

**\$2,800,000**  
**City of Waukesha, Wisconsin**  
**Industrial Development Revenue Bonds, Series 2023**  
**(707 Executive Place Holdings LLC Project)**

**BOND AGREEMENT**

By and Among

**CITY OF WAUKESHA, WISCONSIN,**  
as Issuer,

**707 EXECUTIVE PLACE HOLDINGS LLC,**  
as Borrower

**WAUKESHA STATE BANK,**  
as Trustee

and

**WAUKESHA STATE BANK,**  
as Original Purchaser

Dated as of June 1, 2023

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**\$2,800,000**  
**City of Waukesha, Wisconsin**  
**Industrial Development Revenue Bonds, Series 2023**  
**(707 Executive Place Holdings LLC Project)**

**BOND AGREEMENT**

THIS BOND AGREEMENT (the “Bond Agreement”), dated as of June 1, 2023, is by and among the CITY OF WAUKESHA, WISCONSIN (the “Issuer”), 707 EXECUTIVE PLACE HOLDINGS LLC, a Wisconsin limited liability company (the “Borrower”), WAUKESHA STATE BANK, as original purchaser (the “Original Purchaser”), and WAUKESHA STATE BANK, as trustee (the “Trustee”).

Under Section 66.1103 of the Wisconsin Statutes, as amended (the “Statute”), the Issuer is authorized and empowered to issue revenue bonds and loan the proceeds from the sale of said bonds to one or more parties used to defray all or a portion of the cost of acquiring, constructing, improving and equipping a “project” as that term is defined in the Statute.

The Issuer desires to issue the Bonds (hereinafter defined) and to lend the Bond Proceeds (hereinafter defined) to the Borrower for the purpose of financing the Project (hereinafter defined) located in the City of Waukesha, Wisconsin, and the Borrower desires to borrow the Bond Proceeds for the purpose of financing the Project.

Pursuant to its authorizing Resolutions (hereinafter defined), the Issuer has authorized the Bonds to be issued in the aggregate principal amount of \$2,800,000.

In consideration of the premises, the promises of the Issuer, the Borrower, the Original Purchaser and the Trustee set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to secure the payment of the principal of, premium, if any, and interest on all Bonds issued and outstanding under this Bond Agreement, the parties agree as follows:

**ARTICLE I**

**DEFINITIONS**

**Section 1.01 Definitions.** In addition to terms defined herein, the following capitalized terms shall have the respective meanings set forth below:

Authorized Representative of the Borrower: A member of the Borrower authorized, even if acting alone, to bind the Borrower to contracts, to execute and deliver Borrower’s Requisitions and to give Trust Fund investment directions on behalf of the Borrower.

Bond Amount: \$2,800,000.

Bond Counsel: A law firm whose legal and tax opinion on municipal bond issues is nationally recognized, initially, Husch Blackwell LLP

Bond Fund: The Trust Fund described in Section 3.03

Bond Proceeds: The proceeds of the sale of the Bonds, namely, such amount of \$2,800,000, as may be advanced hereunder by the Original Purchaser.

Bond Register: The registration books maintained by the Trustee pursuant to Section 2.17.

Bondowners: At the time or times of determination, the Persons who are registered owners of Bonds as shown in the Bond Register maintained by the Trustee pursuant to Section 2.17.

Bonds: The Issuer's \$2,800,000 Industrial Development Revenue Bonds, Series 2023 (707 Executive Place Holdings LLC Project), issued hereunder.

Borrower: 707 Executive Place Holdings LLC, a Wisconsin limited liability company.

Borrower's Organizational Documents: The Articles of Organization and the Operating Agreement of the Borrower.

Borrower's Address: The address which the Borrower designates for the delivery of notices hereunder. Until changed by notice from an Authorized Representative of the Borrower to the Issuer, the Trustee and the Original Purchaser, the Borrower's address shall be:

707 Executive Place Holdings LLC  
c/o Sky High Marketing, Inc.  
259 West Broadway  
Waukesha, WI 53189  
Attn: Joshua Kozinski  
Phone: (262) 259-0418

Borrower's Certificate: A certificate signed on behalf of the Borrower by an Authorized Representative of the Borrower.

