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**TRUST AGREEMENT**

by and between

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

and

**CITY OF APACHE JUNCTION, ARIZONA**

Dated as of December 1, 2019

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## **EXHIBIT A - FORM OF 2019 OBLIGATION**

## **TRUST AGREEMENT**

**THIS TRUST AGREEMENT**, made and entered into as of December 1, 2019 (this “Trust Agreement”), by and between **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, as trustee (the “Trustee”), and **CITY OF APACHE JUNCTION, ARIZONA**, a municipal corporation organized under the laws of the State of Arizona (the “City”);

### **RECITALS**

A. Pursuant to a General Indenture of Trust, dated as of October 1, 1998 (the “1998 Trust Agreement”), by and between the Greater Arizona Development Authority (“GADA”) and U.S. Bank National Association (as successor in interest to U.S. Bank Trust National Association), as Trustee (the “1998 Trustee”), as supplemented by a Supplemental Indenture Number Thirteen, dated as of May 1, 2007 (the “Thirteenth Supplemental Indenture” and together with the 1998 Trust Agreement, the “GADA Indenture”), by and between the GADA and U.S. Bank National Association (as successor in interest to U.S. Bank Trust National Association), GADA sold its Infrastructure Revenue Bonds, Series 2007A (the “GADA Bonds”).

B. GADA loaned a portion of the proceeds of the GADA Bonds in the aggregate principal amount of \$3,800,000 (the “Loan”) to the City pursuant to a Second Loan Repayment Agreement, dated as of May 1, 2007, by and between the City and GADA (the “Loan Agreement”), for the purpose of financing the costs of expansion and renovation of the City’s Public Library (the “2007 Project”) (the Library being located at 1177 N. Idaho Road, Apache Junction, AZ).

C. The Loan is secured by the City’s irrevocable pledge of its Excise Taxes and State Shared Revenues (each as defined in the Loan Agreement) and remains outstanding in the aggregate principal amount of \$1,770,000 payable in various principal amounts on July 1 in the years 2020 through 2026, which principal amounts bear interest at rates per annum which vary from 4.375% to 5.000%.

D. The outstanding portion of the Loan is prepayable at any time at a prepayment price equal to the principal amount being prepaid (in integral multiples of \$5,000), together with accrued interest to the prepayment date, interest from the prepayment date until the prepayment of the corresponding GADA Bonds and any premium coming due on the prepayment date for the corresponding GADA Bonds.

E. The City desires to redeem in advance of maturity the July 1, 2020 through the July 1, 2026 payments of the Loan (collectively the “Obligation Being Refunded”).

F. For the purpose of the refinancing of a portion of the costs of the 2007 Project (the “Refinancing”) under the terms and conditions hereinafter set forth in the Purchase Agreement dated as of December 1, 2019 (the “Purchase Agreement”) wherein the Trustee is the Seller, the City has heretofore agreed to purchase from the Trustee and the Trustee has agreed to sell to the City that portion of the 2007 Project that is being refinanced with the proceeds of the 2019 Obligations (as defined herein) and under the Purchase Agreement.

G. The City has pledged certain revenues (the “Pledged Revenues,” as defined herein) to the payment of amounts due under the Purchase Agreement.

H. The City and the Trustee will enter into this Trust Agreement to facilitate the administration of the Refinancing.

I. For the purpose of obtaining money to be deposited with the Trustee to refinance a portion of the costs of the 2007 Project, the Trustee has agreed to execute and deliver Pledged Revenue Refunding Obligations, Series 2019 (the “2019 Obligations” and individually, a “2019 Obligation”), evidencing a proportionate interest in the Purchase Agreement and the Payments and Prepayments made by the City under the Purchase Agreement, in exchange for the moneys required herein to be deposited to finance the 2012 Project and redeem the Obligation Being Refunded.

J. With the refinancing of the 2007 Project and prepayment of amounts outstanding under the Loan Agreement, the City has no other outstanding obligations payable from the Pledged Revenues.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration for the 2019 Obligations executed, delivered and Outstanding under this Trust Agreement, the acceptance by the Trustee of the trusts created herein and the purchase and acceptance of the 2019 Obligations by the Owners (as hereinafter defined), and in order to secure the payment of principal and interest (to the extent provided herein) related to the 2019 Obligations, the rights of the Owners of the Obligations and the performance and the observance of the covenants and conditions contained in the Obligations, the Purchase Agreement and herein, the City absolutely and irrevocably pledges and assigns to the Trustee, and the Trustee hereby declares an irrevocable trust and acknowledges its acceptance of all right, title and interest in and to the following described trust estate, which shall be administered by the Trustee according to the provisions of this Trust Agreement:

A. All right, title and interest of Seller in, under and pursuant to the Purchase Agreement, the Payments and Prepayments (as hereinafter defined) and any other amounts payable by the City under the Purchase Agreement and the present and continuing right to: (i) make claim for, collect or cause to be collected, receive or cause to be received all such revenues, receipts and other sums of money payable or receivable thereunder; (ii) bring actions and proceedings thereunder or for the enforcement of such rights; and (iii) do any and all other things which the Seller is or may become entitled to do thereunder;

B. Except as otherwise provided herein, amounts on deposit from time to time in the funds created pursuant hereto, subject to the provisions of this Trust Agreement permitting the application thereof for the purposes and on the terms and conditions set forth herein;

C. The right to enforce the Purchase Agreement and receive payment from Pledged Revenues of amounts due under the Purchase Agreement; and

D. All rights declared in trust by the Trustee shall be administered by the Trustee according to the provisions of this Trust Agreement and for the equal and proportionate benefit of the Owners (as defined herein) of 2019 Obligations; and

E. Any and all other real or personal property of any kind from time to time hereafter by delivery or by writing of any kind specifically conveyed, pledged, assigned or transferred, as and for additional security hereunder for the 2019 Obligations, by Seller or by anyone on its behalf or with its written consent, in favor of the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof;

**TO HAVE AND TO HOLD**, all and singular, the trust estate, including all additional property which by the terms hereof has or may become subject to the encumbrance of this Trust Agreement, unto the Trustee and its successors and assigns, forever, subject, however, to the rights of the City, its successors and assigns, under the Purchase Agreement;

**IN TRUST**, however, for the equal and proportionate benefit and security of the Owners from time to time of the 2019 Obligations authenticated and delivered hereunder and Outstanding, none of the 2019 Obligations being entitled to priority or distinction one over the other in the application of the Pledged Revenues pledged by the Purchase Agreement to the Payments, regardless of the delivery of any of the 2019 Obligations prior to the delivery of any other of the 2019 Obligations, or regardless of the time or times principal represented by any 2019 Obligations is paid or is subject to prepayment with respect to principal represented thereby, all of the 2019 Obligations being co-equal as to the pledge of and lien on the Pledged Revenues pledged for the Payments thereof and sharing ratably, without preference, priority or distinction, as to the source or method of payment from the Pledged Revenues or security therefor; and conditioned, however, that if the City shall well and truly pay or cause to be paid fully and promptly when due all indebtedness, liabilities, obligations and sums at any time secured hereby, including interest and attorney fees, and shall promptly, faithfully and strictly keep, perform and observe or cause to be kept, performed and observed all of its covenants, warranties and agreements contained herein, this Trust Agreement shall be and become void and of no further force and effect; otherwise, the same shall remain in full force and effect, and upon the trust and subject to the covenants and conditions hereinafter set forth.

For such purposes, the City and the Trustee hereby agree as follows:



## ARTICLE I

### DEFINITIONS

**Section 1.1**      **Definitions.** In addition to the terms defined in the first paragraph hereof and in the Recitals hereto and in the Purchase Agreement and unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Trust Agreement, have the meanings herein specified.

**“Additional Parity Obligations”** mean any obligations issued on a parity herewith with respect to Pledged Revenues pursuant to the provisions of Section 6.3 hereof.

**“Authorized Denominations”** means such denominations as may be required by the purchaser of the 2019 Obligations.

**“Book-Entry-Only System”** means, as to the 2019 Obligations, a system under which: (i) physical 2019 Obligation certificates in fully registered form registered in the name of the Depository or its nominee as Owner, with the physical 2019 Obligation certificates held in the custody of, or on behalf of, the Depository; and (ii) the ownership of beneficial interests in 2019 Obligations and principal of, premium, if any, and interest thereon may be transferred only through a book entry made by others than the City or the Trustee. The records maintained by entities other than the City or the Trustee constitute the written record that identifies the owners, and records the transfer, of beneficial interests in those 2019 Obligations and principal of, premium, if any, and interest thereon.

**“Business Day”** means a day of the year other than: (a) a Saturday or a Sunday, (b) a day on which banks in the state in which the Designated Office of the Trustee, are required or are authorized by law or other governmental action to be closed; and (c) a day on which the New York Stock Exchange is closed.

**“City”** means the City of Apache Junction, Arizona, a municipal corporation and a political subdivision of the State of Arizona.

**“City Representative”** means the Mayor, City Manager and Assistant City Manager or any other person authorized by the City Manager, the Assistant City Manager or the Mayor and the City Council of the City to act on behalf of the City with respect to this Trust Agreement.

**“Closing Date”** means the day when the 2019 Obligations, duly executed by the Trustee, are delivered to the Original Purchaser.

**“Code”** means the Internal Revenue Code of 1986, (the “Code”) as amended. References to the Code and Sections thereof include applicable regulations and temporary regulations thereunder and any successor provisions to those Sections, regulations or temporary regulations and any applicable regulations or temporary regulations issued pursuant to the Internal Revenue Code of 1954.

III hereof                    **“Costs of Issuance Fund”** means the fund of that name created pursuant to Article

**“Debt Service”** means, means the amount to be paid in any Fiscal Year with respect to the Parity Obligations for payment of principal and interest requirements.

**“Default Rate”** means 0.5 % per above the rates on the 2019 Obligations.

**“Defaulted Interest”** has the meaning provided in Section 2.10(d).

**“Defeasance Obligations”** means, to the extent permitted by law, (1) cash, (2) non-callable direct obligations of the United States of America (“Treasuries”) or (3) evidences of ownership of proportionate interests in future interest and principal payments on Treasuries held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying Treasuries are not available to any person claiming through the custodian or to whom the custodian may be obligated or any combination thereof.

