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**PURCHASE AGREEMENT**

**Between**

**U.S. BANK NATIONAL ASSOCIATION  
as Trustee**

**and**

**CITY OF APACHE JUNCTION, ARIZONA**

Dated as of December 1, 2019

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## TABLE OF CONTENTS

	Page
1. Definitions.....	1
2. Term and Payments.....	1
3. Pledge of Excise Taxes; Limited Obligations.....	3
4. Surplus and Deficiency of Excise Taxes .....	3
5. Use of Other Funds at the Option of City .....	4
6. Additional Parity Obligations .....	4
7. City to Maintain Excise Taxes Coverage of Three Times Debt Service .....	4
8. Definition of Excise Taxes.....	5
9. Representations, Warranties and Covenants.....	5
10. Providing for Payment .....	6
11. Transfer of 2012 Project, Personal Property .....	7
12. Remedies Upon Default; Acceleration. ....	7
13. Assignment and Sublease .....	8
14. Miscellaneous. ....	8
15. Notices; Mailing Addresses .....	9
16. Tax Covenants .....	10
17. City's Easement to Seller.....	10
18. Covenant as to Conflict of Interest .....	10
19. Seller's Limited Authority .....	10
20. Seller as Trustee.....	11
22. E-Verify Requirements .....	11
22. Scrutinized Business Operations.....	<b>Error! Bookmark not defined.</b>
Signatures.....	12

EXHIBIT A - PAYMENT SCHEDULE

EXHIBIT B - BILL OF SALE

## **PURCHASE AGREEMENT**

**THIS PURCHASE AGREEMENT** (the “Agreement”) by and between the City of Apache Junction, Arizona, a municipal corporation and a political subdivision under the laws of the State of Arizona (“City”) and U.S. Bank National Association, a national banking association (“Seller”), in its capacity as trustee (“Trustee”) under the Trust Agreement dated as of December 1, 2019, by and between Trustee and City (the “Trust Agreement”).

### **RECITALS**

A. The Mayor and Council of City have determined that it will be beneficial to the citizens of City for City to refinance the costs of the 2007 Project (as such term and all other undefined terms used herein are defined in the Trust Agreement).

B. For such refinancing, the Mayor and Council of City requested that Trustee sell and execute and deliver the 2019 Obligations, and Trustee has, as described in the Trust Agreement, caused deposits to be made to the Costs of Issuance Fund and to a Trust Account to be used for payment and prepayment of the Obligation Being Refunded.

C. Trustee has full legal authority and is duly empowered to enter into this Agreement and has taken all actions necessary to the execution and delivery hereof.

### **AGREEMENT**

**1. Definitions.** All terms not otherwise defined herein are as defined in the Trust Agreement.

**2. Term and Payments.**

(a) For the purpose of (i) refinancing a portion of the costs of expansion and renovation of the City’s Public Library (the “2007 Project”) that was financed pursuant to the Loan Agreement, the City hereby sells and conveys any interests it has in the 2007 Project to the Seller without any representation or warranty, express or implied, for the sum of \$10.00 and Seller hereby resells to City and City hereby repurchases from Seller that portion of the 2007 Project that is being refinanced by this Agreement as further described in the Depository Trust Agreement.

(b) Seller agrees to cause to be redeemed in advance of maturity the Obligation Being Refunded and to pay all costs and expenses attendant thereto.

(c) To provide the funds necessary for the refinancing of the 2003 Project to the extent that the 2003 Obligations are being refinanced, Seller, as trustee under the Trust Agreement, will execute and deliver the Pledged Revenue Refunding Obligations, Series 2019 (the “2019 Obligations”) and Seller shall have no further obligation to provide funds to pay such costs and expenses.

(d) As the purchase price for the 2007 Project, City agrees to make Payments to Seller at the address specified pursuant to Section 15 hereof (or such other address as Seller may designate in writing) three Business Days in advance of the Payment Dates set forth, and in the

amounts set forth, in the payment schedule attached hereto as Exhibit A and incorporated herein. City's obligation to make Payments shall be limited to payment from Pledged Revenues (as defined in Section 8 below) pledged to the payment thereof by City. City shall receive a credit against amounts due equal to any amounts held in the Payment Fund and available for such purpose.

