

the Bank or such Participant to compensation pursuant to this Section. The failure of the Bank or such Participant to so notify the City shall in no manner release the City from its obligations under this Section 3.3. Each demand for compensation pursuant to this Section 3.3 shall be accompanied by a certificate of the Bank or such Participant in reasonable detail setting forth the computation of such compensation (including the reason therefor), which certificate shall be conclusive, absent manifest error, as against all other Persons, including the City and the Authority. In determining any compensation pursuant to this Section, the Bank or such Participant may use reasonable averaging and attribution methods, reasonable estimates, assumptions, allocations and the like that the Bank or such Participant in good faith determines to be appropriate.

#### Section 3.4 Overdue Payments; Default Pricing; Excess Interest.

(a) Overdue principal and overdue interest in respect of each Drawing, each Liquidity Advance, each Term Loan and any other overdue amount payable by the City hereunder shall bear interest at a per annum rate equal to the Default Rate. During the continuance of an Event of Default, each Drawing, each Liquidity Advance, each Term Loan and other any other amount payable by the City hereunder shall bear interest at a rate per annum equal to the Default Rate.

(b) Interest not paid when due pursuant to Section 3.4(a) above, shall, to the extent permitted by law, be compounded on a monthly basis and added to principal.

(c) If the rate of interest payable hereunder shall exceed the Maximum Rate for any period for which interest is payable, then, subject to Section 2.4(d), (i) interest at the Maximum Rate shall be due and payable with respect to such interest period and (ii) interest at the rate equal to the difference between (A) the rate of interest calculated in accordance with the terms hereof and (B) the Maximum Rate (the "Excess Interest"), shall be deferred until such date as the rate of interest calculated in accordance with the terms hereof ceases to exceed the Maximum Rate, at which time the City shall pay to the Bank, with respect to amounts then payable to the Bank that are required to accrue interest hereunder, such portion of the deferred Excess Interest as will cause the rate of interest then paid to the Bank to equal the Maximum Rate, which payments of deferred Excess Interest shall continue to apply to such unpaid amounts hereunder until all deferred Excess Interest is fully paid to the Bank. Upon the termination of the Letter of Credit and this Agreement, in consideration for the limitation of the rate of interest otherwise payable hereunder, the City shall pay to the Bank a fee equal to the amount of all unpaid deferred Excess Interest.

#### Section 3.5 Payments.

(a) Method and Place of Payment. Except as otherwise specifically provided herein, all amounts payable under this Agreement shall be made to the Bank not later than 1:00 p.m. Los Angeles time on the date when due and shall be made in Dollars in immediately available funds. Whenever any payment to be made hereunder shall be stated to be due on a day which is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest shall be payable at the applicable rate during such extension. Amounts received later than 1:00 p.m. Los Angeles time

on a Business Day but before the Bank's close of business on such Business Day shall be deemed received on or before 1:00 p.m. Los Angeles time on the next Business Day.

(b) Net Payments. All payments made by the City hereunder shall be made without setoff, counterclaim or other defense. All such payments will be made free and clear of, and without deduction or withholding for, any present or future taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein (but excluding, except as provided below, any tax imposed on or measured by the overall net income of the Bank pursuant to the laws of the jurisdiction (or any political subdivision or taxing authority thereof or therein) under which the Bank is organized) and all interest, penalties or similar liabilities with respect thereto (collectively, "Taxes"). If the City shall be required by any law, rule or regulation to deduct any Taxes from or in respect of any sum payable under this Agreement or any Related Document to the Bank, (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section), the Bank receives an amount equal to the sum it would have received had no such deductions been made, (ii) the City shall make such deductions, (iii) the City shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable laws, rules and regulations and (iv) within 45 days after the date of such payment, the City shall furnish to the Bank the original or a certified copy of a receipt evidencing payment thereof. The City will to the maximum extent permitted by applicable law indemnify and hold harmless the Bank, and reimburse the Bank upon its written request, for the amount of any Taxes so levied or imposed and paid by the Bank. The agreements in this subsection shall survive the termination of the Letter of Credit and repayment of all of the Obligations.

#### ARTICLE IV NATURE OF OBLIGATIONS; INDEMNITY

Section 4.1 Obligations of the City. The obligations of the City under this Agreement shall be primary, absolute, independent, unconditional and irrevocable and shall be performed strictly in accordance with the terms of this Agreement, including without limitation the following circumstances:

(a) Any lack of validity or enforceability of the Letter of Credit, the Related Documents or any other agreement or instrument relating to any of the above;

(b) Any amendment or waiver of, or any consent to or departure from, any provision of any of the Related Documents, except for any waiver or consent granted by the Bank;

(c) The existence of any claim, setoff, defense or other rights that the City may have at any time against the Trustee, any beneficiary or transferee of the Letter of Credit (or any Person for whom the Trustee, any such beneficiary or any such transferee may be acting), the Bank or any other Person, whether in connection with this Agreement, the Related Documents or any unrelated transaction;

(d) Any breach of contract or other dispute between the City and the Trustee, any beneficiary or transferee of the Letter of Credit (or any Person for whom the Trustee, any such beneficiary or any such transferee may be acting), any Owner, the Bank or any other Person;

(e) Any demand, statement or any other document presented under the Letter of Credit or hereunder proving to have been forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect whatsoever;

(f) Payment by the Bank under the Letter of Credit against presentation of a draft or certificate which does not comply strictly with the terms of the Letter of Credit;

(g) Any non-application or misapplication by the Trustee, any paying agent or the Tender Agent or otherwise of the proceeds of any Drawing; or

(h) The failure by the Bank to honor any Drawing under the Letter of Credit or to make any payment demanded under the Letter of Credit on the grounds that the demand for such payment does not conform strictly to the terms and conditions of the Letter of Credit.