**“Delivery Costs”** means all items of expense directly or indirectly payable by or reimbursable to the City or the Trustee relating to the execution, sale and delivery of the Purchase Agreement, this Trust Agreement and the 2019 Obligations, including but not limited to filing and recording costs, settlement costs, printing costs, reproduction and binding costs, initial fees and charges of the Trustee, 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 2019 Obligations and charges and fees in connection with the foregoing.

**“Depository Trustee”** means any bank or trust company, which may include the Trustee, meeting the requirements of, and designated to act as, Depository Trustee pursuant to Section 13.1 of this Trust Agreement.

**“Designated Office of the Trustee”** means the office designated as such by the Trustee in writing to the City and the Trustee.

**“Electronically”** or **“Electronic”** notice means notice transmitted through a time-sharing terminal, computer network or facsimile machine, if operative as between any two parties, or if not operative, by telephone (promptly confirmed in writing).

**“Event of Default”** means an event of default under the Purchase Agreement, as defined in Section 12 thereof.

**“Event of Taxability”** means: (i) a written opinion by an attorney or firm of attorneys of nationally recognized standing on the subject of tax-exempt municipal finance to the effect that the Interest Portion is includable for federal income tax purposes in the gross income of the Owner of the applicable, related Obligation; or (ii) a determination or the taking of any official action by the Commissioner, any District Director, other officer or representative of the Internal Revenue Service (or any other government official or agent exercising the same or a substantially

similar function from time to time) that such interest is includable for federal income tax purposes in the gross income of the Owner thereof due to the City's action or failure to take any action.

**"Excise Taxes"** means 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.

**"Fiscal Year"** means the period commencing each July 1 and ending June 30 of the succeeding calendar year, unless otherwise determined and designated by the City, and the Pledged Revenues shall be accounted for on that basis.

**"Government Obligations"** means direct general obligations of, or obligations the timely payment of principal and interest on which are fully and unconditionally guaranteed by, the United States of America (including, without limitation, the interest portion of obligations issued by the Resolution Funding Corporation in book entry form and stripped by request to the Federal Reserve Bank of New York), including Government Obligations which have been stripped of their unmatured interest coupons and interest coupons stripped from Government Obligations, provided any stripped Government Obligations have been stripped by the applicable U.S. Governmental Agency.

**"Gross-Up Amount"** has the meaning set forth in Section 2(e) of the Purchase Agreement.

**"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 City or the Trustee.

**"Interest Payment Date"** means each January 1 and July 1, while any 2019 Obligations are Outstanding provided that, if any such day is not a Business Day, any payment due on such date may be made on the next Business Day, without additional interest and with the same force and effect as if made on the specified date for such payment.

**"Interest Portion"** means the amounts of each of the Payments in the column in the Schedule attached to the Purchase Agreement designated "Interest," denominated as and comprising interest pursuant to the Purchase Agreement and received by any Owner.

**"Letter of Instruction"** means the letter dated as of \_\_\_\_\_, 2019 given by the City to the Trustee pursuant to Section 2(h) of the Loan Agreement instructing the Trustee as to the deposit and disposition of proceeds of the 2019 Obligations in connection with the Refinancing.

**"Market Value"** means the indicated bid value of the investment or investments to be valued as shown in The Wall Street Journal or any publication having general acceptance as a source of valuation of the same or similar types of securities or any securities pricing service available to or used by the Trustee and generally accepted as a source of valuation.

**“Obligation Being Refunded”** means the payments of the Loan to come due and payable on July 1, 2020 through the July 1, 2026.

**“Obligations”** means the Pledged Revenue Refunding Obligations, Series 2019, executed and delivered pursuant hereto.

**“Original Purchaser”** means \_\_\_\_\_, as original purchaser of the 2019 Obligations.

**“Outstanding”**, when used with respect to Parity Obligations (including the Obligations), refers to Parity Obligations issued in accordance with this Trust Agreement, excluding: (i) Parity Obligations which have been exchanged or replaced, or delivered to the trustee therefor for credit against a sinking fund installment; (ii) Parity Obligations which have been paid; (iii) Parity Obligations which have become due and for the payment of which moneys have been duly provided to the trustee therefor; and (iv) Parity Obligations for which there have been irrevocably set aside with a trustee therefor sufficient moneys or Defeasance Obligations bearing interest at such rates and with such maturities as will provide sufficient funds to pay the principal of, premium, if any, and interest on such Parity Obligations as provided in the proceedings under which such Parity Obligations were issued, provided, however, that if any such Parity Obligations are to be redeemed prior to maturity, the City shall have taken all action necessary to redeem such Parity Obligations and notice of such redemption shall have been duly mailed in accordance with the proceedings under which such Parity Obligations were issued or irrevocable instructions so to mail shall have been given to the trustee therefor.

**“Owner”** or any similar term, when used with respect to a 2019 Obligation means the person in whose name such 2019 Obligation shall be registered.

**“Parity Obligations”** means, collectively, the 2019 Obligations and any Additional Parity Obligations hereafter Outstanding.

**“Payment Date”** means, for any 2019 Obligations, the date on which such 2019 Obligation is due and payable as provided in Section 2.3 hereof.

**“Payment Fund”** means the fund by that name established and held by the Trustee pursuant to Article V hereof.

**“Payments”** means all payments, required to be paid by the City on any date pursuant to Section 2 of the Purchase Agreement.

**“Permitted Investments”** means any investment permitted by A.R.S. § 35-323.

**“Pledged Revenues”** means, collectively, the revenues from the Excise Taxes and the State Shared Revenues

**“Prepayment”** means any payment applied towards the prepayment of the Payments, in whole or in part, pursuant to Section 2 of the Purchase Agreement.

**“Purchase Agreement”** means the Purchase Agreement, dated as of December 1, 2019, by and between the City and the Trustee as Seller, together with any duly authorized and executed amendment thereto.

**“Record Date”** means the close of business of the Trustee on the fifteenth day of the month preceding an Interest Payment Date.

**“Responsible Officer”** means, when used with respect to the Trustee, the president, any vice president, any assistant vice president, the secretary, any assistant secretary, the treasurer, any assistant treasurer or any other officer of the Trustee within the office of the Trustee set forth in Section 13.3 hereof (the “Corporate Trust Office”) (or any successor corporate trust office) customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred at the Corporate Trust Office because of such person’s knowledge of and familiarity with the particular subject and having direct responsibility for the administration of this Trust Agreement.

**“Seller”** means the Trustee in its trust capacity as Seller under the Purchase Agreement.

**“Special Counsel”** means Dickinson Wright PLLC, Phoenix, Arizona, or other nationally recognized bond counsel firm.

**“Special Record Date”** means the close of business of the Trustee on the date set by the Trustee with respect to Defaulted Interest pursuant to Section 2.10(d) hereof.

**“State”** means the State of Arizona.

**“State Shared Revenues”** means 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.

**“Supplemental Agreement”** means any agreement amending or supplementing the terms of this Trust Agreement or providing for the issuance or securing of Additional Parity Obligations.

**“Taxable Date”** means the date on which the Interest Portion is first includable in gross income of the Owner (including, without limitation, any previous Owner) thereof as a result of an Event of Taxability as such date is established by the Commissioner, any District Director, other officer or representative of the Internal Revenue Service (or any other government official or agent exercising the same or a substantially similar function from time to time).

**“Taxable Rate”** means the equivalent after-tax yield to the yields on the 2019 Obligations.

**“Term of the Purchase Agreement”** means the time during which the Purchase Agreement is in effect, as provided therein.

**“Trust Account”** means the trust account established under the 2019 Depository Trust Agreement to pay and redeem the Obligation Being Refunded.

**“Trust Agreement”** means this Trust Agreement, together with any amendments or supplements hereto permitted to be made hereunder.

**“Trustee”** means U.S. Bank National Association, or any successor thereto acting as Trustee pursuant to this Trust Agreement and in its capacity as Seller under the Purchase Agreement.

**“2007 Project”** means the construction and acquisition of certain improvements to the City’s Public Library.

**“Depository Trustee”** means U.S. Bank National Association, as depository trustee under the Letter of Instruction.

**“2019 Obligation Register”** means the register of ownership of the 2019 Obligations maintained by the Trustee.

**“2019 Obligations”** means the \$\_\_\_\_\_ aggregate principal amount of Pledged Revenue Refunding Obligations, Series 2019, to be executed and delivered pursuant hereto.

Words importing persons include firms, associations and corporations, and the singular and plural forms of words shall be deemed interchangeable wherever appropriate.

**Section 1.2**      **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.

## ARTICLE II

### SPECIAL REVENUE OBLIGATIONS

**Section 2.1**      **Authorization of the 2019 Obligations.** The Trustee is hereby authorized and directed to execute and deliver to the Original Purchaser, 2019 Obligations in the total principal amount of \$\_\_\_\_\_ evidencing all of the ownership interests in the Payments.

The Trustee shall not at any time while the 2019 Obligations are Outstanding issue additional certificates or obligations payable from the Payments except as provided in Section 6.3 hereof. The 2019 Obligations shall in no event be deemed an obligation or debt of the Trustee.

**Section 2.2**      **Date.** Each 2019 Obligation shall be dated \_\_\_\_\_, 2019, and interest with respect thereto shall be payable from such date, or from the most recent Interest Payment Date to which interest has previously been paid or made available for payment with respect to the Outstanding 2019 Obligations.

**Section 2.3**      **Payment Amounts, Payment Dates, and Interest Rates.** The 2019 Obligations shall be in the Authorized Denomination of the principal amount thereof Outstanding from time to time, and be payable on \_\_\_\_\_ 1, 20\_\_, in the principal amount of \$\_\_\_\_\_, and interest represented by the 2019 Obligations shall be computed at the rate of \_\_\_\_\_% per annum from the Closing Date (on the basis of a 360-day year composed of twelve (12) months of thirty (30) days each).

**Section 2.4**      **Interest on 2019 Obligations.** The 2019 Obligations shall be in fully registered certificated form.

Interest on the 2019 Obligations shall be payable semiannually on January 1 and July 1 of each year commencing July 1, 2020, to and including the date of payment or prepayment. Except for the initial period, said interest shall represent the portion of Payments designated as interest and coming due during the six-month period preceding each Interest Payment Date with respect to the 2019 Obligations.

The proportionate share of the portion of Payments designated as interest with respect to any 2019 Obligation shall be computed by multiplying the portion of Payments designated as principal remaining with respect to the 2019 Obligations (whether paid as a result of mandatory prepayment or maturity) by \_\_\_\_\_% (on the basis of a 360-day year composed of twelve 30-day months), except that the first portion of the Payments designated as interest shall be for interest from the date of initial execution and delivery to July 1, 2020, and that during any period when and Event of Default or an Event of Taxability exists, such rate shall instead be the Default Rate or the Taxable Rate, respectively.