(e) Upon the occurrence of (i) an Event of Default, the amount of each of the Payments denominated as and comprising interest pursuant to this Agreement shall be computed by multiplying the portion of the Payments designated as principal by the Default Rate (on the basis of a 360-day year of twelve 30-day months), and the Schedule hereto shall be deemed to be amended to reflect such re-calculation; or (ii) an Event of Taxability, (x) the amount of each of the Payments denominated as and comprising interest pursuant to this Agreement shall be computed by multiplying the portion of the Payments designated as principal by the Taxable Rate (on the basis of a 360-day year of twelve 30-day months), and the Schedule hereto shall be deemed to be amended to reflect such re-calculation and (y) City shall pay to the Seller for the purpose of remitting to Trustee in trust for the benefit of the Owners (or former Owners, as the case may be) of the 2019 Obligations as a gross-up amount (the "Gross-Up Amount") (1) an amount equal to the difference between (A) the amount of interest that would have been paid to such Owner during the period for which such interest is included in the gross income of such Owner if a 2019 Obligation had borne interest at the Taxable Rate, beginning on the Taxable Date (the "Taxable Period"), and (B) the corresponding Interest Portion actually paid to the Owner (or former Owner, as the case may be) during the Taxable Period, and (2) to the extent permitted by applicable law, an amount equal to any interest, penalties or charges owed by such Owner (or former Owner, as the case may be) as a result of the Interest Portion becoming included in the gross income of such Owner (or former Owner, as the case may be), together with any and all attorney fees, court costs, or other "out-of-pocket" costs incurred by such Owner (or former Owner, as the case may be) in connection therewith; provided, however, that in neither the case of (i) or (ii) nor both cases (i) and (ii) combined may such increase in interest rate(s) result in the savings threshold required by the resolution authorizing the execution and delivery of the Obligations to not be satisfied.

(f) The obligations of City to make Payments from the sources described herein and to perform and observe the other agreements contained herein shall be absolute and unconditional and shall not be subject to any defense or any right of set-off, abatement, counterclaim, or recoupment arising out of any breach of Seller of any obligation to City or otherwise, or out of indebtedness or liability at any time owing to City by Seller. Until such time as all of the Payments shall have been fully paid or provided for, City: (i) will not suspend or discontinue any Payments provided for in this Section 2; (ii) will perform and observe all other agreements contained in this Agreement; and (iii) will not terminate the term of this Agreement for any cause, including, without limiting the generality of the foregoing, failure of Seller or any other person to complete the refinancing of a portion of the costs of the 2007 Project, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the 2007 Project, the taking by eminent domain of title to or temporary use of any or all of the 2007 Project, commercial frustration of purpose, abandonment of the 2007 Project by City, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either or any failure of Seller to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or

connected with the Trust Agreement or this Agreement. Nothing contained in this Section shall be construed to release Seller from the performance of any of the agreements on its part herein or in the Trust Agreement contained and in the event Seller shall fail to perform any such agreements on its part, City may institute such action against Seller as City may deem necessary to compel performance so long as such action does not abrogate the obligations of City contained in the first sentence of this paragraph (f). This Agreement shall not terminate so long as any payments are due and owing under the 2019 Obligations.

It is understood and agreed that Seller shall in no event be deemed an owner of the 2007 Project or appear on any records (including, without limitation, real property records) as an owner of the 2007 Project.