#### Section 4.2 Indemnification.

(a) To the maximum extent permitted by applicable law, the City agrees to indemnify, save and hold harmless each Bank-Related Person from and against: (i) any and all claims, demands, actions or causes of action that (x) are asserted against any Bank-Related Person by any Person relating directly or indirectly to a claim, demand, action or cause of action that such Person asserts or may assert against the City or any of its elected officials, officers or employees or any plant, property or equipment of the City; and/or (y) may at any time (including at any time following repayment of the Obligations) be asserted or imposed against any Bank-Related Person arising out of or relating to this Agreement or any Related Agreement, the use or contemplated use of the proceeds of any Drawing, any Liquidity Advance or any Term Loan, or the relationship of City and the Bank under this Agreement or any Related Document; (ii) any investigative, administrative or judicial proceeding by any Governmental Authority arising out of or related to a claim, demand, action or cause of action described in subsection (i) above; and (iii) any and all liabilities (including liabilities under indemnities), losses, costs or expenses (including attorney costs) that any Bank-Related Person suffers or incurs as a result of the assertion of any foregoing claim, demand, action, cause of action or proceeding, or as a result of the preparation of any defense in connection with any foregoing claim, demand, action, cause of action or proceeding, in all cases, and whether or not a Bank-Related Person is a party to such claim, demand, action, cause of action or proceeding; provided that no Bank-Related Person shall be entitled to indemnification for any claim caused by its own gross negligence or willful misconduct or for any loss asserted against it by another Bank-Related Person. The agreements in this subsection shall survive the termination of the Letter of Credit and repayment of all of the Obligations.

(b) To the maximum extent permitted by applicable law, the City shall also indemnify and hold harmless the Bank from any transfer taxes, documentary taxes, assessments or charges made by any Governmental Authority by reason of the execution and delivery of this

Agreement and the Related Documents or the issuance of the Letter of Credit. The agreements in this subsection shall survive the termination of the Letter of Credit and repayment of all of the Obligations.

Section 4.3 Obligations and Liability of the Bank.

(a) Except as provided in this Agreement, the Bank shall not be obligated to issue any further credits, to cure any defaults under any Related Document or otherwise, or in any other manner to extend any financial consideration or accommodation to the City.

(b) The City shall not be deemed to have waived or released any of its rights or remedies (whether specified in or arising under this Agreement or otherwise available to it by law or agreement) unless the Bank shall have signed a written waiver or release. Delay or failure to act on the Bank's part shall not constitute a waiver of or otherwise preclude enforcement of any of their rights and remedies. All of the Bank's rights and remedies shall be cumulative and may be exercised separately or concurrently. The Bank need not resort to any particular right or remedy before exercising or enforcing any other, and the Bank's resort to any right or remedy shall not preclude the exercise or enforcement of any other right or remedy.

(c) The City assumes all risks of the acts or omissions of the Trustee, any transferee of the Letter of Credit, the Tender Agent and the Remarketing Agent with respect to its use of the Letter of Credit and the application of proceeds drawn thereunder; provided that this assumption with respect to the Bank is not intended to, and shall not, preclude the City's pursuing such rights and remedies as it may have against the Trustee, such transferee, the Tender Agent or the Remarketing Agent at law or under any other agreement. Neither the Bank nor any of its officers, directors, employees or agents shall be liable or responsible for:

(i) The use that may be made of the Letter of Credit or for any acts or omissions of the Trustee or any transferee of the Letter of Credit in connection therewith;

(ii) The form, validity, sufficiency, accuracy or genuineness of documents, or of any endorsements thereon, even if such documents should prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged, so long as the Bank was not grossly negligent or guilty of willful misconduct as determined by a court of competent jurisdiction;

(iii) Payment by the Bank against presentation of documents that do not comply strictly with the terms of the Letter of Credit, including failure of any documents to bear any reference or adequate reference to the Letter of Credit;

(iv) The validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign the Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason;

(v) Errors, omissions, interruptions or delays in transmission or delivery of any messages by telex, mail, cable, telegraph, facsimile or otherwise, whether or not they have been in cipher, including any Drawings under the Letter of Credit;

- (vi) Errors in interpretation of technical terms; or
- (vii) Any consequences arising from causes beyond the control of the Bank, including, without limitation, any Government Acts;

provided that, notwithstanding anything in the preceding clauses (i) through (vii) to the contrary, the City shall have a claim against the Bank, and the Bank shall be liable to the City, to the extent, but only to the extent, of any direct, as opposed to consequential, damages suffered by the City that the City proves were caused by (A) the Bank's failure to pay under the Letter of Credit after the presentation to it by the Trustee of a sight draft and certificate strictly complying with the terms and conditions of the Letter of Credit or (B) the Bank's willful or grossly negligent payment under the Letter of Credit as determined by a court of competent jurisdiction.

In furtherance and not in limitation of the foregoing, the Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary.

#### ARTICLE V REPRESENTATIONS AND WARRANTIES OF THE CITY

The City represents and warrants as of the date hereof as follows:

Section 5.1 Existence and Power. The City is a municipal corporation and chartered city duly organized and existing under and by virtue of the laws of the State of California and the Charter, and is possessed of full powers to own and lease (as lessor and lessee) real and personal property, to conduct its business as presently conducted and to enter into contracts such as this Agreement and the City Related Documents, which powers have been validly exercised in connection with the transactions effected by this Agreement and the City Related Documents.

Section 5.2 Authorization; Contravention; Approvals. The execution, delivery and performance by the City of this Agreement and the City Related Documents and the other documents contemplated hereby and thereby are within the powers of City, have been duly authorized by all necessary actions and (i) do not contravene the Charter or the City Administrative Code or any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or any indenture, agreement, lease, instrument or other contractual restriction binding on or affecting the City and (ii) except as provided in or contemplated by this Agreement and the Related Documents, do not result in or require the creation of any Lien, security interest or other charge or encumbrance upon or with respect to any asset of the City. The City is not in violation of or in default in any respect under any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or any indenture, agreement, lease, instrument or other contractual restriction or the City Related Documents. No Default or Event of Default has occurred and is continuing. All orders, consents and other authorizations or approvals of all Governmental Authorities and all other Persons have been obtained (and no additional authorization, approval or other action by, and no notice to or filing or registration with, any Governmental Authority is required to be made or obtained by the City) for the due execution, delivery and performance by the City of this Agreement and the City Related Documents.

Section 5.3 Enforceability. This Agreement and the City Related Documents, and other documents contemplated hereby and thereby to which the City is a party or by which it is bound are legally valid and binding obligations of the City enforceable against the City in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally and by general principles of equity.