**Section 2.5**      **Form.** The 2019 Obligations shall be in fully registered form.

The fully registered book-entry-only form of the 2019 Obligations shall be substantially in the form set forth in Exhibit A, attached hereto and incorporated herein. If the Book-Entry-Only System is discontinued, the 2019 Obligations shall be in substantially the same

form with such changes as may be necessary to provide for issuance of 2019 Obligations to the beneficial owners thereof.

**Section 2.6**      **Execution.** The 2019 Obligations shall be executed by and in the name of the Trustee by the manual signature of an authorized representative of the Trustee. If any representative whose signature appears on any 2019 Obligation ceases to be such representative before the Closing Date, such signature shall nevertheless be as effective as if the representative had remained in office until the Closing Date. Any 2019 Obligation may be executed on behalf of the Trustee by such person as at the actual date of the execution of such 2019 Obligation shall be the proper authorized representative of the Trustee although at the nominal date of such 2019 Obligation such person shall not have been such authorized representative of the Trustee. No 2019 Obligation shall be valid or become obligatory for any purpose or shall be entitled to any security or benefit under this Trust Agreement unless and until executed and delivered by the Trustee. The execution by the Trustee upon any 2019 Obligation shall be conclusive evidence that the 2019 Obligation so executed has been duly authorized and delivered hereunder and is entitled to the security and benefit of this Trust Agreement.

**Section 2.7**      **Application of Proceeds.** The proceeds received by the Trustee from the sale of the 2019 Obligations shall forthwith be set aside by the Trustee in the following respective funds and in the following order of priority:

(1)      The Trustee shall deposit the amount of \$\_\_\_\_\_ to the Costs of Issuance Fund;

(2)      The Trustee shall transfer proceeds in the amount of \$\_\_\_\_\_ to the Depository Trustee for deposit into the Trust Account held thereunder to be used for payment and redemption of the Obligation Being Refunded.

**Section 2.8**      **Transfer and Exchange.**

(a)      **Transfer of 2019 Obligations.** Any Obligation may, in accordance with its terms and this Section 2.8, be transferred upon the books required to be kept pursuant to the provisions of Section 2.12 hereof by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Obligation for cancellation, accompanied by delivery of a written instrument of transfer in a form approved by the Trustee, duly executed. Whenever any Obligation or Obligations shall be surrendered for transfer, the Trustee shall execute and deliver a new Obligation in fully registered form for the remaining aggregate principal amount. The Owner may at any time sell or otherwise transfer the Obligations, in whole, to: (i) an affiliate of the Owner; or (ii) a trust or other custodial arrangement established by the Owner or an affiliate of the Owner, the owners of any beneficial interest in which are limited to “Qualified Institutional Buyers” as defined in Rule 144A promulgated under the Securities Act of 1933, as amended. The Trustee’s sole responsibility in connection with any transferee which presents an investment letter to the Trustee is to confirm that any such investment letter is in the form delivered by the Owner in connection with the original execution and delivery of the Obligations; provided, however, the Trustee shall only be obligated to confirm that such investment letter meets such requirement if the City provides the Trustee with such original investment letter.



(b) **Exchange of 2019 Obligations.** 2019 Obligations may be exchanged at the Designated Office of the Trustee for the remaining aggregate principal amount of Obligations Outstanding. In connection with any such exchange or transfer of 2019 Obligations, the Owner requesting such exchange or transfer shall, as a condition precedent to the exercise of the privilege of making such exchange or transfer, remit to the Trustee an amount sufficient to pay any tax, or other governmental charge required to be paid, other than one imposed by the City, or any fee or expense of the Trustee or the City with respect to such exchange or transfer.

**Section 2.9**      **2019 Obligations Mutilated, Lost, Destroyed or Stolen.** If any 2019 Obligation shall become mutilated, the Trustee, at the expense of the Owner of said 2019 Obligation, shall execute and deliver a new 2019 Obligation of like series, tenor, maturity and amount in exchange and substitution for the 2019 Obligation so mutilated, but only upon surrender to the Trustee of the 2019 Obligation so mutilated. Any mutilated 2019 Obligation so surrendered to the Trustee shall be cancelled by it and redelivered to, or upon the order of, the 2019 Obligation Owner. If any 2019 Obligation shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may 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 2019 Obligation Owner, shall execute and deliver a new 2019 Obligation of like series, tenor, maturity and amount and numbered as the Trustee shall determine in lieu of and in substitution for the 2019 Obligation so lost, destroyed or stolen. The Trustee may require payment of an appropriate fee for each new 2019 Obligation delivered under this Section 2.10 and of the expenses which may be incurred by the Trustee in carrying out the duties under this Section 2.10. Any 2019 Obligation issued under the provisions of this Section 2.10 in lieu of any 2019 Obligation alleged to be lost, destroyed or stolen shall be equally and proportionately entitled to the benefits of this Trust Agreement with all other 2019 Obligations secured by this Trust Agreement. The Trustee shall not be required to treat both the original 2019 Obligation and any replacement 2019 Obligation as being Outstanding for the purpose of determining the principal amount of 2019 Obligations which may be executed and delivered hereunder or for the purpose of determining any percentage of 2019 Obligations Outstanding hereunder, but both the original and replacement 2019 Obligation shall be treated as one and the same. Notwithstanding any other provision of this Section 2.10, in lieu of delivering a new 2019 Obligation for a 2019 Obligation which has been mutilated, lost, destroyed or stolen, and which has matured, the Trustee may make payment with respect to such 2019 Obligation upon receipt of the aforementioned indemnity.

**Section 2.10**      **Payment.**

(a) Payment of interest due with respect to any 2019 Obligation on any Interest Payment Date shall be made to the person appearing on the registration books of the Trustee as the Owner thereof as of the Record Date immediately preceding such Interest Payment Date, such interest to be paid by check mailed on the date due by first class mail to such Owner at his address as it appears on such registration books.

(b) The principal and redemption price, if any, with respect to the 2019 Obligations shall be payable in lawful money of the United States of America upon surrender when due at the Designated Office of the Trustee.

(c) Interest and, if arrangements for surrender are made with the Trustee, principal and redemption price, if any, payable to any securities depository or to any Owner of \$1,000,000 or more in principal amount of 2019 Obligations shall be paid by wire transfer in immediately available funds to an account in the United States if the Owner makes a written request of the Trustee at least twenty (20) days before the Interest Payment Date specifying the account address. The notice may provide that it shall remain in effect for subsequent payments until otherwise requested in a subsequent written notice.

(d) Any interest on any 2019 Obligation which is payable on, but is not punctually paid or duly provided for on, any Interest Payment Date (herein referred to as "Defaulted Interest") shall forthwith cease to be payable to the Owner on the relevant Record Date solely by virtue of such Owner having been such Owner. Such Defaulted Interest shall thereupon be paid, together with interest thereon at the same rate per annum as such Defaulted Interest, by the Trustee to the persons in whose names such 2019 Obligations are registered at the close of business on a Special Record Date for the payment of such portion of Defaulted Interest as may then be paid from the sources herein provided. When the Trustee has funds available to pay the Defaulted Interest and interest thereon, the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest and interest thereon which shall be not more than fifteen (15) nor less than ten (10) days prior to the date of the proposed payment by the Trustee. The Trustee shall promptly cause notice of the proposed payment of such Defaulted Interest and interest thereon and the Special Record Date therefor to be mailed, first class postage prepaid, to each Owner of a 2019 Obligation at his address as it appears in the 2019 Obligation Register not less than ten (10) days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and interest thereon and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest and interest thereon shall be paid to the persons in whose names the 2019 Obligation are registered on such Special Record Date.

**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 2019 Obligation 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 2019 Obligations. Proof of the execution of any such instrument, or of any instrument appointing any such attorney or agent, and of the ownership of 2019 Obligations 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 2019 Obligations by any person and the amount, the maturity and the numbers of such 2019 Obligations and the date of his holding the same be proved on the registration books maintained pursuant to Section 2.12 hereof.

Nothing contained in this Article II shall be construed as limiting the Trustee to such proof, it being intended that the Trustee may accept any other evidence of the matters herein stated which the Trustee may deem sufficient. Any request or consent of the Owner of any 2019 Obligation shall bind every future Owner of the same 2019 Obligation in respect of anything done or suffered to be done by the Trustee in pursuance of such request or consent.

**Section 2.12**      **2019 Obligation Register.** The Trustee will keep or cause to be kept, at its Designated Office, sufficient books for the registration and transfer of the 2019 Obligations which shall at all times during regular business hours be open to inspection by the City 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 said books, 2019 Obligations as hereinbefore provided.

## ARTICLE III

### APPLICATION OF PROCEEDS RECEIVED BY TRUSTEE; PREPAYMENT OF LOAN; COSTS OF ISSUANCE FUND

#### **Section 3.1**      **Providing for Prepayment of Loan.**

Without further order or direction, the Trustee shall transfer to the Depository Trustee \$\_\_\_\_\_ to provide for the payment in full on the dates set forth in the 2019 Depository Trust Agreement to prepay the Obligation Being Refunded.

#### **Section 3.2**      **Establishment and Application of Costs of Issuance Fund.**

(a) The Trustee shall establish a special trust fund designated as the “City of Apache Junction 2019 Costs of Issuance Fund” (hereinafter referred to as the “Costs of Issuance Fund”), shall keep such fund separate and apart from all other funds and moneys held by it, and shall administer such fund as provided in this Trust Agreement.

(b) Amounts in the Costs of Issuance Fund shall be disbursed for the payment of Delivery Costs. Disbursements from the Costs of Issuance Fund shall be made by the Trustee upon receipt of a requisition for disbursement (on which the Trustee is entitled to rely) executed or approved by the City Representative. Each such certificate shall set forth the amounts to be disbursed for payment, or reimbursement of previous payments, of Delivery Costs and the person or persons to whom said amounts are to be disbursed. The Trustee has no duty or obligation to confirm that such disbursements constitute Delivery Costs.

(c) Should any shortfall or deficiency occur in the Costs of Issuance Fund, the City shall pay such amounts to the Trustee.

(d) On the earlier of March 1, 2020, or when all Delivery Costs associated with the 2019 Obligations have been paid (as shown by a certificate of a City Representative, if requested by the Trustee), the Trustee shall transfer any amounts remaining in the Costs of Issuance Fund to the Payment Fund and the Costs of Issuance Fund shall be closed.