Borrower's Requisition: A request for a withdrawal from the Project Fund pursuant to Section 4.02, in the form of Exhibit D attached hereto.

Borrower's Tax Matters Closing Certificate: The Borrower's Tax Matters Closing Certificate dated the Original Issue Date and executed by the Borrower.

Business Day: Any day other than a Saturday, Sunday or other day on which banks are required or authorized to remain closed in the city in which the Trustee's Principal Office is located.

Clerk: Clerk means the person at the time incumbent in the office of the City Clerk of the Issuer or, in the event of death, disability or absence of such person, the person duly authorized and legally empowered to perform the duties of such office in such event.

Code: The Internal Revenue Code of 1986, as amended.

Completion Date: The completion date of the Project established in accordance with Section 4.03.

Counsel: An attorney acceptable to the Trustee, duly admitted to practice law before the highest court of any state, who may be an attorney for the Borrower, the Original Purchaser, the Trustee or the Issuer.

Credit Agreement: The Credit Agreement dated [June 30, 2023] executed by the Borrower and the Original Purchaser, as amended, modified, supplemented or extended from time to time.

Default Rate: The default rate shall mean the then-current interest rate on the Bonds, plus [\_\_\_%].

Defeasance Obligations: Any of the following which is not subject to prepayment in whole or in part or to redemption by the issuer thereof prior to maturity:

(a) Government Obligations;

(b) Evidences of ownership of proportionate interests in future interest and principal payments on Government Obligations 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 on the Government Obligations, and which underlying Government Obligations are not available to satisfy any claim of the custodian or any person claiming through the custodian or to whom the custodian may be obligated; and

(c) Obligations described in Section 103(a) of the Code, which obligations have been assigned the highest rating assigned to legally defeased debt by S&P Global Ratings and Moody's Investors Service, Inc. and provision for the payment of the principal of, premium, if any, and interest on which shall have been made by the irrevocable deposit with a bank or trust company acting as a trustee or escrow agent for holders of such obligations of securities described in clauses (a) or (b), the maturing principal of and interest on which, when due and payable, will provide sufficient moneys to pay when due the principal of, premium, if any, and interest on such obligations, and which securities described in clauses (a) or (b) are not available to satisfy any other claim, including any claim of the trustee or escrow agent or of any person claiming through the trustee or escrow agent or proceedings arising out of such insolvency.

Determination of Taxability: The issuance of a statutory notice of deficiency by the Internal Revenue Service, or a ruling of the National Office or any District Office of the Internal Revenue Service, or a final decision of a court of competent jurisdiction, or a regulation or revenue ruling issued by the Internal Revenue Service, after the period, if any, for contest or appeal by the taxpayer of such action, ruling or decision has expired without any such contest or appeal having been properly instituted by the taxpayer, or delivery to the Trustee by Bond Counsel of an opinion, which holds or declares in effect that the interest payable on any of the Bonds is includable for federal income tax purposes in the gross income of the Bondowners of such Bonds (other than a Bondowner who is a substantial user of the Project or a related person, as such terms are defined in the Code).

Event of Default: Any of the events described as such in Section 8.01 (a "Bond Default") or in Section 9.01 (a "Loan Default").



Event of Taxability: The circumstance of interest paid or payable on any Bond becoming includable (other than for purposes of a tax on preferences of the type imposed by Section 56 of the Code or any successor statute thereto or any similar federal tax on preferences or similar items and other than by reason having to do with the tax status of, or rules applicable to, the particular individual Bondowner rather than the status of, or rules applicable to, all persons generally) for federal income tax purposes in the gross income of any Bondowner (other than a Bondowner who is a “substantial user” or a “related person” within the meaning and for the purposes of Section 147(a) of the Code) as a consequence of any act, omission or event whatsoever; *provided, however*, that a change in the Code enacted after the date of issuance of the Bonds which results in interest on borrowings by state and local governments generally being included in gross income shall not be an Event of Taxability.