Section 5.4 Litigation. Except as disclosed in the Official Statement, there are no actions, suits, proceedings, inquiries or investigations, at law or in equity, before any court, Governmental Authority or arbitrator pending or, to the best knowledge of the City, threatened, against or directly involving the City, affecting the existence of the City, the title of any officials to their respective offices, the Leased Property or affecting or seeking to prohibit, restrain or enjoin the execution or delivery of this Agreement or any Related Document, or in any way contesting or affecting the validity or enforceability of the Certificates, this Agreement, any Related Document or contesting the tax-exempt status of the Certificates, or contesting in any way the completeness or accuracy of the Official Statement or any supplements or amendments thereto, or contesting the powers of the City or any authority for the issuance of the Certificates, the execution and delivery of this Agreement or the City Related Documents, nor, to the best knowledge of the City, is there any basis therefor, which, if determined adversely to the City (i) would adversely affect the validity or enforceability of, or the authority or ability of the City to perform its obligations under, this Agreement or any City Related Documents, (ii) would, in the reasonable opinion of the City, have a material adverse effect on the business, financial position or results of operations of the City or (iii) would adversely affect the exclusion of interest on the Certificates from gross income for Federal income tax purposes or the exemption of such interest from State of California personal income taxes.

Section 5.5 Financial Information.

(a) The audited financial statements of the City included in the 2007 CAFR, true and correct copies of which have heretofore been delivered to the Bank, fairly present, in conformity with generally accepted accounting principles the financial position of the City and its results of operations and changes in financial position at the dates and for the periods indicated.

(b) Since June 30, 2007, there has been no material adverse change in the business, financial position or results of operations of the City.

(c) Except as fully reflected in the financial statements included in the 2007 CAFR and except for the City's obligations set forth in this Agreement and the City Related Documents, there are as of the date hereof no liabilities or obligations with respect to the City of any nature whatsoever (whether absolute, accrued, contingent or otherwise and whether or not due) which, in the aggregate, would be material to the City. The City does not know of any basis for the assertion against the City of any liability or obligation of any nature whatsoever that is not fully reflected in the financial statements included in the 2007 CAFR which, in the aggregate, could be material to the City.

Section 5.6 Disclosure. No written information furnished by the City to the Bank in connection with this Agreement (except information which has been superseded by subsequent information provided by the City) includes any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made in such information and all other written information delivered by the City, when taken together and in light of the circumstances in which they were made, not misleading in any material respect. Except for information contained in the Official Statement under the subcaptions "Letter of Credit", "Reimbursement Agreement" and "The Bank", as to which no representation is made, the Official Statement is, and any supplement or amendment to either shall be, accurate in all materials respects for the purpose for which its use is, was or shall be, authorized; and except for information contained in the Official Statement under the previously mentioned captions, as to which no representation is made, the Official Statement does not, and any such supplement or amendment will not, contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements made therein, in the light of the circumstances under which they are or were made, not misleading.

Section 5.7 Environmental Matters. The City has not received notice to the effect that its operations are not in compliance with any of the requirements of applicable federal, state or local environmental, health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, in each case relating to the Leased Property which non-compliance or remedial action could have a material adverse effect on the assets, financial condition, Properties, business or operations of the City or its ability to perform its obligations under the City Related Documents.

Section 5.8 Plans. The City currently has a Plan which is in compliance in all respects with the requirements of the applicable laws of the State of California, including without limitation the obligation to pay contributions on behalf of its employees in accordance therewith, and the City has no Plan which is subject to the requirements of ERISA. No condition exists or event or transaction has occurred with respect to any Plan which could reasonably be expected to result in the incurrence by the City of any material liability, fine or penalty.

Section 5.9 Use of Certificate Proceeds. The proceeds of the Certificates will be expended in the manner set forth in the Third Supplemental Trust Agreement.

Section 5.10 Regulations U and X. The City is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U or X issued by the Board of Governors of the Federal Reserve System); and no proceeds of any Certificates will be used to extend credit to others for the purpose of purchasing or carrying any margin stock.

Section 5.11 Tax-Exempt Status. The City has not taken any action or omitted to take any action, and knows of no action taken or omitted to be taken by any other Person, which action, if taken or omitted, would adversely affect the exclusion of interest on the Certificates from gross income for Federal income tax purposes or the exemption of such interest from State of California personal income taxes.

Section 5.12 Security. The Trust Agreement creates a valid security interest in the funds and accounts created under the Trust Agreement and the moneys, including, without limitation, the Rental Payments on deposit therein, as security for the punctual payment of the interest and principal due with respect to the Existing Certificates, the 2008 Certificates and all Obligations. All action necessary to create a first and exclusive lien on such funds and accounts and on moneys on deposit therein, including the Rental Payments, have been duly and validly taken. The City's obligation to pay the Obligations is *par passu* with its obligation to pay the Existing Certificates and the 2008 Certificates.

Section 5.13 Rental Payments. The Assignment Agreement validly assigns to the Trustee all of the rights of the Authority to receive the Rental Payments as security for (a) the punctual payment of interest and principal due with respect to the Certificates, (b) to reimburse any Credit Provider (as defined in the Trust Agreement) for payment in respect of the punctual payment of interest and principal due with respect to the Certificates and (c) to pay amounts payable under any Swap Agreement (as defined in the Trust Agreement). All actions necessary to create a first and exclusive right to the Rental Payments have been duly and validly taken.

Section 5.14 Fair Market Rental Value. The total principal component of the Rental Payments due under the Sublease and the total amount due with respect to all bonds, certificates of participation or any other obligation supported by or based on the fair market rental value of the Leased Property do not exceed the fair market value of the Leased Property and the total principal and interest due with respect to the Existing Certificates, the 2008 Certificates and the Obligations do not exceed the total Rental Payments due under the Sublease.

Section 5.15 Marketable Fee. The City has good and marketable fee title to the Leased Property. Each item of Leased Property is an essential asset of the City necessary to serve the needs of the residents of the City. The City believes that at all times while any Rental Payments or any obligation of the City hereunder remains unpaid, each item of the Leased Property will remain an essential asset of the City.

Section 5.16 Constitutional Matters. To the best knowledge of the City, there is no amendment, or proposed amendment certified for placement on a statewide ballot, to the Constitution of the State of California or any published administrative interpretation of the Constitution of the State of California or any State of California law, or any legislation which has passed either house of the State legislature or is under consideration by any conference or similar committee, or any published judicial decision interpreting any of the foregoing, the effect of which could reasonably be expected to have material adverse effect on the assets, financial condition, business or operations of the City, on the City's ability to pay in full in a timely fashion the Rental Payments and other obligations under the Sublease or the obligations of the City under this Agreement or any Related Document to which it is a party.

Section 5.17 No Sovereign Immunity. The City is not entitled to claim the defense of sovereign immunity in any action, suit or proceeding arising under or relating to this Agreement or any City Related Document (a) for monetary damages or (b) for the execution or enforcement of any judgment (subject to applicable bankruptcy or insolvency laws or limitations on legal remedies against public agencies in the State of California), nor may there be attributed to the City any such immunity (whether or not claimed).