### **3. Pledge of Excise Taxes; Limited Obligations.**

(a) City hereby pledges for the payment of the purchase price hereunder (including, without limitation, any amounts due on the 2019 Obligations) and all other amounts payable pursuant hereto, the Pledged Revenues. City intends that this pledge shall be a first lien pledge upon such amounts of said Pledged Revenues as will be sufficient to make the Payments when due. City agrees and covenants to make said Payments from such Pledged Revenues, except to the extent it chooses to make the Payments from other funds pursuant to Section 5. Said pledge of, and said lien on, the Pledged Revenues is hereby irrevocably made and created for the prompt and punctual payment of the Payments according to the terms hereof, and to create and maintain the funds as hereinafter specified in this Agreement or as may be specified in the Trust Agreement. All of the Payments are coequal as to the pledge of and lien on the Pledged Revenues pledged for the payment thereof and share ratably, without preference, priority or distinction, as to the source or method of payment from Pledged Revenues or security therefor. The rights of the Owners of the 2019 Obligations to payment from Pledged Revenues are on a parity with the rights to payment from such Pledged Revenues of the holders of any Additional Parity Obligations.

(b) City shall remit to Trustee from Pledged Revenues all amounts due under this Agreement in the amounts and at the times and for the purposes as required herein. City's obligation to make payments of any amounts due under this Agreement, including amounts due after default or termination hereof, is limited to payment from Pledged Revenues and shall in no circumstances constitute a general obligation of, or a pledge of the full faith and credit of, City, the State, or any of its political subdivisions, or require the levy of, or be payable from the proceeds of, any *ad valorem* taxes.

**4. Surplus and Deficiency of Pledged Revenues.** Subject to the right with respect to the Pledged Revenues of the owners of any other obligations issued on a parity herewith pursuant to the Trust Agreement and this Agreement with respect to the Pledged Revenues, all Pledged Revenues in excess of amounts, if any, required to be deposited with or held by Trustee for payments due under this Agreement and the Trust Agreement shall constitute surplus revenues and may be used by City for any lawful purpose for the benefit of City, including the payment of junior lien obligations to which such Pledged Revenues may from time to time be pledged, if at all. If at any time the moneys in the funds and accounts held for payment of amounts due under this Agreement or the Trust Agreement are not sufficient to make the deposits and transfers required,

any such deficiency shall be made up from the first moneys thereafter received and available for such transfers under the terms of this Agreement and, with respect to payment from Pledged Revenues, *pro rata*, as applicable, with amounts due with respect to Additional Parity Obligations, and the transfer of any such sum or sums to said fund or accounts as may be necessary to make up any such deficiency shall be in addition to the then-current transfers required to be made pursuant hereto.

City shall impose all necessary Pledged Revenues, shall collect and receive the proceeds of sufficient Pledged Revenues, and pay such proceeds to Trustee in such amounts and at such times as will be fully sufficient, in conjunction with any other legally available moneys (but not proceeds of *ad valorem* taxes, except in compliance with Section 5) which City may from time to time lawfully choose to pay to Trustee, to assure the punctual performance of all duties requiring the payment or expenditure of money by City under the terms of this Agreement. Such payments shall be made on the dates specified herein during the term of this Agreement and shall be sufficient to meet all requirements for the 2019 Obligations.

**5. Use of Other Funds at the Option of City.** City may, at City's sole option, make such payments from its other funds as permitted by law and as City shall determine from time to time, but Seller acknowledges that it has no claim hereunder to such other funds. No part of the purchase price payable pursuant to this Agreement shall be payable out of any *ad valorem* taxes imposed by City or from bonds or other obligations, the payment of which City's general taxing authority is pledged, unless: (i) the same shall have been duly budgeted by City according to law; (ii) such payment or payments shall be within the budget limitations of the statutes of the State; and (iii) any such bonded indebtedness or other obligation is within the debt limitations of the Constitution of the State.

**6. Additional Parity Obligations.** So long as any of the 2019 Obligations remain outstanding and the principal and interest thereon shall be unpaid or unprovided for or any other amounts remain unpaid or unprovided for hereunder, City will not further encumber the Pledged Revenues pledged hereunder on a basis equal to the pledge hereunder unless the Pledged Revenues collected in the next preceding Fiscal Year shall have amounted to at least two (2) times the highest combined Debt Service requirements for any succeeding Fiscal Year for all Parity Obligations, including with respect to the Additional Parity Obligations so proposed to be issued. Subject to the foregoing, and to other terms and conditions set forth herein, City shall have the right to incur Additional Parity Obligations payable from and secured by the Pledged Revenues, on a parity with the 2019 Obligations.