Facility: The Borrower’s facility located at 707 Executive Place in the City of Waukesha, Wisconsin.

GAAP: Those generally accepted accounting principles and practices which are recognized as such by the American Institute of Certified Public Accountants acting through appropriate boards or committees thereof and which are consistently applied for all periods so as to properly reflect the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries.

Government Authority: Any nation or government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, and any corporation or other entity owned or controlled through stock or capital ownership or otherwise, by any of the foregoing.

Government Obligations: Securities which are direct full faith and credit obligations of the United States or securities as to which the timely payment of both principal and interest are unconditionally guaranteed by the United States of America.

Highest Elected Official: The Mayor of the Issuer.

Indebtedness: All liabilities or obligations of a Person, whether or not included on the liability portion of a balance sheet, which shall include, without limitation, all (a) indebtedness for borrowed money; (b) indebtedness for the deferred purchase price of property or services for which the Person is liable, contingently or otherwise, as obligor, guarantor or otherwise; (c) any commitment by which the Person assures a creditor against loss, including, without limitation, contingent reimbursement obligations with respect to letters of credit; (d) obligations which are evidenced by notes, acceptances or other instruments; (e) indebtedness guaranteed in any manner by the Person, including without limitation guaranties in the form of an agreement to repurchase or reimburse; (f) any unfunded obligation of the Person to any pension plan; (g) all liabilities secured by any Lien on any Property owned by the Person, even though it has not assumed or otherwise become liable for the payment thereof; and (h) other liabilities or obligations of the Person and its Subsidiaries which would, in accordance with GAAP, be included on the liability portion of a balance sheet.

Insurance and Condemnation Proceeds Fund: The Trust Fund described in Section 3.05.

Issuer: The City of Waukesha, Wisconsin, its successors and assigns.

Issuer's Address: The address which the Issuer designates for the delivery of notices hereunder. Until changed by notice from the Issuer to the Borrower, the Trustee and the Original Purchaser, the Issuer's Address shall be:

City of Waukesha  
201 Delafield Street  
Waukesha, WI 53188  
Attn: City Clerk  
Phone: (262) 524-3550

Lien: Any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), deed of trust, charge, preference, priority, security interest or other security agreement or preferential arrangement of any kind or nature whatsoever including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement that is not wrongfully filed under the Uniform Commercial Code of the State of Wisconsin or comparable law of any jurisdiction.

Loan: The loan of the Bond Proceeds by the Issuer to the Borrower.

Loan Documents: The documents relating to the Bonds and the Loan, including the Resolutions, this Bond Agreement, the Credit Agreement, the Security Documents, the Promissory Note, and other documents executed and delivered at the closing.

Loan Repayments: The payments required to be made by the Borrower pursuant to Section 4.06.

Material Adverse Effect: (a) an Event of Default, (b) a material adverse change in the business, prospects or condition (financial or otherwise) of the Borrower or any of its Subsidiaries or in any Property, (c) the termination of any material agreement to which the Borrower is a party, (d) any material impairment of the right to carry on the business as now or proposed to be conducted by the Borrower, or (e) any material impairment of the ability of the Borrower to perform its obligations under this Bond Agreement or the Security Documents.

Net Proceeds: The gross proceeds of an insurance claim or condemnation award with respect to the Project after payment of all expenses (including attorneys' fees and any extraordinary fee or expense of the Trustee) incurred in its collection.

No Arbitrage Certificate: That certain No Arbitrage Certificate dated the Original Issue Date made by the Issuer and acknowledged, with respect to accuracy and reasonableness of certain expectations, facts and estimates contained therein, by the Borrower.