Section 5.18 Incorporation of Representations and Warranties by Reference. Each representation and warranty of the City contained in any Related Document to which it is a party is true and correct. The City hereby makes every representation and warranty made by it in any Related Document to which it is a party, which representations and warranties, as well as the defined terms contained therein that are necessary for a correct interpretation thereof, are incorporated herein by this reference with the same effect as if each and every such provision and defined term were set forth herein in its entirety. No amendment to such representations and warranties or defined terms made pursuant to any such Related Document and no termination or replacement of any such Related Document shall be effective to amend, terminate or replace such representations and warranties or defined terms as incorporated by reference therein without the prior written consent of the Bank.

## ARTICLE VI REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE AUTHORITY

The Authority represents, warrants and covenants as of the date hereof as follows:

Section 6.1 Existence and Power. The Authority is a joint exercise of powers authority duly organized and existing under and by virtue of the laws of the State of California and the Joint Exercise of Powers Agreement, and is possessed of full powers to own and lease (as lessor and lessee) real and personal property, to conduct its business as presently conducted and to enter into contracts such as this Agreement and the Authority Related Documents, which powers have been validly exercised in connection with the transactions effected by this Agreement and the Authority Related Documents.

Section 6.2 Authorization; Contravention; Approvals. The execution, delivery and performance by the Authority of this Agreement and the Authority Related Documents and the other documents contemplated hereby and thereby are within the powers of Authority, have been duly authorized by all necessary actions and (i) do not contravene the Joint Exercise of Powers Agreement or any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or any indenture, agreement, lease, instrument or other contractual restriction binding on or affecting the Authority and (ii) except as provided in or contemplated by this Agreement and the Related Documents, do not result in or require the creation of any Lien, security interest or other charge or encumbrance upon or with respect to any asset of the Authority. The Authority is not in violation of or in default in any respect under any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or any indenture, agreement, lease, instrument or other contractual restriction or the Authority Related Documents. All orders, consents and other authorizations or approvals of all Governmental Authorities and all other Persons have been obtained (and no additional authorization, approval or other action by, and no notice to or filing or registration with, any Governmental Authority is required to be made or obtained by the Authority) for the due execution, delivery and performance by the Authority of this Agreement and the Authority Related Documents.

Section 6.3 Enforceability. This Agreement and the Authority Related Documents, and other documents contemplated hereby and thereby to which the Authority is a party or by which it is bound are legally valid and binding obligations of the Authority enforceable against the Authority in accordance with their respective terms, except as such enforceability may be

limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally and by general principles of equity.

Section 6.4 Litigation. Except as disclosed in the Official Statement, there are no actions, suits, proceedings, inquiries or investigations, at law or in equity, before any court, Governmental Authority or arbitrator pending or, to the best knowledge of the Authority, threatened, against or directly involving the Authority, affecting the existence of the Authority, the title of any officials to their respective offices, the Leased Property or affecting or seeking to prohibit, restrain or enjoin the execution or delivery of this Agreement or any Related Document, or in any way contesting or affecting the validity or enforceability of the Certificates, this Agreement, any Related Document or contesting the tax-exempt status of the Certificates, or contesting in any way the completeness or accuracy of the Official Statement or any supplements or amendments thereto, or contesting the powers of the Authority or any authority for the issuance of the Certificates, the execution and delivery of this Agreement or the Authority Related Documents, nor, to the best, knowledge of the Authority, is there any basis therefor, which, if determined adversely to the Authority would adversely affect the validity or enforceability of, or the authority or ability of the Authority to perform its obligations under, this Agreement or any Authority Related Documents.

Section 6.5 Rental Payments. The Assignment Agreement validly assigns to the Trustee all of the rights of the Authority to receive the Rental Payments as security for (a) the punctual payment of interest and principal due with respect to the Certificates, (b) to reimburse any Credit Provider (as defined in the Trust Agreement) for payment in respect of the punctual payment of interest and principal due with respect to the Certificates and (c) to pay amounts payable under any Swap Agreement (as defined in the Trust Agreement). All actions necessary to create a first and exclusive right to the Rental Payments have been duly and validly taken. The Authority acknowledges and agrees that all payments (including principal and interest) due hereunder in respect of Liquidity Provider Certificates, Liquidity Advances and Term Loans shall be payable from Base Rental Payments and all other Obligations shall constitute costs and expenses of the Authority payable as Additional Rental.

Section 6.6 No Sovereign Immunity. The Authority is not entitled to claim the defense of sovereign immunity in any action, suit or proceeding arising under or relating to this Agreement or any Authority Related Document (a) for monetary damages or (b) for the execution or enforcement of any judgment (subject to applicable bankruptcy or insolvency laws or limitations on legal remedies against public agencies in the State of California), nor may there be attributed to the Authority any such immunity (whether or not claimed).

## ARTICLE VII COVENANTS

Until the Letter of Credit has terminated on accordance with its terms and all Obligations of the City shall have been paid and performed in full, unless the Bank shall otherwise consent in writing, the City agrees that:

Section 7.1 Reports and Other Information. The City will furnish, or cause to be furnished, at the City's expense to the Bank:

(a) As soon as possible and in any event within 5 Business Days after the occurrence of any Event of Default, a statement of the Authorized City Representative setting forth details of such Event of Default and the action that the City proposes to take with respect thereto;

(b) As soon as available and in any event within 180 days after the end of each fiscal year of the City, a copy of the comprehensive annual financial report of the City for such year, including a balance sheet of the City as at the end of such fiscal year and the related statements of revenues, expenses and changes in fund balances and statement of cash flows, all in reasonable detail and reported on by a firm of nationally recognized independent certified public accountants, and the report of such firm of independent certified public accountants shall state, without qualification, that such financial statements present fairly the financial position of the City as of the end of such fiscal year, the results of operations, the changes in fund balances and cash flows of the City for such fiscal year then ended in conformity with generally accepted accounting principles;

(c) Simultaneously with the delivery of each set of financial statements referred to in clause (b) above, a certificate of the Director of Finance of the City stating whether there exists on the date of such certificate any Event of Default or Default and, if any Event of Default or Default then exists, setting forth the details thereof and the action that the City is taking or proposes to take with respect thereto;

