agreement.

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

Section 11.7. Applicable Law. This Lease Agreement shall be governed by and construed in accordance with the laws of the State.

Section 11.8. Corporation and City Representatives. Whenever under the provisions of this Lease Agreement the approval of the Corporation or the City is required, or the Corporation or the City is required to take some action at the request of the other, such approval or such request shall be given for the Corporation by an Corporation Representative and for the City by a City Representative, and each party hereto shall be authorized to rely upon any such approval or request.

Section 11.9. Captions. The captions or headings in this Lease Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Section of this Lease Agreement.

IN WITNESS WHEREOF, the Corporation has caused this Lease Agreement to be executed in its corporate name by its duly authorized officers and sealed with its corporate seal; and the City has caused this Lease Agreement to be executed in its name by its duly authorized officers and sealed with its corporate seal, as of the date first above written.

LODI PUBLIC IMPROVEMENT CORPORATION, as Lessor

By \_\_\_\_\_  
Executive Director

(S E A L)

Attest:

\_\_\_\_\_  
Secretary

CITY OF LODI, as Lessee

By \_\_\_\_\_  
City Manager

(S E A L)

Attest:

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

APPROVED:

By \_\_\_\_\_  
City Attorney

NOTARY ACKNOWLEDGMENT FORMS TO BE ATTACHED

**EXHIBIT A**  
**DEFINITIONS**

*"Acquisition and Construction Costs"* means all costs of payment of, or reimbursement for, acquisition, construction and installation of the Improvements, including but not limited to, architect and engineering fees, construction contractor payments, costs of feasibility and other reports, inspection costs, performance bond premiums and permit fees.

*"Acquisition and Construction Fund"* means the fund by that name established and held by the Trustee pursuant to Article III of the Trust Agreement.

*"Assignment Agreement"* means the Assignment Agreement, dated as of August 1, 1996, by and between the Corporation and the Trustee, together with any duly authorized and executed amendments thereto.

*"Bond Counsel"* means (a) Jones Hall Hill & White, A Professional Law Corporation, or (b) any other attorney or firm of attorneys appointed by or acceptable to the City of nationally-recognized experience in the issuance of obligations the interest on which is excludable from gross income for federal income tax purposes under the Code.

*"Business Day"* means a day which is not a Saturday, Sunday or legal holiday on which banking institutions in the state in which the Principal Corporate Trust Office is located are closed or are required to close or a day on which the New York Stock Exchange is closed.

*"Certificate of Completion"* means the certificate of a City Representative certifying that the Improvements have been acquired and constructed by or on behalf of the City and that all Acquisition and Construction Costs have been paid.

*"Certificates"* means the \$\_\_\_\_\_ principal amount of certificates of participation to be executed and delivered pursuant to the Trust Agreement.

*"City"* means the City of Lodi, a municipal corporation and general law city duly organized and existing under and by virtue of the constitution and laws of the State.

*"City Representative"* means the Mayor, the City Manager, the Finance Director or any other person authorized by resolution of the City Council of the City to act on behalf of the City under or with respect to the Trust Agreement, the Lease Agreement or the Site and Facility Lease.

*"Closing Date"* means August \_\_, 1996, the date upon which there is a physical delivery of the Certificates in exchange for the amount representing the purchase price of the Certificates by the Original Purchaser.

*"Code"* means the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced in the Installment Sale Agreement or the Trust Agreement) as it may be amended to apply to obligations issued on the Closing Date, together with applicable temporary and final regulations promulgated under the Code.

*"Continuing Disclosure Certificate"* shall mean that certain Continuing Disclosure Certificate executed by the City and dated the date of issuance and delivery of the Certificates,

as originally executed and as it may be amended from time to time in accordance with the terms thereof.

*"Completion Date"* means the date of completion of acquisition, construction, installation and equipping of the Improvements, as evidenced by the filing with the Trustee of a Certificate of Completion.

*"Corporation"* means the Lodi Public Improvement Corporation, a nonprofit, public benefit corporation organized and existing under the laws of the State.

*"Corporation Representative"* means the President, the Vice President, the Executive Director, the Assistant Executive Director or any other person authorized by resolution of the Board of Directors of the Corporation to act on behalf of the Corporation under or with respect to the Trust Agreement, the Lease Agreement, the Assignment Agreement and the Site and Facility Lease.

*"Defeasance Obligations"* means:

- (a) cash;
- (b) non-callable Federal Securities (including State and Local Government Securities);
- (c) direct obligations of the United States of America which have been stripped by the Department of the Treasury of the United States of America;
- (d) CATS, TIGRS and similar securities;
- (e) bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America : (i) direct obligations or fully guaranteed certificates of beneficial ownership of the U.S. Export-Import Bank; (ii) certificates of beneficial ownership of the Farmers Home Administration; (iii) obligations of the Federal Financing Bank; (iv) participation certificates of the General Services Administration; (v) guaranteed Title XI financings of the U.S. Maritime Administration; (vi) New Communities debentures; (vii) U.S. government guaranteed public housing notes and bonds; and (viii) project notes and local authority bonds of the U.S. Department of Housing and Urban Development; and
- (f) pre-refunded municipal bonds rated "Aaa" by Moody's and "AAA" by S&P; provided, however, pre-refunded municipal bonds rated by S&P only (i.e., no Moody's rating) are acceptable if such pre-refunded municipal bonds were pre-refunded with cash, direct U.S. or U.S. guaranteed obligations or AAA rated pre-refunded municipal bonds.

*"Delivery Costs"* means all items of expense directly or indirectly payable by or reimbursable to the City or the Corporation relating to the execution and delivery of the Lease Agreement, the Trust Agreement and the Assignment Agreement or the execution, sale and delivery of the Certificates, including but not limited to filing and recording costs, settlement costs, printing costs, reproduction and binding costs, initial fees and charges of the Trustee (including fees of its counsel), financing discounts, legal fees and charges, insurance fees and charges, financial and other professional consultant fees, costs of rating agencies for credit ratings, fees for execution, transportation and safekeeping of the Certificates and charges and fees in connection with the foregoing.

*"Delivery Costs Fund"* means the fund by that name established and held by the Trustee pursuant to Article III of the Trust Agreement.

*"Event of Default"* means an event of default under the Lease Agreement, as defined in Section 9.1 thereof.

*"Facility"* means the existing improvements located on the Site, all as more particularly described in Exhibit B attached to the Site and Facility Lease and in Exhibit C attached to the Lease Agreement, as the same may be amended from time to time.

*"Fair Market Value"* means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of section 1273 of the Code) and, otherwise, the term *"Fair Market Value"* means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (iii) the investment is a United States Treasury Security--State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) the investment is the Local Agency Investment Fund of the State of California but only if at all times during which the investment is held its yield is reasonably expected to be equal to or greater than the yield on a reasonably comparable direct obligation of the United States. The Trustee shall have no duty with regard to the determination of Fair Market Value other than to follow the written directions of the City.

*"Federal Securities"* means direct general obligations of (including obligations issued or held in book entry form on the books of the Department of the Treasury) the United States of America, or obligations the payment of principal of and interest on which are guaranteed by, the United States of America.

*"Fiscal Year"* means the twelve-month period beginning on July 1 of any year and ending on June 30 of the next succeeding year, or any other twelve-month period selected by the City as its fiscal year.

*"Guaranty Agreement"* means the Financial Guaranty Agreement dated as of the Closing Date, by and between the City and the Municipal Bond Insurer relating to the Reserve Fund Surety Bond, as amended from time to time.

*"Independent Counsel"* means an attorney duly admitted to the practice of law before the highest court of the state in which such attorney maintains an office and who is not an employee of the Corporation or the City.

*"Information Services"* means Financial Information, Inc.'s *"Daily Called Bond Service,"* 30 Montgomery Street, 10th Floor, Jersey City, NJ 07302, Attention: Editor; Kenny Information Services' *"Called Bond Service,"* 65 Broadway, 16th Floor, New York, NY 10006; Moody's *"Municipal and Government,"* 5250 77 Center Drive, Suite 150, Charlotte, NC 28217, Attention: Municipal News Reports; and S&P's *"Called Bond Record,"* 25 Broadway, 3rd Floor, New York, NY 10004; or to such other addresses and/or such other national information services providing information or disseminating notices of redemption of obligations similar to the Certificates as shall be designated by the City to the Trustee.

*"Improvements"* means the public improvements to be acquired and/or constructed by the City with the proceeds of the Certificates, all as more particularly described in Exhibit C attached to the Trust Agreement.

*"Insurance and Condemnation Fund"* means the fund by that name established and held by the Trustee pursuant to Section 7.01 of the Trust Agreement.

*"Interest Payment Date"* means the first (1st) day of each April and October, commencing April 1, 1997, so long as any Certificates are Outstanding.

*"Lease Agreement"* means the Lease Agreement, dated as of August 1, 1996, by and between the Corporation and the City, together with any duly authorized and executed amendments thereto.

*"Lease Payment Date"* means the 15th day of March and September in each year during the Term of the Lease Agreement, commencing March 15, 1997.

*"Lease Payment Fund"* means the fund by that name established and held by the Trustee pursuant to Section 5.02 of the Trust Agreement.

*"Lease Payments"* means all payments required to be paid by the City pursuant to Section 4.4 of the Lease Agreement, including any prepayment thereof pursuant to Article X of the Lease Agreement, which payments consist of an interest component and a principal component.

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

*"Municipal Bond Insurance Policy"* means the municipal bond insurance policy issued by the Municipal Bond Insurer insuring the payment, when due, of the principal and interest with respect to the Certificates.

*"Municipal Bond Insurer"* means the MBIA Insurance Corporation.

*"Net Proceeds,"* when used with respect to insurance or condemnation proceeds, means any insurance proceeds or condemnation award paid with respect to the Property, to the extent remaining after payment therefrom of all expenses incurred in the collection thereof.

*"Original Purchaser"* means Seidler-Fitzgerald Public Finance (A Division of the Seidler Companies Inc.), the first purchaser of the Certificates upon their delivery by the Trustee on the Closing Date.

*"Outstanding,"* when used as of any particular time with respect to Certificates, means (subject to the provisions of Section 10.03 of the Trust Agreement) all Certificates theretofore executed and delivered by the Trustee under the Trust Agreement except -

(a) Certificates theretofore canceled by the Trustee or surrendered to the Trustee for cancellation;

(b) Certificates for the payment or redemption of which funds or Federal Securities in the necessary amount shall have theretofore been deposited with the Trustee (whether upon or

prior to the maturity or redemption date of such Certificates), provided that, if such Certificates are to be redeemed prior to maturity, notice of such redemption shall have been given as provided in Section 4.03 of the Trust Agreement or provision satisfactory to the Trustee shall have been made for the giving of such notice; and

(c) Certificates in lieu of or in exchange for which other Certificates shall have been executed and delivered by the Trustee pursuant to Sections 2.08 or 2.09 of the Trust Agreement.

*"Owner" or "Certificate Owner" or "Owner of a Certificate"*, or any similar term, when used with respect to a Certificate means the person in whose name such Certificate shall be registered on the Registration Books.

*"Participating Underwriter"* shall have the meaning ascribed thereto in the Continuing Disclosure Certificate.

*"Permitted Encumbrances"* means, as of any particular time: (a) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the City may, pursuant to provisions of Article V of the Lease Agreement, permit to remain unpaid; (b) the Assignment Agreement; (c) the Site and Facility Lease, (d) the Lease Agreement; (e) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law; (f) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the Closing Date and which the City certifies in writing will not materially impair the use of the Property; and (g) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the date of recordation of the Lease Agreement and to which the Corporation, the Municipal Bond Insurer and the City consent in writing.

*"Permitted Investments"* means the following, but only to the extent that the same are acquired at Fair Market Value:

(a) Federal Securities;

(b) bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself): (i) certificates of beneficial ownership of the Farmers Home Administration; (ii) debentures of the Federal Housing Administration; (iii) participation certificates of the General Services Administration; (iv) guaranteed mortgage-backed bonds or guaranteed pass-through obligations (participation certificates) of the Government National Mortgage Association; (v) guaranteed Title XI financings of the U.S. Maritime Administration; and (vi) project notes and local authority bonds of the U.S. Department of Housing and Urban Development;

(c) bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities are only permitted if they have been stripped by the agency itself): (i) senior debt obligations (consolidated debt obligations) of the Federal Home Loan Bank System; (ii) participation certificates (mortgage-backed securities) of the Federal Home Loan Mortgage Corporation; (iii) mortgaged-backed securities and senior debt obligations of the Federal National Mortgage Association (excluding stripped mortgage securities which are valued greater than par on the portion of unpaid principal); (iv) senior debt obligations of the Student Loan Marketing Association; (v) obligations (but only the interest component of stripped obligations) of the Resolution Funding Corporation, and (v) consolidated systemwide bonds and notes of the Farm Credit System;

(d) money market funds (including funds managed or advised by the trustee or its affiliates) registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of "AAAm-G", "AAAm" or "AAm";

(e) certificates of deposit secured at all times by collateral described in (a) or (b) above, which have a maturity of one year or less, which are issued by commercial banks, savings and loan associations or mutual savings banks whose short term obligations are rated "A-1+" or better by S&P (such collateral must be held by a third party and Owners must have a perfected first security interest in such collateral);

(f) certificates of deposit, savings accounts, deposit accounts or money market deposits which are fully insured by the Federal Deposit Insurance Corporation;

(g) Investment agreements, including guaranteed investment contracts, acceptable to the Municipal Bond Insurer;

(h) commercial paper rated, at the time of purchase, "Prime-1" by Moody's and "A-1+" or better by S&P;

(i) bonds or notes issued by any state or municipality which are rated at the time of purchase by Moody's and S&P in one of the two highest long term rating categories assigned by such agencies;

(j) federal funds or bankers acceptances with a maximum term of one year of any bank with an unsecured, uninsured and unguaranteed obligation rating of "Prime-1" or "A3" or better by Moody's and "A-1+" or better by S&P;

(k) repurchase agreements which provide for the transfer of securities from a dealer bank or securities firm (seller/borrower) to the Trustee and the transfer of cash from the Trustee to the dealer bank or securities firm with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the Trustee in exchange for the securities at a specified date, which satisfy the following criteria (unless otherwise approved by the Municipal Bond Insurer):

(i) repurchase agreements must be between the Trustee and (A) a primary dealer on the Federal Reserve reporting dealer list which falls under the jurisdiction of the Securities Investors Protection Corporation and which are rated "A" or better by Moody's and S&P, or (B) a bank rated "A" or better by Moody's and S&P;

(ii) the written repurchase agreement contract must include the following: (A) securities acceptable for transfer, which may be direct U.S. government obligations, or federal agency obligations backed by the full faith and credit of the U.S. government (including the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation); (B) the term of the repurchase agreement may be up to 30 days; (C) the collateral must be delivered to the Trustee or a third party acting as agent for the Trustee before or simultaneous with payment (perfection by possession of certificated securities); (D) the Trustee must have a perfected first priority security interest in the collateral; (E) the collateral must be free and clear of third-party liens and, in the case of a broker which falls under the jurisdiction of the Securities Investors Protection Corporation, are not subject to a repurchase agreement or a reverse repurchase agreement; (F) failure to maintain the requisite collateral percentage, after a two day restoration period, will require the Trustee to liquidate the collateral; (G) the securities must be valued weekly, marked-to-market at current market price plus accrued interest

and the value of collateral must be equal to 104% of the amount of cash transferred by the Trustee to the dealer bank or securities firm under the repurchase agreement plus accrued interest (unless the securities used as collateral are obligations of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, in which case the collateral must be equal to 105% of the amount of cash transferred by the Trustee to the dealer bank or securities firm under the repurchase agreement plus accrued interest). If the value of securities held as collateral falls below 104% of the value of the cash transferred by the Trustee, then additional cash and/or acceptable securities must be transferred; and

(iii) a legal opinion must be delivered to the Trustee to the effect that the repurchase agreement meets guidelines under state law for legal investment of public funds;

(l) pre-refunded municipal bonds rated "Aaa" by Moody's and "AAA" by S&P; provided, however, pre-refunded municipal bonds rated by S&P only (i.e., no Moody's rating) are acceptable if such pre-refunded municipal bonds were pre-refunded with cash, direct U.S. or U.S. guaranteed obligations or AAA rated pre-refunded municipal bonds;

(m) the Local Agency Investment Fund of the State, created pursuant to section 16429.1 of the California Government Code, to the extent the Trustee is authorized to register such investment in its name; and

(n) any other investments permitted in writing by the Municipal Bond Insurer, Moody's and S&P.

*"Principal Corporate Trust Office"* means the corporate trust office of the Trustee at One California Street, 4th Floor, San Francisco, California 94111, Attention: Corporate Trust Department, or at such other address designated by the Trustee in a written notice filed with the City and the Corporation; *provided, however*, for the purpose of maintenance of the registration Books and presentation of Certificates for payment, transfer or exchange, such term shall mean the office at which the Trustee conducts its corporate agency business.

*"Proceeds,"* when used with reference to the Certificates, means the face amount of the Certificates, plus accrued interest and original issue premium, if any, less original issue discount, if any.

*"Property"* means, collectively, the Site and the Facility.

*"Rating Category"* means, with respect to any Permitted Investment, one or more of the generic categories of rating by Moody's and S&P applicable to such Permitted Investment, without regard to any refinement or gradation of such rating category by a plus or minus sign.

*"Registration Books"* means the records maintained by the Trustee pursuant to Section 2.12 of the Trust Agreement for registration of the ownership and transfer of ownership of the Certificates.

*"Regular Record Date"* means the close of business on the fifteenth (15th) calendar day of the month preceding each Interest Payment Date, whether or not such day is a Business Day.

*"Regulations"* means temporary and permanent regulations promulgated under the Code.

*"Rental Period"* means each twelve-month period during the Term of the Lease Agreement commencing on October 2 in any year and ending on October 1 in the next

succeeding year; provided, however, that the first Rental Period shall begin on the Closing Date and shall end on October 1, 1997.

*"Reserve Fund"* means the fund by that name established and held by the Trustee pursuant to Section 6.01 of the Trust Agreement.

*"Reserve Fund Surety Bond"* means the debt service reserve fund surety bond issued by the Municipal Bond Insurer pursuant to the Guaranty Agreement for the credit of the Reserve Fund as provided therein and subject to the limitations set forth therein.

*"Reserve Requirement"* means an amount equal to \$\_\_\_\_\_; provided, however, that if the Certificates are partially refunded, such amount shall be reduced to an amount equal to the maximum annual Lease Payments relating to the Certificates not so refunded, as specified in a certificate of a City Representative delivered to the Trustee.

*"S&P"* means Standard & Poor's Corporation, a New York corporation, and its successors and assigns, and if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized securities rating agency designated by the City by notice to the Trustee.