Obligation: Collectively, the Credit Agreement, the Promissory Note, all mandatory prepayments, all costs and expenses and all other indebtedness of the Borrower to the Original Purchaser, including, without limitation, [all Obligations as defined in the Credit Agreement].

Opinion of Counsel: A written opinion of Counsel.

Original Issue Date: [June 30, 2023].

Original Purchaser: Waukesha State Bank and its successors and assigns.

Original Purchaser's Address: The address which the Original Purchaser designates for the delivery of notices hereunder. Until changed by notice from the Original Purchaser to the Borrower, the Issuer and the Trustee, the Original Purchaser's Address is:

Waukesha State Bank  
151 East St. Paul Avenue  
Waukesha, WI 53187  
Attn: Claire Bessette  
Phone: (262) 549-8555

Outstanding Bonds and Outstanding (when used with reference to Bonds): All Bonds which have been authenticated and delivered by the Trustee hereunder, except:

(a) Bonds or portions thereof cancelled by the Trustee or delivered to the Trustee for cancellation; and

(b) Bonds in lieu of which other Bonds have been authenticated and delivered in accordance with Sections 2.15, 2.16 and 2.23.

Paying Agent: Any corporate trustee or bank designated pursuant to this Bond Agreement as the agent of the Issuer to receive and disburse the principal of and interest on the Bonds; initially, the Trustee.

Payment Date: Monthly on the [first] day of each month, commencing [\_\_\_\_\_ 1 , 2023], as more fully described in Section 2.03 herein, and any other date that principal, any applicable premium, or interest is due on the Bonds under this Bond Agreement and the Credit Agreement.

Person: An individual, partnership, corporation, limited liability company, enterprise, association, business trust, joint stock company, joint venture, trust, unincorporated organization, governmental authority or any agency or political subdivision thereof, or other entity of whatever nature.

Pledged Revenues: All revenues and income derived by or for the account of the Issuer from or for the account of the Borrower pursuant to the terms of this Bond Agreement, including, without limitation (a) all payments by the Borrower on the Loan or pursuant to Section 4.07 and on the Promissory Note, (b) all cash and securities held from time to time in the Trust Funds (with the exception of the Rebate Credit Account) and the investment earnings thereon, and (c) all proceeds of any casualty insurance or condemnation awards payable with respect to the Project.

Project: The project described in Exhibit A attached hereto.

Project Costs:

(a) All legal, abstracting, surveying, financial and accounting and other fees and expenses, printing and engraving costs and expenses incurred in connection with the establishment of title, the authorization, sale and issuance of the Bonds (including any underwriter's or agent's fees, commitment or origination fees, or points in connection with the issuing of the Bonds but, to the

extent paid from Bond Proceeds, not to exceed 2% of the face amount of the Bonds), and the preparation of this Bond Agreement, the Loan Documents and all other documents, including filing fees for any financing statements deemed necessary by Counsel;

- (b) All costs of acquiring and improving the Project Site;
- (c) All costs of acquiring and installing the Project Equipment at the Project Site;
- (d) All architectural, engineering, consulting, legal, supervisory and other services incurred and to be incurred in the construction, purchase, acquiring, installing, improving, equipping or furnishing of the Project;
- (e) The contract price of all labor, services, materials, supplies and equipment furnished under any contract entered into in connection with the construction, purchase, acquisition, installing, improving, equipping or furnishing of the Project;
- (f) The cost of all other labor, services, materials, supplies and equipment necessary to complete the Project;
- (g) To the extent permitted by the Statute and not prohibited by rules or regulations of the Internal Revenue Service and not otherwise paid from Bond Proceeds deposited in the Bond Fund, all interest accruing up until and not later than the completion of the Project, on money borrowed by the Borrower for temporary financing of Project Costs if such money was borrowed by the Borrower for the specific purpose of temporarily financing Project Costs and was not part of a general purpose open line of credit, and interest accruing on the Bonds prior to, and up to completion of the Project;
- (h) Without limitation by the foregoing, all other expenses which under GAAP constitute necessary capital expenditures for the completion of the construction, acquisition, purchase, installation, improving, equipping or furnishing of the Project, not including initial working capital or expendable supplies (all of which are nevertheless to be supplied by the Borrower from its own funds without reimbursement);
- (i) All advances, payments and expenditures made or to be made by the Issuer, the Trustee or any other person with respect to any of the foregoing expenses; and
- (j) Reimbursement of the Borrower for the Borrower's payment of any of the foregoing incurred after March 17, 2023, to the extent such reimbursement is permissible under the Statute.