**7. City to Maintain Pledged Revenues Coverage of Two Times Debt Service.**

(a) To the extent permitted by applicable law, the City covenants and agrees that the Pledged Revenues which it presently imposes will continue to be imposed in each Fiscal Year so that the amount of Pledged Revenues, all within and for such Fiscal Year of City, shall be equal to at least two (2) times the total of the Debt Service for all outstanding 2019 Obligations and other Outstanding Parity Obligations in such Fiscal Year. The City further covenants and agrees that if such receipts for any such Fiscal Year shall not equal two (2) times such Debt Service for such Fiscal Year, or if at any time it appears that the current Fiscal Year's receipts will not be sufficient to meet such Fiscal Year's actual Debt Service, City, to the extent permitted by

applicable law, will either impose new Pledged Revenues or will increase the rates of such taxes currently imposed in order that: (i) the current Fiscal Year's receipts will be sufficient to meet such Fiscal Year's Debt Service requirement; and (ii) the next succeeding Fiscal Year's receipts will be equal to at least two (2) times the next succeeding Fiscal Year's Debt Service requirement.

(b) In order to secure payment of this Agreement and to create a separate and special fund which shall contain only the Pledged Revenues and shall not contain any other moneys of City, City shall establish a special fund to be known as the "City of Apache Junction Pledged Revenues Fund" (the "Pledged Revenues Fund"). Upon receipt by City, the Pledged Revenues shall be deposited in and to the Pledged Revenues Fund. The Pledged Revenues Fund shall be funded only from the Pledged Revenues received by City and from no other source. After paying therefrom amounts of the Pledged Revenues for the purposes described herein, the Pledged Revenues Fund may be reduced to zero, including by transferring any such balance to the General Fund of City.

**8. Definition of Pledged Revenues.** "Pledged Revenues" shall mean, collectively, (i) all unrestricted excise, transaction, franchise, privilege and business taxes, fees for licenses and permits, and fines and forfeitures now or hereafter validly imposed by the City; provided, however, that the Mayor and Council of the City may impose other transaction privilege taxes in the future, the uses of revenue from which will be restricted, at the discretion of such Council and (ii) revenues from any excise taxes, transaction privilege (sales) taxes and income taxes imposed by the State of Arizona or any agency thereof and returned, allocated or apportioned to the City, except the City's share of any such taxes which by State law, rule or regulation must be expended for other purposes, such as motor vehicle fuel taxes.

The City's obligation to make the payments under this Agreement or the Trust Agreement does not constitute an obligation of the City or the State of Arizona, or any of its political subdivisions, for which the City or the State of Arizona, or any of its political subdivisions, is obligated to levy or pledge any form of *ad valorem* taxation nor does the obligation to make any payments under this Agreement or the Trust Agreement constitute an indebtedness of the City or of the State of Arizona or any of its political subdivisions within the meaning of the Constitution of the State of Arizona or otherwise.

**9. Representations, Warranties and Covenants.**

(a) Except with respect to its power and authority to enter into this Agreement and to perform its covenants hereunder, Trustee has made and makes no representation or warranty, express or implied, and assumes no obligation with respect to the title, merchantability, condition, quality or fitness of the 2007 Project for any particular purpose or the conformity of the 2007 Project to any plans, specifications, construction contract, purchase order, model or sample, or as to their design, construction, delivery, installation, construction oversight and operation or their suitability for use by City. All such risks shall be borne by City without in any way excusing City from its obligations under this Agreement, and Trustee shall not be liable to City for any damages on account of such risks. Except with respect to any acts by Trustee which are not undertaken at the request of City or with the prior approval of City, City waives all claims against Trustee growing out of the acquisition of the 2007 Project. Trustee shall have no liability to City for any failure of any contractor to perform any contract or other undertaking with respect to the 2007