*"Securities Depositories"* means The Depository Trust Company, 711 Stewart Avenue, Garden City, NY 11530, Fax (516) 227-4039 or 4190; Philadelphia Depository Trust Company, Reorganization Division, 1900 Market Street, Philadelphia, PA 19103, Attention: Bond Department, Fax (215) 496-5058; or to such other addresses and/or such other registered securities depositories holding substantial amounts of obligations of types similar to the Certificates as shall be designated by the City to the Trustee.

*"Site"* means those certain parcels of real property situated in the City of Lodi, San Joaquin County, State of California, more particularly described in Exhibit A to the Site and Facility Lease and Exhibit B to the Lease Agreement.

*"Site and Facility Lease"* means the Site and Facility Lease, dated as of August 1, 1996, by and between the City and the Corporation, together with any duly authorized and executed amendments thereto.

*"State"* means the State of California.

*"Term of the Lease Agreement"* means the time during which the Lease Agreement is in effect, as provided in Section 4.2 of the Lease Agreement.

*"Trust Agreement"* means the Trust Agreement, dated as of August 1, 1996, by and among the City, the Corporation and the Trustee, together with any duly authorized amendments thereto.

*"Trustee"* means First Trust of California, National Association, or any successor thereto, acting as Trustee pursuant to the Trust Agreement.

## EXHIBIT B

### DESCRIPTION OF THE SITE

Those parcels of land in the City of Lodi, San Joaquin County, State of California, described as follows:

#### Parcel One

Lots 1, 2, 3, 4, 5, 6, 7 and 8, of Block 3 of the City of Lodi, as said Lots and Block are delineated and designated upon on the Official Map entitled, "Mokelumne" now known as the City of Lodi filed August 25, 1869, in Book of Maps and Plats, Vol. 2 at page 12 in the Office of the County Recorder of the County of San Joaquin, State of California.

TOGETHER WITH that portion of Pleasant Avenue and the alley between Pine Street and Elm Street, as described in the order vacating same, a certified copy of which recorded October 11, 1966 in Book 2988 of Official Records page 411.

EXCEPTING THEREFROM the North 65 feet of the East 72.5 feet of Lot 5, as conveyed to the City of Lodi, recorded May 1, 1992, Instrument No. 92050418.

#### Parcel Two

The North 65 feet of the East 72.5 feet of Lot 5, Block 3 as said Lots and Block are delineated and designated upon on the Official Map entitled, "Mokelumne" now known as the City of Lodi filed August 25, 1869, in Book of Maps and Plats, Vol. 2 Page 12, in the Office of the County Recorder of the County of San Joaquin, State of California.

#### Parcel Three

Commencing at the center line of Oak Street at the intersection of the center line of Hutchins Street according to the Official Map or Plat of Hutchins Addition to Lodi as filed for record in the Office of the County Recorder of San Joaquin County on April 10th, 1897, and running thence Westerly along the Center Line of Oak Street 760 feet; running thence at right angles Southerly 687.79 feet; running thence at right angles Easterly 760 feet to the Center Line of Hutchins Street; running thence at right angles Northerly along the Center line of Hutchins Street 687.79 feet to the Point of Beginning.

EXCEPTING THEREFROM for road or street purposes the East 30 feet thereof; the West 30 feet thereof; the North 30 feet thereof and the South 30 feet thereof, and being all of Lots number Eight (8) and Nine (9) and portion of Lots Number Seven (7), Ten (10), Eleven (11) and Twelve (12) in Block Number Fourteen (14) of Hutchins Addition to Lodi according to the Official Map or Plat of said Addition filed for record in the Office of the County Recorder of San Joaquin County on April 10th, 1897.

## EXHIBIT C

### DESCRIPTION OF THE FACILITY

The Facility consists of:

(a) the *City Hall building*, located at 221 West Pine Street, which is an approximately 18,425 square foot two story building constructed in 1927. The City Hall building houses the City administrative offices, the City Clerk, the City Attorney and the Personnel, Risk Management, Public Works and Community Development departments.

(b) the *Public Safety building*, located 230 West Elm Street, which is an approximately 40,151 square foot two story building with basement of brick construction constructed in 1967. The Public Safety building houses the Police and Fire departments and the municipal court.

(c) the *Hutchins Street Square building*, located at 125 South Hutchins Street, is the old Tokay High School, located four blocks from downtown acquired by the City in 1975. The Hutchins Street Square building houses a community center, senior complex, a pool and a small fine arts center.

EXHIBIT D

SCHEDULE OF LEASE PAYMENTS

<u>Lease Payment Date</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Total Lease Payment</u>
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AFTER RECORDATION RETURN TO:

JONES HALL HILL & WHITE,  
A PROFESSIONAL LAW CORPORATION  
Four Embarcadero Center, 19th Floor  
San Francisco, California 94111  
Attention: Brian D. Quint, Esq.

THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

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**ASSIGNMENT AGREEMENT**

**Dated as of August 1, 1996**

**by and between the**

**LODI PUBLIC IMPROVEMENT CORPORATION**

**and**

**FIRST TRUST OF CALIFORNIA, NATIONAL ASSOCIATION,  
as Trustee**

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(1996 Public Improvement Financing Project)

## ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AGREEMENT, made and entered into as of August 1, 1996, is by and between the LODI PUBLIC IMPROVEMENT CORPORATION, a nonprofit, public benefit corporation duly organized and existing under the laws of the State of California (the "Corporation"), and FIRST TRUST OF CALIFORNIA, NATIONAL ASSOCIATION, a national banking association duly organized and existing under the laws of the United States of America, as trustee (the "Trustee");

### WITNESSETH:

In the joint and mutual exercise of their powers, in consideration of the mutual covenants herein contained and for other valuable consideration, the parties hereto recite and agree as follows:

#### Section 1. Recitals.

(a) The Corporation and the City of Lodi (the "City"), have entered into a lease agreement, dated as of August 1, 1996, and recorded concurrently herewith (the "Lease Agreement"), whereby the Corporation has agreed to lease to the City, and the City has agreed to lease from the Corporation, those certain parcels of real property situated in the City of Lodi, San Joaquin County, State of California, more particularly described in Exhibit A attached hereto and made a part hereof (collectively, the "Site"), and those certain improvements on the Site more particularly described in Exhibit B attached hereto and made a part hereof (the "Facility" and with the Site, the "Property"), in the manner and on the terms set forth in the Lease Agreement, which terms include, without limitation, the obligation of the City to pay Lease Payments (as defined in the Lease Agreement) to the Corporation in consideration of the City's use and enjoyment of the Property.

(b) Under the Lease Agreement, the Corporation is required to cause to be deposited with the Trustee certain sums of money to be credited, held and applied in accordance with the Lease Agreement and with a trust agreement, dated as of August 1, 1996 (the "Trust Agreement"), by and among the Corporation, the City and the Trustee.

(c) Upon delivery of the Lease Agreement, the Corporation is required to deposit with the Trustee, in addition to other moneys to be deposited with the Trustee, moneys for the financing of the acquisition, construction and installation of certain public improvements within the geographic boundaries of the City (the "Improvements"). For the purpose of obtaining such moneys, the Corporation is willing to convey to certain persons (the "Owners") direct, undivided fractional interests in the Lease Payments, such direct, undivided fractional interests to be evidenced by certificates of participation therein (the "Certificates"). In order to make such fractional interests marketable on terms acceptable to the Corporation, the Corporation is willing to assign and transfer its rights under the Lease Agreement to the Trustee for the benefit of the Owners. Concurrently with the delivery of this Assignment Agreement, the Trustee is executing and delivering Certificates in an aggregate principal amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_). The proceeds of such sale (together with certain other moneys) are anticipated to be sufficient to permit the Corporation to make the deposits required under the Lease Agreement and the Trust Agreement and to permit the Corporation to finance the cost of acquisition, construction and installation of the Improvements.

(d) Each of the parties has authority to enter into this Assignment Agreement and has taken all actions necessary to authorize its officers to execute it.

Section 2. Assignment. The Corporation hereby transfers, assigns and sets over to the Trustee, for the benefit of the Owners of the Certificates, all of the Corporation's rights, but none of its obligations, under the Lease Agreement (excepting only the Corporation's rights under Sections 5.8, 7.3 and 9.4 of the Lease Agreement), including without limitation (i) the right to receive and collect all of the Lease Payments from the City under the Lease Agreement, (ii) the right to receive and collect any proceeds of any insurance maintained thereunder and of any condemnation award rendered with respect to the Property, and (iii) the right to exercise such rights and remedies conferred on the Corporation pursuant to the Lease Agreement as may be necessary or convenient (A) to enforce payment of the Lease Payments and any other amounts required to be deposited in the Lease Payment Fund, the Reserve Fund, the Delivery Costs Fund or the Insurance and Condemnation Fund established under the Trust Agreement, or (B) otherwise to protect the interests of the Owners in the event of a default by the City under the Lease Agreement. All rights assigned by the Corporation shall be administered by the Trustee in accordance with the provisions of the Trust Agreement for the equal and fractional benefit of the Owners of the Certificates.

Section 3. Acceptance. The Trustee hereby accepts the assignments made herein for the purpose of securing, equally and fractionally, the payments due pursuant to the Lease Agreement and the Trust Agreement to, and the rights under the Lease Agreement and Trust Agreement of, the Owners of the Certificates delivered pursuant to the Trust Agreement, all subject to the provisions of the Trust Agreement.

Section 4. Conditions. This Assignment Agreement shall neither confer rights nor impose duties upon the Trustee beyond those expressly provided in the Lease Agreement and the Trust Agreement. The Trustee assumes no responsibility for the accuracy of the recitals herein.

Section 5. Capacity of Trustee. The Trustee is entering into this Assignment Agreement solely in its capacity as Trustee under the Trust Agreement and the duties, powers and liabilities of the Trustee in acting hereunder shall be subject to the provisions of the Trust Agreement including, without limitation, the provisions of Articles IX and XIII thereof.

Section 6. Applicable Law. This Assignment Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 7. Execution in Counterparts. This Assignment Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Assignment Agreement by their duly authorized officers as of the day and year first written above.

LODI PUBLIC IMPROVEMENT  
CORPORATION

By \_\_\_\_\_  
Executive Director

(S E A L)

Attest:

\_\_\_\_\_  
Secretary

APPROVED:

By \_\_\_\_\_  
Counsel to Corporation

FIRST TRUST OF CALIFORNIA,  
NATIONAL ASSOCIATION, as Trustee

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

NOTARY ACKNOWLEDGMENT FORMS TO BE ATTACHED

## EXHIBIT A

### DESCRIPTION OF THE SITE

Those parcels of land in the City of Lodi, San Joaquin County, State of California, described as follows:

#### Parcel One

Lots 1, 2, 3, 4, 5, 6, 7 and 8, of Block 3 of the City of Lodi, as said Lots and Block are delineated and designated upon on the Official Map entitled, "Mokelumne" now known as the City of Lodi filed August 25, 1869, in Book of Maps and Plats, Vol. 2 at page 12 in the Office of the County Recorder of the County of San Joaquin, State of California.

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EXCEPTING THEREFROM for road or street purposes the East 30 feet thereof; the West 30 feet thereof; the North 30 feet thereof and the South 30 feet thereof, and being all of Lots number Eight (8) and Nine (9) and portion of Lots Number Seven (7), Ten (10), Eleven (11) and Twelve (12) in Block Number Fourteen (14) of Hutchins Addition to Lodi according to the Official Map or Plat of said Addition filed for record in the Office of the County Recorder of San Joaquin County on April 10th, 1897.

## EXHIBIT B

### DESCRIPTION OF THE FACILITY

The Facility consists of:

(a) the *City Hall building*, located at 221 West Pine Street, which is an approximately 18,425 square foot two story building constructed in 1927. The City Hall building houses the City administrative offices, the City Clerk, the City Attorney and the Personnel, Risk Management, Public Works and Community Development departments.

(b) the *Public Safety building*, located 230 West Elm Street, which is an approximately 40,151 square foot two story building with basement of brick construction constructed in 1967. The Public Safety building houses the Police and Fire departments and the municipal court.

(c) the *Hutchins Street Square building*, located at 125 South Hutchins Street, is the old Tokay High School, located four blocks from downtown acquired by the City in 1975. The Hutchins Street Square building houses a community center, senior complex, a pool and a small fine arts center.

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**TRUST AGREEMENT**

**Dated as of August 1, 1996**

**by and among**

**FIRST TRUST OF CALIFORNIA, NATIONAL ASSOCIATION,  
as Trustee,**

**the**

**LODI PUBLIC IMPROVEMENT CORPORATION**

**and the**

**CITY OF LODI**

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(1996 Public Improvement Financing Project)

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EXHIBIT C:	Description of the Improvements

## TRUST AGREEMENT

THIS TRUST AGREEMENT (the "Trust Agreement"), dated as of August 1, 1996, is by and among FIRST TRUST OF CALIFORNIA, NATIONAL ASSOCIATION, a national banking association duly organized and existing under the laws of the United States of America, as trustee (the "Trustee"), the LODI PUBLIC IMPROVEMENT CORPORATION, a nonprofit, public benefit corporation duly organized and existing under the laws of the State of California (the "Corporation"), and the CITY OF LODI, a municipal corporation and general law city duly organized and existing under the laws of the State of California (the "City");

### WITNESSETH:

WHEREAS, pursuant to that certain Site and Facility Lease, dated as of August 1, 1996 (the "Site and Facility Lease"), the City has leased those certain parcels of real property situated in the City of Lodi, San Joaquin County, State of California, more particularly described in Exhibit A attached thereto and made a part thereof (collectively, the "Site"), and those certain improvements on the Site more particularly described in Exhibit B attached thereto and made a part thereof (the "Facility" and, with the Site, the "Property"), all for the purpose of enabling the City to undertake the acquisition and construction of certain public improvements within the geographic boundaries of the City, more particularly described in Exhibit C attached hereto (the "Improvements");

WHEREAS, the Corporation proposes to lease the Property back to the City pursuant to that certain Lease Agreement, dated as of August 1, 1996, by and between the Corporation and the City (the "Lease Agreement"), and to assign its right to receive lease payments under the Lease Agreement (the "Lease Payments"), its right to enforce payment of the Lease Payments and otherwise to enforce its interest and rights under the Lease Agreement in the event of a default thereunder by the City, to the Trustee pursuant to that certain Assignment Agreement, dated as of August 1, 1996, by and between the Corporation and the Trustee;

WHEREAS, pursuant to this Trust Agreement, the Trustee will execute and deliver certificates of participation (the "Certificates") in the Lease Payments; and

WHEREAS, the proceeds of the Certificates, together with other available moneys, will be applied by the City to (i) finance the Improvements, and (ii) fund a reserve fund, and (iii) pay delivery costs incurred in connection with the execution, delivery and sale of the Certificates;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties hereto hereby agree as follows:

ARTICLE I  
DEFINITIONS

Section 1.01. Definitions. The terms defined in Exhibit A attached hereto and by this reference incorporated herein, as used and capitalized herein, shall, for all purposes of this Trust Agreement, have the meanings ascribed to them in said Exhibit A unless the context clearly requires some other meaning.

Section 1.02. Authorization. Each of the parties hereby represents and warrants that it has full legal authority and is duly empowered to enter into this Trust Agreement, and has taken all actions necessary to authorize the execution of this Trust Agreement by the officers and persons signing it.

Section 1.03. Exhibits. The following exhibits are attached to, and by reference made a part of, this Trust Agreement:

- Exhibit A:     Definitions
- Exhibit B:     Form of Certificates of Participation
- Exhibit C:     Description of the Improvements

ARTICLE II

THE CERTIFICATES OF PARTICIPATION

Section 2.01. Authorization. The Trustee is hereby authorized and directed, upon written request from the Corporation, to prepare, execute and deliver, to the Original Purchaser identified in such written request, Certificates in an aggregate original principal amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_) evidencing direct, undivided fractional interests of the Owners thereof in the Lease Payments.

Section 2.02. Date; Payment of Interest. Each Certificate shall be dated as of August 1, 1996. Interest with respect to a Certificate shall be payable on each Interest Payment Date and accrue from the Interest Payment Date next preceding the date of execution thereof, unless: (i) it is executed as of an Interest Payment Date, in which event interest with respect thereto shall be payable from such Interest Payment Date; or (ii) it is executed after a Regular Record Date and before the following Interest Payment Date, in which event interest with respect thereto shall be payable from such Interest Payment Date; or (iii) it is executed on or before March 15, 1997, in which event interest with respect thereto shall be payable from August 1, 1996; *provided, however,* that if, as of the date of execution of any Certificate, interest is in default with respect to any Outstanding Certificates, interest represented by such Certificate shall be payable from the Interest Payment Date to which interest has previously been paid or made available for payment with respect to the Outstanding Certificates.

Section 2.03. Maturity; Interest Rates. The Certificates shall mature on October 1 in each of the respective years, and in the respective amounts, except that no Certificate may have principal maturing in more than one year, and interest represented thereby shall be computed at the respective rates, as follows:

<u>Maturity Date</u> <u>(October 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Maturity Date</u> <u>(October 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>
--------------------------------------------	-----------------------------------	--------------------------------	--------------------------------------------	-----------------------------------	--------------------------------

Section 2.04. Interest. Interest with respect to the Certificates shall be payable on each Interest Payment Date to and including the date of maturity or redemption, whichever is earlier, as provided in Section 2.10 hereof. Said interest shall represent the portion of Lease Payments designated as interest and coming due during the six-month period preceding each Interest Payment Date with respect to the Certificates. The fractional share of the portion of Lease Payments designated as interest with respect to any Certificate shall be computed by multiplying the portion of Lease Payments designated as principal with respect to such Certificate by the rate of interest applicable to such Certificate (on the basis of a 360-day year of twelve 30-day months).

Section 2.05. Form. The Certificates shall be delivered in the form of fully registered Certificates without coupons in the denomination of \$5,000 or any integral multiple thereof (except during such time as the Certificates are in book-entry form as more particularly described in Section 2.14 hereof). The Certificates shall be assigned such alphabetical and/or

numerical designation as shall be deemed appropriate by the Trustee. The Certificates shall be substantially in the form set forth in Exhibit B attached hereto and by this reference incorporated herein.

Section 2.06. Execution. The Certificates shall be executed by and in the name of the Trustee by the manual signature of an authorized officer or signatory of the Trustee. If any officer or signatory whose signature appears on any Certificate ceases to be such officer or signatory before the date of delivery of said Certificate, such signature shall nevertheless be as effective as if the officer or signatory had remained in office until such date.

Section 2.07. Application of Proceeds. The proceeds received by the Trustee from the sale of the Certificates in the aggregate amount of \$\_\_\_\_\_, including accrued interest with respect to the Certificates, shall forthwith be set aside by the Trustee in the following respective funds and accounts:

(a) The Trustee shall deposit in the Lease Payment Fund an amount equal to \$\_\_\_\_\_, representing accrued interest with respect to the Certificates from August 1, 1996, to the Closing Date;

(b) The Trustee shall deposit in the Delivery Costs Fund an amount equal to \$\_\_\_\_\_;

and

(c) The Trustee shall deposit the remainder of said proceeds (\$\_\_\_\_\_) in the Acquisition and Construction Fund.