Project Equipment: The equipment to be installed by the Borrower at the Project Site as part of the Project.

Project Fund: The Trust Fund described in Section 3.02.

Project Site: The location of the Project and the Project Equipment located 707 Executive Place in the City of Waukesha, Wisconsin.

Promissory Note: The Promissory Note to the Issuer from the Borrower, dated the Original Issue Date, in the original principal amount of \$2,800,000.

Property: Any interest of the Borrower or its Subsidiaries, if any, of any kind in property or assets, whether real, personal, mixed, tangible or intangible, wherever located, and whether now owned or subsequently acquired or arising and in the products, proceeds, additions and accessions thereof or thereto, including without limitation the Project.

Put Date: [June 30, 2028] and each subsequent Reset Date.

Qualified Investments: Includes any of the following securities, in and to the extent that the Trustee has not been notified that the same have not been disqualified as legal for the investment of the Issuer's moneys: Government Obligations and (a) the obligations, including discount notes, of (i) Federal National Mortgage Association, (ii) Federal Intermediate Credit Banks, (iii) Federal Banks for Cooperatives, (iv) Federal Land Banks, (v) Federal Home Loan Banks, (vi) Federal Financing Bank, (vii) Federal Farm Credit System, (viii) Federal Home Loan Mortgage Corporation, (ix) Government National Mortgage Association, (x) Federal Housing Administration, and (xi) Farmers Home Administration; *provided, however*, that obligations listed in this subpart (a) shall be guaranteed as to the timely payment of principal and interest by the United States of America; (b) unsecured certificates of deposit, demand deposits, including interest bearing money market accounts, trust deposits, time deposits or bankers acceptances (in each case having maturities of not more than 360 days) of any domestic bank (including the Original Purchaser and the Trustee and any bank affiliated with the Trustee) including a branch office of a foreign bank, which branch office is located in the United States, provided that such bank at the time of purchase, has a short-term "Bank Deposit" rating of "Prime-1" or better by Moody's Investors Service, Inc., and a rating of "A-1" or better by S&P Global Ratings; (c) certificates of deposit or time deposits fully collateralized by Government Obligations; (d) any repurchase agreement by the Trustee that is with a bank or institution, which bank, institution or holding company thereof is rated "BAA1" or better by Moody's Investors Service, Inc. or "B+" or better by S&P Global Ratings, provided that such repurchase agreement may not extend more than 30 days beyond its issuance and such repurchase obligation will be for Government Obligations; and notwithstanding any of the foregoing, to the extent that any obligations described in this definition are repurchase agreements then (i) the Trustee must have perfected a first security interest in such obligations, (ii) the Trustee or a third party acting solely as agent for the Trustee must have possession of such obligations, (iii) such obligations must be free and clear of third party claims, and (iv) any investment in a repurchase agreement will be considered to mature on the date the bank or trust company providing the repurchase agreement is obligated to repurchase the Government Obligations; (e) commercial paper or finance company paper rated not less than A 1 or prime-one or their equivalents by S&P Global Ratings and Moody's Investors Service, Inc., respectively; (f) state and local government obligations, the interest on which is excludable from the gross income of the holder thereof for federal income tax purposes pursuant to Section 103(a) of the Code, provided that such obligations have a rating of "A" or better from S&P Global Ratings or Moody's Investors Service, Inc.; and (g) so long as the Original Purchaser is the Bondowner of all of the Bonds Outstanding, investment agreements or certificates of deposit as may be approved by the Borrower and the Original Purchaser; *provided, however*, that such investment ratings shall apply only at the time of acquisition of such investment.