(d) As soon as practicable and in any event within ten (10) Business Days after the City obtains actual knowledge of: (i) any litigation, arbitration or governmental proceeding pending against the City which (A) if determined adversely to the City could reasonable be expected to result in uninsured damages in excess of \$5,000,000 and (B) the City has determined, based upon the advise of counsel (which may be the City Attorney or attorneys supervised by the City Attorney), has merit; (ii) any litigation, arbitration or governmental proceeding pending against the City that challenges the City's ability to perform its obligations under this Agreement and/or the City Related Documents; (iii) a change or amendment to the Charter or the City Administrative Code, which change or amendment is materially adverse to the City's ability to perform its obligations under this Agreement and/or the City Related Documents; (iv) any other event or condition causing a material adverse change in the City's ability to perform its obligations under this Agreement and/or the City Related Documents; or (v) the destruction of any Leased Property or any material damage to any such property that is not fully covered by casualty insurance, in each case a statement of the Authorized City Representative of the City setting forth details describing the same and the steps being taken with thereto;

(e) As soon as practicable and in any event within ninety (90) days following its adoption by the City Council, a copy of each annual budget for the City;

(f) Promptly following its receipt thereof, a copy of any non-routine notice, certification, demand or other non-routine writing or communication from the Trustee, the Tender Agent or the Remarketing Agent under or in connection with the 2008 Certificates or any of the other Related Documents;

- (g) As soon as practicable, any disclosure documents publicly distributed in connection with any issue of Certificates pursuant to the Trust Agreement;
- (h) As soon as practicable, a copy of any appraisal made with respect to the Leased Property;
- (i) As soon as practicable, notice of any change in, or the withdrawal of, any Rating; and
- (j) From time to time, such additional information (including, without limitation, management letters) regarding the financial position, results of operations, business or prospects of the City as the Bank may reasonably request.

Section 7.2 Books and Records; Inspections. The City will keep proper books of record and account in which full and correct entries shall be made of assets and liabilities, financial transactions and business of the City in conformity with generally accepted accounting principles. The City will upon reasonable notice permit any Person designated by the Bank in writing to visit any of the properties of the City, including the Leased Properties, and to examine the books and financial records of the City and make copies thereof or extracts therefrom, and to discuss the affairs, finances and accounts of the City with the principal officers of the City all at such reasonable times and as often as the Bank may reasonably request.

Section 7.3 Maintain Existence. The City will preserve and maintain its existence, rights and franchises as a municipal corporation duly organized and existing under the Constitution and laws of the State of California and will not merge or combine with any other Person.

Section 7.4 Compliance with Laws. The City will comply with the requirements of all laws, rules, regulations and orders of any Governmental Authority having jurisdiction over the City, noncompliance with which would materially adversely affect the ability of the City to perform its obligations under this Agreement and the City Related Documents.

Section 7.5 Compliance with Agreements. The City will observe and perform all of its obligations under this Agreement and the City Related Documents.

Section 7.6 Incorporation of Covenants by Reference. The City, by this reference, hereby incorporates into this Agreement the covenants and agreements made by it in the City Related Documents, as such covenants and agreements exist on the date hereof, as if such covenants and agreements were set forth herein in their entirety together with all defined terms and interpretative provisions necessary for a complete understanding thereof (such enumerated covenants, agreements and defined and interpretative terms, the "Underlying Provisions"; the Underlying Provisions as so incorporated, the "Incorporated Provisions"). The Incorporated Provisions shall be deemed to be made for the benefit of the Bank and shall be enforceable against the City by the Bank. To the extent that any Underlying Provision permits any Person to waive compliance with such provision or requires that a document, opinion or other instrument or any event or condition be acceptable or satisfactory to any Person, the corresponding Incorporated Provision shall require that such waiver be acceptable to the Bank and that such document, opinion or other instrument or any event or condition be acceptable or satisfactory to

the Bank. No termination or amendment or modification of any of the Underlying Provisions shall be effective to terminate or amend or modify the Incorporated Provisions without the prior written consent of the Bank. The Incorporated Provisions shall be in addition to the express covenants contained herein and shall not be limited by the express covenants contained herein nor shall the Incorporated Provisions be a limitation on the express covenants contained herein. In the event of a conflict between the covenants and agreements set forth in this Article VI (other than the Incorporated Provisions) and the Incorporated Provisions, the covenants and agreements set forth in the other provisions of Article VI shall prevail. Notwithstanding anything to the contrary contained in this Section 7.6, any Incorporated Provisions that require the Bank to provide consent for the issuance of Additional Certificates shall be waived so long as all other conditions in the Related Documents necessary for the issuance of Additional Certificates have been satisfied in full.

Section 7.7 City Related Documents. The City will not amend, supplement or otherwise modify, or agree to the amendment, modification or termination of, any of the Related City Documents if such action could reasonably be expected to materially adversely affect the City's ability to perform its obligations under this Agreement and the City Related Documents or materially adversely affect the business, financial position or results of operations of the City.

Section 7.8 Assignment, Transfer or Sublease. The City shall not assign, transfer or sublease any Leased Property except (a) in accordance with Section 2.04 of the Sublease and (ii) with the written consent of the Bank, which consent shall not be unreasonably withheld.

Section 7.9 Abandonment of Property. Except as set forth in the Sublease, the City will not abandon, vacate or close any item of Leased Property.

Section 7.10 Abatement. Except as set forth in the Sublease, the City will not seek or assert a claim for rent abatement with respect to any Leased Property.

Section 7.11 Annual Appropriation. The City shall make annual appropriations at levels to make Rental Payments as required under the Sublease and this Agreement.

Section 7.12 Trustee; Tender Agent and Remarketing Agent. The City will not dismiss, replace or permit the resignation of the Trustee, the Tender Agent or the Remarketing Agent unless it has appointed a new trustee, tender agent or remarketing agent, as the case may be, which shall have been confirmed in writing by the Bank as satisfactory to it in its sole discretion.

Section 7.13 Alternate Credit Enhancement. The City agrees that any termination of the Letter of Credit as a result of the provision of any Alternate Credit Enhancement will require, as a condition thereto, that the City or the issuer of the Alternate Credit Enhancement will provide funds on the date of such termination or provision, which funds will be sufficient to pay in full at the time of termination of the Letter of Credit all Obligations due to the Bank hereunder.

Section 7.14 Best Efforts. In the event the City does not request an extension of the LOC Period or the Bank denies or fails to respond to a request to extend the LOC Period, the City shall use its best efforts to secure Alternate Credit Enhancement for the 2008 Certificates, convert the 2008 Certificates to a mode of interest that does not require Credit Enhancement,

prepay the 2008 Certificates or defease the 2008 Certificates, in any case prior to the expiration of the Letter of Credit.