Section 2.08. Transfer and Exchange.

(a) *Transfer of Certificates*. The registration of any Certificate may, in accordance with its terms, be transferred upon the Registration Books by the person in whose name it is registered, in person or by his attorney duly authorized in writing upon surrender of such Certificate for cancellation at the Principal Corporate Trust Office accompanied by delivery of a written instrument of transfer in a form approved by the Trustee, duly executed. Whenever any Certificate or Certificates shall be surrendered for registration of transfer, the Trustee shall execute and deliver a new Certificate or Certificates for like aggregate principal amount in authorized denominations. The Trustee may require the payment by the Certificate Owner requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer.

No transfer of Certificates shall be required to be made during the fifteen (15) days prior to the date of selection of Certificates for redemption and between a Regular Record Date and the next succeeding Interest Payment Date, and no transfer of any Certificate selected for redemption shall be required to be made.

(b) *Exchange of Certificates*. Certificates may be exchanged upon surrender thereof at the Principal Corporate Trust Office for a like aggregate principal amount of Certificates of other authorized denominations of the same maturity. The Trustee may require the payment by the Certificate Owner requesting such exchange of any tax or other governmental charge required to be paid with respect to such exchange.

No exchange of Certificates shall be required to be made during the fifteen (15) days prior to the date of selection of Certificates for redemption and between a Regular Record Date and the next succeeding Interest Payment Date, and no exchange of any Certificate selected for redemption shall be required to be made.

Section 2.09. Certificates Mutilated, Lost, Destroyed or Stolen. If any Certificate shall become mutilated, the Trustee, at the expense of the Owner of said Certificate, shall execute and deliver a new Certificate of like tenor, maturity and amount in exchange and substitution for the Certificate so mutilated, but only upon surrender to the Trustee of the Certificate so mutilated. Every mutilated Certificate so surrendered to the Trustee shall be canceled by it and destroyed with a certificate of destruction furnished to the City At the City's written request. If any Certificate shall be lost, destroyed or stolen, evidence of such loss, destruction or theft shall be submitted to the Trustee, and, if such evidence is satisfactory to the Trustee and if an indemnity satisfactory to the Trustee shall be given, the Trustee, at the expense of the Certificate Owner, shall execute and deliver a new Certificate of like tenor, maturity and amount and numbered as the Trustee shall determine in lieu of and in substitution for the Certificate so lost, destroyed or stolen. The Trustee may require payment by the Owner of the expenses which may be incurred by the Trustee in carrying out the duties under this Section 2.09. Any Certificate executed and delivered under the provisions of this Section 2.09 in lieu of any Certificate alleged to be lost, destroyed or stolen shall be equally and fractionally entitled to the benefits of this Trust Agreement with all other Certificates secured by this Trust Agreement. The Trustee shall not be required to treat both the original Certificate and any replacement Certificate as being Outstanding for the purpose of determining the principal amount of Certificates which may be executed and delivered hereunder or for the purpose of determining any percentage of Certificates Outstanding hereunder, but both the original and replacement Certificate shall be treated as one and the same. Notwithstanding any other provision of this Section 2.09, in lieu of delivering a new Certificate in replacement of a Certificate which has been mutilated, lost, destroyed or stolen, and which has matured or has been called for redemption, the Trustee may make payment with respect to such Certificate upon receipt of the aforementioned indemnity.

Section 2.10. Payment. Except as provided in Section 2.14, payment of interest due with respect to any Certificate on any Interest Payment Date shall be made to the person appearing on the Registration Books as the Owner thereof as of the Regular Record Date immediately preceding such Interest Payment Date, such interest to be paid by check mailed by first class mail to such Owner at his address as it appears on the Registration Books or, upon written request filed with the Trustee prior to the Regular Record Date by an Owner of at least \$1,000,000 in aggregate principal amount of Certificates, by wire transfer in immediately available funds to an account in the United States designated by such Owner in such written request. Such written request shall remain in effect until rescinded by such Owner. The principal and redemption premium (if any) payable with respect to any Certificate shall be paid upon presentation and surrender thereof at the Principal Corporate Trust Office. Both the principal and interest and premium (if any) with respect to the Certificates shall be payable in lawful money of the United States of America.

Section 2.11. Execution of Documents and Proof of Ownership. Any request, direction, consent, revocation of consent, or other instrument in writing required or permitted by this Trust Agreement to be signed or executed by Certificate Owners may be in any number of concurrent instruments of similar tenor, and may be signed or executed by such Owners in person or by their attorneys or agents appointed by an instrument in writing for that purpose, or by any bank, trust company or other depository for such Certificates. Proof of the execution of any such instrument, or of any instrument appointing any such attorney or agent, and of the ownership of Certificates shall be sufficient for any purpose of this Trust Agreement (except as otherwise herein provided), if made in the following manner:

(a) The fact and date of the execution by any Owner or his attorney or agent of any such instrument and of any instrument appointing any such attorney or agent, may be proved by a certificate, which need not be acknowledged or verified, of an officer of any bank or trust company located within the United States of America, or of any notary public, or other officer

authorized to take acknowledgments of deeds to be recorded in such jurisdictions, that the persons signing such instruments acknowledged before him the execution thereof. Where any such instrument is executed by an officer of a corporation or association or a member of a partnership on behalf of such corporation, association or partnership, such certificate shall also constitute sufficient proof of his authority.

(b) The fact of the ownership of Certificates by any person and the amount, the maturity and the numbers of such Certificates and the date of his holding the same shall be proved by the Registration Books.

Any request or consent of the Owner of any Certificate shall bind every future Owner of the same Certificate in respect of anything done or suffered to be done by the Trustee pursuant to such request or consent.

Section 2.12. Registration Books. The Trustee shall keep or cause to be kept, at its Principal Corporate Trust Office sufficient records for the registration and registration of transfer of the Certificates, which shall at all reasonable times be open to inspection by the City and the Corporation during regular business hours with reasonable prior notice; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on the Registration Books, Certificates as hereinbefore provided.

Section 2.13. CUSIP Numbers. The Trustee, the City and the Corporation shall not be liable for any defect or inaccuracy in the CUSIP number that appears on any Certificate or in any redemption notice. The Trustee may, in its discretion, include in any redemption notice a statement to the effect that the CUSIP numbers on the Certificates have been assigned by an independent service and are included in such notice solely for the convenience of the Owners and that neither the Trustee, the City nor the Corporation shall be liable for any inaccuracies in such numbers.

Section 2.14. Use of Depository. Notwithstanding any provision of this Trust Agreement to the contrary:

(a) At the request of the Original Purchaser, the Certificates shall be initially issued and registered in the name of "Cede & Co.," as nominee of The Depository Trust Company, the depository designated by the Original Purchaser, and shall be evidenced by one Certificate maturing on each of the maturity dates set forth in Section 2.03 hereof to be in a denomination corresponding to the total principal therein designated to mature on such date. Registered ownership of such Certificates, or any portions thereof, may not thereafter be transferred except:

(i) to any successor of The Depository Trust Company or its nominee, or of any substitute depository designated pursuant to paragraph (ii) of this subsection (a) ("substitute depository"); provided that any successor of The Depository Trust Company or substitute depository shall be qualified under any applicable laws to provide the service proposed to be provided by it;

(ii) to any substitute depository designated in a written request of the City, upon (i) the resignation of The Depository Trust Company or its successor (or any substitute depository or its successor) from its functions as depository or (ii) a determination by the City that The Depository Trust Company or its successor is no longer able to carry out its functions as depository; provided that any such substitute depository shall be qualified under any applicable laws to provide the services proposed to be provided by it; or

(iii) to any person as provided below, upon (A) the resignation of The Depository Trust Company or its successor (or any substitute depository or its successor) from its functions as depository or (B) a determination by the City that The Depository Trust Company or its successor is no longer able to carry out its functions as depository; provided that no substitute depository which is not objected to by the City and the Trustee can be obtained.

(b) In the case of any transfer pursuant to paragraph (i) or paragraph (ii) of subsection (a) of this Section 2.14, upon receipt of all Outstanding Certificates by the Trustee, together with a written request of a City Representative to the Trustee, a single new Certificate shall be executed and delivered for each maturity of such Certificate then outstanding, registered in the name of such successor or such substitute depository or their nominees, as the case may be, all as specified in such written request of a City Representative. In the case of any transfer pursuant to paragraph (iii) of subsection (a) of this Section 2.14, upon receipt of all Outstanding Certificates by the Trustee together with a written request of a City Representative, new Certificates shall be executed and delivered in such denominations and registered in the names of such persons as are requested in a written request of the City provided the Trustee shall not be required to deliver such new Certificates within a period less than sixty (60) days from the date of receipt of such a written request of a City Representative.

(c) In the case of partial prepayment or an advance refunding of any Certificates evidencing all of the principal maturing in a particular year, The Depository Trust Company shall, at the City's expense, deliver the Certificates to the Trustee for cancellation and re-registration to reflect the amounts of such reduction in principal.

(d) The City and the Trustee shall be entitled to treat the person in whose name any Certificate is registered as the absolute Owner thereof for all purposes of this Trust Agreement and any applicable laws, notwithstanding any notice to the contrary received by the Trustee or the City; and the City and the Trustee shall have no responsibility for transmitting payments to, communication with, notifying or otherwise dealing with any beneficial owners of the Certificates. Neither the City nor the Trustee will have any responsibility or obligations, legal or otherwise, to the beneficial owners or to any other party including The Depository Trust Company or its successor (or substitute depository or its successor), except for the registered owner of any Certificate.

(e) So long as all outstanding Certificates are registered in the name of Cede & Co. or its registered assign, the City and the Trustee shall reasonably cooperate with Cede & Co., as sole registered Owner, or its registered assign in effecting payment of the principal and prepayment premium, if any, and interest due with respect to the Certificates by arranging for payment in such manner that funds for such payments are properly identified and are made immediately available on the date they are due.

(f) So long as all Outstanding Certificates are registered in the name of Cede & Co. or its registered assigns (hereinafter, for purposes of this paragraph (f), the "Owner"):

(i) All notices and payments addressed to the Owners shall contain the Certificates' CUSIP number.

(ii) Notices to the Owner shall be forwarded in the manner set forth in the form of Blanket Issuer Letter of Representations executed by the City and received and accepted by The Depository Trust Company.

Section 2.15. Payment Procedure Pursuant to Municipal Bond Insurance Policy.

(a) In the event that, on the second Business Day, and again on the Business Day, prior to each Interest Payment Date, the Trustee has not received sufficient moneys (following a draw on the Reserve Fund Surety Bond) to pay all principal and interest due with respect to the Certificates due on the second following or following, as the case may be, Business Day, the Trustee shall immediately notify the Municipal Bond Insurer or its designee on the same Business Day by telephone or telegraph, confirmed in writing by registered or certified mail, of the amount of the deficiency.

(b) If the deficiency is made up in whole or in part prior to or on the Interest Payment Date, the Trustee shall so notify the Municipal Bond Insurer or its designee.

(c) In addition, if the Trustee has actual knowledge that any Owner has been required to disgorge payments of principal or interest with respect to the Certificates to a trustee in bankruptcy or creditors or others pursuant to a final judgment by a court of competent jurisdiction that such payment constitutes a voidable preference to such Owner within the meaning of any applicable bankruptcy laws, then the Trustee shall notify the Municipal Bond Insurer or its designee of such fact by telephone or telegraphic notice, confirmed in writing by registered or certified mail.

(d) The Trustee is hereby irrevocably designated, appointed, directed and authorized to act as attorney-in-fact for the Owners as follows:

(i) If and to the extent there is a deficiency in amounts required to pay interest with respect to the Certificates, the Trustee shall (A) execute and deliver to State Street Bank and Trust Company, N.A., or its successors under the Municipal Bond Insurance Policy (the "Insurance Trustee"), in form satisfactory to the Insurance Trustee, an instrument appointing the Municipal Bond Insurer as agent for such Owners in any legal proceeding related to the payment of such interest and an assignment to the Municipal Bond Insurer of the claims for interest to which such deficiency relates and which are paid by the Municipal Bond Insurer, (B) receive, as designee of the respective Owners (and not as Trustee) in accordance with the tenor of the Municipal Bond Insurance Policy, payment from the Insurance Trustee with respect to the claims for interest so assigned, and (C) disburse the same to such respective Owners, and

(ii) If and to the extent of a deficiency in amounts required to pay principal with respect to the Certificates, the Trustee shall (A) execute and deliver to the Insurance Trustee in form satisfactory to the Insurance Trustee an instrument appointing the Municipal Bond Insurer as agent for such Owner in any legal proceeding relating to the payment of such principal and an assignment to the Municipal Bond Insurer of any of the Certificate surrendered to the Insurance Trustee of so much of the principal amount thereof as has not previously been paid or for which moneys are not held by the Trustee and available for such payment (but such assignment shall be delivered only if payment from the Insurance Trustee is received), (B) receive, as designee of the respective Owners (and not as Trustee) in accordance with the tenor of the Municipal Bond Insurance Policy, payment therefor from the Insurance Trustee, and (C) disburse the same to such Owners.

(e) Payments with respect to claims for interest and principal with respect to Certificates disbursed by the Trustee from proceeds of the Municipal Bond Insurance Policy shall not be considered to discharge the obligation of the City with respect to such Certificates, and the Municipal Bond Insurer shall become the owner of such unpaid Certificates and claims

for the interest in accordance with the tenor of the assignment made to it under the provisions of this subsection or otherwise.

(f) Irrespective of whether any such assignment is executed and delivered, the City, the Corporation and the Trustee hereby agree for the benefit of the Municipal Bond Insurer that,

(i) They recognize that to the extent the Municipal Bond Insurer makes payments, directly or indirectly (as by paying through the Trustee), on account of principal or interest with respect to the Certificates, the Municipal Bond Insurer will be subrogated to the rights of such Owners to receive the amount of such principal and interest from the City, with interest thereon as provided and solely from the sources stated in the Lease Agreement, this Trust Agreement and the Certificates; and

(ii) They will accordingly pay to the Municipal Bond Insurer the amount of such principal and interest (including principal and interest recovered under subparagraph (ii) of the first paragraph of the Municipal Bond Insurance Policy, which principal and interest shall be deemed past due and not to have been paid), with interest thereon as provided in the Lease Agreement, this Trust Agreement and the Certificates, but only from the sources and in the manner provided herein for the payment of principal and interest with respect to the obligations to Owners, and will otherwise treat the Municipal Bond Insurer as the owner of such rights to the amount of such principal and interest.

### ARTICLE III

#### ACQUISITION AND CONSTRUCTION FUND AND DELIVERY COSTS FUND

Section 3.01. Acquisition and Construction Fund. The Trustee shall establish a special fund designated as the "Acquisition and Construction Fund"; shall keep such fund separate and apart from all other funds and moneys held by it; and shall administer such fund as provided herein. There shall be deposited in the Acquisition and Construction Fund from the proceeds of sale of the Certificates the amount required to be deposited therein pursuant to Section 2.07(c) hereof, **together with** any other amounts from time to time deposited with the Trustee for such purpose as may be identified in writing to the Trustee.

Section 3.02. Payment of Acquisition and Construction Costs. The City agrees to construct the Improvements in accordance with all applicable public bidding requirements and shall cause the acquisition and construction to be performed diligently to the end that the Improvements will be substantially completed in accordance with the aforesaid plans and specifications on or prior to August 1, 1999. Upon completion, the City shall file a Certificate of Completion with the Trustee. In addition, in the event that the costs of acquiring, delivering and installing the Improvements or any portion thereof are greater than the amount of money deposited in or transferred to the Acquisition and Construction Fund, together with investment earnings thereon, the City agrees if, under such circumstances, it nonetheless desires to construct, deliver or install such portion of the Improvements, to deposit into the Acquisition and Construction Fund an amount of money necessary to pay such increased Acquisition and Construction Costs, but only from legally available funds, if any.

Amounts in the Acquisition and Construction Fund shall be disbursed for Acquisition and Construction Costs. Disbursements from the Acquisition and Construction Fund shall be made by the Trustee upon receipt of a sequentially numbered requisition requesting disbursement executed by a City Representative. Each such requisition shall:

(a) set forth the amounts to be disbursed for payment or reimbursement of previous payments of Acquisition and Construction Costs and the person or persons to whom said amounts are to be disbursed;

(b) state that the amounts to be disbursed constitute Acquisition and Construction Costs, that said amounts are required to be disbursed pursuant to a contract entered into therefor by or on behalf of the City, or were necessarily and reasonably incurred, and that said amounts are not being paid in advance of the time, if any, fixed for payment;

(c) state that no amount set forth in the requisition was included in any requisition requesting disbursement previously filed with the Trustee pursuant to this Section 3.02;

(d) state the portion, if any, of the proceeds of the Certificates to be used for a private business use or to make or finance a loan (other than a loan to a state or local governmental unit); and

(e) state that there has been compliance with Section 5.11 of the Lease Agreement relating to the private use limitation and the private loan limitation;

The Trustee shall be responsible for the safekeeping and investment (in accordance with Section 8.02 hereof) of the moneys held in the Acquisition and Construction Fund and the payment thereof in accordance with this Section 3.02, but the Trustee shall not be responsible

for the truth or accuracy of such requisitions and shall be under no duty to investigate or verify any statements made therein.

Section 3.03. Delivery Costs Fund. The Trustee shall establish a special fund designated as the "Delivery Costs Fund"; shall keep such fund separate and apart from all other funds and moneys held by it; and shall administer such fund as provided herein. There shall be deposited in the Delivery Costs Fund the proceeds of sale of the Certificates required to be deposited therein pursuant to Section 2.07(b) hereof and any other funds from time to time deposited with the Trustee for such purpose and identified in writing to the Trustee.

Section 3.04. Payment of Delivery Costs. The moneys in the Delivery Costs Fund shall be disbursed by the Trustee to pay the Delivery Costs.

The Trustee shall disburse moneys in the Delivery Costs Fund only upon a receipt of a sequentially numbered requisition, signed by a City Representative, setting forth the amounts to be disbursed for payment or reimbursement of Delivery Costs and the name and address of the person or persons to whom said amounts are to be disbursed, stating that the amounts to be disbursed are for Delivery Costs properly chargeable to the Delivery Costs Fund.

The Trustee shall be responsible for the safekeeping and investment (in accordance with Section 8.02 hereof) of the moneys held in the Delivery Costs Fund and the payment thereof in accordance with this Section 3.04, but the Trustee shall not be responsible for the truth or accuracy of such requisitions and shall be under no duty to investigate or verify any statements made therein.

Upon written notice from a City Representative that all Delivery Costs have been paid, but in no event later than February 1, 1997, the Trustee shall transfer any moneys then remaining in the Delivery Costs Fund to the Acquisition and Construction Fund, the Delivery Costs Fund shall be closed, the Trustee shall no longer be obligated to make payments for Delivery Costs and all further Delivery Costs shall be paid by the City.