**Section 3.3**      **Payments by the City.** The City shall be required to make Payments as required in Section 2 of the Purchase Agreement as necessary, taking into account any funds on deposit in the Payment Fund as a credit towards any Payment for the 2019 Obligations then due. The Trustee, on or before each Payment Date, shall notify the City of the amount required to be paid on that Payment Date after taking into account interest earnings which will be transferred to the Payment Fund in accordance herewith.

## ARTICLE IV

### PREPAYMENT OF 2019 OBLIGATIONS

**Section 4.1**      **No Optional Prepayment.**      Principal represented by the Obligations is not subject to optional prepayment.

**Section 4.2**      **Mandatory Prepayment.**      Principal represented by the Obligations shall be prepaid on July 1 of the years indicated and in the amounts indicated at a price equal to the amount thereof plus interest accrued to the date of prepayment, but without premium:

Year Prepaid

20\_\_  
20\_\_  
20\_\_

Principal Amount Prepaid

\$\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## ARTICLE V

### PAYMENTS; PAYMENT FUND AND REBATE FUND

**Section 5.1**      **Trustee's Rights in Purchase Agreement.** The Trustee holds in trust hereunder all of its rights and duties in the Purchase Agreement, including but not limited to all of the rights to receive and collect all of the Payments and all other amounts required to be deposited in the Payment Fund pursuant to the Purchase Agreement or pursuant hereto. All of the Payments and such other amounts to which the Seller may at any time be entitled shall be paid directly to the Trustee in trust, and all of the Payments collected or received by the Trustee shall be held by the Trustee in trust hereunder in the Payment Fund for the benefit of the Owners.

**Section 5.2**      **Establishment of Payment Fund.** The Trustee shall establish a special trust fund designated as the "City of Apache Junction 2019 Payment Fund" (which shall also be known as the "Payment Fund"). All moneys at any time deposited by the Trustee in the Payment Fund shall be held by the Trustee in trust for the benefit of the Owners of the 2019 Obligations. So long as any 2019 Obligations are Outstanding, the City shall have no beneficial right or interest in the 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 5.3**      **Payments by City; Deposits.** Not less than ten (10) Business Days prior to each Interest Payment Date, the Trustee shall notify the City of the amount required to be paid, after taking into account amounts which will be transferred to the Payment Fund in accordance herewith, on or before such Interest Payment Date, so that a sufficient amount will then be on deposit for both principal and interest represented by the 2019 Obligations then due. All amounts received by the Trustee as Payments pursuant to the Purchase Agreement or as transfers pursuant hereto shall be deposited in the Payment Fund.

**Section 5.4**      **Application of Moneys.** All amounts in the Payment Fund shall be used and withdrawn by the Trustee solely for the purpose of paying the principal and interest represented by the 2019 Obligations as the same shall become due and payable, in accordance with the provisions of Articles II and IV.

**Section 5.5**      **Transfers of Investment Earnings to Payment Fund.** Except as otherwise directed by the City, the Trustee shall, on or before the next Interest Payment Date, transfer any income or profit on the investment of moneys in the funds hereunder to the Payment Fund.

**Section 5.6**      **Surplus.** Any surplus remaining in any of the funds created hereunder, after prepayment and payment of all 2019 Obligations, including accrued interest and prepayment premium, if any, and payment of any applicable fees, expenses or indemnities to the Trustee, or provision for such prepayment and payment having been made to the satisfaction of the Trustee, shall be withdrawn by the Trustee and remitted to the City.

**Section 5.7**      **Separate Funds and Accounts.** Monies and investments properly paid into and held in the funds and accounts established hereunder shall not be subject to

the claims of the owners of any Parity Obligations other than the 2019 Obligations and the Owners of the 2019 Obligations shall have no claim or lien upon any monies or investments properly paid into and held in the funds and accounts established under the proceedings for any other Parity Obligations.

## ARTICLE VI

### PLEDGE AND LIEN

**Section 6.1**      **Pledge.** Payments and all other amounts due under the Purchase Agreement are payable from a pledge of, and secured by a lien on, the Pledged Revenues as may be necessary for their prompt and punctual payment. Said pledge of, and said lien on, the Pledged Revenues is irrevocably made and created by the City pursuant to the Purchase Agreement for the prompt and punctual payment of amounts due under the Purchase Agreement according to its terms, and to create and maintain the funds as hereinafter specified therein and herein. None of the 2019 Obligations shall be entitled to priority or distinction one over the other in the application of the Pledged Revenues thereby pledged to the payment thereof, regardless of the delivery of any of the 2019 Obligations prior to the delivery of any other of the 2019 Obligations or regardless of the time or times the 2019 Obligations mature or are called for redemption prior to maturity. All of the 2019 Obligations are co-equal 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 Excise Taxes or security therefor.

**Section 6.2**      **Protection of Lien.** The Trustee and the City hereby agree not to make or create or suffer to be made or created any assignment or lien having priority or preference over the assignment and lien hereof upon the interests granted hereby or any part thereof. The Trustee and the City agree that no obligations the payment of which is secured by an equal claim on or interest in property or revenues pledged hereunder will be issued or delivered by either except: (a) in lieu of, or upon transfer of registration or exchange of, any 2019 Obligation as provided herein; and (b) Additional Parity Obligations. No obligation with a subordinate lien on Excise Taxes may be accelerated so long as any 2019 Obligation is Outstanding.

**Section 6.3**      **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, neither the Trustee nor the City will further encumber the Pledged Revenues pledged under the Purchase Agreement on a basis equal to the pledge thereunder 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, 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 in the Purchase Agreement, the 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. Such obligations may include any long term obligation or deferred payment for property including, without limitation, installment purchase or lease purchase agreements. For the purpose of this Section 6.3, payments on installment purchase or lease purchase agreements shall be deemed to include a principal component and an interest component and references in this Trust Agreement to the payment of principal, interest and premium shall include the payment of lease purchase or installment purchase payments.



## ARTICLE VII

### MONEYS IN FUNDS; INVESTMENT

**Section 7.1**      **Held in Trust.** Except or otherwise provided herein, moneys and investments held by the Trustee under this Trust Agreement are irrevocably held in trust for the benefit of the Owners of the 2019 Obligations, 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 be subject to levy or attachment or lien by or for the benefit of any creditor of the City, the Trustee or any Owners of the 2019 Obligations.

**Section 7.2**      **Investments Authorized.** Upon written order of the City Representative, moneys held by the Trustee hereunder shall be invested and reinvested by the Trustee, to the maximum extent practicable in Permitted Investments. The City Representative may direct such investment in specific Permitted Investments. Such investments, if registrable, shall be registered in the name of the Trustee and shall be held by the Trustee. The Trustee may purchase from or sell to, itself or any affiliate, as principal or agent, investments authorized by this Section 7.2. 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 purchaser or agent in the making or disposing of any investment. The Trustee shall not invest any cash held by it hereunder in the absence of timely and specific written direction from the City Representative. In no event shall the Trustee be liable for the selection of investments. The Trustee may conclusively rely upon such written direction from the City Representative as to both the suitability and legality of the directed investments. The City acknowledges that regulations of the Comptroller of the Currency grant the City the right to receive brokerage confirmations of the security transactions as they occur, at no additional cost. To the extent permitted by law, the City specifically waives compliance with Title 12 C.F.R. Part 12 and hereby notifies the Trustee that no brokerage confirmations need be sent relating to the security transactions as they occur.

**Section 7.3**      **Accounting.** The Trustee shall furnish to the City, not less than semiannually, an accounting (which may be in the form of its customary statement) 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 7.2 hereof.

**Section 7.4**      **Allocation of Earnings.** Any income, profit or loss on investments shall be deposited in or charged to the respective funds from which such investments were made, and any interest on any deposit of funds shall be deposited in the fund from which such deposit was made, except as otherwise provided in Section 5.6 herein. At the direction of the City, any such income, profit or interest shall be transferred to the Rebate Fund.

**Section 7.5**      **Valuation and Disposition of Investments.** For the purpose of determining the amount in any fund, all Permitted Investments credited to such fund shall be valued at Market Value. The Trustee may sell at the price obtainable, or present for redemption, 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 such investment.

**Section 7.6**      **Arbitrage Covenant.** The City hereby covenants with the Owners of the 2019 Obligations that it will make no use of the proceeds of the 2019 Obligations or other moneys which would cause the obligations of the City under the Purchase Agreement to be “arbitrage bonds” subject to federal income taxation by reason of § 148 of the Code.

**Section 7.7**      **Other Tax Covenants.** In consideration of the acceptance and execution of the Purchase Agreement by the Trustee and the purchase by the Owners of the 2019 Obligations, and in consideration of retaining the exclusion of the portion of each Payment denominated as and comprising interest pursuant to the Purchase Agreement and received by the Owners of the 2019 Obligations for federal income tax purposes, the City shall, from time to time, neither take nor fail to take any action, which action or failure to act is within its power and authority and would result in such portion of each such Payment becoming subject to inclusion in gross income for federal income tax purposes under either laws existing on the date of execution of the Purchase Agreement or such laws as they may be modified or amended or tax laws later adopted.

The City shall comply with such requirement(s) and will take any such action(s) as are necessary to prevent such portion of each such Payment 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 required by any Special Counsel’s Opinion; to pay to the United States of America any required amounts representing rebates of arbitrage profits relating to the 2019 Obligations; 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 held pursuant to this Trust Agreement and limiting the use of the proceeds of the 2019 Obligations and property financed thereby.

## ARTICLE VIII

### THE TRUSTEE

**Section 8.1**      **Appointment of Trustee.** U.S. Bank National Association, a national banking association, is hereby appointed Trustee by the City for the purpose of executing and delivering the Purchase Agreement, as Seller, and 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 City covenants that it will maintain as Trustee a bank or trust company 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, so long as any 2019 Obligations are Outstanding. If such bank or trust company 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 8.1 the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

The Trustee is hereby authorized to pay or prepay, as applicable, the 2019 Obligations when duly presented for payment at maturity, or on prepayment, and to cancel all 2019 Obligations upon payment thereof. The Trustee shall keep accurate records of all funds administered by it and of all 2019 Obligations paid and discharged.