Project in any respect. Trustee shall have no obligation to obtain or insure compliance with any required permits or approval procedures with respect to the 2007 Project. In the event of any defect in any item of the 2007 Project or other claim with respect to the 2007 Project, recourse of City shall be against the contractors, manufacturers, suppliers, etc. of the 2007 Project and, where applicable, the person selling the property to Trustee, and not against Trustee. For such purpose, Trustee hereby assigns and transfers to City the right, title and interest of Trustee in and to all representations, warranties, guarantees and service agreements relating to the 2007 Project made or entered into by Trustee and by any contractor, manufacturers, suppliers, etc. of the 2007 Project. Trustee further designates City as its attorney-in-fact granting to City the right to initiate and take all actions necessary to enforce any and all construction contracts and all such warranties and service agreements with the same force and effect as Trustee could do if the foregoing assignment had not been made. Trustee is entering into this Agreement solely as seller and shall not be personally liable hereunder and shall be afforded the same rights, protections, immunities and indemnities acting hereunder as afforded to it as Trustee under the Trust Agreement. Notwithstanding anything to the contrary herein, at no time shall Trustee be listed in the chain of title to the 2007 Project. Provisions governing the rights, immunities and protections of Trustee under the Trust Agreement are herein incorporated by reference into this Agreement as though fully set forth herein.

(b) City represents, warrants and covenants that it has the power to enter into this Agreement; that this Agreement is a lawful, valid and binding obligation of City, enforceable against City in accordance with its terms, and has been duly authorized, executed and delivered by City; that all required procedures for execution and performance of this Agreement, including publication of notice, public hearing or competitive bidding, if applicable, have been or will be complied with in a timely manner; and that all Payments hereunder will be paid when due out of funds which are legally available for such purposes.

**10. Providing for Payment.** City may provide for the payment of any Payment in any one or more of the following ways:

(a) by paying such Payment as provided herein as and when the same becomes due and payable at its scheduled due date pursuant to Section 2 hereof or on a date on which it can be prepaid;

(b) by depositing with a Depository Trustee (as defined below), in trust for such purposes, money which, together with the amounts then on deposit with Trustee and available for such Payment is fully sufficient to make, or cause to be made, such Payment at its scheduled due date or on a date on which it can be prepaid; or

(c) by depositing with a Depository Trustee, in trust for such purpose, any Government Obligations which are noncallable, in such amount as shall be certified to Seller and City, by a national firm of certified public accountants acceptable to both Seller and City, as being fully sufficient, together with the interest to accrue thereon and moneys then on deposit with Seller and available for such Payment, to make, or cause to be made, such Payment at its scheduled due date or on a date on which it can be prepaid.



A Depository Trustee shall be any bank or trust company, including Seller, with 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 who holds money and securities in trust for the purposes set forth in subparagraphs (b) or (c) of this Section 10 (a "Depository Trustee").

**11. Transfer of 2007 Project, Personal Property.** Seller shall execute appropriate transfer documents in the form attached hereto as Exhibit C, which shall transfer Seller's right, title and interest, if any, in and to the 2007 Project, including without limitation, all of Seller's right, title and interest in the Personal Property. Seller shall convey title free from any liens, encumbrances or security interests created by Seller except as may be otherwise imposed hereunder or under the Trust Agreement, or as otherwise consented to in writing by the City.

**12. Default; Remedies Upon Default.**

(a) (i) Upon (A) the nonpayment of the whole or any part of any Payment at the time when the same is to be paid as provided herein or in the Trust Agreement, (B) the violation by City of any other covenant or provision of this Agreement or the Trust Agreement, (C) the occurrence of an event of default with respect to any Outstanding Parity Obligations other than the 2012 Obligations, or (D) the insolvency or bankruptcy of City as the same may be defined under any law of the United States of America or the State, or any voluntary or involuntary action of City or others to take advantage of, or to impose, as the case may be, any law for the relief of debtors or creditors, including a petition for reorganization, and