Section 3.05. Transfers of Unexpended Proceeds. The Trustee is hereby directed that all unexpended moneys remaining in the Acquisition and Construction Fund and not identified in writing by a City Representative to be required for payment of Acquisition and Construction Costs shall, on the Completion Date, be transferred to the Lease Payment Fund and applied to pay the Lease Payments as the same become due and payable and the Acquisition and Construction Fund shall be closed.

ARTICLE IV

REDEMPTION OF CERTIFICATES

Section 4.01. Redemption.

(a) *Optional Redemption.* The Certificates maturing on or before October 1, \_\_\_\_, are not subject to optional redemption prior to maturity. The Certificates maturing on and after October 1, \_\_\_\_, are subject to redemption in whole at any time or in part on any Interest Payment Date on or after October 1, \_\_\_\_, at the principal amount with respect thereto, together with the premium set forth below (expressed as a percentage of the total principal amount to be redeemed), together with accrued interest unpaid with respect thereto to the date fixed for redemption, from the proceeds of optional prepayments of Lease Payments made by the City pursuant to the Lease Agreement:

<u>Redemption Period</u>	<u>Redemption Premium</u>
October 1, ____, through September 30, ____	2%
October 1, ____, through September 30, ____	1
October 1, ____, and thereafter	0

(b) *Redemption From Net Proceeds of Insurance, Title Insurance and Condemnation.* The Certificates are subject to mandatory redemption in whole at any time or in part on any Interest Payment Date from the Net Proceeds of an insurance, title insurance or condemnation award to the extent credited towards the prepayment of the Lease Payments by the City pursuant to Section 10.3 of the Lease Agreement, at a redemption price equal to the principal amount thereof to be redeemed together with accrued interest to the date fixed for redemption, without premium.

(c) *Mandatory Redemption.* Certificates maturing on October 1, \_\_\_\_, are subject to mandatory redemption in part on October 1 in each year on and after October 1, \_\_\_\_, from the principal components of scheduled Lease Payments required to be paid by the City pursuant to Section 4.4 of the Lease Agreement with respect to each such redemption date (subject to abatement, as set forth in Section 6.3 of the Lease Agreement), at a redemption price equal to the principal amount thereof to be redeemed, together with accrued interest to the date fixed for redemption, without premium, as follows:

<u>Year (October 1)</u>	<u>Principal Amount of Certificates to be Redeemed</u>
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In the event that the Trustee shall redeem Certificates maturing on October 1, \_\_\_\_, in part but not in whole pursuant to subsections (a) or (b) of this Section 4.01, the amount of the Certificates to be redeemed in each subsequent year pursuant to this subsection (c) shall be reduced to correspond to the principal components of the Lease Payments prevailing following such redemption as determined pursuant to Section 4.4(b) of the Lease Agreement.

Section 4.02. Selection of Certificates for Redemption. Whenever provision is made in this Trust Agreement for the redemption of Certificates and less than all Outstanding

Certificates are to be redeemed, the Trustee shall select Certificates for redemption from the Outstanding Certificates not previously called for redemption, except redemptions pursuant to Section 4.01(c), in such order of maturity as shall be designated by the City to the Trustee in writing and, if the City shall fail to so designate, in inverse order of maturity. The Trustee shall select Certificates for redemption within a maturity by lot. For the purposes of such selection, Certificates shall be deemed to be composed of \$5,000 portions and any such portion may be separately redeemed. The Trustee shall promptly notify the City and the Corporation in writing of the Certificates so selected for redemption. Selection by the Trustee of Certificates for redemption shall be final and conclusive.

#### Section 4.03. Notice of Redemption.

(a) *Official Notice.* Unless waived by any Owner of Certificates to be redeemed, official notice of any such redemption shall be given by the Trustee on behalf and at the expense of the City by mailing a copy thereof by first class mail at least thirty (30) days and not more than sixty (60) days prior to the date fixed for redemption to the Owner of the Certificate or Certificates to be redeemed at the address shown on the Registration Books.

All official notices of redemption shall be dated and shall state: (i) the redemption date, (ii) the redemption price, (iii) if fewer than all Outstanding Certificates are to be redeemed, the Certificate numbers (and, in the case of partial redemption, the respective principal amounts) of the Certificates to be redeemed, (iv) that on the redemption date the redemption price will become due and payable upon each such Certificate or portion thereof called for redemption, and that interest with respect thereto shall cease to accrue from and after said date, (v) the CUSIP numbers of the Certificates to be redeemed, and (vi) the place where such Certificates are to be surrendered for payment of the redemption price, which place for payment shall be the Principal Corporate Trust Office.

Prior to any redemption date, the City shall deposit, or cause to be deposited, with the Trustee an amount of money sufficient to pay the redemption price of all the Certificates or portions of Certificates which are to be redeemed on that date.

Official notice of redemption having been given as aforesaid, the Certificates or portions of Certificates so to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) interest with respect to such Certificates or portions of Certificates shall cease to be payable. Upon surrender of such Certificates for redemption in accordance with said notice, such Certificates shall be paid by the Trustee at the redemption price. Installments of interest due on or prior to the redemption date shall be payable as herein provided for payment of interest. All Certificates which have been redeemed shall be canceled and destroyed by the Trustee and shall not be reissued.

Failure by any Owner to receive notice as hereinabove provided shall not affect the validity of any such redemption.

(b) *Further Notice.* In addition to the foregoing notice, further notice shall be given by the Trustee as set forth in this subsection (b), but no defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as prescribed in subsection (a) above. Each further notice of redemption given hereunder shall contain the information required above for an official notice of redemption plus (A) the CUSIP numbers of all Certificates being redeemed; (B) the original date of execution and delivery of the Certificates; (C) the rate of interest payable with respect to each Certificate being redeemed; and (D) the maturity date of each Certificate being redeemed. Each further notice of redemption shall be sent, at least thirty-five (35) days before

the redemption date, by telecopy, registered, certified or overnight mail to all Securities Depositories and to the Information Services. Upon the payment of the redemption price of Certificates being redeemed, each check or other transfer of funds issued for such purpose shall, to the extent practicable, bear or indicate the CUSIP number identifying, by issue and maturity, the Certificates being redeemed with the proceeds of such check or other transfer.

Section 4.04. Partial Redemption of Certificate. Upon surrender of any Certificate redeemed in part only, the Trustee shall execute and deliver to the Owner thereof, at the expense of the City, a new Certificate or Certificates of authorized denominations equal in aggregate principal amount to the unredeemed portion of the Certificate surrendered and of the same interest rate and the same maturity.

Section 4.05. Purchase of Certificates. In lieu of redemption of Certificates as provided in this Article IV, amounts held by the Trustee for such redemption may also be used at any time, upon the written request of a City Representative at least 75 days prior to such anticipated redemption date, for the purchase of Certificates at public or private sale as and when and at such prices (including brokerage, accrued interest and other charges) as the City may in its discretion direct, but not to exceed the redemption price which would be payable if such Certificates were redeemed at that time rather than purchased. The aggregate principal amount of Certificates of the same maturity purchased in lieu of redemption pursuant to this Section 4.05 shall not exceed the aggregate principal amount of Certificates of such maturity which would otherwise be subject to such redemption. Remaining moneys, if any, shall be deposited in the Lease Payment Fund.

## ARTICLE V

### LEASE PAYMENTS; LEASE PAYMENT FUND

Section 5.01. Assignment of Rights in Lease Agreement. The Corporation has, in the Assignment Agreement, transferred, assigned and set over to the Trustee certain of its rights, but none of its obligations, set forth in the Lease Agreement, including but not limited to all of the Corporation's rights to receive and collect all of the Lease Payments and all other amounts required to be deposited in the Lease Payment Fund pursuant to the Lease Agreement or pursuant hereto. All Lease Payments and such other amounts to which the Corporation may at any time be entitled shall be paid directly to the Trustee and all of the Lease Payments collected or received by the Corporation shall be deemed to be held and to have been collected or received by the Corporation as the agent of the Trustee, and if received by the Corporation at any time shall be deposited by the Corporation with the Trustee within one Business Day after the receipt thereof, and all such Lease Payments and such other amounts shall be forthwith deposited by the Trustee upon the receipt thereof in the Lease Payment Fund (except as provided in Section 6.04 hereof).

Section 5.02. Establishment of Lease Payment Fund. The Trustee shall establish a special fund designated as the "Lease Payment Fund". All moneys at any time deposited by the Trustee in the Lease Payment Fund shall be held by the Trustee in trust for the benefit of the Owners of the Certificates. So long as any Certificates are Outstanding, neither the City nor the Corporation shall have any beneficial right or interest in the Lease Payment Fund or the moneys deposited therein, except only as provided in this Trust Agreement, and such moneys shall be used and applied by the Trustee as hereinafter set forth.

Section 5.03. Deposits. There shall be deposited in the Lease Payment Fund all Lease Payments received by the Trustee (except as provided in Section 6.04 hereof), including any moneys received by the Trustee for deposit therein pursuant to Sections 2.07(a), 4.01, 5.01 or Article VII hereof, or Article X of the Lease Agreement, and any other moneys required to be deposited therein pursuant to the Lease Agreement or pursuant to this Trust Agreement.

Section 5.04. Application of Moneys. All amounts in the Lease Payment Fund shall be used and withdrawn by the Trustee solely for the purpose of paying the principal, interest and redemption premiums (if any), with respect to the Certificates as the same shall become due and payable, in accordance with the provisions of Articles II, IV and XIV hereof.

Section 5.05. Surplus. Any surplus remaining in the Lease Payment Fund after redemption and/or payment of all Certificates, including premiums and accrued interest (if any) and payment of any applicable fees and expenses to the Trustee, or provision for such redemption or payment having been made to the satisfaction of the Trustee, shall be withdrawn by the Trustee and remitted to the City.

ARTICLE VI  
RESERVE FUND

Section 6.01. Establishment of Reserve Fund. The Trustee shall establish a special fund designated as the "Reserve Fund." All moneys at any time on deposit in the Reserve Fund shall be held by the Trustee in trust for the benefit of the Owners of the Certificates, and applied solely as provided herein.

Section 6.02. Deposits; Reserve Fund Surety Bond.

(a) There shall be deposited and maintained in the Reserve Fund at all times the Reserve Fund Surety Bond in an amount equal to the Reserve Requirement. The Reserve Fund Surety Bond shall be held as a reserve for the payment when due of the Lease Payments.

(b) As long as the Reserve Fund Surety Bond shall be in full force and effect, the City and the Trustee agree to comply with the following provisions:

(i) In the event and to the extent that moneys on deposit in the Lease Payment Fund, plus all amounts on deposit in and credited to the Reserve Fund in excess of the amount of the Reserve Fund Surety Bond, are insufficient to pay the amount of principal and interest coming due, then upon the later of: (A) three (3) days after receipt by the Municipal Bond Insurer of a demand for payment in the form attached to the Reserve Fund Surety Bond as Attachment 1 (the "Demand for Payment"), duly executed by the Trustee certifying that payment due under the Lease Agreement has not been made to the Trustee; or (B) the Interest Payment Date specified in the Demand for Payment presented by the Trustee to the Municipal Bond Insurer, the Municipal Bond Insurer will make a deposit of funds in an account with the Trustee sufficient for the payment to the Trustee of amounts which are then due to the Trustee under the Lease Agreement (as specified in the Demand for Payment) up to but not in excess of the Surety Bond Coverage, as defined in the Reserve Fund Surety Bond.

(ii) The Trustee shall, after submitting to the Municipal Bond Insurer the Demand for Payment as provided in (i) above, make available to the Municipal Bond Insurer, upon its request, copies of all records relating to the funds and accounts maintained under this Trust Agreement.

(iii) The Trustee shall, upon receipt of moneys received from the draw on the Reserve Fund Surety Bond, as specified in the Demand for Payment, credit the Reserve Fund to the extent of moneys received pursuant to such Demand.

(iv) Upon receipt of any delinquent Lease Payment with respect to which moneys have been credited to the Reserve Fund advanced from a draw on the Reserve Fund Surety Bond, such Lease Payment shall be paid to the Municipal Bond Insurer as a reimbursement for such draw to the extent required to reimburse the Municipal Bond Insurer in full, and then remaining amounts shall be transferred to the Lease Payment Fund.

Section 6.03. Transfers of Excess. The Trustee shall, on each March 1 and September 1, transfer any moneys in the Reserve Fund then in excess of the Reserve Requirement to the Lease Payment Fund, to be credited to the Lease Payments next coming due and payable; *provided, however* that the Trustee shall not liquidate an investment to make such transfer of excess unless so directed by a City Representative.

Section 6.04. Application in Event of Deficiency in the Lease Payment Fund. If, on any Interest Payment Date, the moneys available in the Lease Payment Fund do not equal the amount of the principal, interest and redemption premium (if any) with respect to the Certificates then coming due and payable, the Trustee shall apply the moneys available in the Reserve Fund to make delinquent Lease Payments by transferring the amount necessary for this purpose to the Lease Payment Fund. Upon receipt of any delinquent Lease Payment with respect to which moneys have been advanced from the Reserve Fund, such Lease Payment shall be deposited in the Reserve Fund to the extent of such advance.

Section 6.05. Transfer To Make All Lease Payments. If, on any Interest Payment Date, the moneys on deposit in the Reserve Fund and the Lease Payment Fund (excluding amounts required for payment of principal, interest and redemption premium (if any) with respect to Certificates not presented for payment) are sufficient to pay all Outstanding Certificates, including all principal, interest and redemption premiums (if any), the Trustee shall transfer all amounts then on deposit in the Reserve Fund to the Lease Payment Fund to be applied to the payment of the Lease Payments, and such moneys shall be distributed to the Owners of Certificates in accordance with Article II and IV of this Trust Agreement. Any amounts remaining in the Reserve Fund upon payment in full of all Outstanding Certificates and all amounts due the Trustee hereunder, or upon provision for such payment as provided in Section 14.01, shall be withdrawn by the Trustee and paid to the City.

## ARTICLE VII

### INSURANCE AND CONDEMNATION FUND; INSURANCE; EMINENT DOMAIN; TITLE INSURANCE

#### Section 7.01. Establishment of Insurance and Condemnation Fund; Application of Net Proceeds of Insurance Award.

(a) Any Net Proceeds of insurance against accident to or destruction of any part of the Property collected by the City in the event of any such accident or destruction shall be paid to the Trustee by the City pursuant to Section 6.2(a) of the Lease Agreement and deposited by the Trustee promptly upon receipt thereof in a special fund designated as the "Insurance and Condemnation Fund."

(b) If the City determines and notifies the Trustee in writing of its determination, within ninety (90) days following the date of such deposit, that the replacement, repair, restoration, modification or improvement of the Property is not economically feasible or in the best interest of the City, then such Net Proceeds shall be promptly transferred by the Trustee to the Lease Payment Fund and applied to the prepayment of Lease Payments pursuant to Section 10.3 of the Lease Agreement.

(c) In the event of damage or destruction of the Property in full, such Net Proceeds may be transferred to the Lease Payment Fund only if sufficient, together with other moneys available therefor, to cause the prepayment of the principal components of all unpaid Lease Payments pursuant to Section 10.3 of the Lease Agreement and Section 4.01(b) hereof.

(d) In the event of damage or destruction of the Property in part, such Net Proceeds may be transferred to the Lease Payment Fund and applied to the prepayment of Lease Payments only if the resulting Lease Payments are equal to or less than the fair rental value of the remaining portions of the Property (giving due consideration to the factors identified in the last sentence of Section 4.4(d) of the Lease Agreement).

(e) All Net Proceeds deposited in the Insurance and Condemnation Fund and not so transferred to the Lease Payment Fund shall be applied by the City to the prompt replacement, repair, restoration, modification or improvement of the damaged or destroyed portions of the Property. Net Proceeds deposited in the Insurance and Condemnation Fund shall be applied for such purpose by the City, upon submission to the Trustee of requisitions signed by a City Representative, stating with respect to each payment to be made (i) the requisition number, (ii) the name and address of the person, firm or corporation to whom payment is due, (iii) the amount to be paid and (iv) that each obligation mentioned therein has been properly incurred, is a proper charge against the Insurance and Condemnation Fund, has not been the basis of any previous withdrawal, and specifying in reasonable detail the nature of the obligation. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to the City.

(f) Notwithstanding the foregoing, if the period of replacement, repair, restoration, modification or improvement of the damaged or destroyed portions of the Property will exceed the period of time for which rental interruption insurance will be available for the payment of Lease Payments, such Net Proceeds shall not be applied for such purposes but shall be transferred to the Lease Payment Fund and applied to the prepayment of Lease Payments unless the City shall elect to deposit moneys to the Lease Payment Fund to pay Lease Payments in excess of the amount of rental interruption insurance for the full period of such replacement, repair, restoration, modification or improvement. The City hereby declares that,

since the Property is essential to the operations of the City, it will use its best efforts to so deposit moneys to the Lease Payment Fund to pay Lease Payments in excess of the amount of rental interruption insurance for the full period of such replacement, repair, restoration, modification or improvement so as to accomplish such replacement, repair, restoration, modification or improvement.

Section 7.02. Application of Net Proceeds of Eminent Domain Award. If all or any part of the Property shall be taken by eminent domain proceedings (or sold to a government threatening to exercise the power of eminent domain) the Net Proceeds therefrom shall be deposited with the Trustee in the Insurance and Condemnation Fund pursuant to Section 6.2(b) of the Lease Agreement and shall be applied and disbursed by the Trustee as follows:

(a) If the City has given written notice to the Trustee of its determination that (i) such eminent domain proceedings have not materially affected the operation of the Property or the ability of the City to meet any of its obligations with respect to the Property under the Lease Agreement, and (ii) such proceeds are not needed for repair or rehabilitation of the Property, the City shall so certify to the Trustee and the Trustee, at the written request of a City Representative, shall transfer such proceeds to the Lease Payment Fund to be credited towards the prepayment of the Lease Payments pursuant to Section 10.3 of the Lease Agreement and applied to the redemption of Certificates in the manner provided in Section 4.01(b) hereof.

(b) If the City has given written notice to the Trustee of its determination that (i) such eminent domain proceedings have not materially affected the operation of the Property or the ability of the City to meet any of its obligations with respect to the Property under the Lease Agreement, and (ii) such proceeds are needed for repair, rehabilitation or replacement of the Property, the City shall so certify to the Trustee and the Trustee, at the City's written request, shall pay to the City, or to its order, from said proceeds such amounts as the City may expend for such repair or rehabilitation, upon the filing with the Trustee of requisitions of a City Representative, in the form and containing the provisions set forth in Section 7.01.