**Section 8.2**      **Liability of Trustee; Standard of Care.** The recitals of facts, covenants and agreements herein and in the 2019 Obligations contained shall be taken as statements, covenants and agreements of the City, and the Trustee assumes no responsibility for the correctness of the same, or makes any representations as to the validity or sufficiency of this Trust Agreement or of the 2019 Obligations or shall incur any responsibility in respect thereof, other than in connection with the duties or obligations herein or in the 2019 Obligations assigned to or imposed upon them, respectively, including but not limited to the Trustee's obligations under Section 7.7 hereof. Prior to the occurrence of an Event of Default, or after the timely cure of an Event of Default, the Trustee shall perform only such duties as are specifically set forth in this Trust Agreement and no implied covenants or obligations shall be read into this Trust Agreement against the Trustee. After the occurrence of an Event of Default, the Trustee shall exercise such of the rights and powers vested in it, and use the same degree of care and skill in such exercise, as a prudent indenture trustee would exercise under the circumstances in the conduct of the Trustee's corporate trust business.

**Section 8.3**      **Merger or Consolidation.** Any bank or company into which the Trustee may be merged or converted or with which it may be consolidated or any bank or company resulting from any merger, conversion or consolidation to which it shall be a party or any bank or company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided that such company shall be eligible under Section 8.1 hereof, shall be the successor to the Trustee without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

**Section 8.4**      **Protection and Rights of the Trustee.** The Trustee shall be protected and shall incur no liability in acting or proceeding in good faith upon any resolution, notice, telegram, request, consent, waiver, certificates, statements, affidavit, voucher, bond, requisition or other paper or document which it shall in good faith believe to be genuine and to have been passed or signed by the proper board or person or to have been prepared and furnished pursuant to any of the provisions of this Trust Agreement, and the Trustee shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements. The Trustee shall not be bound to recognize any person as an Owner of any 2019 Obligation or to take any action at his request unless such 2019 Obligation shall be deposited with the Trustee and satisfactory evidence of the ownership of such 2019 Obligation shall be furnished to the Trustee. The Trustee may consult with counsel, who may be counsel to the City with regard to legal questions and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith in accordance therewith.

Whenever in the administration of its duties under this Trust Agreement, the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) shall be deemed to be conclusively proved and established by the certificate of the City Representative and such certificate shall be full warranty to the Trustee for any action taken or suffered under the provisions of this Trust Agreement upon the faith thereof, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

The Trustee may become the Owner of the 2019 Obligations with the same rights it would have if it were not Trustee; may acquire and dispose of other bonds or evidence 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 2019 Obligations, whether or not such committee shall represent the Owners of the majority in principal amount of the 2019 Obligations then Outstanding.

The recitals, statements and representations by the City contained in this Trust Agreement or in the 2019 Obligations shall be taken and construed as made by and on the part of the City and not by the Trustee, and the Trustee does not assume, and shall not have, any responsibility or obligation for the correctness of any thereof.

The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, or receivers, and shall be entitled to advice of counsel concerning all matters of trust and its duty hereunder, and the Trustee shall not be answerable for the default or misconduct of any such attorney, agent, or receiver selected by it with reasonable care. The Trustee shall not be answerable for the exercise of any discretion or power under this Trust Agreement or for anything whatever in connection with the funds established hereunder, except only for its own willful misconduct or negligence.

No provision in this Trust Agreement shall require the Trustee to risk or expend its own funds or otherwise incur any financial liability (including, without limitation, any and all environmental liability) in the performance of any of its duties hereunder 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 indemnity satisfactory to it against such risk or liability is not reasonably assured to it.

The Trustee shall not be accountable for the use or application by the City 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 of the Project. In no event shall the Trustee be liable for incidental, indirect, special or consequential damages in connection with or arising from the Purchase Agreement or this Trust Agreement for the existence, furnishing or use of the Project.

Notwithstanding any provision in this Trust Agreement or the Purchase Agreement to the contrary, the Trustee shall not be required to take notice or be deemed to have notice of an Event of Default, except an Event of Default under Section 12(a)(i)(A) of the Purchase Agreement unless a Responsible Officer of the Trustee has actual notice thereof or is specifically notified in writing of such default by the City or the Owners of at least twenty-five percent (25%) in aggregate principal amount of the 2019 Obligations then Outstanding.

The Trustee shall have no responsibility or liability with respect to any information, statements or recitals in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of these 2019 Obligations. The permissive right of the Trustee to do things enumerated in this Trust Agreement shall not be construed as a duty and the Trustee shall not be answerable for other than its negligence or willful default. 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. The Trustee shall not be liable to the parties hereto or deemed in breach or default hereunder if and to the extent its performance hereunder is prevented by reason of force majeure. The term “force majeure” means an occurrence that is beyond the control of the Trustee and could not have been avoided by exercising due care. Force majeure shall include acts of God, terrorism, war, riots, strikes, fire, floods, earthquakes, epidemics or other similar occurrences.

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 not less than a majority in aggregate principal amount of the 2019 Obligations then outstanding 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 taking any action under this Trust Agreement relating to an event of default or in connection with its duties under this Trust Agreement other than making payments of principal and interest represented by the 2019 Obligations as they become due or causing an acceleration of the 2019 Obligations whenever required by the Agreement, the Trustee may require

that a satisfactory indemnity bond be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, including, but not limited to, any liability arising directly or indirectly under any federal, state or local statute, rule, law or ordinance related to the protection of the environment or hazardous substances and except liability which is adjudicated to have resulted from its negligence or willful default in connection with any action so taken.

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

In acting or omitting to act pursuant to the Purchase Agreement or any other documents that the Trustee enters into in connection with this Trust Agreement or the Purchase Agreement, the Trustee shall be entitled to all of the rights, immunities and indemnities accorded to it under this Trust Agreement, including, but not limited to, this Article VIII and Section 11.3 hereunder.

**Section 8.5**      **Compensation of Trustee.** The City shall from time to time, as agreed upon between the City and the Trustee, pay to the Trustee reasonable compensation for its services, including an hourly rate based fee after an Event of Default and shall reimburse the Trustee for all its advances and expenditures, including but not limited to advances to, and reasonable fees and expenses of, independent appraisers, accountants, consultants, counsel, agents and attorneys-at-law or other experts employed by it in the exercise and performance of its powers and duties hereunder. When the Trustee incurs expenses or renders services after the occurrence of an Event of Default, such expenses and the compensation for such services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law.

**Section 8.6**      **Removal of Trustee.** The City (but only if no Event of Default has occurred and is continuing), or the Owners of the 2019 Obligations Outstanding, by written directive given to the Trustee, at any time and for any reason, may remove the Trustee and any successor thereto, but any such successor shall be a bank or trust company having a combined capital (exclusive of borrowed capital) and surplus of at least Fifty Million Dollars (\$50,000,000) and subject to supervision or examination by Federal or State authority. If such bank or trust company publishes a report of condition at least annually, pursuant to law or the requirements of



any supervising or examining authority above referred to, then, for the purposes of this Section 8.6, the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

The Trustee may at any time resign by giving written notice to the City. Upon receiving such notice of resignation, the City shall promptly appoint a successor trustee by an instrument in writing; provided, however, that in the event that the City does not appoint a successor trustee within thirty (30) days following the City's sending notice of removal or its receipt of such notice of resignation, the resigning or removed Trustee may petition the appropriate court having jurisdiction to appoint a successor trustee. Any resignation or removal of the Trustee and appointment of a successor trustee shall become effective upon acceptance of appointment by the successor trustee. Trustee and City shall execute any documents reasonably required to effect the transfer of rights and obligations of the Trustee to the successor trustee subject, however, to the terms and conditions herein set forth, including, without limitation, the right of the predecessor Trustee to be paid and reimbursed in full for its reasonable charges and expenses (including reasonable fees and expenses of its counsel) and the indemnification under Sections 8.4 and 11.3 hereof. Upon such acceptance, the successor trustee shall mail notice thereof to the 2019 Obligation Owners at their respective addresses set forth on the 2019 Obligation Register maintained pursuant to Section 2.12 hereof.

Notwithstanding the foregoing, in the event the Trustee merges or becomes consolidated with any other entity which resulting entity is otherwise qualified to be a successor trustee hereunder, such resulting entity shall assume all rights, obligations and duties of the Trustee hereunder and under the Purchase Agreement without the execution or filing of any papers or any further act on the part of either party hereto.

**Section 8.7**      **Appointment of Agent.** The Trustee may appoint an agent or agents to exercise any of the powers, rights or remedies granted to the Trustee under this Trust Agreement, and to hold title to property or to take any other action which may be desirable or necessary.

**Section 8.8**      **Commingling.** The Trustee may commingle any of the funds held by it pursuant to this Trust Agreement in a separate fund or funds for investment purposes only; provided, however, that all funds held by the Trustee hereunder shall be accounted for separately notwithstanding such commingling by the Trustee.

**Section 8.9**      **Records.** The Trustee shall keep complete and accurate records of all moneys received and disbursed under this Trust Agreement, which shall be available for inspection by the City, or any of its agents, at any time during regular business hours. The Trustee shall provide the City Representative with semiannual reports of funds transactions and balances.

**Section 8.10**      **Force Majeure.** The Trustee shall not be considered in breach of or in default in its obligations hereunder or progress in respect thereto in the event of enforced delay ("unavoidable delay") in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, Acts of God or of the public enemy or terrorists, acts of a government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquakes, explosion, mob

violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources or energy, material or supplies in the open market, litigation or arbitration involving a party or others relating to zoning or other governmental action or inaction pertaining to the project, malicious mischief, condemnation, and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar event and/or occurrences beyond the control of the Trustee.

**Section 8.11**      **Facsimile Instruction.** The Trustee agrees to accept and act upon facsimile transmission of written instructions and/or directions pursuant to this Trust Agreement provided, however, that: (a) subsequent to such facsimile transmission of written instructions and/or directions the Trustee shall forthwith receive the originally executed instructions and/or directions; (b) such originally executed instructions and/or directions shall be signed by a person as may be designated and authorized to sign for the party signing such instructions and/or directions; and (c) the Trustee shall have received a current incumbency certificate containing the specimen signature of such designated person.