(ii) if such default has not been cured (A) in the case of nonpayment of any Payment hereunder or under the Trust Agreement on the due date, or the nonpayment of installment payments on their due dates with respect to any other Parity Obligations; (B) in the case of the breach of any other covenant or provision of the Trust Agreement or this Agreement not cured within sixty (60) days after notice in writing from Seller specifying such default; and (C) in the case of any other default under any other Parity Obligation after any notice and passage of time provided for under the proceedings under which such Parity Obligations were issued then,

(iii) subject to the limitations of the Trust Agreement, the Trustee may take whatever action at law or in equity, including the remedy of specific performance, may appear necessary or desirable to collect the Payments and any other amounts payable by City under the Trust Agreement or this Agreement, then due and thereafter to become due, or to enforce performance and observance of any pledge, obligation, agreement, or covenant of City under the Trust Agreement or this Agreement, and with respect to Pledged Revenues, without notice and without giving any bond or surety to City or anyone claiming under City, have a receiver appointed of Pledged Revenues which are pledged to the payment of amounts due hereunder, with such powers as the court making such appointment shall confer (and City does hereby irrevocably consent to such appointment); provided, however, that under no circumstances may the Payments be accelerated.

Each right, power and remedy of Trustee provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for herein, or, unless prohibited by the terms hereof, now or hereafter existing at law or in equity or by statute or otherwise, in any jurisdiction where such rights, powers and remedies are sought to be enforced,

and the exercise or beginning of the exercise by Trustee of any one or more of the rights, powers or remedies provided for herein or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by either party of any or all of such other rights, powers or remedies. The failure to insist upon strict performance of any of the covenants or agreements herein set forth shall not be considered or taken as a waiver or relinquishment for the future of the rights of Trustee to insist upon a strict compliance by Trustee with all the covenants and conditions hereof. City shall, upon not less than 10 days' prior request by Trustee, execute, acknowledge and deliver to Trustee a statement in writing certifying that this Agreement is unmodified and in full force and effect (or, if this Agreement has been modified, that it is in full force and effect except as modified, and stating the modification), and the dates to which the amounts payable hereunder have been paid in advance, if any.

(b) Trustee shall in no event be in default in the performance of any of its obligations hereunder unless and until Trustee shall have failed to perform such obligation within thirty (30) days or such additional time as is reasonably required to correct any such default after notice by City properly specifying wherein Trustee has failed to perform any such obligation. No default by Trustee shall relieve City of its obligations to make the various payments herein required, so long as the Obligations remain outstanding; however, City may exercise any other remedy available at law or in equity to require Trustee to remedy such default so long as such remedy does not interfere with or endanger the payments required to be made to Trustee under the Trust Agreement.

(c) City's obligations under this Agreement, including, without limitation, its obligation to pay the Payments, shall survive any action brought as provided in this Section 12, and City shall continue to pay the Payments and perform all other obligations provided in this Agreement; provided, however, that City shall be credited with any amount received by Trustee pursuant to actions brought under this Section 12.

**13. Assignment and Sublease.** The City may assign, transfer, pledge or hypothecate or otherwise dispose of this Agreement, or any interest therein; provided, that the City remains obligated to make the Payments hereunder. The Seller shall be entitled to sell, pledge or assign all of its right, title and interest in, to and under this Agreement, to an entity succeeding it as Trustee under the Trust Agreement. Subject to the terms of the Trust Agreement, all and every part of the right, title and interest of City in and to this Agreement and all payments of any kind due or which become due to Trustee hereunder are sold, pledged, assigned and transferred pursuant to the Trust Agreement.

**14. Miscellaneous.**

(a) No covenant or obligation herein to be performed by City may be waived except by the written consent of Seller and a waiver of any such covenant or obligation or a forbearance to invoke any remedy on any occasion shall not constitute or be treated as a waiver of such covenant or obligation as to any other occasion and shall not preclude Seller from invoking such remedy at any later time prior to City's cure of the condition giving rise to such remedy.

(b) This Agreement shall be construed and governed in accordance with the laws of the State in effect from time to time.