(c) If (i) less than all of the Property shall have been taken in such eminent domain proceedings or sold to a government threatening the use of eminent domain powers, and if the City has given written notice to the Trustee of its determination that such eminent domain proceedings have materially affected the operation of the Property or the ability of the City to meet any of its obligations with respect to the Property under the Lease Agreement or (ii) all of the Property shall have been taken in such eminent domain proceedings, then the Trustee shall transfer such proceeds to the Lease Payment Fund to be credited toward the prepayment of the Lease Payments pursuant to Section 10.3 of the Lease Agreement and applied to the redemption of Certificates in the manner provided in Section 4.01(b) hereof.

(d) In making any determination under this Section 7.02, the City may, but shall not be required to, obtain at its expense, the report of an independent engineer or other independent professional consultant, a copy of which shall be filed with the Trustee. Any such determination by the City shall be final.

Section 7.03. Application of Net Proceeds of Title Insurance Award. The Net Proceeds from a title insurance award shall be deposited with the Trustee in the Insurance and Condemnation Fund pursuant to Section 6.2(c) of the Lease Agreement and shall be transferred to the Lease Payment Fund to be credited towards the prepayment of Lease Payments required to be paid pursuant to Section 10.3 of the Lease Agreement and applied to the redemption of Certificates in the manner provided in Section 4.01(b).

Section 7.04. Cooperation. The Corporation and the Trustee shall cooperate fully with the City, at the expense of the City, in filing any proof of loss with respect to any insurance

policy maintained pursuant to Article V of the Lease Agreement and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Property or any portion thereof. The Trustee shall not be obligated to join in such action if it believes it will be exposed to liability or has not been indemnified to its satisfaction from any loss, liability or expense including, but not limited to, attorneys fees.

## ARTICLE VIII

### MONEYS IN FUNDS; INVESTMENT

Section 8.01. Held in Trust. The moneys and investments held by the Trustee under this Trust Agreement are irrevocably held in trust for the benefit of the Owners of the Certificates and for the purposes herein specified and such moneys, and any income or interest earned thereon, shall be expended only as provided in this Trust Agreement and shall not (except as set forth in Section 9.03 hereof) be subject to levy, attachment or lien by or for the benefit of any creditor of the Corporation, the Trustee, the City or any Owner of Certificates.

Section 8.02. Investments Authorized. Moneys held by the Trustee hereunder shall, upon written order of a City Representative, be invested and reinvested by the Trustee in Permitted Investments. If a City Representative shall fail to so direct investments, the Trustee shall invest the affected moneys in Permitted Investments described in paragraph (d) of the definition thereof. A City Representative shall, by written order filed with the Trustee, direct such investment of moneys held by the Trustee in specific Permitted Investments. The Trustee may conclusively rely upon the fact that any investment directed hereunder is a Permitted Investment as required by this Trust Agreement. Such investments, if registrable, shall be registered in the name of and held by the Trustee or its nominee, as trustee. The Trustee may purchase or sell to itself or any affiliate, as principal or agent, investments authorized by this Section 8.02. Such investments and reinvestments shall be made giving full consideration to the time at which funds are required to be available. The Trustee may act as sponsor, manager, advisor or depository with regard to any Permitted Investment hereunder. Investment of moneys in the Reserve Fund shall be limited in term to five years or less. The City acknowledges that regulations of the Comptroller of the currency grant the City the right to receive brokerage confirmations of security transactions to be effected by the trustee hereunder as they occur. The City specifically waives the right to receive such notification to the extent permitted by applicable law and agrees that it will instead receive periodic cash transaction statements which include detail for the investment transactions effected by the Trustee hereunder; *provided, however*, that the City retains its right to receive brokerage confirmation on any investment transaction requested by the City.

Section 8.03. Accounting. The Trustee shall furnish to the City, at least monthly, an accounting which may be in the form of its customary accounting statements of all investments made by the Trustee. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with Section 8.02 hereof.

Section 8.04. Allocation of Earnings. All interest or income received by the Trustee on investment of the Lease Payment Fund shall as received, prior to the Completion Date, be transferred to the Acquisition and Construction Fund (except as otherwise provided herein) and thereafter shall be retained in the Lease Payment Fund. Amounts retained or deposited in the Lease Payment Fund pursuant to this Section 8.04 shall be applied as a credit against the Lease Payment due by the City pursuant to the Lease Agreement on the Lease Payment Date following the date of deposit. All interest received by the Trustee on investment of the Reserve Fund shall be retained in the Reserve Fund in the event that amounts on deposit in the Reserve Fund are less than the Reserve Requirement. In the event that amounts then on deposit in the Reserve Fund equal or exceed the Reserve Requirement, such excess shall, prior to the Completion Date, be transferred to the Acquisition and Construction Fund and thereafter shall be transferred to the Lease Payment Fund. Transfers to the Lease Payment Fund from the Reserve Fund shall be made by the Trustee on or prior to each March 1 and September 1. All interest or income in the Acquisition and Construction Fund shall be retained in the Acquisition and Construction Fund until the Acquisition and Construction Fund is closed pursuant to

Section 3.05 hereof. All interest or income in the Delivery Costs Fund shall be retained in the Delivery Costs Fund until the Delivery Costs Fund is closed pursuant to Section 3.04 hereof.

Section 8.05. Acquisition, Disposition and Valuation of Investments.

(a) Except as otherwise provided in subsection (b) of this Section 8.05, the City covenants that all investments of amounts deposited in any fund or account created by or pursuant to this Trust Agreement, or otherwise containing gross proceeds of the Certificates (within the meaning of section 148 of the Code) shall be acquired, disposed of, and valued (as of the date that valuation is required by this Trust Agreement or the Code) at Fair Market Value.

(b) Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Code and (unless valuation is undertaken at least annually) investments in the Reserve Fund shall be valued at their present value (within the meaning of section 148 of the Code); provided that the City shall inform the Trustee which funds are subject to a yield restriction.

(c) For the purpose of determining the amount in any fund, the value of Permitted Investments credited to such fund shall be valued by the Trustee at least semiannually on or before each March 1 and September 1 at the market value thereof. The Trustee may sell at the best price reasonably obtainable, or present for prepayment, any Permitted Investment so purchased by the Trustee whenever it shall be necessary in order to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund to which such Permitted Investment is credited, and the Trustee shall not be liable or responsible for any loss resulting from any such Permitted Investment.

ARTICLE IX  
THE TRUSTEE

Section 9.01. Appointment of Trustee. The Trustee is hereby appointed trustee, registrar and paying agent by the Corporation and the City for the purpose of receiving all moneys required to be deposited with the Trustee hereunder and to allocate, use and apply the same as provided in this Trust Agreement. The Corporation and the City agree that they will maintain a Trustee which shall be a corporation or association organized and doing business under the laws of any state of the United States of America or the District of Columbia or under federal law of the United States, authorized under such laws to exercise corporate trust powers, which shall have (or, in the case of a corporation included in a bank holding company system, the related bank holding company shall have) a combined capital and surplus of at least fifty million dollars (\$50,000,000), and subject to supervision or examination by federal or State authority, so long as any Certificates are Outstanding and acceptable to the Municipal Bond Insurer. If such corporation or association publishes a report of condition at least annually pursuant to law or to the requirements of any supervising or examining authority above referred to then for the purpose of this Section 9.01, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 9.01, the Trustee shall resign immediately in the manner and with the effect specified in Section 9.07.

The Trustee is hereby authorized to pay the Certificates when duly presented for payment at maturity, or on redemption, or on purchase by the Trustee prior to maturity in accordance with Section 4.05 hereof, and to cancel all Certificates upon payment thereof. The Trustee shall keep records in accordance with industry standards of all funds administered by it and of all Certificates paid and discharged. The Trustee shall be compensated for its services rendered pursuant to the provisions of this Trust Agreement.

Section 9.02. Acceptance of Trusts. The Trustee hereby accepts the trusts imposed upon it by this Trust Agreement and agrees to perform said trusts, but only upon and subject to the following express terms and conditions:

The Trustee, prior to the occurrence of an Event of Default and after the curing or waiver of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Trust Agreement and no implied duties or obligations shall be read into this Trust Agreement against the Trustee. In case an Event of Default has occurred (which has not been cured or waived) the Trustee may exercise such of the rights and powers vested in it by this Trust Agreement and shall use the same degree of care and skill in their exercise as a prudent and reasonable person would exercise or use under the circumstances in the conduct of such person's own affairs.

No provision in this Trust Agreement shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or thereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder either directly or by or through attorneys or agents and shall not be liable with respect to any action taken by any attorney or agent selected by it with due care. The Trustee shall be entitled to advice of counsel concerning all matters of trust and its duty

hereunder or thereunder. The Trustee may consult with counsel and the written advice or the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered or omitted by it hereunder in reliance thereon.

The Trustee shall not be responsible for any recital herein, in the Assignment Agreement or in the Certificates, or for any of the supplements thereto or instruments of further assurance, or for the sufficiency of the security for the Certificates delivered hereunder or intended to be secured hereby and the Trustee shall not be bound to ascertain or inquire as to the observance or performance of any covenants, conditions or agreements on the part of the Corporation or the City under the Lease Agreement.

The Trustee shall not be accountable for the use or application by the City or the Corporation of the Certificates or the proceeds thereof. The Trustee may become the Owner or pledgee of Certificates secured hereby with the same rights which it would have if it were not the Trustee; may acquire and dispose of other bonds or evidences of indebtedness of the City with the same rights it would have if it were not the Trustee; and may act as a depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Owners of Certificates, whether or not such committee shall represent the Owners of the majority in principal amount, of the Certificates then Outstanding.

The Trustee may rely and shall be protected in acting or refraining from acting upon any notice, request, consent, requisition, certificate, order, affidavit, letter, telegram or other paper or document believed by it to be genuine and to have been signed or sent by the proper person or persons. Any action taken or omitted to be taken by the Trustee in good faith pursuant to this Trust Agreement upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the Owner of any Certificate, shall be conclusive and binding upon all future Owners of the same Certificate and upon Certificates executed and delivered in exchange therefor or in place thereof.

As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate signed by an Corporation Representative or a City Representative as sufficient evidence of the facts therein contained and prior to the occurrence of an Event of Default of which the Trustee has been given notice or is deemed to have notice, shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient. The Trustee may accept a certificate of an Corporation Representative or a City Representative to the effect that an authorization in the form therein set forth has been adopted by the Corporation or the City, as the case may be, as conclusive evidence that such authorization has been duly adopted, and is in full force and effect.

The permissive right of the Trustee to do things enumerated in this Trust Agreement and the Lease Agreement shall not be construed as a duty and it shall not be answerable for other than its negligence or willful misconduct. The immunities and exceptions from liability of the Trustee shall extend to its officers, directors, employees and agents.

The Trustee shall not be required to take notice or be deemed to have notice of any Event of Default hereunder except failure by the City to make any of the Lease Payments to the Trustee required to be made by the City pursuant to the Lease Agreement, unless the Trustee shall be specifically notified in writing of such default by the Corporation, the City or by the Owners of at least five percent (5%) in aggregate principal amount of Certificates then Outstanding and all notices or other instruments required by this Trust Agreement to be delivered to the Trustee must, in order to be effective, be delivered at the Principal Corporate

Trust Office, and in the absence of such notice so delivered the Trustee may conclusively assume there is no Event of Default except as aforesaid.

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

Notwithstanding anything elsewhere in this Trust Agreement with respect to the execution of any Certificates, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Trust Agreement, the Trustee shall have the right, but shall not be required, to demand any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action, by the Trustee deemed desirable for the purpose of establishing the right of the City to the withdrawal of any cash, or the taking of any other action by the Trustee.

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

The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of a majority in aggregate principal amount of the Outstanding Certificates relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Trust Agreement.

Before being required to take any action, the Trustee may require an opinion of Independent Counsel acceptable to the Trustee, which opinion shall be made available to the other parties hereto upon request, which counsel may be counsel to any of the parties hereto, or a verified certificate of any party hereto, or both, concerning the proposed action. If it does so in good faith, the Trustee shall be absolutely protected in relying thereon.

The Trustee shall not be liable for any error of judgment made in good faith by a responsible officer of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts.

The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Trust Agreement at the request or direction of any of the Owners pursuant to this Trust Agreement, unless such Owners shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order bond or other paper or document but the Trustee, in its sole discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the City and the Corporation, personally or by agent or attorney.

Under no circumstances shall the Trustee be liable in its individual capacity for the obligations evidenced by the Certificates.

The Trustee shall not be accountable for the use or application by the City or the Corporation or any other party of any funds which the Trustee has released in accordance with the terms of this Trust Agreement.

The Trustee makes no representation or warranty, express or implied, as to the title, value, design, compliance with specifications or legal requirements, quality, durability, operation, condition, merchantability or fitness for any particular purpose or fitness for the use contemplated by the City or the Corporation of the Property. In no event shall the Trustee be liable for incidental, indirect, special or consequential damages in connection with or arising from the Lease Agreement or this Trust Agreement for the existence, furnishing or use of the Property.

The Trustee makes no representations as to the validity or sufficiency of the Certificates and shall incur no responsibility in respect thereof, other than in connection with the duties or obligations herein or therein specifically assigned to or imposed upon it. The Trustee shall not be responsible for the validity or sufficiency of the Lease Agreement or the assignment under the Assignment Agreement. The Trustee shall not be liable for the sufficiency or collection of any Lease Payments or other moneys required to be paid to it under the Lease Agreement (except as provided in this Trust Agreement), its right to receive moneys pursuant to the Lease Agreement, or the value of or title to the premises upon which the Property is located or the Property. The Trustee makes no representations and shall have no responsibility or liability for any official statement or other offering material prepared or distributed with respect to the Certificates.

In accepting the trust hereby created, the Trustee acts solely as Trustee for the Owners and not in its individual capacity and all persons, including without limitation the Owners and the City or the Corporation having any claim against the Trustee arising from this Trust Agreement shall look only to the funds and accounts held by the Trustee hereunder for payment except as otherwise provided herein.

The Trustee shall not be personally liable, in case of entry by it or the Corporation upon the Property, for debts contracted or liabilities or damages incurred in the management or operation of the Property by the Corporation or it.

Whether or not therein expressly so provided, every provision of this Trust Agreement and the Assignment Agreement relating to the conduct or affecting the liability of the Trustee shall be subject to the provisions of this Article IX.

Section 9.03. Fees, Charges and Expenses of Trustee. The Trustee shall be entitled to payment and reimbursement for reasonable fees for its services rendered hereunder and all advances, counsel fees (including expenses) and other expenses reasonably and necessarily made or incurred by the Trustee in connection with such services and, following an Event of Default, the Trustee shall have a first and prior lien on the funds held hereunder to secure the same. The Trustee's rights hereunder, including its rights under Section 12.03 hereof, shall survive its resignation or removal and final payment of the Certificates.

Section 9.04. Notice to Certificate Owners of Default. If an Event of Default occurs of which the Trustee has been given notice, then the Trustee shall, within ninety (90) days of the occurrence thereof, give written notice thereof by first class mail to the Owner of each Certificate, unless such Event of Default shall have been cured before the giving of such notice; *provided, however,* that unless such Event of Default consists of the failure by the City to make any Lease Payment when due, the Trustee may elect not to give such notice if and so long as the Trustee in good faith determines that it is in the best interests of the Certificate Owners not to give such notice.

Section 9.05. Intervention by Trustee. In any judicial proceeding to which the Corporation or the City is a party which, in the opinion of the Trustee, has a substantial bearing on the interests of Owners of the Certificates, the Trustee may intervene on behalf of the Certificate Owners, and shall do so if requested in writing by the Owners of at least a majority of the aggregate principal amount of Certificates then Outstanding; provided that the Trustee shall have no duty to take such action unless it has been indemnified to its satisfaction for any expenses hereunder. The rights and obligations of the Trustee under this Section 9.05 are subject to the approval of a court of competent jurisdiction.

Section 9.06. Removal of Trustee. Upon thirty (30) days' prior written notice, the City (so long as no Event of Default has occurred and is continuing) or the Owners of at least a majority of the aggregate principal amount of Certificates then Outstanding may, with the consent of the Corporation, remove the Trustee initially appointed, and any successor thereto, by an instrument or concurrent instruments in writing delivered to the Trustee and the Corporation, and may appoint a successor or successors thereto; provided that any such successor shall be a bank or trust company meeting the requirements set forth in Section 9.01 hereof and the appointment of such successor shall be approved in writing by the City.

The Trustee may be removed at any time, at the request of the Municipal Bond Insurer with the consent of the City, for any breach of the trust set forth herein. The Municipal Bond Insurer shall receive written notice prior to the effective date of any Trustee resignation.

Section 9.07. Resignation by Trustee. The Trustee and any successor Trustee may, at any time, resign by giving thirty (30) days' written notice by registered or certified mail to the City and the Corporation.

Section 9.08. Appointment of Successor Trustee. In the event of the removal or resignation of the Trustee pursuant to Sections 9.06 or 9.07 hereof, the City shall promptly appoint a successor Trustee. In the event the City shall, for any reason whatsoever, fail to appoint a successor Trustee within thirty (30) days following the delivery to the Trustee of the instrument described in Section 9.06 hereof or within thirty (30) days following the receipt of notice by the City pursuant to Section 9.07 hereof, the Trustee may apply to a court of competent jurisdiction at the expense of the City for the appointment of a successor Trustee meeting the requirements of Section 9.01 hereof. Any such successor Trustee appointed by such court shall become the successor Trustee hereunder notwithstanding any action by the City purporting to appoint a successor Trustee following the expiration of such thirty (30) day period.

Notwithstanding any other provision of this Trust Agreement, no removal, resignation or termination of the Trustee shall take effect until a successor, reasonably acceptable to the Municipal Bond Insurer, shall be appointed.

Section 9.09. Merger or Consolidation. Any company or association into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company or association to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided that such company or association shall be eligible under Section 9.01 hereof, shall be the successor to the Trustee and vested with all of the title to the trust estate and all of the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

Section 9.10. Concerning any Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also the Corporation

and the City an instrument in writing accepting such appointment hereunder and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessors; but such predecessor shall, nevertheless, on the written request of the City, or of its successor, execute and deliver an instrument transferring to such successor all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as the Trustee hereunder to its successor. Upon such acceptance, the City shall mail, or cause the mailing of, notice thereof to the Certificate Owners at their respective addresses set forth on the Registration Books. Should any instrument in writing from the City be required by any successor Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the City. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article IX, shall be filed or recorded by the successor Trustee in each recording office where the Assignment Agreement shall have been filed or recorded.

## ARTICLE X

### MODIFICATION OR AMENDMENT OF AGREEMENTS

Section 10.01. Amendments Permitted. This Trust Agreement and the rights and obligations of the Owners of the Certificates and the Lease Agreement and the rights and obligations of the parties thereto, may be modified or amended at any time by a supplemental agreement which shall become effective when the written consents of the Owners of at least fifty-one percent (51%) in aggregate principal amount of the Certificates then Outstanding, exclusive of Certificates disqualified as provided in Section 10.03 hereof, shall have been filed with the Trustee. No such modification or amendment shall (1) extend or have the effect of extending the fixed maturity of any Certificate or reducing the interest rate with respect thereto or extending the time of payment of interest, or reducing the amount of principal thereof, or reducing any premium payable upon the redemption thereof, without the express consent of the Owner of such Certificate, or (2) reduce or have the effect of reducing the percentage of Certificates required for the affirmative vote or written consent to an amendment or modification of the Lease Agreement, or (3) modify any of the rights or obligations of the Trustee without its written consent thereto. Any such supplemental agreement shall become effective as provided in Section 10.02 hereof.