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



## ARTICLE IX

### MODIFICATION OR AMENDMENT OF AGREEMENTS

**Section 9.1**      **Amendments Permitted.** This Trust Agreement and the rights and obligations of the Owners of the 2019 Obligations and the Purchase Agreement and the rights and obligations of the parties thereto, may be modified or amended at any time by a supplemental or amending agreement which shall become effective when the written consent of the Owners of a majority of the principal amount of the 2019 Obligations Outstanding, exclusive of 2019 Obligations disqualified as provided in Section 9.3 hereof, shall have been filed with the Trustee. No such modification or amendment shall: (1) extend or have the effect of extending the final payment of principal represented by any 2019 Obligation or reducing the interest represented thereby or extending the time of payment of interest, or reducing the amount of principal thereof, without the express consent of the Owner of such 2019 Obligation; or (2) reduce or have the effect of reducing the percentage of 2019 Obligations required for the affirmative vote or written consent to an amendment or modification of this Trust Agreement or the Purchase Agreement; or (3) modify any of the rights or obligations of the Trustee without its written assent thereto. Any such supplemental or amending agreement shall become effective as provided in Section 9.2 hereof.

This Trust Agreement and the rights and obligations of the Owners of the 2019 Obligations, and the Purchase Agreement and the rights and obligations of the parties thereto, may be modified or amended at any time by a supplemental or amending agreement, without the consent of any such Owner, but 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 Trustee (for its own behalf) or the City; (2) to secure additional revenues or provide additional security or reserves for payment of the 2019 Obligations; (3) to comply with the requirements of any state or federal securities laws or the Trust Indenture Act of 1939, as from time to time amended, if required by law or regulation lawfully issued thereunder; (4) to provide for the appointment of a successor trustee pursuant to the terms hereof; (5) to preserve the exclusion of interest represented by the 2019 Obligations from gross income for purposes of federal or State income taxes and to preserve the power of the City to continue to issue bonds or incur other obligations the interest on which is likewise exempt from federal and State income taxes; (6) to cure, correct or supplement any ambiguous or defective provision contained herein or therein; or (7) in regard to questions arising hereunder or thereunder, as the parties hereto or thereto may deem necessary or desirable and which shall not materially adversely affect the interests of the Owners of the 2019 Obligations as evidenced by a Special Counsel's Opinion delivered by the City to the Trustee. Any such supplemental or amending agreement shall become effective upon execution and delivery by the parties hereto or thereto as the case may be. The Trustee may rely upon a Special Counsel's Opinion as conclusive evidence that any such supplemental or amending agreement complies with this Section.

**Section 9.2**      **Procedure for Amendment With Written Consent of 2019 Obligation Owners.** This Trust Agreement and the Purchase Agreement may be amended by supplemental or amending agreement as provided in this Section in the event the consent of the Owners of the 2019 Obligations is required pursuant to Section 9.1. A copy of such supplemental or amending agreement, together with a request to the Owners of a majority of the principal amount

of the 2019 Obligations Outstanding for their consent thereto, shall be mailed by the Trustee to the Owners of the 2019 Obligations, but failure to mail copies of such supplemental or amending agreement and request shall not affect the validity of the supplemental or amending agreement when assented to as provided in this Section 9.2.

Such supplemental or amending agreement shall not become effective unless there shall be filed with the Trustee the written consent of the Owners of a majority of the principal amount of 2019 Obligations Outstanding (exclusive of 2019 Obligations disqualified as provided in Section 9.3 hereof) and a notice shall have been mailed as hereinafter in this Section provided. The consent of the Owners of the 2019 Obligations shall be effective only if accompanied by proof of ownership of the 2019 Obligations for which such consent is given, which proof shall be such as is permitted by Section 2.11. Any such consent shall be binding upon the Owners and on any subsequent Owner (whether or not such subsequent Owner has notice thereof) unless such consent is revoked in writing by the Owners or a subsequent Owner by filing such revocation with the Trustee prior to the date when the notice hereinafter in this Section provided for has been mailed.

After the Owners of a majority of the principal amount of 2019 Obligations Outstanding shall have filed their consent to such supplemental or amending agreement, the Trustee shall mail a notice to the Owners of the 2019 Obligations in the manner hereinbefore provided in this Section for the mailing of such supplemental or amending agreement of the notice of adoption thereof, stating in substance that such supplemental or amending agreement has been consented to by the Owners of a majority of the principal amount of 2019 Obligations Outstanding and will be effective as provided in this Section (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 to be filed with the Trustee, shall be conclusive proof of the matters therein stated. Such supplemental or amending agreement shall become effective upon the mailing of such last-mentioned notice, and such supplemental or amending agreement shall be deemed conclusively binding upon the parties hereto and the Owners of all the 2019 Obligations 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 sixty (60) days.

**Section 9.3**      **Disqualified 2019 Obligations.** 2019 Obligations owned or held by or for the account of the City or by any person directly or indirectly controlled by, or under direct or indirect common control with the City (except any 2019 Obligations held in any pension or retirement fund) shall not be deemed Outstanding for the purpose of any vote, consent, waiver or other action or any calculation of Outstanding 2019 Obligations 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; except that in determining whether the Trustee shall be protected in relying upon any such approval or consent of an Owner, only 2019 Obligations which a Responsible Officer of the Trustee actually knows to be owned or held by or for the account of the City or by any person directly or indirectly controlled by, or under direct or indirect common control with the City (except any 2019 Obligations held in any pension or retirement fund) shall be disregarded unless all 2019 Obligations are owned or held by or for the account of the City or by any person directly or indirectly controlled by, or under direct or indirect common control with

the City, in which case such 2019 Obligations shall be considered outstanding for the purpose of such determination.

**Section 9.4**      **Effect of Supplemental Trust Agreement.** From and after the time any supplemental or amending agreement becomes effective pursuant to this Article IX, this Trust Agreement or the Purchase 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 2019 Obligations 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 or amending agreement shall be deemed to be part of the terms and conditions of this Trust Agreement or the Purchase Agreement, as the case may be, for any and all purposes.

The Trustee may require each 2019 Obligation Owner, before his consent provided for in this Article IX shall be deemed effective, to reveal whether the 2019 Obligations as to which such consent is given are disqualified as provided in Section 9.3 hereof.

**Section 9.5**      **Endorsement or Replacement of 2019 Obligations Delivered After Amendments.** The Trustee may determine that 2019 Obligations delivered after the effective date of any action taken as provided in this Article IX 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 2019 Obligation Outstanding at such effective date and presentation of his 2019 Obligation for the purpose at the office of the Trustee, a suitable notation shall be made on such 2019 Obligation. The City may determine that the delivery of substitute 2019 Obligations, so modified as in the opinion of the Trustee is necessary to conform to such 2019 Obligation Owners' action, which substitute 2019 Obligations shall thereupon be prepared, executed and delivered. In that case, upon demand of the Owner of any 2019 Obligation then Outstanding, such substitute 2019 Obligation shall be exchanged at the Designated Office of the Trustee, without cost to such Owner, for a 2019 Obligation of the same character then Outstanding, upon surrender of such Outstanding 2019 Obligation.

**Section 9.6**      **Amendatory Endorsement of 2019 Obligations.** The provisions of this Article IX shall not prevent any 2019 Obligation Owner from accepting any amendment as to the particular 2019 Obligations held by him, provided that proper notation thereof is made on such 2019 Obligations.

## ARTICLE X

### COVENANTS, NOTICES

#### **Section 10.1**      **Compliance With and Enforcement of Purchase Agreement.**

The City covenants and agrees with the Owners of the 2019 Obligations to perform all obligations and duties imposed on it under the Purchase Agreement, and the City shall 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 an Event of Default. The City, immediately upon receiving or giving any notice, communication or other document in any way relating to or affecting its estate in the 2007 Project, 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 10.2**      **Observance of Laws and Regulations.**

The City shall 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 of America, 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 political subdivision, 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 10.3**      **Further Assurances.**

The Trustee and the City, at the expense, and upon the reasonable request, of 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 Purchase Agreement, and for the better assuring and confirming unto the Owners of the 2019 Obligations the rights and benefits provided herein.

#### **Section 10.4**      **Notification to the City of Failure to Make Payments.**

The Trustee shall notify the City of any failure by the City to make any Payment or other payment required under the Purchase Agreement to be made to the Trustee, in writing and within one (1) Business Day of any such failure. Such notice shall not be a prerequisite for the occurrence of an Event of Default.

#### **Section 10.5**      **Business Days.**

Except as otherwise required herein, if this Trust Agreement requires any party to act on a specific day and such day is not a Business Day, such party need not perform such act until the next succeeding Business Day, and such act shall be deemed to have been performed on the day required.

## ARTICLE XI

### LIMITATION OF LIABILITY

**Section 11.1**      **Limited Liability of the City.** Except for the payment of Payments from Pledged Revenues when due in accordance with the Purchase Agreement and the performance of the other covenants and agreements of the City contained in the Purchase Agreement, the City shall have no pecuniary obligation or liability to any of the other parties or to the Owners of the 2019 Obligations with respect to this Trust Agreement, or the terms, execution, delivery or transfer of the 2019 Obligations, or the distribution of Payments to the Owners by the Trustee.

**Section 11.2**      **No Liability of the City for Trustee Performance.** The City shall have no obligation or liability to any of the other parties or to the Owners of the 2019 Obligations with respect to the performance by the Trustee of any duty imposed upon it under this Trust Agreement.

**Section 11.3**      **Indemnification of the Trustee.** To the extent permitted by law, the City shall indemnify and save the Trustee and its officers, directors, agents and employees harmless for, from and against all claims, losses, costs, expenses, liability and damages, including legal fees and expenses, arising out of: (a) the use, maintenance, condition or management of, or from any work or thing done on, the 2007 Project, or the site of the 2007 Project, or any portion thereof or interest therein, by the City; (b) any breach or default on the part of the City in the performance of any of its obligations under this Trust Agreement and any other agreement made and entered into for purposes of the Project or any interest therein; (c) any act of negligence of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Project; (d) any act of negligence of any assignee of, or purchaser from, the City or of any of its or their agents, contractors, servants, employees or licensees with respect to the Project; (e) the refinancing of a portion of the costs of the 2007 Project or any interest therein; (f) the actions of any other party, including but not limited to the operation or use of the 2007 Project or the site of the 2007 Project, or interest therein, by the City; (g) the ownership of the 2007 Project, or the site of the 2007 Project, or interest therein, or (h) this Trust Agreement and the Purchase Agreement, including the Trustee's exercise and performance of its powers and duties hereunder. No indemnification will be made under this Section or elsewhere in this Trust Agreement for willful misconduct, negligence or breach of duty under this Trust Agreement by the Trustee, or by its officers, agents, employees, successors or assigns. The City's obligations hereunder for indemnification under this Section shall remain valid and binding notwithstanding, and shall survive, the maturity and payment or redemption of the 2019 Obligations or resignation or removal of the Trustee or the termination of this Trust Agreement.