(c) This Agreement constitutes the entire agreement between the parties and shall not be modified, waived, discharged, terminated, amended, supplemented, altered or changed in any respect except by a written document signed by both Seller and City. This Agreement may not be amended except as provided in the Trust Agreement.

(d) Any term or provision of this Agreement found to be prohibited by law or unenforceable or which would cause this Agreement to be invalid, prohibited by law or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without, to the extent reasonably possible, causing the remainder of this Agreement to be invalid, prohibited by law or unenforceable.

(e) Seller hereunder shall have the right at any time or times, by notice to City to designate or appoint any person or entity to act as agent or trustee for Seller for any purposes hereunder.

(f) City agrees to pay interest at the rates specified in Exhibit A.

(g) Use of any gender herein is for purposes of convenience only and shall be deemed to mean and include the masculine or feminine gender whenever and wherever appropriate.

(h) The captions set forth herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

(i) Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, assigns and personal representatives, as the case may be. Any person or entity acquiring any interest in or to Seller's right, title or interest herein shall be and have the rights of a third party beneficiary hereunder.

(j) Any payments due on a day which is not a Business Day may be made on the next Business Day and will be deemed to have been made on the date due.

**15. Notices; Mailing Addresses.** All notices, consents or other communications required or permitted hereunder shall be deemed sufficient if given in writing addressed and mailed by registered or certified mail, or delivered to the party for which the same is intended or certified, as follows:

If to Seller: U.S. Bank National Association  
101 North First Avenue, Suite 1600  
Phoenix, AZ 85003  
LM-AZ-X16P  
Attn: Global Corporate Trust Services

If to City: City of Apache Junction  
300 East Superstition Boulevard  
Apache Junction, Arizona 85119  
Attn: City Manager

with a copy to:

Dickinson Wright PLLC  
1850 N. Central Avenue, Suite 1400  
Phoenix, Arizona 85004  
Attn: Eric McGlothlin

**16. Tax Covenants.** In consideration of the acceptance and execution of this Agreement by Seller and the purchase of the 2019 Obligations by the Owners thereof, from time to time, and in consideration of retaining the exclusion of interest income from gross income on this Agreement and the 2019 Obligations for federal income tax purposes, City covenants with Seller and the Owners from time to time to neither take nor fail to take any action, which action or failure to act is within its power and authority and would result in interest income on this Agreement or the 2019 Obligations to become subject to inclusion in gross income for federal income tax purposes under either laws existing on the date of execution of this Agreement or such laws as they may be modified or amended or tax laws later adopted.

City agrees that it will comply with such requirement(s) and will take any such action(s) as are necessary to prevent interest income on this Agreement or the 2019 Obligations from becoming subject to inclusion in gross income for federal income tax purposes. Such requirements may include but are not limited to making further specific covenants; making truthful certifications and representations and giving necessary assurances; complying with all representations, covenants and assurances contained in certificates or agreements to be prepared by special counsel; filing forms, statements and supporting documents as may be required under the federal tax laws; limiting the term of and yield on investments made with moneys relating to this Agreement; and limiting the use of the proceeds of this Agreement and property financed thereby. The City expects that as of the date hereof and the Closing Date, that it will not be required to rebate any amounts to the United States pursuant the small issuer exception from rebate contained within § 148(f)(4)(D) of the Code and the Treasury regulations promulgated thereunder.

**17. City's Easement to Seller.** City hereby gives express permission to Seller to cause the 2007 Project to be refinanced and maintained and hereby grants and conveys to Seller, and all persons claiming by, through or under Seller, including its successors and assigns under the Trust Agreement and the Owners of the 2019 Obligations for whom it acts, a nonexclusive easement upon, in and to the 2007 Project for the purpose of permitting the 2007 Project to be maintained upon the premises.

**18. Covenant as to Conflict of Interest.** A.R.S. § 38-511 provides that City may, within three years after its execution, cancel any contract, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of City is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. In addition, City may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of City from any other party to the contract arising as a result of the contract.