Rebate Credit Account: The account described in Section 3.06, which account shall not be pledged for the benefit of the Bondowners hereunder.

Record Date: For the interest payable on any Payment Date means the day (whether or not a Business Day) preceding such Payment Date.

Redemption Date: The date upon which any Bond is to be redeemed prior to maturity.

Redemption Fund: The Trust Fund described in Section 3.04.

Requirements of Law: As to any matter or Person, the articles of organization and the operating agreement, or the articles of incorporation and the bylaws, or other organizational or governing documents of such Person, and any law, ordinance, resolution, treaty, rule, regulation, order, decree, determination or other requirement having the force of law relating to such matter or Person and, where applicable, any interpretation thereof by any Government Authority.

Requisite Consent: Unless all Bonds are then owned by the Borrower, the affirmative written consent of Bondowners owning in aggregate not less than a majority in principal amount of the Bonds (other than Bonds owned by the Borrower or any “related person” as defined in Section 147 of the Code) at the time Outstanding.

Resolutions: The resolutions adopted by the governing body of the Issuer dated May 16, 2023 and June 20, 2023 authorizing the issuance of the Bonds.

Security Documents: The Loan Documents and the other related documents as described in the Credit Agreement.

Statute: Section 66.1103 of the Wisconsin Statutes, as amended from time to time.

Subsidiary: As to any Person, a corporation or limited liability company of which shares of stock or membership interest having voting power (other than stock or membership interest having such power only by reason of the happening of a contingency that has not occurred) sufficient to elect a majority of the board of directors or other managers of such corporation or limited liability company are at the time owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person.

Tenant: Sky High Marketing, Inc., as Wisconsin corporation, and its successors and assigns.

Trustee: Initially, Waukesha State Bank, and any successor banking corporation, banking association or trust company at the time serving as corporate trustee hereunder.

Trustee’s Address and Trustee’s Principal Office: The address or office which the Trustee designates for the delivery of notices or payments hereunder. Until changed by notice from the Trustee to the Borrower, the Issuer and the Original Purchaser, the Trustee’s Address and Principal Office is:

Waukesha State Bank  
151 East St. Paul Avenue  
Waukesha, WI 53187  
Attn: Claire Bessette  
Phone: (262) 549-8555

Trust Funds: The trust funds and accounts administered by the Trustee hereunder.

Unassigned Rights: The Borrower's obligations to the Issuer under Section 4.07(c), Section 4.13, Section 5.06, Section 6.08, Section 6.15, Section 6.17, Section 9.06 and Section 9.07 and Article X and the rights to receive notices and give consents hereunder.

**Section 1.02 Use of Phrases; Rules of Construction.** The following provisions shall be applied wherever appropriate herein:

"Herein," "hereby," "hereunder," "hereof" and other equivalent words refer to this Bond Agreement as an entirety and not solely to the particular portion hereof in which any such word is used.

The definitions set forth in Section 1.01 shall be deemed applicable whether the words defined are herein used in the singular or the plural.

Wherever used herein, any pronoun or pronouns shall be deemed to include both the singular and plural and to cover all genders.

Unless otherwise provided, any determinations or reports hereunder which require the application of accounting concepts or principles shall be made in accordance with GAAP.

## **ARTICLE II**

### **ISSUANCE AND TERMS OF BONDS**

**Section 2.01 Creation of Bonds for Issuance.** There is hereby created for issuance an issue of Bonds to be designated:

\$2,800,000  
City of Waukesha, Wisconsin  
Industrial Development Revenue Bonds, Series 2023  
(707 Executive Place Holdings LLC Project)

The Bonds shall be issued in the aggregate principal amount up to TWO MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$2,800,000). The Bonds shall be numbered in such manner as the Trustee shall deem appropriate, provided that each particular Bond shall have a different identifying number. The Bonds shall be issuable in the form of typewritten or printed, fully registered Bonds. The Bonds shall specify the Original Issue Date as their original issue date, and each particular Bond shall be dated, as its registration date, the date of its authentication. The Bond shall be issued in denominations of \$0.01 and integral multiples thereof.