Section 7.15 Return of Letter of Credit. The City shall, upon the occurrence of the Termination Date, cause the Trustee to surrender forthwith the Letter of Credit to the Bank for cancellation.

Section 7.16 Official Statement. The City shall not change any reference to the Bank in the Official Statement without the Bank's prior written consent thereto.

Section 7.17 Use of Proceeds. The City will use the proceeds of the 2008 Certificates solely as provided for in the Third Supplemental Trust Agreement.

Section 7.18 Ranking of Obligations. The City shall not take any action that would result in the Obligations not ranking at least *pari passu* in right of payment with all obligations of the City to the other creditors that are secured by Rental Payments.

Section 7.19 Investment Agreements; Qualified Swap; Consent of Credit Provider. The City agrees that it will not, and instruct the Trustee not to, invest the proceeds of any 2008 Certificates or Rental Payments in any Permitted Investment of the type described in clause (h) thereof (investment agreements) without first obtaining the prior written consent of the Bank, which consent shall not be unreasonably withheld. Without first obtaining the prior written consent of the Bank, which consent shall not be unreasonably withheld, the City shall not enter into a Qualified Swap that does not comply with the Swap Policy as in effect on the date hereof. The City acknowledges and agrees that the Trustee and the Owners must obtain the prior written consent of the Bank, as contemplated by Article XI of the Trust Agreement, before proceeding to exercise remedies under the Trust Agreement with respect to the 2008 Certificates following the occurrence of an "event of default" under the Trust Agreement.

Section 7.20 Maintenance of Tax-Exempt Status of the 2008 Certificates. The City will not take any action or omit to take any action which, if taken or omitted, would adversely affect the exclusion of interest on the 2008 Certificates from gross income for purposes of federal income taxation or the exemption of such interest from State of California personal income taxes.

Section 7.21 Plans. The City will (i) remain at all times in compliance with any applicable law (including any legally available grace periods) with respect to any Plan, and (ii) maintain each Plan as to which it may have any liability in compliance in all material respects with the provisions of applicable law, the failure to comply with which could subject the City to any tax or penalty which tax or penalty, taken together, with all other taxes and penalties which could be assessed against the City by reason of all other non-compliances, would have a material adverse affect on the business, financial position or results of operations of the City.

Section 7.22 Further Assurances. The City agrees to do such further acts and things and to execute and deliver to the Bank such additional assignments, agreements, powers and instruments as the Bank may reasonably require or reasonably deem advisable to carry into effect the purposes of this Agreement or to better assure and confirm to the Bank its rights, powers and remedies hereunder and under the City Related Documents. If on the date the Letter of Credit

issued, the Certificates have been assigned a long-term/short-term rating of “AA/A-1+” by S&P or “AA/F-1+” by Fitch but not by both rating agencies, then the City shall use its reasonable best efforts to seek the other long-term/short-term rating in respect of the Certificates as soon as practicable following the Date of Issuance.

## ARTICLE VIII DEFAULTS AND REMEDIES

Section 8.1 Events of Default. The occurrence and continuance of one or more of the following events shall constitute an event of default hereunder (“Event of Default”):

(a) The City shall fail to pay when due (i) the amount of any Drawing; (ii) the principal of any Liquidity Advance or any Term Loan; (iii) the interest on any Liquidity Advance or any Term Loan, and such default shall continue unremedied for 2 Business Days, or (iv) any other amount payable hereunder, and such default shall continue unremedied for 5 days; or

(b) The City shall (i) default in the due performance or observance by it of any Incorporated Provision or any term, covenant or agreement contained in Sections 7.1(a), 7.3, 7.7, 7.9, 7.10, 7.11, 7.12, 7.13, 7.16, 7.18 or 7.19; (ii) default in the due performance or observance by it of any other term, covenant or agreement contained in Sections 7.1(b), 7.1(c), 7.1(d), 7.1(e), 7.1(f), 7.1(g), 7.1(h), 7.1(i) or 7.1(j) and such default shall continue unremedied for a period of 5 days; or (iii) default in the due performance or observance by it of any other term, covenant or agreement hereunder (other than those referred to in Section 8.1(a), 8.1(b)(i) and 8.1(b)(ii)) and such default shall continue unremedied for a period of 30 days after written notice to the City by the Bank; or

(c) Any representation, warranty, certification or statement made or deemed made by the City or the Authority in this Agreement, any Related Document or in any certificate, financial statement or other document delivered pursuant to this Agreement shall prove when made or deemed made, in the reasonable judgment of the Bank, to have been inaccurate and misleading in any material respect; or

(d) The City shall (i) default in any payment of any Debt beyond the period of grace (not to exceed 30 days), if any, provided in the instrument or agreement under which such Debt was created, or (ii) default in the observance or performance of any agreement or condition relating to any Debt contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of any Debt (or a trustee or agent on behalf of such holder or holders) to cause, with the giving of notice if required, such Debt to become due prior to its stated maturity; or (iii) any Debt shall be declared to be due and payable, or required to be prepaid other than by a regularly scheduled required prepayment, prior to the stated maturity thereof; or

(e) The City shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee,

receiver, liquidator, custodian or other similar official of itself or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally, or in the reasonable judgment of the Bank be unable, to pay its debts as they become due, or shall take any action to authorize any of the foregoing; or

(f) An involuntary case or other proceeding shall be commenced against the City seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property and such case or proceeding is not controverted within 30 days and dismissed within 60 days; or an order for relief shall be entered against the City under the federal bankruptcy laws as now or hereafter in effect; or

(g) A court of competent jurisdiction shall enter a final and non-appealable judgment, order or decree declaring any (i) obligation of the City contained in this Agreement or any Related Document or (ii) Related Document to which the City is a party, in either case to be invalid, not binding or unenforceable against the City; or

(h) A moratorium shall have been declared or announced by a Governmental Authority (whether or not in writing) with respect to any Debt of the City; or

(i) Dissolution or termination of the existence of the City; or

(j) A judgment or order for the payment of money in excess of \$5,000,000 and for which insurance proceeds shall not be available shall be rendered against the City and such judgment or order shall continue unstayed, unbonded or unsatisfied for a period of 60 days; or

(k) Any of the funds or accounts established pursuant to the Trust Agreement or any funds or accounts on deposit, or otherwise to the credit of, such funds or accounts shall become subject to any stay, writ, judgment, warrant of attachment, execution or similar process by any of the creditors of the City and such stay, writ, judgment, warrant of attachment, execution or similar process shall not be released, vacated or stayed within fifteen (15) days after its issue or levy; or