This Trust Agreement and the rights and obligations of the Owners of the Certificates and the Lease Agreement and the rights and obligations of the respective parties thereto, may be modified or amended at any time by a supplemental agreement, without the consent of any such Owners, but only to the extent permitted by law and only (1) to add to the covenants and agreements of any party, other covenants to be observed, or to surrender any right or power herein reserved to the Corporation or the City, (2) to cure, correct or supplement any ambiguous or defective provision contained herein or therein and which shall not, in the opinion of nationally recognized bond counsel, materially adversely affect the interests of the Owners of the Certificates, (3) in regard to questions arising hereunder or thereunder, as the parties hereto or thereto may deem necessary or desirable and which shall not, in the opinion of nationally recognized bond counsel, materially adversely affect the interests of the Owners of the Certificates, (4) to modify the legal description of the Sites to conform to the requirements of title insurance or otherwise to add or delete property descriptions to reflect accurately the description of the parcels intended to be included therein, (5) in connection with any substitution of the Site or the Improvements or the release of any portion of the Site in accordance with Section 8.3 of the Lease Agreement; or (6) to make such additions, deletions or modifications as may be necessary or desirable to assure exemption from federal income taxation of interest with respect to the Certificates. Any such supplemental agreement shall become effective upon execution and delivery by the parties hereto or thereto, as the case may be.

The Trustee shall be entitled to conclusively rely on an opinion of Bond Counsel as to whether an amendment to the Trust Agreement or the Lease Agreement satisfies the requirements of this Article X.

Section 10.02. Procedure for Amendment with Written Consent of Certificate Owners. This Trust Agreement and the Lease Agreement may be amended by supplemental agreement as provided in this Section 10.02 in the event the consent of the Owners of the Certificates is required pursuant to Section 10.01 hereof. A copy of such supplemental agreement, together with a request to the Certificate Owners for their consent thereto, shall be mailed by the Trustee to each Owner of a Certificate at his address as set forth on the Registration Books, but failure to mail copies of such supplemental agreement and request shall not affect the validity of the supplemental agreement when assented to as in this Section 10.02 provided.

Such supplemental agreement shall not become effective unless there shall be filed with the Trustee the written consents of the Owners of at least fifty-one percent (51%) in aggregate principal amount of the Certificates then Outstanding, (exclusive of Certificates disqualified as provided in Section 10.03 hereof), and a notice shall have been mailed as hereinafter in this Section 10.02 provided. Each such consent shall be effective only if accompanied by proof of ownership of the Certificates for which such consent is given, which proof shall be such as is permitted by Section 2.11 hereof. Any such consent shall be binding upon the Owner of the Certificate giving such consent and on any subsequent Owner (whether or not such subsequent Owner has notice thereof) unless such consent is revoked in writing by the Owner giving such consent or a subsequent Owner by filing such revocation with the Trustee prior to the date when the notice hereinafter in this Section 10.02 provided for has been mailed.

After the Owners of the required percentage of Certificates shall have filed their consents to such supplemental agreement, the Trustee shall mail a notice to the Owners of the Certificates in the manner hereinbefore provided in this Section 10.02 for the mailing of such supplemental agreement of the notice of adoption thereof, stating in substance that such supplemental agreement has been consented to by the Owners of the required percentage of Certificates and will be effective as provided in this Section 10.02 (but failure to mail copies of said notice shall not affect the validity of such supplemental agreement or consents thereto). A record, consisting of the papers required by this Section 10.02 to be filed with the Trustee, shall be conclusive proof of the matters therein stated. Such supplemental agreement shall become effective upon the mailing of such last-mentioned notice, and such supplemental agreement shall be deemed conclusively binding upon the parties hereto and the Owners of all Certificates at the expiration of sixty (60) days after such filing, except in the event of a final decree of a court of competent jurisdiction setting aside such consent in a legal action or equitable proceeding for such purpose commenced within such sixty (60) day period.

Each Certificate Owner shall certify to the Trustee whether the Certificates as to which such consent is given are disqualified as provided in Section 10.03 hereof.

Section 10.03. Disqualified Certificates. Certificates owned or held by or for the account of the City or the Corporation or by any person directly or indirectly controlled or controlled by, or under direct or indirect common control with the City or the Corporation (except any Certificates held in any pension or retirement fund) shall not be deemed Outstanding for the purpose of any vote, consent, waiver or other action provided for in this Trust Agreement, and shall not be entitled to vote upon, consent to, or take any other action provided for in this Trust Agreement. Upon request, the City and the Corporation shall specify to the trustee those Certificates disqualified pursuant to this Section 10.03.

Section 10.04. Effect of Supplemental Agreement. From and after the time any supplemental agreement becomes effective pursuant to this Article X, this Trust Agreement or the Lease Agreement, as the case may be, shall be deemed to be modified and amended in accordance therewith, the respective rights, duties and obligations of the parties hereto or thereto and all Owners of Certificates Outstanding, as the case may be, shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any supplemental agreement shall be deemed to be part of the terms and conditions of this Trust Agreement or the Lease Agreement, as the case may be, for any and all purposes.

Section 10.05. Endorsement or Replacement of Certificates Delivered After Amendments. The City may determine that Certificates delivered after the effective date of any action taken as provided in this Article X shall bear a notation, by endorsement or otherwise, in form approved by the Trustee, as to such action. In that case, upon demand of the Owner of

any Certificate Outstanding at such effective date and presentation of his Certificate for the purpose at the Principal Corporate Trust Office a suitable notation shall be made on such Certificate. The City may determine that the delivery of substitute Certificates, so modified as in the opinion of the Trustee is necessary to conform to such Certificate Owners' action, which substitute Certificates shall thereupon be prepared, executed and delivered. In that case, upon demand of the Owner of any Certificate then Outstanding, such substitute Certificate shall be exchanged at the Principal Corporate Trust Office at the expense of the City, for a Certificate of the same tenor then Outstanding, upon surrender of such Outstanding Certificate.

Section 10.06. Amendatory Endorsement of Certificates. The provisions of this Article X shall not prevent any Certificate Owner from accepting any amendment as to the particular Certificates held by him, provided that proper notation thereof is made on such Certificates.

ARTICLE XI  
COVENANTS

Section 11.01. Compliance With and Enforcement of Site and Facility Lease and Lease Agreement. The City covenants and agrees with the Owners of the Certificates to perform all obligations and duties imposed on it under the Site and Facility Lease and the Lease Agreement. The Corporation covenants and agrees with the Owners of the Certificates to perform all obligations and duties imposed on it under the Site and Facility Lease and the Lease Agreement. The Corporation covenants and agrees with the Owners of the Certificates that it will not pledge the Lease Payments or other amounts derived from the Property and from its other rights under the Lease Agreement and will not mortgage or encumber the Property, except as provided under the terms of the Lease Agreement and this Trust Agreement.

The City will not do or permit anything to be done, or omit or refrain from doing anything, in any case where any such act done or permitted to be done, or any such omission of or refraining from action, would or might be a ground for cancellation or termination of the Lease Agreement by the Corporation thereunder. The Corporation and the City, immediately upon receiving or giving any notice, communication or other document in any way relating to or affecting their respective estates, or either of them, in the Property, which may or can in any manner affect such estate of the City, will deliver the same, or a copy thereof, to the Trustee.

Section 11.02. Observance of Laws and Regulations. The City will well and truly keep, observe and perform all valid and lawful obligations or regulations now or hereafter imposed on it by contract, or prescribed by any law of the United States, or of the State, or by any officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of any and every right, privilege or franchise now owned or hereafter acquired by the City, including its right to exist and carry on business as a public entity, to the end that such rights, privileges and franchises shall be maintained and preserved, and shall not become abandoned, forfeited or in any manner impaired.

Section 11.03. Prosecution and Defense of Suits. The City shall promptly, upon request of the Trustee or any Certificate Owner, from time to time take such action as may be necessary or proper to remedy or cure any defect in or cloud upon the title to the Property, whether now existing or hereafter developing and shall prosecute all such suits, actions and other proceedings as may be appropriate for such purpose and shall indemnify and save the Trustee and every Certificate Owner harmless from all loss, cost, damage and expense, including attorneys' fees, which they or any of them may incur by reason of any such defect, cloud, suit, action or proceeding.

Section 11.04. Recordation and Filing. The City shall record and file, or cause to be recorded and filed, the Site and Facility Lease, the Lease Agreement (or a memorandum thereof), the Assignment Agreement and all such documents as may be required by law (and shall take all further actions which may be necessary or be reasonably required by the Trustee), all in such manner, at such times and in such places as may be required by law in order fully to preserve, protect and perfect the security of the Trustee and the Certificate Owners.

Section 11.05. City Budgets. The City shall supply to the Trustee on or before August 1 of each year a written determination by a City Representative that the City has made adequate provision in its proposed annual budget for the payment of Lease Payments due under the Lease Agreement in the fiscal year covered by such budget.

Section 11.06. Further Assurances. The Corporation and the City will make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Trust Agreement and the Lease Agreement, or as may be requested by the Trustee and for the better assuring and confirming unto the Owners of the Certificates and the Trustee the rights and benefits provided herein.

Section 11.07. Satisfaction of Conditions Precedent. The City hereby certifies, recites and declares that all acts, conditions and things required by the constitution and statutes of the State of California, the Lease Agreement and this Trust Agreement to exist, to have happened and to have been performed precedent to and in the delivery of the Certificates, do exist, have happened and have been performed in due time, form and manner as required by law.

Section 11.08. Continuing Disclosure. The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. Notwithstanding any other provision of this Trust Agreement, failure of the City to comply with the Continuing Disclosure Certificate shall not be considered an Event of Default; however, any holder or beneficial owner of the Certificate may, take such actions as may be necessary and appropriate to compel performance, including seeking mandate or specific performance by court order.

Section 11.09. No Derivative Contracts. The City hereby covenants and agrees that it shall not incur any variable rate liability in connection with the Lease Payments through the execution of a derivative contract.

## ARTICLE XII

### LIMITATION OF LIABILITY

Section 12.01. Limited Liability of City. Except for the payment of Lease Payments when due in accordance with the Lease Agreement and the performance of the other covenants and agreements of the City contained in the Lease Agreement and this Trust Agreement, the City shall have no pecuniary obligation or liability to any of the other parties or to the Owners of the Certificates with respect to this Trust Agreement or the terms, execution, delivery or transfer of the Certificates, or the distribution of Lease Payments to the Owners by the Trustee, except as expressly set forth herein.

Section 12.02. No Liability of City or Corporation for Trustee Performance. Neither the City nor the Corporation shall have any obligation or liability to any of the other parties or to the Owners of the Certificates with respect to the performance by the Trustee of any duty imposed upon it under this Trust Agreement.

Section 12.03. Indemnification of Trustee. The City shall to the extent permitted by law indemnify and save the Trustee, its officers, employees, directors and agents harmless from and against all claims, losses, costs, expenses, liability and damages, including legal fees and expenses, arising out of (i) the use, maintenance, condition or management of, or from any work or thing done on, the Property by the Corporation or the City, (ii) any breach or default on the part of the Corporation or the City in the performance of any of their respective obligations under the Lease Agreement, this Trust Agreement and any other agreement made and entered into for purposes of the Property, (iii) any act of the Corporation or the City or of any of their respective agents, contractors, servants, employees, licensees with respect to the Property, (iv) any act of any assignee of, or purchaser from the Corporation or the City or of any of its or their respective agents, contractors, servants, employees or licensees with respect to the Property, (v) the authorization of payment Delivery Costs or Acquisition and Construction Costs, (vi) the actions of any other party, including but not limited to the ownership, operation or use of the Property by the Corporation or the City, (vii) the acceptance and performance by the trustee of its duties and obligations hereunder and under the Lease Agreement, and (viii) the offering and sale of the Certificates. No indemnification will be made under this Section 12.03 or elsewhere in this Trust Agreement for willful misconduct or negligence under this Trust Agreement by the Trustee, its officers or employees. The City's obligations hereunder shall remain valid and binding notwithstanding maturity and payment of the Certificates or resignation or removal of the Trustee.

Section 12.04. Limitation of Rights to Parties and Certificate Owners. Nothing in this Trust Agreement or in the Certificates expressed or implied is intended or shall be construed to give any person other than the City, the Corporation, the Trustee, its officers, employees and agents, and the Owners of the Certificates, any legal or equitable right, remedy or claim under or in respect of this Trust Agreement or any covenant, condition or provision hereof; and all such covenants, conditions and provisions are and shall be for the sole and exclusive benefit of the City, the Corporation, the Trustee, its officers, employees and agents, and said Owners.

## ARTICLE XIII

### EVENTS OF DEFAULT AND REMEDIES OF CERTIFICATE OWNERS

Section 13.01. Assignment of Rights. Pursuant to the Assignment Agreement, the Corporation has transferred, assigned and set over to the Trustee all of the Corporation's rights in and to the Lease Agreement (excepting only the Corporation's rights under Sections 5.8, 7.3 and 9.4 thereof), including without limitation all of the Corporation's rights to exercise such rights and remedies conferred on the Corporation pursuant to the Lease Agreement as may be necessary or convenient (i) to enforce payment of the Lease Payments and any other amounts required to be deposited in the Lease Payment Fund, the Reserve Fund, the Delivery Costs Fund or the Insurance and Condemnation Fund, and (ii) otherwise to exercise the Corporation's rights and take any action to protect the interests of the Trustee or the Certificate Owners in an Event of Default.

Section 13.02. Remedies. If an Event of Default shall happen, then and in each and every such case during the continuance of such Event of Default, the Trustee may, and upon request of the Owners of a majority in aggregate principal amount of the Certificates then Outstanding, upon being indemnified to its satisfaction therefor, shall, exercise any and all remedies available pursuant to law or granted pursuant to the Lease Agreement; *provided, however*, that notwithstanding anything herein or in the Lease Agreement to the contrary, there shall be no right under any circumstances to accelerate the maturities of the Certificates or otherwise to declare any Lease Payment not then in default to be immediately due and payable.

Section 13.03. Application of Funds. All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article XIII or Article IX of the Lease Agreement shall be applied by the Trustee in the following order upon presentation of the several Certificates:

*First*, to the payment of the costs and expenses of the Trustee and, thereafter, of the Certificate Owners in declaring such Event of Default, including reasonable compensation to its or their agents, attorneys and counsel, including all fees and expenses past due; and

*Second*, to the payment of the whole amount then owing and unpaid with respect to the Certificates for principal and interest with interest on the overdue principal and installments of interest at the rate of twelve percent (12%) per annum (but such interest on overdue installments of interest shall be paid only to the extent funds are available therefor following payment of principal and interest, and interest on overdue principal, as aforesaid), and in case such moneys shall be insufficient to pay in full the whole amount so owing and unpaid with respect to the Certificates, then to the payment of such principal and interest, without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, ratably to the aggregate of such principal and interest.

Section 13.04. Institution of Legal Proceedings. If one or more Events of Default shall happen and be continuing, the Trustee in its discretion may, and upon the written request of the Owners of a majority in principal amount of the Certificates then Outstanding, and upon being indemnified to its satisfaction therefor, shall, proceed to protect or enforce its rights or the rights of the Owners of Certificates by a suit in equity or action at law, either for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or by mandamus or other appropriate proceeding for the enforcement of any other legal or equitable remedy as the Owners of at least a majority of the aggregate

principal amount of Certificates then Outstanding shall deem most effectual in support of any of their rights hereunder.

Section 13.05. Non-waiver. Nothing in this Article XIII or in any other provision of this Trust Agreement or in the Certificates, shall affect or impair the obligation of the City to pay or prepay the Lease Payments as provided in the Lease Agreement, or affect or impair the right of action, which is absolute and unconditional, of the Certificate Owners to institute suit to enforce and collect such payment. No delay or omission of the Trustee or of any Owner of any of the Certificates to exercise any right or power arising upon the happening of any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein, and every power and remedy given by this Article XIII to the Trustee or to the Owners of Certificates may be exercised from time to time and as often as shall be deemed expedient by the Trustee or the Certificate Owners.

Section 13.06. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Trustee or to the Certificate Owners is intended to be exclusive of any other remedy, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing, at law or in equity or by statute or otherwise.

Section 13.07. Power of Trustee to Control Proceedings. In the event that the Trustee, upon the happening of an Event of Default, shall have taken any action, by judicial proceedings or otherwise, pursuant to its duties hereunder, whether upon its own discretion or upon the request of the Owners of a majority in principal amount of the Certificates then Outstanding, it shall have full power, in the exercise of its discretion for the best interests of the Owners of the Certificates, with respect to the continuance, discontinuance, withdrawal, compromise, settlement or other disposal of such action; *provided, however*, that the Trustee shall not discontinue, withdraw, compromise or settle, or otherwise dispose of any litigation pending at law or in equity, without the consent of a majority in aggregate principal amount of the Certificates Outstanding.

Section 13.08. Limitation on Certificate Owners' Right to Sue. No Owner of any Certificate issued hereunder shall have the right to institute any suit, action or proceeding at law or in equity, for any remedy under or upon this Trust Agreement, unless (a) such Owner shall have previously given to the Trustee written notice of the occurrence of an Event of Default hereunder; (b) the Owners of at least a majority in aggregate principal amount of all the Certificates then Outstanding, shall have made written request upon the Trustee to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (c) said Owners shall have tendered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request; and (d) the Trustee shall have refused or omitted to comply with such request for a period of sixty (60) days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Trustee.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of Certificates of any remedy hereunder; it being understood and intended that no one or more Owners of Certificates shall have any right in any manner whatever by his or their action to enforce any right under this Trust Agreement, except in the manner herein provided, and that all proceedings at law or in equity with respect to an Event of Default shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Owners of the Outstanding Certificates.

The right of any Owner of any Certificate to receive payment of said Owner's fractional interest in the Lease Payments as the same become due, or to institute suit for the enforcement

of such payment, shall not be impaired or affected without the consent of such Owner, notwithstanding the foregoing provisions of this Section 13.08 or any other provision of this Trust Agreement.

Section 13.09. Parties Interested Herein.

(a) Nothing in this Trust Agreement expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the City, the Corporation, the Trustee, the Municipal Bond Insurer, their officers, employees and agents, and the Owners any right, remedy or claim under or by reason of this Trust Agreement, or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Trust Agreement contained by and on behalf of the City shall be for the sole and exclusive benefit of the City, the Corporation, the Trustee, the Municipal Bond Insurer, their officers, employees and agents, and the Owners.