**Section 2.02 Maturity; Repayment of Principal.** The Bonds will be issued in the aggregate amount up to \$2,800,000 and shall mature on June 1, 2053. Principal of the Bonds shall be repaid by the Issuer solely from payments to be made by the Borrower pursuant to optional sinking fund redemption in such amounts and on such dates as set forth in the Credit Agreement.

Notwithstanding anything else herein to the contrary, the principal amount of the Bonds Outstanding shall never exceed the aggregate amounts transferred from the Original Purchaser to

the Trustee for deposit into the Project Fund pursuant to Sections 3.01 and 4.02 of the Bond Agreement, less repayments of principal made by the Issuer (solely from payments to be made by the Borrower); provided, however, that nothing herein shall be construed to obligate the Borrower to proceed with the Project, and in the event the Borrower does not proceed with the Project, the Borrower shall have no obligation hereunder, other than the repayment, together with interest for amounts advanced by the Original Purchaser.

Payments of principal in excess of the scheduled installments set forth herein and related payments of premium shall be credited against scheduled installments in inverse order with respect to the Bonds.

**Section 2.03 Interest on the Bonds. [SECTION 2.03 IS UNDER REVIEW BY BANK]**

(a) Initial Interest Rate - Commencing on the Original Issue Date through [June 29, 2028], the Bonds shall bear interest at a fixed rate of [4.35%], calculated pursuant to the following formula:

Fixed rate on Original Issue Date: [INSERT RATE FORMULA] = [4.35%]

(b) Interest Rate Reset; Interest Rate Options - Commencing on [June 30, 2028] and on each Reset Date thereafter (which date shall also be a Put Date), the Bonds shall bear interest for such applicable Reset Period at a variable rate or fixed rate as selected by Borrower in writing, with the consent of the Original Purchaser, and delivered to the Trustee not less than 30 days nor more than 60 days (unless waived by the Borrower and the Original Purchaser) prior to the next succeeding Reset Date (provided that if no election is made by the Borrower during such notice period, then the Borrower shall be deemed to have made an election at the variable rate), which election shall be irrevocable, for such Reset Period equal to either:

(1) A variable rate, adjusted monthly, equal to:

(1-Month Term SOFR Rate + Credit Spread) x Tax-Exempt Multiplier

-OR-

(2) A fixed rate for a period of 3 years or 5 years, as selected by the Borrower, with the consent of the Original Purchaser, which shall be reset on each Reset Date, calculated pursuant to the following formula:

(3-Year Treasury Rate + Credit Spread) x Tax-Exempt Multiplier

-OR-

(5-Year Treasury Rate + Credit Spread) x Tax-Exempt Multiplier

The Bonds, if bearing interest at the variable rate, shall bear interest at the rate determined according to the above variable rate formula, adjusted monthly, during such Reset Period.



The Bonds, if bearing interest at the fixed rate, shall bear interest at the rate determined according to the above fixed rate formula for the applicable Reset Period and tenor as approved by the Original Purchaser, which election shall be irrevocable for the duration of such Reset Period. Such fixed rate shall be determined not less than two nor more than three Business Days prior to the end of the applicable Reset Period.

Notwithstanding the foregoing, the interest rate on the Bonds (i) shall never exceed the Maximum Rate and (ii) shall not be less than 4.35%.