**19. Seller's Limited Authority.** Notwithstanding any other terms or provisions of this Agreement, Seller's interest in the 2007 Project and responsibility for causing the financing and

refinancing, acquisition, construction and installation of the 2007 Project is solely for the purpose of facilitating the financing and refinancing of the purchase acquisition by City of the 2007 Project and Seller shall not have the power, authority or obligation to assume any responsibility for the overall management of the 2007 Project, including, without limitation, any day- to-day decision-making or operational aspects of the 2007 Project. The elements of the 2007 Project and the sites therefor were selected by City and all design and engineering criteria and specifications for the 2007 Project to be constructed or acquired were or will be determined by City.

**20. Seller as Trustee.** Seller is acting hereunder in its capacity as Trustee under the Trust Agreement and the term “Seller”, when used herein, shall mean Trustee as defined in the Trust Agreement and is entitled to all the rights, protections, immunities and indemnities hereunder as afforded to the Trustee under the Trust Agreement.

**21. E-Verify Requirements.** To the extent applicable under A.R.S. § 41-4401, the Seller and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under A.R.S. § 23-214(A). The Seller or its subcontractors’ breach of the above-mentioned warranty shall be deemed a material breach of this Agreement and may result in the termination of the Seller’s services by the City. The City retains the legal right to randomly inspect the papers and records of the Seller or its subcontractor employee who work on this Agreement to ensure that the Seller and its subcontractors are complying with the above- mentioned warranty.

The Seller and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by the City. The Seller and its subcontractors shall cooperate with the City’s random inspections including granting the City entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

**22. No Boycott of Israel.** Pursuant to A.R.S. § 35-393 *et seq.*, Trustee hereby certifies it is not currently engaged in, and for the duration of this Agreement shall not engage in, a boycott of Israel. The term “boycott” has the meaning set forth in A.R.S. § 35-393. If City determines that Trustee’s certification above is false or that it has breached such agreement, City may impose remedies as provided by law.

*[Signatures on following page]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the first day of December, 2019.

Seller:

**U.S. BANK NATIONAL ASSOCIATION,**  
a national banking association

By \_\_\_\_\_

Name \_\_\_\_\_

Its \_\_\_\_\_

City:

**CITY OF APACHE JUNCTION,** a  
municipal corporation and political  
subdivision under the laws of the State of  
Arizona

By \_\_\_\_\_

Bryant Powell  
City Manager

ATTEST:

By \_\_\_\_\_

Jennifer Peña  
City Clerk

APPROVED AS TO FORM:

By \_\_\_\_\_

Eric McGlothlin  
Special Counsel

**EXHIBIT A**  
**PAYMENT SCHEDULE**

<b><u>Payment Date</u></b>	<b><u>Principal</u></b>	<b><u>Interest</u></b>	<b><u>Total Payment</u></b>
___/01/20__	\$	\$	\$
___/01/20__			
___/01/20__			
___/01/20__			
___/01/20__			
___/01/20__			
___/01/20__			
___/01/20__			
___/01/20__			
___/01/20__			
___/01/20__			
<b>TOTAL</b>	\$	\$	\$

**EXHIBIT B**

**BILL OF SALE**

KNOW ALL MEN BY THESE PRESENTS:

That U.S. Bank National Association as trustee but in its separate capacity as seller (the "Seller"), for good and valuable consideration received by the Seller from the City of Apache Junction, Arizona (the "City"), receipt of which is hereby acknowledged, does by these presents, and to the extent not otherwise prohibited by applicable law with regard to any part thereof, grant, bargain, sell and convey without recourse, representation or warranty to the City, its successors and assigns, any interests the Seller has in the 2007 Project (as such term is defined in the Trust Agreement, dated as of December 1, 2019, by and between the Seller and the City), to have and to hold the 2007 Project as sold to the City and its successors and assigns forever.

IN WITNESS WHEREOF, the Seller has caused this Bill of Sale to be executed this \_\_\_\_\_ day of December, 2019.

U.S. BANK NATIONAL ASSOCIATION

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

Printed Name: \_\_\_\_\_

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