(b) Notwithstanding any other provision of this Trust Agreement, if the trustee is required to determine whether the rights of the Owners will be adversely affected by any action taken pursuant to the terms and provisions of this Trust Agreement, the Trustee shall consider the effect on the Owners as if there was no Municipal Bond Insurance Policy.

Section 13.10. Consent of Municipal Bond Insurer.

(a) Any provision of this Trust Agreement expressly recognizing or granting rights in or to the Municipal Bond Insurer may not be amended in any manner which affects the rights of the Municipal Bond Insurer hereunder without the prior written consent of the Municipal Bond Insurer.

(b) Unless otherwise provided in this Section 13.10, the Municipal Bond Insurer's consent shall be required in addition to Owner consent, when required, for the following purposes: (i) execution and delivery of any amendment, supplement or change to or modification of this Trust Agreement or the Lease Agreement, (ii) removal of the Trustee and selection and appointment of any successor trustee; and (iii) initiation or approval of any action not described in (i) or (ii) of this paragraph (b) which requires Owner consent.

(c) Anything in this Trust Agreement to the contrary notwithstanding, upon the occurrence and continuance of an Event of Default, the Municipal Bond Insurer shall, after payment of principal and interest then due, if any, be entitled to control and direct the enforcement of all rights and remedies granted to the Owners or the Trustee, after providing the Trustee with indemnities to its satisfaction, for the benefit of the Owners under this Trust Agreement and the Municipal Bond Insurer shall also be entitled to approve all waivers of Events of Default.



If to the Trustee: First Trust of California, National Association  
One California Street, 4th Floor  
San Francisco, CA 94111  
Attention: Corporate Trust Department

If to the Municipal Bond Insurer: MBIA Insurance Corporation  
113 King Street  
Armonk, NY 10504  
Attention: Insured Portfolio Management

Section 14.04. Notices to be Given to the Municipal Bond Insurer. While the Municipal Bond Insurance Policy is in effect, the City shall furnish, or cause to be furnished, to the Municipal Bond Insurer:

(a) a copy of any notice to be given to the Owners and any certificate rendered pursuant to this Trust Agreement or the Lease Agreement relating to the security for the Certificates;

(b) notice of resignation of the Trustee; and

(c) such additional information it may reasonably request.

The Trustee shall notify the Municipal Bond Insurer of any failure of the City to provide notices and certificates required to be provided by the City to the Trustee hereunder. The Trustee shall notify S&P of all consents given by the Municipal Bond Insurer hereunder.

The City will permit the Municipal Bond Insurer to discuss the affairs, finances and accounts of the City or any information the Municipal Bond Insurer may reasonably request regarding the security for the Certificates with appropriate officers of the City. The Trustee or the City, as appropriate, will permit the Municipal Bond Insurer to have access to the Project and have access to and to make copies of all books and records relating to the Certificates at any reasonable time upon reasonable notice.

Notwithstanding any other provision of this Trust Agreement, the Trustee shall, as soon as practicable, notify the Municipal Bond Insurer if the Trustee has actual knowledge of the occurrence of any Event of Default.

Section 14.05. Governing Law. This Trust Agreement shall be construed and governed in accordance with the laws of the State.

Section 14.06. Binding Effect; Successors. This Trust Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Whenever in this Trust Agreement the Corporation, the City or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Trust Agreement contained by or on behalf of the Corporation, the City or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

Section 14.07. Execution in Counterparts. This Trust Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

Section 14.08. Destruction of Canceled Certificates. Whenever in this Trust Agreement provision is made for the surrender to or cancellation by the Trustee and the delivery to the City

of any Certificates, the Trustee shall, in lieu of such cancellation and delivery, destroy such Certificates and deliver, upon written request, a certificate of such destruction to a City Representative.

Section 14.09. Headings. The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Trust Agreement. All references herein to "Articles," "Sections," and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Trust Agreement; and the words "herein," "hereof," "hereunder" and other words of similar import refer to this Trust Agreement as a whole and not to any particular Article, Section or subdivision hereof.

Section 14.10. Waiver of Notice. Whenever in this Trust Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Section 14.11. Payments Due on Other than Business Day. If the date for making any payment as provided in this Trust Agreement is not a Business Day, such payment may be made on the next succeeding Business Day with the same force and effect as if done on the date provided therefor herein.

Section 14.12. Non-Presentment of Certificates. In the event any Certificate shall not be presented for payment when the principal with respect thereto becomes due, either at maturity or at the date fixed for redemption thereof, if moneys sufficient to pay such Certificate shall have been deposited in the Lease Payment Fund all liability of the City to the Owner thereof for the payment of such Certificate shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such moneys in trust, without liability for interest thereon, for the benefit of the Owner of such Certificate who shall thereafter be restricted exclusively to such moneys for any claim of whatever nature on his or her part under this Trust Agreement or on, or with respect to, said Certificate. However, after two (2) years, such moneys shall be paid by the Trustee to the City free from the trusts created by this Trust Agreement, and thereafter Owners shall be entitled to look only to the City for payment and then only to the extent of the amount so repaid by the Trustee. The City shall not be liable for any interest on the sums paid to it pursuant to this Section 14.12 and shall not be regarded as a trustee of such money.

Section 14.13. Separability of Invalid Provisions. In case any one or more of the provisions contained in this Trust Agreement or in the Certificates shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision of this Trust Agreement, and this Trust Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The parties hereto hereby declare that they would have entered into this Trust Agreement and each and every other section, paragraph, sentence, clause or phrase hereof and authorized the delivery of the Certificates pursuant thereto irrespective of the fact that any one or more sections, paragraphs, sentences, clauses or phrases of this Trust Agreement may be held illegal, invalid or unenforceable.

IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement as of the date and year first above written.

FIRST TRUST OF CALIFORNIA,  
NATIONAL ASSOCIATION, as Trustee

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

Attest:

\_\_\_\_\_  
Authorized Officer

LODI PUBLIC IMPROVEMENT  
CORPORATION

By \_\_\_\_\_  
Executive Director

(S E A L)

Attest:

\_\_\_\_\_  
Secretary

CITY OF LODI

By \_\_\_\_\_  
City Manager

(S E A L)

Attest:

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

APPROVED:

By \_\_\_\_\_  
City Attorney

**EXHIBIT A**  
**DEFINITIONS**

*"Acquisition and Construction Costs"* means all costs of payment of, or reimbursement for, acquisition, construction and installation of the Improvements, including but not limited to, architect and engineering fees, construction contractor payments, costs of feasibility and other reports, inspection costs, performance bond premiums and permit fees.

*"Acquisition and Construction Fund"* means the fund by that name established and held by the Trustee pursuant to Article III of the Trust Agreement.

*"Assignment Agreement"* means the Assignment Agreement, dated as of August 1, 1996, by and between the Corporation and the Trustee, together with any duly authorized and executed amendments thereto.

*"Bond Counsel"* means (a) Jones Hall Hill & White, A Professional Law Corporation, or (b) any other attorney or firm of attorneys appointed by or acceptable to the City of nationally-recognized experience in the issuance of obligations the interest on which is excludable from gross income for federal income tax purposes under the Code.

*"Business Day"* means a day which is not a Saturday, Sunday or legal holiday on which banking institutions in the state in which the Principal Corporate Trust Office is located are closed or are required to close or a day on which the New York Stock Exchange is closed.

*"Certificate of Completion"* means the certificate of a City Representative certifying that the Improvements have been acquired and constructed by or on behalf of the City and that all Acquisition and Construction Costs have been paid.

*"Certificates"* means the \$\_\_\_\_\_ principal amount of certificates of participation to be executed and delivered pursuant to the Trust Agreement.

*"City"* means the City of Lodi, a municipal corporation and general law city duly organized and existing under and by virtue of the constitution and laws of the State.

*"City Representative"* means the Mayor, the City Manager, the Finance Director or any other person authorized by resolution of the City Council of the City to act on behalf of the City under or with respect to the Trust Agreement, the Lease Agreement or the Site and Facility Lease.

*"Closing Date"* means August \_\_, 1996, the date upon which there is a physical delivery of the Certificates in exchange for the amount representing the purchase price of the Certificates by the Original Purchaser.

*"Code"* means the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced in the Installment Sale Agreement or the Trust Agreement) as it may be amended to apply to obligations issued on the Closing Date, together with applicable temporary and final regulations promulgated under the Code.

*"Continuing Disclosure Certificate"* shall mean that certain Continuing Disclosure Certificate executed by the City and dated the date of issuance and delivery of the Certificates,

as originally executed and as it may be amended from time to time in accordance with the terms thereof.

*"Completion Date"* means the date of completion of acquisition, construction, installation and equipping of the Improvements, as evidenced by the filing with the Trustee of a Certificate of Completion.

*"Corporation"* means the Lodi Public Improvement Corporation, a nonprofit, public benefit corporation organized and existing under the laws of the State.

*"Corporation Representative"* means the President, the Vice President, the Executive Director, the Assistant Executive Director or any other person authorized by resolution of the Board of Directors of the Corporation to act on behalf of the Corporation under or with respect to the Trust Agreement, the Lease Agreement, the Assignment Agreement and the Site and Facility Lease.

*"Defeasance Obligations"* means:

- (a) cash;
- (b) non-callable Federal Securities (including State and Local Government Securities);
- (c) direct obligations of the United States of America which have been stripped by the Department of the Treasury of the United States of America;
- (d) CATS, TIGRS and similar securities;
- (e) bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America : (i) direct obligations or fully guaranteed certificates of beneficial ownership of the U.S. Export-Import Bank; (ii) certificates of beneficial ownership of the Farmers Home Administration; (iii) obligations of the Federal Financing Bank; (iv) participation certificates of the General Services Administration; (v) guaranteed Title XI financings of the U.S. Maritime Administration; (vi) New Communities debentures; (vii) U.S. government guaranteed public housing notes and bonds; and (viii) project notes and local authority bonds of the U.S. Department of Housing and Urban Development; and
- (f) pre-refunded municipal bonds rated "Aaa" by Moody's and "AAA" by S&P; provided, however, pre-refunded municipal bonds rated by S&P only (i.e., no Moody's rating) are acceptable if such pre-refunded municipal bonds were pre-refunded with cash, direct U.S. or U.S. guaranteed obligations or AAA rated pre-refunded municipal bonds.

*"Delivery Costs"* means all items of expense directly or indirectly payable by or reimbursable to the City or the Corporation relating to the execution and delivery of the Lease Agreement, the Trust Agreement and the Assignment Agreement or the execution, sale and delivery of the Certificates, including but not limited to filing and recording costs, settlement costs, printing costs, reproduction and binding costs, initial fees and charges of the Trustee (including fees of its counsel), financing discounts, legal fees and charges, insurance fees and charges, financial and other professional consultant fees, costs of rating agencies for credit ratings, fees for execution, transportation and safekeeping of the Certificates and charges and fees in connection with the foregoing.

*"Delivery Costs Fund"* means the fund by that name established and held by the Trustee pursuant to Article III of the Trust Agreement.

*"Event of Default"* means an event of default under the Lease Agreement, as defined in Section 9.1 thereof.

*"Facility"* means the existing improvements located on the Site, all as more particularly described in Exhibit B attached to the Site and Facility Lease and in Exhibit C attached to the Lease Agreement, as the same may be amended from time to time.

*"Fair Market Value"* means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of section 1273 of the Code) and, otherwise, the term "Fair Market Value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (iii) the investment is a United States Treasury Security--State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) the investment is the Local Agency Investment Fund of the State of California but only if at all times during which the investment is held its yield is reasonably expected to be equal to or greater than the yield on a reasonably comparable direct obligation of the United States. The Trustee shall have no duty with regard to the determination of Fair Market Value other than to follow the written directions of the City.

*"Federal Securities"* means direct general obligations of (including obligations issued or held in book entry form on the books of the Department of the Treasury) the United States of America, or obligations the payment of principal of and interest on which are guaranteed by, the United States of America.

*"Fiscal Year"* means the twelve-month period beginning on July 1 of any year and ending on June 30 of the next succeeding year, or any other twelve-month period selected by the City as its fiscal year.

*"Guaranty Agreement"* means the Financial Guaranty Agreement dated as of the Closing Date, by and between the City and the Municipal Bond Insurer relating to the Reserve Fund Surety Bond, as amended from time to time.

*"Independent Counsel"* means an attorney duly admitted to the practice of law before the highest court of the state in which such attorney maintains an office and who is not an employee of the Corporation or the City.

*"Information Services"* means Financial Information, Inc.'s "Daily Called Bond Service," 30 Montgomery Street, 10th Floor, Jersey City, NJ 07302, Attention: Editor; Kenny Information Services' "Called Bond Service," 65 Broadway, 16th Floor, New York, NY 10006; Moody's "Municipal and Government," 5250 77 Center Drive, Suite 150, Charlotte, NC 28217, Attention: Municipal News Reports; and S&P's "Called Bond Record," 25 Broadway, 3rd Floor, New York, NY 10004; or to such other addresses and/or such other national information services providing information or disseminating notices of redemption of obligations similar to the Certificates as shall be designated by the City to the Trustee.

*"Improvements"* means the public improvements to be acquired and/or constructed by the City with the proceeds of the Certificates, all as more particularly described in Exhibit C attached to the Trust Agreement.

*"Insurance and Condemnation Fund"* means the fund by that name established and held by the Trustee pursuant to Section 7.01 of the Trust Agreement.

*"Interest Payment Date"* means the first (1st) day of each April and October, commencing April 1, 1997, so long as any Certificates are Outstanding.

*"Lease Agreement"* means the Lease Agreement, dated as of August 1, 1996, by and between the Corporation and the City, together with any duly authorized and executed amendments thereto.

*"Lease Payment Date"* means the 15th day of March and September in each year during the Term of the Lease Agreement, commencing March 15, 1997.

*"Lease Payment Fund"* means the fund by that name established and held by the Trustee pursuant to Section 5.02 of the Trust Agreement.

*"Lease Payments"* means all payments required to be paid by the City pursuant to Section 4.4 of the Lease Agreement, including any prepayment thereof pursuant to Article X of the Lease Agreement, which payments consist of an interest component and a principal component.

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

*"Municipal Bond Insurance Policy"* means the municipal bond insurance policy issued by the Municipal Bond Insurer insuring the payment, when due, of the principal and interest with respect to the Certificates.

*"Municipal Bond Insurer"* means the MBLA Insurance Corporation.

*"Net Proceeds,"* when used with respect to insurance or condemnation proceeds, means any insurance proceeds or condemnation award paid with respect to the Property, to the extent remaining after payment therefrom of all expenses incurred in the collection thereof.

*"Original Purchaser"* means Seidler-Fitzgerald Public Finance (A Division of the Seidler Companies Inc.), the first purchaser of the Certificates upon their delivery by the Trustee on the Closing Date.

*"Outstanding,"* when used as of any particular time with respect to Certificates, means (subject to the provisions of Section 10.03 of the Trust Agreement) all Certificates theretofore executed and delivered by the Trustee under the Trust Agreement except -

(a) Certificates theretofore canceled by the Trustee or surrendered to the Trustee for cancellation;

(b) Certificates for the payment or redemption of which funds or Federal Securities in the necessary amount shall have theretofore been deposited with the Trustee (whether upon or

prior to the maturity or redemption date of such Certificates), provided that, if such Certificates are to be redeemed prior to maturity, notice of such redemption shall have been given as provided in Section 4.03 of the Trust Agreement or provision satisfactory to the Trustee shall have been made for the giving of such notice; and

(c) Certificates in lieu of or in exchange for which other Certificates shall have been executed and delivered by the Trustee pursuant to Sections 2.08 or 2.09 of the Trust Agreement.

*"Owner" or "Certificate Owner" or "Owner of a Certificate"*, or any similar term, when used with respect to a Certificate means the person in whose name such Certificate shall be registered on the Registration Books.

*"Participating Underwriter"* shall have the meaning ascribed thereto in the Continuing Disclosure Certificate.

*"Permitted Encumbrances"* means, as of any particular time: (a) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the City may, pursuant to provisions of Article V of the Lease Agreement, permit to remain unpaid; (b) the Assignment Agreement; (c) the Site and Facility Lease, (d) the Lease Agreement; (e) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law; (f) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the Closing Date and which the City certifies in writing will not materially impair the use of the Property; and (g) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the date of recordation of the Lease Agreement and to which the Corporation, the Municipal Bond Insurer and the City consent in writing.

*"Permitted Investments"* means the following, but only to the extent that the same are acquired at Fair Market Value:

(a) Federal Securities;

(b) bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself): (i) certificates of beneficial ownership of the Farmers Home Administration; (ii) debentures of the Federal Housing Administration; (iii) participation certificates of the General Services Administration; (iv) guaranteed mortgage-backed bonds or guaranteed pass-through obligations (participation certificates) of the Government National Mortgage Association; (v) guaranteed Title XI financings of the U.S. Maritime Administration; and (vi) project notes and local authority bonds of the U.S. Department of Housing and Urban Development;

(c) bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities are only permitted if they have been stripped by the agency itself): (i) senior debt obligations (consolidated debt obligations) of the Federal Home Loan Bank System; (ii) participation certificates (mortgage-backed securities) of the Federal Home Loan Mortgage Corporation; (iii) mortgage-backed securities and senior debt obligations of the Federal National Mortgage Association (excluding stripped mortgage securities which are valued greater than par on the portion of unpaid principal); (iv) senior debt obligations of the Student Loan Marketing Association; (v) obligations (but only the interest component of stripped obligations) of the Resolution Funding Corporation, and (v) consolidated systemwide bonds and notes of the Farm Credit System;

(d) money market funds (including funds managed or advised by the trustee or its affiliates) registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of "AAAm-G", "AAAm" or "AAm";

(e) certificates of deposit secured at all times by collateral described in (a) or (b) above, which have a maturity of one year or less, which are issued by commercial banks, savings and loan associations or mutual savings banks whose short term obligations are rated "A-1+" or better by S&P (such collateral must be held by a third party and Owners must have a perfected first security interest in such collateral);

(f) certificates of deposit, savings accounts, deposit accounts or money market deposits which are fully insured by the Federal Deposit Insurance Corporation;

(g) Investment agreements, including guaranteed investment contracts, acceptable to the Municipal Bond Insurer;

(h) commercial paper rated, at the time of purchase, "Prime-1" by Moody's and "A-1+" or better by S&P;

(i) bonds or notes issued by any state or municipality which are rated at the time of purchase by Moody's and S&P in one of the two highest long term rating categories assigned by such agencies;

(j) federal funds or bankers acceptances with a maximum term of one year of any bank with an unsecured, uninsured and unguaranteed obligation rating of "Prime-1" or "A3" or better by Moody's and "A-1+" or better by S&P;

(k) repurchase agreements which provide for the transfer of securities from a dealer bank or securities firm (seller/borrower) to the Trustee and the transfer of cash from the Trustee to the dealer bank or securities firm with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the Trustee in exchange for the securities at a specified date, which satisfy the following criteria (unless otherwise approved by the Municipal Bond Insurer):

(i) repurchase agreements must be between the Trustee and (A) a primary dealer on the Federal Reserve reporting dealer list which falls under the jurisdiction of the Securities Investors Protection Corporation and which are rated "A" or better by Moody's and S&P, or (B) a bank rated "A" or better by Moody's and S&P;

(ii) the written repurchase agreement contract must include the following: (A) securities acceptable for transfer, which may be direct U.S. government obligations, or federal agency obligations backed by the full faith and credit of the U.S. government (including the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation); (B) the term of the repurchase agreement may be up to 30 days; (C) the collateral must be delivered to the Trustee or a third party acting as agent for the Trustee before or simultaneous with payment (perfection by possession of certificated securities); (D) the Trustee must have a perfected first priority security interest in the collateral; (E) the collateral must be free and clear of third-party liens and, in the case of a broker which falls under the jurisdiction of the Securities Investors Protection Corporation, are not subject to a repurchase agreement or a reverse repurchase agreement; (F) failure to maintain the requisite collateral percentage, after a two day restoration period, will require the Trustee to liquidate the collateral; (G) the securities must be valued weekly, marked-to-market at current market price plus accrued interest

and the value of collateral must be equal to 104% of the amount of cash transferred by the Trustee to the dealer bank or securities firm under the repurchase agreement plus accrued interest (unless the securities used as collateral are obligations of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, in which case the collateral must be equal to 105% of the amount of cash transferred by the Trustee to the dealer bank or securities firm under the repurchase agreement plus accrued interest). If the value of securities held as collateral falls below 104% of the value of the cash transferred by the Trustee, then additional cash and/or acceptable securities must be transferred; and

(iii) a legal opinion must be delivered to the Trustee to the effect that the repurchase agreement meets guidelines under state law for legal investment of public funds;

(l) pre-refunded municipal bonds rated "Aaa" by Moody's and "AAA" by S&P; provided, however, pre-refunded municipal bonds rated by S&P only (i.e., no Moody's rating) are acceptable if such pre-refunded municipal bonds were pre-refunded with cash, direct U.S. or U.S. guaranteed obligations or AAA rated pre-refunded municipal bonds;

(m) the Local Agency Investment Fund of the State, created pursuant to section 16429.1 of the California Government Code, to the extent the Trustee is authorized to register such investment in its name; and

(n) any other investments permitted in writing by the Municipal Bond Insurer, Moody's and S&P.