(l) Any pledge or security interest created by this Agreement or any Related Document to secure any amount due by the City under this Agreement or with respect to the 2008 Certificates shall fail to be fully enforceable with the priority required hereunder or thereunder; or

(m) Any event which materially and adversely affects the financial condition of the City or the ability of the City to observe and perform its obligations under this Agreement and the City Related Documents shall have occurred and be continuing; or

(n) (i) The withdrawal or suspension for credit-related reasons by any Rating Agency that is at the time rating any long-term unenhanced Debt of the City payable from

general funds of the City that is senior in right of payment to, or on a parity with, the 2008 Certificates of its long-term rating with respect to such Debt; or (ii) the downgrade by any such Rating Agency of its long-term rating with respect to any such Debt to a level below "BBB-" (or its equivalent) in the case of Fitch, "BBB-" (or its equivalent) in the case of S&P or "Baa3" (or its equivalent) in the case of Moody's; or

(o) There shall have been rendered a determination that interest on any of the 2008 Certificates is includable in the gross income of the Owners thereof for Federal income tax purposes, as a result of the entry of any decree or judgment by a court of competent jurisdiction, or the taking of any official action by the Internal Revenue Service, whether or not such decree, judgment or action is appealable or deemed to be final under applicable procedural law, or delivery to the City, the Bank and the Trustee of an opinion of nationally recognized bond counsel selected by the Bank and reasonably acceptable to the City and the Trustee to the effect that the interest borne by the 2008 Certificates is includable in the gross income of the recipients thereof generally for Federal income tax purposes; or

(p) An "event of default" (or similar event) shall have occurred under any of the Related Documents.

#### Section 8.2 Rights and Remedies Upon Default.

Upon the occurrence of an Event of Default hereunder the Bank, in its sole discretion, may do any, none or all of the following:

(a) Deliver a written notice to the Trustee requiring the Trustee to (i) cause a mandatory purchase of all Outstanding Certificates pursuant to Section 4.07 of the Trust Agreement and (ii) submit a final Drawing under the Letter of Credit to pay the purchase price of such Certificates upon their mandatory purchase; or

(b) The Bank may by written notice to the City take any or all of the following actions, without prejudice to the rights of the Bank to enforce its claims against the City (provided, that, if an Event of Default specified in Section 8.1(e) or 8.1(f) shall occur, the result which would occur upon the giving of written notice by the Bank to the City as specified in clauses (i) and (ii) below shall occur automatically without the giving of any such notice): (i) declare the commitment of the Bank to make Liquidity Advances and Term Loans terminated, whereupon such commitment shall forthwith terminate immediately; and (ii) declare the principal of and any accrued interest in respect of all Liquidity Advances, all Term Loans and all other Obligations (other than the payment of the principal of and interest on Liquidity Provider Certificates) owing hereunder to be, whereupon the same shall become, forthwith due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; or

(c) Exercise any rights and remedies available to the Bank at law, equity or under any Related Document.

ARTICLE IX  
MISCELLANEOUS

Section 9.1 Right of Setoff; Other Collateral.

(a) Upon the occurrence and during the continuance of an Event of Default, the Bank is hereby authorized at any time and from time to time without notice to the City (any such notice being expressly waived by the City), and to the fullest extent permitted by law, to setoff, to exercise any banker's lien or any right of attachment and to apply any and all balances, credits, deposits (general or special, time or demand, provisional or final), accounts or monies at any time held and other debt at any time owing by the Bank to or for the account of the City (irrespective of the currency in which such accounts, monies or debt may be denominated and the Bank is authorized to convert such accounts, monies and debt into United States dollars) against any and all of the Obligations of the City, whether or not the Bank shall have made any demand hereunder or thereunder.

(b) The rights of the Bank under this Section are in addition to, in augmentation of, and do not derogate from or impair, other rights and remedies (including, without limitation, other rights of setoff) that the Bank may have. The Bank agrees to promptly notify the City in writing after any such setoff and application referred to in subsection (a) above, provided that failure to give such notice shall not affect the validity of such setoff and application.

Section 9.2 Notices.

(a) Except as otherwise expressly provided herein, all notices and other communications provided for hereunder shall be in writing, mailed by registered or certified mail, with return receipt requested, delivered by a nationally recognized overnight courier, telecopied or hand delivered. All such notices and other communications shall be effective (i) if given by mail, 3 days after the date of deposit in the mails, postage prepaid, addressed as specified in this Section, (ii) if given by facsimile, when sent to the facsimile number set forth below (or such other number as may be provided to each of the other parties listed in this Section in writing) and when confirmed by telephone or (iii) if given by other means, when delivered to the address specified herein:

If to the City, to it at:

City of Pasadena  
[ \_\_\_\_\_ ]  
Pasadena, CA [ \_\_\_\_\_ ]  
Attention: [ \_\_\_\_\_ ]  
Facsimile: [ \_\_\_\_\_ ]  
Telephone: [ \_\_\_\_\_ ]

If to the Trustee or the Tender Agent, to it at:

[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]

[\_\_\_\_\_] , CA [\_\_\_\_\_]
Attention: [\_\_\_\_\_]
Facsimile: [\_\_\_\_\_]
Telephone: [\_\_\_\_\_]

If to the Remarketing Agent, to it at:

Banc of America Securities LLC
300 South Grand Avenue, 19th Floor
Los Angeles, CA 90071
Attention: David Johnson
Facsimile: 213-489-5872
Telephone: 213-229-3431

If to the Bank, to:

Bank of America, N.A.
Trade Operation Center
Mail Stop: CA9-705-07-05
1000 West Temple Street, 7th Floor
Los Angeles, CA 90012-1514
Attention: Standby Letter of Credit Department
Facsimile: 213-457-8841

With a copy to:

Bank of America, N.A.
333 South. Hope St., 13th Floor
Mail Stop: CA9-193-13-17
Los Angeles, CA 9007
Attention: Paul F. Sutherlen, Senior Vice President
Credit Products Officer
Facsimile: 213-621-3606

or at such other address as shall be designated by such party in a written notice to the other party hereto.

(b) This Agreement and the Custodian Agreement may be transmitted and/or signed by facsimile. The effectiveness of any such documents and signatures shall, subject to applicable law, have the same force and effect as manually signed originals and shall be binding on the City and the Bank.