The Trustee, promptly after determining that any event or condition which requires or may require indemnification by the City hereunder exists or may exist, or after receipt of notice of the commencement of any action in respect of which indemnity may be sought hereunder, shall notify the City in writing of such circumstances or action (the "Notification"). Upon giving of the Notification, the Trustee shall cooperate fully with the City in order that the City may defend, compromise or settle any such matters or actions which may result in payment by City hereunder.

The City shall give the Trustee notice of its election within fifteen (15) Business Days after receiving the Notification whether the City, at its sole cost and expense, shall represent and defend the Trustee in any claim or action which may result in a request for indemnification hereunder. If the City timely gives the notice that it will represent and defend the Trustee thereafter, the Trustee shall not settle or compromise or otherwise interfere with the defense or undertakings of the City hereunder. The City shall not settle or compromise any claim or action against the Trustee without the written approval of the Trustee, except to the extent that the City shall pay all losses and the Trustee shall be fully released from such claim or action. If the City either fails to timely give its notice or notifies the Trustee that the City will not represent and defend the Trustee, the Trustee may defend, settle, compromise or admit liability as it shall determine in the reasonable exercise of its discretion and in an effort to minimize any claims for indemnity made hereunder. In the event the City is required to and does indemnify the Trustee as herein provided, the rights of the City shall be subrogated to the rights of the Trustee to recover such losses or damages from any other person or entity.

**Section 11.4**      **Opinion of Counsel.** 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.



## ARTICLE XII

### EVENTS OF DEFAULT AND REMEDIES OF 2019 OBLIGATION OWNERS

**Section 12.1**      **Seller's Rights Held in Trust.** As provided herein, the Trustee holds in trust hereunder all of the Seller's rights in and to the Purchase Agreement, including without limitation all of the Seller's rights to exercise such rights and remedies conferred on the Seller pursuant to the Purchase Agreement as may be necessary or convenient to enforce payment of the Payments and any other amounts required to be deposited in the Payment Fund and enforcement of the pledge of Pledged Revenues for the payment of the 2019 Obligations.

**Section 12.2**      **Remedies Upon Default; No Acceleration.** 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, or upon request of the Owners of a majority of the principal amount of 2019 Obligations Outstanding and receiving indemnity satisfactory to it shall, exercise one or more of the remedies granted pursuant to the Purchase Agreement; provided, however, that notwithstanding anything herein or in the Purchase Agreement to the contrary, there shall be no right under any circumstances to accelerate the payment date of the 2019 Obligations or otherwise to declare any of the Payments not then past due or in default to be immediately due and payable.

**Section 12.3**      **Application of Funds.** All moneys received by the Trustee pursuant to any right given or action taken pursuant to the provisions of this Article XII or Section 12 of the Purchase Agreement shall be applied by the Trustee in the order following, in the case of the 2019 Obligations, upon presentation of the several 2019 Obligations, and the stamping thereon of the payment if only partially paid, or upon the surrender thereof if fully paid:

**First:** to the payment of the fees, costs and expenses of the Trustee and then of the Owners in declaring such Event of Default, including reasonable compensation to the Owners' or the Trustee's agents, attorneys and counsel; and

**Second:** to the payment of the whole amount then owing and unpaid with respect to the Obligations and, in case such moneys shall be insufficient to pay in full the whole amount so owing and unpaid with respect to the Obligations, 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 12.4**      **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 of the principal amount of the 2019 Obligations 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 2019 Obligations by a suit in equity or action at law for the specific performance of any covenant or agreement contained herein.

**Section 12.5**      **Non-waiver.** Nothing in this Article XII or in any other provision of this Trust Agreement or in the 2019 Obligations, shall affect or impair the obligation

of the City to pay or prepay the Payments as provided in the Purchase Agreement, or affect or impair the right of action, which is absolute and unconditional, of the 2019 Obligation 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 2019 Obligations 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 XII to the Trustee or the Owners of 2019 Obligations may be exercised from time to time and as often as shall be deemed expedient by the Trustee or the 2019 Obligation Owners.

**Section 12.6**      **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 the 2019 Obligations then Outstanding, it shall have full power, in the exercise of its discretion for the best interests of the Owners of the 2019 Obligations, 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 the Owners.

**Section 12.7**      **Limitation on 2019 Obligation Owners' Right to Sue.** No Owner of any 2019 Obligation 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; (b) the Owners of a majority of the principal amount of all the 2019 Obligations 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 indemnity satisfactory to it 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 2019 Obligations of any remedy hereunder; it being understood and intended that no one or more Owners of 2019 Obligations 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 and proportionate benefit of all Owners of the Outstanding 2019 Obligations.

The right of any Owner of any 2019 Obligation to receive payment of said Owner's proportionate interest in the 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 or any other provision of this Trust Agreement.



## ARTICLE XIII

### MISCELLANEOUS

**Section 13.1**      **Defeasance.** If and when all Outstanding 2019 Obligations shall be paid and discharged in any one or more of the following ways:

(a)      **Payment.** By paying or causing to be paid the principal of and interest represented by such 2019 Obligations Outstanding, as and when the same become due and payable;

(b)      **Cash Deposit.** By depositing with a Depository Trustee, in trust for such purpose, at or before the payment date therefor, money which, together with the amounts then on deposit in the Payment Fund is fully sufficient to pay or cause to be paid all principal and interest represented by such 2019 Obligations Outstanding, including all principal, interest and redemption premium, if any; or

(c)      **Government Obligations Deposit.** By depositing with a Depository Trustee, in trust for such purpose, any noncallable Government Obligations in such amount as shall be certified to the Trustee and the City in a report by an independent firm of nationally recognized certified public accountants acceptable to both the Trustee and the City, as being fully sufficient, together with the interest to accrue thereon and moneys then on deposit in the Payment Fund together with the interest to accrue thereon, to pay and discharge or cause to be paid and discharged all principal and interest represented by the 2019 Obligations at the payment or prepayment dates or prior redemption dates, which deposit may be made in accordance with the provisions of Section 10 of the Purchase Agreement;

notwithstanding that any 2019 Obligations shall not have been surrendered for payment, all obligations of the Trustee and the City with respect to all Outstanding 2019 Obligations shall cease and terminate, except only the obligation of the Trustee to pay or cause to be paid, from funds deposited pursuant to paragraphs (b) or (c) of this Section and paid to the Trustee by the Depository Trustee, to the Owners of the 2019 Obligations not so surrendered and paid all sums due with respect thereto, and in the event of deposits pursuant to paragraphs (b) or (c), the 2019 Obligations shall continue to represent direct and proportionate interests of the Owners thereof in such funds.

Any funds held by the Trustee, at the time of one of the events described in paragraphs (a) through (c) of this Section, which are not required for the payment to be made to the Owners or for the payment of any other amounts due and payable by the City hereunder or under the Purchase Agreement, shall be paid over to the City.

The 2109 Obligations may be paid and discharged as provided in this Section; provided that if the 2019 Obligations will not be payable within sixty (60) days of the deposit referred to in subsections (b) or (c) of this Section, the Trustee shall give notice of such deposit by first class mail to the Owners.

No 2019 Obligations may be provided for as described in this Section if, as a result thereof, or of any other action in connection with which the provisions for payment of such 2019 Obligation is made, the interest payable on the 2019 Obligation is thereby made includable in gross income for federal income tax purposes. The Trustee, the Depository Trustee and the City may rely upon a Special Counsel's Opinion to the effect that the provisions of this Subsection will not be breached by so providing for the payment of any 2019 Obligations.

The Depository Trustee shall be any bank or trust company, which may be the Trustee, designated by the City, 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 of Arizona authority.

**Section 13.2**      **Records.** The Trustee shall keep complete and accurate records of all moneys received and disbursed under this Trust Agreement, which shall be available for inspection by the City and any Owner, or the agent of any of them, at any time during regular business hours.

**Section 13.3**      **Notices.** All written notices to be given under this Trust Agreement shall be given by overnight delivery or courier or by mail or personal delivery to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other party in writing from time to time. Notice shall be effective upon deposit in the United States mail, postage prepaid or, in the case of personal delivery, upon delivery to the address set forth below:

If to the City:	City of Apache Junction, Arizona 300 East Superstition Boulevard Apache Junction, Arizona 85119 Attn: City Manager
If to the Trustee:	U.S. Bank National Association 101 North First Avenue, Suite 1600 Phoenix, AZ 85003 LM-AZ-X16P Attn: Global Corporate Trust Services
If to Special Counsel:	Dickinson Wright PLLC 1850 North Central Avenue, Suite 1400 Phoenix, Arizona 85004 Attn: Eric McGlothlin

**Section 13.4**      **Covenant as to Conflict of Interest.** As required by the provisions of A.R.S. § 38-511, notice is hereby given that the City may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the City if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the 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. The cancellation shall be effective when written notice is received by all other parties to the contract unless the notice specifies a later time. The Trustee covenants not to employ as an employee, an agent or, with respect to the subject matter of this Trust Agreement, a consultant, any person significantly involved in initiating, negotiating, securing, drafting or creating this Trust Agreement on behalf of the City within three years from the execution of this Trust Agreement, unless a waiver of A.R.S. § 38-511, is provided by the City. No basis exists for the City to cancel this Trust Agreement pursuant to A.R.S. § 38-511, as of the date hereof.

**Section 13.5**      **Governing Law.** This Trust Agreement shall be construed and governed in accordance with the laws of the State of Arizona.

**Section 13.6**      **Binding Effect and Successors.** This Trust Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Whenever in this Trust Agreement either the City or the Trustee is named or referred to, such reference shall be deemed to include successors or assigns thereof, and all the covenants and agreements in this Trust Agreement contained by or on behalf of 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 13.7**      **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 13.8**      **Destruction of Cancelled 2019 Obligations.** 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 2019 Obligations, the Trustee may, destroy such 2019 Obligations and, upon the City's request, deliver a certificate of such destruction to the City.

**Section 13.9**      **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 13.10**      **Parties Interested Herein.** Nothing in this Trust Agreement or the 2019 Obligations, expressed or implied, is intended or shall be construed to confer upon, or to give or grant to, any person or entity, other than the City, the Trustee, and the Owners of the 2019 Obligations, any legal or equitable right, remedy or claim under or by reason of this Trust Agreement or any covenant, condition or stipulation hereof, and all covenants, stipulations, provisions 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 Trustee, and the Owners of the 2019 Obligations.