*"Principal Corporate Trust Office"* means the corporate trust office of the Trustee at One California Street, 4th Floor, San Francisco, California 94111, Attention: Corporate Trust Department, or at such other address designated by the Trustee in a written notice filed with the City and the Corporation; *provided, however*, for the purpose of maintenance of the registration Books and presentation of Certificates for payment, transfer or exchange, such term shall mean the office at which the Trustee conducts its corporate agency business.

*"Proceeds,"* when used with reference to the Certificates, means the face amount of the Certificates, plus accrued interest and original issue premium, if any, less original issue discount, if any.

*"Property"* means, collectively, the Site and the Facility.

*"Rating Category"* means, with respect to any Permitted Investment, one or more of the generic categories of rating by Moody's and S&P applicable to such Permitted Investment, without regard to any refinement or gradation of such rating category by a plus or minus sign.

*"Registration Books"* means the records maintained by the Trustee pursuant to Section 2.12 of the Trust Agreement for registration of the ownership and transfer of ownership of the Certificates.

*"Regular Record Date"* means the close of business on the fifteenth (15th) calendar day of the month preceding each Interest Payment Date, whether or not such day is a Business Day.

*"Regulations"* means temporary and permanent regulations promulgated under the Code.

*"Rental Period"* means each twelve-month period during the Term of the Lease Agreement commencing on October 2 in any year and ending on October 1 in the next

succeeding year; provided, however, that the first Rental Period shall begin on the Closing Date and shall end on October 1, 1997.

*"Reserve Fund"* means the fund by that name established and held by the Trustee pursuant to Section 6.01 of the Trust Agreement.

*"Reserve Fund Surety Bond"* means the debt service reserve fund surety bond issued by the Municipal Bond Insurer pursuant to the Guaranty Agreement for the credit of the Reserve Fund as provided therein and subject to the limitations set forth therein.

*"Reserve Requirement"* means an amount equal to \$\_\_\_\_\_; provided, however, that if the Certificates are partially refunded, such amount shall be reduced to an amount equal to the maximum annual Lease Payments relating to the Certificates not so refunded, as specified in a certificate of a City Representative delivered to the Trustee.

*"S&P"* means Standard & Poor's Corporation, a New York corporation, and its successors and assigns, and if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized securities rating agency designated by the City by notice to the Trustee.

*"Securities Depositories"* means The Depository Trust Company, 711 Stewart Avenue, Garden City, NY 11530, Fax (516) 227-4039 or 4190; Philadelphia Depository Trust Company, Reorganization Division, 1900 Market Street, Philadelphia, PA 19103, Attention: Bond Department, Fax (215) 496-5058; or to such other addresses and/or such other registered securities depositories holding substantial amounts of obligations of types similar to the Certificates as shall be designated by the City to the Trustee.

*"Site"* means those certain parcels of real property situated in the City of Lodi, San Joaquin County, State of California, more particularly described in Exhibit A to the Site and Facility Lease and Exhibit B to the Lease Agreement.

*"Site and Facility Lease"* means the Site and Facility Lease, dated as of August 1, 1996, by and between the City and the Corporation, together with any duly authorized and executed amendments thereto.

*"State"* means the State of California.

*"Term of the Lease Agreement"* means the time during which the Lease Agreement is in effect, as provided in Section 4.2 of the Lease Agreement.

*"Trust Agreement"* means the Trust Agreement, dated as of August 1, 1996, by and among the City, the Corporation and the Trustee, together with any duly authorized amendments thereto.

*"Trustee"* means First Trust of California, National Association, or any successor thereto, acting as Trustee pursuant to the Trust Agreement.

**EXHIBIT B**

**FORM OF CERTIFICATES OF PARTICIPATION**

**CERTIFICATE OF PARTICIPATION**  
**(1996 Public Improvement Financing Project)**  
Evidencing the Direct, Undivided Fractional Interest of the Owner  
Hereof in Lease Payments to be Made by the  
**CITY OF LODI**  
(San Joaquin County, California)  
As the Rental for Certain Project Pursuant  
to a Lease Agreement with the  
Lodi Public Improvement Corporation

RATE OF INTEREST	MATURITY DATE	DATED DATE	CUSIP
_____ %	October 1, ____	August 1, 1996	_____

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: \_\_\_\_\_ DOLLARS

THIS IS TO CERTIFY THAT the registered owner identified above, or registered assigns (the "Owner"), as the registered owner of this Certificate of Participation (the "Certificate"), is the owner of a direct, undivided, fractional interest in lease payments (the "Lease Payments") payable under and defined in the Lease Agreement (the "Lease Agreement"), dated as of August 1, 1996, by and between the Lodi Public Improvement Corporation, a nonprofit, public benefit corporation duly organized and existing under the laws of the State of California (the "Corporation"), and the City of Lodi, a municipal corporation and general law city duly organized and existing under the laws of the State of California (the "City"), which Lease Payments, prepayments and certain other rights and interests under the Lease Agreement have been assigned to First Trust of California, National Association, as trustee (the "Trustee"), at its corporate trust office (the "Principal Corporate Trust Office").

The Owner is entitled to receive, subject to the terms of the Lease Agreement, on the Maturity Date identified above, the Principal Amount identified above, representing a direct, undivided fractional portion of the Lease Payments designated as principal coming due on such date, and to receive on April 1 and October 1 of each year, commencing April 1, 1997 (each, an "Interest Payment Date"), until payment in full of said Principal Amount, the Owner's direct, undivided fractional share of the Lease Payments designated as interest coming due during the six months immediately preceding each of the Interest Payment Dates; provided that interest represented hereby shall be payable from the Interest Payment Date next preceding the date of execution of this Certificate unless (i) this Certificate is executed on an Interest Payment Date, in which event interest shall be payable from such Interest Payment Date, or (ii) this Certificate is executed after the close of business on the fifteenth day of the month immediately preceding an Interest Payment Date, and prior to such Interest Payment Date, in which event interest shall be payable from such Interest Payment Date, or (iii) unless this Certificate is executed on or before March 15, 1997, in which event interest shall be payable from August 1, 1996. Said direct, undivided fractional share of the portion of the Lease Payments designated as interest is

the result of the multiplication of the Principal Amount by the Rate of Interest per annum identified above. Interest represented hereby is payable in lawful money of the United States of America by check or draft of the Trustee mailed by first class mail to the Owner at his address as it appears on the registration books of the Trustee, as of the close of business on the fifteenth (15) day of the month immediately preceding each Interest Payment Date. Principal represented hereby is payable in lawful money of the United States of America by check of the Trustee upon presentation and surrender hereof at the Principal Corporate Trust Office.

This Certificate has been executed and delivered by the Trustee pursuant to the terms of a Trust Agreement by and among the Trustee, the Corporation and the City, dated as of August 1, 1996 (the "Trust Agreement"). The City is authorized to enter into the Lease Agreement and the Trust Agreement under the laws of the State of California. Reference is hereby made to the Lease Agreement and the Trust Agreement (copies of which are on file at the Principal Corporate Trust Office) for a description of the terms on which the Certificates are delivered, the rights thereunder of the registered owners of the Certificates, the rights, duties and immunities of the Trustee and the rights and obligations of the City under the Lease Agreement, all of the provisions of which the Owner of this Certificate, by acceptance hereof, assents and agrees.

The City is obligated under the Lease Agreement to pay Lease Payments from any source of legally available funds and the City has covenanted in the Lease Agreement to make the necessary annual appropriations therefor. The obligation of the City to pay the Lease Payments does not constitute an obligation of the City for which the City is obligated to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation. The obligation of the City to pay Lease Payments does not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

To the extent and in the manner permitted by the terms of the Trust Agreement, the provisions of the Trust Agreement may be amended by the parties thereto with the written consent of the registered owners of at least fifty-one percent (51%) in aggregate principal amount of the Certificates then outstanding, and may be amended without such consent under certain circumstances; provided that no such amendment shall impair the right of any registered owner to receive, in any case, such registered owner's fractional share of any Lease Payment or prepayment thereof in accordance with such registered owner's Certificate, without the consent of such registered owner.

This Certificate is transferable by the Owner, in person or by his attorney duly authorized in writing, at the Principal Corporate Trust Office, but only in the manner, subject to the limitations and upon payment of any charges provided in the Trust Agreement and upon surrender and cancellation of this Certificate. Upon such transfer, a new Certificate or Certificates of an authorized denomination or denominations for the same aggregate principal amount will be delivered to the transferee in exchange herefor. The City, the Corporation and the Trustee may treat the Owner as the absolute owner hereof for all purposes, whether or not the payments represented by this Certificate shall be overdue and the City, the Corporation and the Trustee shall not be affected by any notice to the contrary.

The Certificates maturing on or after October 1, \_\_\_\_, are subject to optional redemption in whole at any time or in part on any Interest Payment Date in such order of maturity as shall be selected by the City and by lot within a maturity, on or after October 1, \_\_\_\_, together with the premium set forth below (expressed as a percentage of the total amount to be redeemed), together with interest accrued and unpaid to the date fixed for redemption, from the proceeds of optional prepayments of Lease Payments made by the City pursuant to the Lease Agreement:

<u>Redemption Period</u>	<u>Redemption Premium</u>
October 1, ____, through September 30, ____	2%
October 1, ____, through September 30, ____	1
October 1, ____, and thereafter	0

The Certificates are subject to extraordinary mandatory redemption in whole at any time, or in part on any Interest Payment Date, in such order of maturity as shall be selected by the City and by lot within a maturity, from the net proceeds of an insurance or condemnation award to the extent credited towards the prepayment of the Lease Payments by the City pursuant to the Lease Agreement, at a redemption price equal to the principal amount thereof to be redeemed, together with accrued interest to the date fixed for redemption, without premium.

The Certificates maturing on October 1, \_\_\_\_, are subject to mandatory redemption in part by lot on October 1 in each year on and after October 1, \_\_\_\_, from the principal components of scheduled Lease Payments required to be paid by the City pursuant to the Lease Agreement with respect to each such redemption date, at a redemption price equal to the principal amount thereof to be redeemed, together with accrued interest to the date fixed for redemption, without premium, as follows:

<u>Year (October 1)</u>	<u>Principal Amount of Certificates to be Redeemed</u>
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In the event that any Certificates maturing on October 1, \_\_\_\_, are redeemed in part but not in whole pursuant to the optional or extraordinary mandatory redemption provisions, each such redemption shall reduce the amount of Certificates to be redeemed in each subsequent year pursuant to the mandatory redemption provisions pro rata to correspond to the principal components of the Lease Payments prevailing following such redemption.

Notice of redemption, unless waived, is to be given by the Trustee by mailing a redemption notice by first class mail at least thirty (30) days and not more than sixty (60) days prior to the date fixed for redemption to the registered owner of the Certificate or Certificates to be redeemed at the address shown on the Certificate registration books maintained by the Trustee. Notice of redemption having been given as aforesaid, the Certificates or portions of Certificates so to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) interest with respect to such Certificates or portions of Certificates shall cease to accrue and be payable.

Unless this Certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC") to the City or the Trustee for registration of transfer, exchange or payment, and any Certificate issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL in as much as the registered owner hereof, Cede & Co., has an interest herein.

The Trustee has no obligation or liability to the registered owners of the Certificates to make payments of principal or interest with respect to the Certificates. The Trustee's sole obligations are to administer, for the benefit of the registered owners of the Certificates, the various funds and accounts established under the Trust Agreement. The Trustee makes no representation concerning the recitals contained herein.

The City has certified, recited and declared that all acts, conditions and things required by the constitution and statutes of the State of California, the Lease Agreement and the Trust Agreement to exist, to have happened and to have been performed precedent to and in the delivery of this Certificate, do exist, have happened and have been performed in due time, form and manner as required by law.

IN WITNESS WHEREOF, this Certificate has been executed by First Trust of California, National Association, as trustee, acting pursuant to the Trust Agreement.

Date of Execution: \_\_\_\_\_

FIRST TRUST OF CALIFORNIA,  
NATIONAL ASSOCIATION, as Trustee

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

## STATEMENT OF INSURANCE

The MBIA Insurance Corporation (the "Insurer") has issued a policy containing the following provisions, such policy being on file at First Trust of California, National Association, San Francisco, California.

The Insurer, in consideration of the payment of the premium and subject to the terms of this policy, hereby unconditionally and irrevocably guarantees to any owner, as hereinafter defined, of the following described obligations, the full and complete payment required to be made by or on behalf of the City of Lodi (the "Issuer") to First Trust of California, National Association, San Francisco, California, or its successor (the "Paying Agent") of an amount equal to (i) the principal of (either at the stated maturity or by any advancement of maturity pursuant to a mandatory sinking fund payment) and interest on, the Obligations (as that term is defined below) as such payments shall become due but shall not be so paid (except that in the event of any acceleration of the due date of such principal by reason of mandatory or optional redemption or acceleration resulting from default or otherwise, other than any advancement of maturity pursuant to a mandatory sinking fund payment, the payments guaranteed hereby shall be made in such amounts and at such times as such payments of principal would have been due had there not been any such acceleration); and (ii) the reimbursement of any such payment which is subsequently recovered from any owner pursuant to a final judgment by a court of competent jurisdiction that such payment constitutes an avoidable preference to such owner within the meaning of any applicable bankruptcy law. The amounts referred to in clauses (i) and (ii) of the preceding sentence shall be referred to herein collectively as the "Insured Amounts." "Obligations" shall mean:

\$ \_\_\_\_\_  
CERTIFICATE OF PARTICIPATION  
(1996 Public Improvement Financing Project)  
Evidencing the Direct, Undivided Fractional Interest of the Owner  
Hereof in Lease Payments to be Made by the  
CITY OF LODI  
(San Joaquin County, California)  
As the Rental for Certain Project Pursuant  
to a Lease Agreement with the  
Lodi Public Improvement Corporation

Upon receipt of telephonic or telegraphic notice, such notice subsequently confirmed in writing by registered or certified mail, or upon receipt of written notice by registered or certified mail, by the Insurer from the Paying Agent or any owner of an Obligation the payment of an Insured Amount for which is then due, that such required payment has not been made, the Insurer on the due date of such payment or within one business day after receipt of notice of such nonpayment, whichever is later, will make a deposit of funds, in an account with State Street Bank and Trust Company, N.A., in New York, New York, or its successor, sufficient for the payment of any such Insured Amounts which are then due. Upon presentment and surrender of such Obligations or presentment of such other proof of ownership of the Obligations, together with any appropriate instruments of assignment to evidence the assignment of the Insured Amounts due on the Obligations as are paid by the Insurer, and appropriate instruments to effect the appointment of the Insurer as agent for such owners of the Obligations in any legal proceeding related to payment of Insured Amounts on the Obligations, such instruments being in a form satisfactory to State Street Bank and Trust Company, N.A., Citibank, N.A. shall disburse to such owners or the Paying Agent payment of the Insured Amounts due on such Obligations, less any amount held by the Paying Agent for the payment of such Insured Amounts and legally available therefor. This policy does not insure against loss of any prepayment premium which may at any time be payable with respect to any Obligation.

As used herein, the term "owner" shall mean the registered owner of any Obligation as indicated in the books maintained by the Paying Agent, the Issuer, or any designee of the Issuer for such purpose. The term owner shall not include the Issuer or any party whose agreement with the Issuer constitutes the underlying security for the Obligations.

Any service of process on the Insurer may be made to the Insurer at its offices located at 113 King Street, Armonk, New York 10504 and such service of process shall be valid and binding.

This policy is non-cancelable for any reason. The premium on this policy is not refundable for any reason including the payment prior to maturity of the Obligations.

In the event the Insurer were to become insolvent, any claims arising under a policy of financial guaranty insurance are excluded from coverage by the California Insurance Guaranty Association, established pursuant to Article 14.2 (commencing with Section 1063) of Chapter 1 of Part 2 of Division 1 of the California Insurance Code.

MBIA INSURANCE CORPORATION

**FORM OF ASSIGNMENT**

For value received the undersigned hereby sells, assigns and transfers unto

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(Name, Address and Tax Identification or Social Security Number of Assignee)

the within-registered Certificate and hereby irrevocably constitute(s) and appoint(s)

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attorney, to transfer the same on the Certificate register of the Trustee with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed:

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NOTICE: Signature(s) must be guaranteed by an eligible guarantor.

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NOTICE: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within Certificate in every particular, without alteration or enlargement or any change whatsoever.

## EXHIBIT C

### DESCRIPTION OF THE IMPROVEMENTS

The Improvements include, but are not limited to, improvements to the Hutchins Street Square building.