(c) Electronic mail and hyperlinks to internet websites that do not require passwords may be used only to distribute routine notices, such as financial statements and other information, and to distribute documents for execution by the parties thereto, and may not be used for any other purpose unless delivery by such means is promptly followed by hand delivery, delivery by courier or delivery by facsimile.

Section 9.3 Governing Law; Venue.

(a) PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW (OR ANY SUCCESSOR STATUTE THERETO), THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT UNDER, AND SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK AND APPLICABLE FEDERAL LAW; PROVIDED, HOWEVER, THE OBLIGATIONS OF THE CITY HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA AND APPLICABLE FEDERAL LAW WITHOUT REGARD TO CHOICE OF LAW RULES.

(b) Any and all disputes or legal actions or proceedings arising out of, under and/or pertaining to this Agreement, the Letter of Credit, the Custodian Agreement or any document related hereto or thereto shall be brought in the courts of the State of California located in the City of Los Angeles or of the Courts of the United States of America for the Central District of California and, by execution and delivery of this Agreement, the parties hereto consent to and hereby accept for themselves and in respect of their property, generally and unconditionally, the jurisdiction of the aforesaid courts. To the maximum extent permitted by law, the parties hereto hereby irrevocably waive any objection, including, without limitation, any objection to the laying of venue or based on the grounds of forum non conveniens, which they may now or hereafter have to the bringing of any such action or proceeding in such respective jurisdictions. The provisions of this Section 9.3(b) shall not limit the right of the City to bring any such action or proceeding against the Bank in any jurisdiction where such action or proceeding is legally permissible. Each party irrevocably consents to the service of any and all process in any such suit, action or proceeding by mailing or delivering copies of such process to such party at its address provided in Section 9.2. Each party agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. All mailings under this Section 9.3 shall be by certified mail, return receipt requested.

(c) Nothing in this Section 9.3 shall affect the right of a party to serve legal process on the other party in any other manner permitted by law or affect the right of a party to bring any suit, action or proceeding against the other party or its property in the courts of any other jurisdiction.

Section 9.4 WAIVER OF JURY TRIAL.

(a) TO THE FULL EXTENT PERMITTED BY LAW, THE CITY AND THE BANK EACH WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY FOR ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE LETTER OF CREDIT, THE CUSTODIAN AGREEMENT ANY OTHER DOCUMENT DELIVERED IN CONNECTION HERewith OR THEREWITH, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY OR IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR ANY BANK-RELATED PERSON, PARTICIPANT OR ASSIGNEE, WHETHER WITH RESPECT TO CONTRACT

CLAIMS, TORT CLAIMS, OR OTHERWISE. EACH OF THE CITY AND THE BANK FURTHER AGREES THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT JURY. WITHOUT LIMITING THE FOREGOING, TO THE EXTENT PERMITTED BY LAW, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT, THE LETTER OF CREDIT, THE CUSTODIAN AGREEMENT ANY OTHER DOCUMENT DELIVERED IN CONNECTION HERewith OR THEREWITH OR ANY PROVISION HEREOF OR THEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT AND ANY OTHER DOCUMENTS DELIVERED IN CONNECTION THEREWITH.

(b) In the event the waiver of jury trial as set forth in subsection (a) of this Section shall be declared void or unenforceable, each of the City and the Bank agrees to refer the dispute to a judicial referee in accordance with the provisions of Section 638 *et seq.* of the California Code of Civil Procedure.

Section 9.5 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and shall inure to the benefit of the City and the Bank and their respective successors and assigns, except that City may not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Bank. Except as provided subsections (b) and (c) below, the Bank may not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the City.

(b) The Bank may at any time assign to one or more banks or other institutions (each an "Assignee") all, or a proportionate part of all, of its rights (but not its obligations) under this Agreement, the Letter of Credit and the Custodian Agreement. The Bank may at any time grant to one or more banks or other institutions (each a "Participant") participating interests in the Drawings under the Letter of Credit and the reimbursement obligations, Liquidity Advances and Term Loans arising therefrom. In the event of any such grant by the Bank of a participating interest to a Participant, whether or not upon notice to the City, the Bank shall remain responsible for the performance of its obligations hereunder and under the Letter of Credit, and the City shall continue to deal solely and directly with the Bank in connection with the Bank's rights and obligations under this Agreement and the Letter of Credit. Any agreement pursuant to which the Bank may grant such a participating interest shall provide that the Bank shall retain the sole right and responsibility to enforce the obligations of the City hereunder and under the Related Documents, including, without limitation, the right to approve any amendment, modification or waiver of any provision of this Agreement or any Related Document; provided that such participation agreement may provide that, without first obtaining the consent of the Participant thereunder, the Bank will not agree to any modification, amendment or waiver of this Agreement or the Trust Agreement which (i) increases or decreases the stated amount of the Letter of Credit, (ii) reduces the principal of or interest on any unreimbursed Drawing or Liquidity Advance or Term Loan owing to the Bank, (iii) postpones or

changes the date fixed for any payment of principal of or interest on any unreimbursed Drawing or Liquidity Advance or Term Loan or fees owing to the Bank, (iv) decreases the formula by which the fees for the Letter of Credit are calculated or (v) releases the Lien of the Trustee over the Trust Estate. The City agrees that each Participant shall be entitled to the benefits of Sections 3.3, 3.5(b) and 4.2 hereof with respect to its participating interest, provided that no Participant or other transferee of any Bank's rights shall be entitled to receive any greater payment than the Bank would have been entitled to receive with respect to the rights participated or transferred.

(c) The Bank may at any time assign all or any portion of its rights under this Agreement and the Letter of Credit to a Federal Reserve Bank. No such assignment by the Bank shall release the Bank from its obligations hereunder or under the Letter of Credit.

Section 9.6 Severability of Provisions. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 9.7 Amendments; Waivers. None of the provisions of this Agreement may be amended, changed, waived, discharged or terminated except by an instrument in writing signed and duly executed by the parties.

Section 9.8 Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute one and the same Agreement. This Agreement constitutes the entire agreement and understanding between the parties hereto and supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

Section 9.9 Headings; Table of Contents. Article and Section headings in this Agreement and the Table of Contents are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

\* \* \*

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be duly executed and delivered by its respective officer thereunto duly authorized as of the date first written above.

Attest:

CITY OF PASADENA

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

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

PASADENA PUBLIC FINANCING AUTHORITY

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

BANK OF AMERICA, N.A.

By \_\_\_\_\_  
Title: Senior Vice President