**Section 13.11**     **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 13.12**     **Severability of Invalid Provisions.** In case any one or more of the provisions contained in this Trust Agreement or in the 2019 Obligations 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 2019 Obligations 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.

**Section 13.13**     **E-Verify Requirements.** To the extent applicable under A.R.S. § 41-4401, the Trustee 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 Trustee or its subcontractors' breach of the above-mentioned warranty shall be deemed a material breach of this Trust Agreement and may result in the termination of the Trustee's services by the City. The City retains the legal right to randomly inspect the papers and records of the Trustee or its subcontractor employee who work on this Trust Agreement to ensure that the Trustee and its subcontractors are complying with the above-mentioned warranty.

The Trustee and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by the City. The Trustee 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.

**Section 13.14**     **No Boycott of Israel.** Pursuant to A.R.S. § 35-393 *et seq.*, the 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 the City determines that the Trustee's certification above is false or that it has breached such agreement, the City may impose remedies as provided by law.

*[Signature page follows]*

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

\_\_\_\_\_, **as Trustee**

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

**CITY OF APACHE JUNCTION,  
ARIZONA**

By: \_\_\_\_\_  
Jeff Serdy  
Mayor

**ATTEST:**

\_\_\_\_\_  
Jennifer Peña  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Eric McGlothlin  
Special Counsel

**EXHIBIT A**

(Form of 2019 Obligation)

**THIS OBLIGATION MAY ONLY BE TRANSFERRED BY THE REGISTERED  
OWNER HEREOF IN ACCORDANCE WITH THE TRANSFER RESTRICTIONS SET  
FORTH IN ARTICLE II OF THE HEREINAFTER DEFINED TRUST AGREEMENT.**

Number: \_\_\_\_\_

Principal Amount: \$\_\_\_\_\_

PLEDGED REVENUE REFUNDING OBLIGATION, SERIES 2019

Evidencing the Interest of the Owner

Hereof in Payments to be Made by

CITY OF APACHE JUNCTION, ARIZONA

to

\_\_\_\_\_,  
as Trustee

Interest Rate

Payment Date

Dated Date

\_\_\_\_%

\_\_\_\_\_ 1, 20\_\_

\_\_\_\_\_, 2019

Registered Owner: \_\_\_\_\_

Principal Amount: \_\_\_\_\_ AND NO/100 DOLLARS (\$\_\_\_\_\_ .00)

The registered owner identified above, or registered assigns, as the registered owner of this Pledged Revenue Obligation, Series 2019 (this "Obligation") is the owner of all of the interests in the rights to receive certain "Payments" under and defined in that certain Purchase Agreement, dated as of December 1, 2019 (the "Purchase Agreement"), by and between \_\_\_\_\_ (the "Trustee"), and the City of Apache Junction, Arizona, a municipal corporation under the laws of the State of Arizona (the "City"), which Payments and other rights and interests under the Purchase Agreement are held by the Trustee in trust under that certain Trust Agreement, dated as of December 1, 2019 (the "Trust Agreement"), by and between the City and the Trustee. The Trustee maintains a corporate trust office for payment and transfer of this Obligation (the "Designated Office").

The registered owner of this Obligation is entitled to receive, subject to the terms of the Purchase Agreement, on the payment date set forth above, the principal amount hereof and to receive semiannually on January 1 and July 1 of each year commencing \_\_\_\_\_ 1, 2019 (the "Interest Payment Dates"), until payment in full of the portion of the Payments designated principal or prepayment prior thereto, the portion of the Payments designated as interest coming due during the period commencing on the last date on which interest was paid

and ending on the day prior to the Interest Payment Date or, if no interest has been paid, from the Dated Date specified above. Said interest is the result of the multiplication of said principal by the interest rate per annum set forth above (subject to adjustment upon the occurrence of an Event of Default (as such term and all other undefined terms used herein are defined in the Trust Agreement) or an Event of Taxability as provided in the Trust Agreement; provided, however, that in neither case nor both cases combined may such increase in interest rate(s) result in the savings threshold required by the Resolution (as hereinafter defined) to not be satisfied). Interest shall be calculated on the basis of a 360-day year composed of twelve (12) months of thirty (30) days each. If an Event of Taxability shall occur, the Gross-Up Amount shall be paid (limited as described above, if applicable).

Principal and interest represented by this Obligation are payable in lawful money of the United States of America as provided in the Trust Agreement and the other amounts due with respect hereto. The records of the Trustee prevail in the event of discrepancy as to payment.

The Trustee has no obligation or liability to the registered owner of this Obligation for the payment of interest or principal represented by this Obligation. The Trustee's sole obligations are to administer, for the benefit of the registered owner of this Obligation, the various funds and accounts established pursuant to the Trust Agreement. (The recitals, statements, covenants and representations made in this Obligation shall be taken and construed as made by and on the part of the City, and not by the Trustee, and the Trustee does not assume, and shall not have, any responsibility or obligation for the correctness of any thereof.)

This Obligation has been executed and delivered by the Trustee pursuant to the terms of, and for the purposes described in, the Trust Agreement. The City is authorized to enter into the Purchase Agreement and the Trust Agreement under the laws of the State of Arizona and by resolution of the Mayor and Council of the City adopted on November 19, 2019 (the "Resolution"). Reference is hereby made to the Purchase Agreement and the Trust Agreement (copies of which are on file at the Designated Office) for further definitions, the terms, covenants and provisions pursuant to which this Obligation is delivered, the rights thereunder of the registered owner of this Obligation, the terms under which the Trust Agreement or the Purchase Agreement may be modified or supplemented, the rights, duties and immunities of the Trustee and the security for, and the rights and obligations of the City under the Purchase Agreement (including with respect to obligations to be secured on a parity lien basis with, the security for the Payments and to certain limitations on such security), to all of the provisions of which Purchase Agreement and Trust Agreement the registered owner of this Obligation, by acceptance hereof, assents and agrees. (To the extent and in the manner permitted by the terms of the Trust Agreement, the provisions of the Trust Agreement and the Purchase Agreement may be amended by the parties thereto with the written consent of the owners of a majority of the obligations of which this Obligation is one (the "Obligations"), and may be amended without such consent under certain circumstances but in no event such that the interests of the owners of the Obligations are adversely affected, provided that no such amendment shall impair the right of any owner to receive in any case such owner's proportionate share of any Payment thereof in accordance with this Obligation.)

The obligation of the City to make the Payments does not represent or constitute a general obligation of the City for which the City is obligated to levy or pledge any form of



taxation nor does the obligation to make the Payments under the Purchase Agreement constitute an indebtedness of the City, the State of Arizona or any of its political subdivisions within the meaning of any constitutional or statutory debt limitation or restriction or otherwise.

Neither the Trustee nor the registered owners of the Obligations shall have any right under any circumstances to accelerate the payment date of the Obligations or otherwise declare any of the Payments not then past due or in default to be immediately due and payable; however, the amount of each of the Payments denominated as and comprising interest shall be calculated at the Default Rate upon the occurrence of an Event of Default. (This Obligation represents an interest in a limited obligation of the City (as described herein), and no member of the Mayor and Council, officer or agent, as such, past, present or future, of the City shall be personally liable for the payment hereof.)

This Obligation is executed and delivered only in fully registered, physically certificated form and shall not be transferable or exchangeable, except as provided in the Trust Agreement.

This Obligation may be exchanged for Obligations in authorized denominations as described in the Trust Agreement.

This Obligation is transferable by the registered owner hereof, in person or by his attorney duly authorized in writing, at the Designated Office, but only in the manner, subject to the limitations and upon payment of the charges provided in the Trust Agreement and upon surrender and cancellation of this Obligation. Upon such transfer a new Obligation, for the principal amount remaining payable at maturity will be delivered to the transferee in exchange therefor. The City and the Trustee may treat the registered owner hereof as the absolute owner hereof for all purposes, whether or not this Obligation shall be overdue, and the City and the Trustee shall not be affected by any notice to the contrary.

The Trustee may require a registered owner, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes or governmental charges required by law in connection with the exchange or transfer.

The registered owner of this Obligation shall have no right to enforce the provisions of the Trust Agreement or the Purchase Agreement or to institute any action to enforce the covenants thereof, or to take any action with respect to a default thereunder or hereunder, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Trust Agreement.

Principal represented by the Obligation is not subject to optional prepayment.



Principal represented by this Obligation shall be prepaid on July 1 of the years indicated and in the principal amounts indicated at a price equal to the amount thereof plus interest accrued to the date of prepayment, but without premium:

<u>Year Prepaid</u>	<u>Principal Amount Prepaid</u>
20__	\$_____
20__	_____
20__	_____

It is hereby certified, recited and declared that all conditions, acts and things required by the Constitution and laws of the State of Arizona to happen, to be done, to exist and to be performed precedent to and in the execution and delivery of this Obligation have happened, have been done, do exist and have been performed in regular and due form and time as required by law.

This Obligation shall not be entitled to any security or benefit under the Trust Agreement until executed by the Trustee.

IN WITNESS WHEREOF, this 2019 Obligation has been executed and delivered by the Trustee, acting pursuant to the Trust Agreement.

Date of Execution: \_\_\_\_\_, 2019

\_\_\_\_\_, **as Trustee**

By \_\_\_\_\_  
Authorized Representative

The following abbreviations, when used in the inscription on the face of this 2019 Obligation, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM –	as tenants in common	UNIF GIFT/TRANS MIN ACT
TEN ENT -	as tenants by the entireties	_____ Custodian _____
JT TEN -	as joint tenants with right of survivorship and not as tenants in common	(Cust) _____ (Minor) _____
		under Uniform Gifts/Transfers to Minors Act

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

### ASSIGNMENT

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

Insert Social Security or Other  
Identifying Number of Transferee

\_\_\_\_\_  
\_\_\_\_\_

(Please Print or Typewrite Name and Address of Transferee)  
the within certificate and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_, attorney to transfer the within certificate on the books kept for registration thereof, with full power of substitution in the premises.

Dated \_\_\_\_\_

\_\_\_\_\_  
Note: The signature(s) on this assignment must correspond with the name(s) as written on the face of the within registered certificate in every particular without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

\_\_\_\_\_  
The signature(s) should be guaranteed by an eligible guarantor institution pursuant to Securities and Exchange Commission Rule 17Ad-15