(c) The following definitions are applicable to the foregoing formulas and to the remainder of this Section 2.03 and Section 2.08:

(i) “1-Month Term SOFR Rate” means the US Dollar-denominated 1-Month Term SOFR index currently published by CME Group (<https://www.cmegroup.com/market-data/cme-group-benchmark-administration/term-sofr.html>) on the first day of each calendar month. If the first day of any calendar month is not a Business Day, then the SOFR index used will be the US Dollar-denominated 1-Month Term SOFR index currently published by CME Group on the first Business Day preceding the first day of each calendar month. If the 1-Month Term SOFR Rate is less than zero, then it shall be deemed to be zero. Any change in the interest rate resulting from a change in the 1-Month Term SOFR Rate shall become effective without notice to Borrower. Original Purchaser may change the service providing such information at any time. If it becomes unlawful for Original Purchaser to make, maintain, or fund loans based on the 1-Month Term SOFR Rate during the term of the Bonds and Promissory Note to which this is attached, Original Purchaser may substitute a comparable index. The 1-Month Term SOFR Rate may or may not be the lowest rate charged by Original Purchaser. The stated interest rate shall be effective of the first day of the applicable Reset Date and adjusted on the same day of each consecutive month thereafter.

(ii) “Credit Spread” means such Credit Spread as determined by the Original Purchaser for a similarly situated borrower as the Borrower based on the Original Purchaser’s then-current underwriting standards, and with credit committee oversight, including, without limitation, factors such as the current credit profile, market conditions and current and historical operating performance and which Credit Spread in the opinion of Bond Counsel will not adversely affect any exemption from federal income taxation to which the Bonds would otherwise be entitled.

(iii) “Maximum Rate” means 20% per annum.

(iv) “Put Date” means each Reset Date.

(v) “Reset Date” means the first day of each Reset Period; the initial Reset Date shall be [June 30, 2028].

(vi) “Reset Period” means each period of 3 years or 5 years from each Reset Date, as selected by the Borrower, through the day preceding the next Reset Date or the maturity date of the Bonds (as applicable).

(vii) “Tax-Exempt Multiplier” means the tax-exempt multiplier determined from time to time by the Original Purchaser or as modified by change in law as shown on its internal

pricing sheets for tax-exempt interest rates which are not bank-qualified pursuant to Section 265 of the Code.

(d) The Original Purchaser shall provide the Borrower and the Trustee with such information as to historical and current interest rates as the Borrower and the Trustee shall reasonably request from time to time.

(e) All determinations of the interest rate hereunder shall be final and conclusive absent manifest error.

(f) Interest on the Bonds shall be payable on the [first] day of each month, commencing on [\_\_\_\_\_ 1, 2023]. Interest on the Bond is computed on a 360-day year, actual days elapsed; that is, by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under the Bond is computed using this method. This calculation method results in a higher effective interest rate than the numeric interest rate stated in the Bond.

Interest shall accrue only on principal amounts actually deposited and from the date such amounts are actually deposited into the Project Fund pursuant to Section 3.01 and Section 4.02 of this Bond Agreement.

(g) Interest Rate Adjustment on Bonds in the Event of Change in Corporate Tax Rate. The interest rates on the Bonds shall be subject to adjustment in the event of an increase or decrease in the Corporate Tax Rate of the Original Purchaser after the Original Issue Date, with such change in the interest rate to be effective as of the date of the increase or decrease in the Corporate Tax Rate of the Original Purchaser. The rates of interest on the Bonds (other than the interest rate in effect following a Determination of Taxability) shall be decreased (in the case of an increase in the Corporate Tax Rate) or increased (in the case of a decrease in the Corporate Tax Rate) so that the effective interest rate to the Original Purchaser, after taking into account such increase or decrease in the Corporate Tax Rate shall be the same yield to the Original Purchaser as was in effect prior to such change in the Corporate Tax Rate. “*Corporate Tax Rate*” means the highest stated statutory rate of federal income tax imposed on corporations, disregarding any surcharges or surtaxes.

(h) Principal payments on the Bonds shall be payable as optional sinking fund redemptions as provided in the Credit Agreement.

(i) Overdue principal and interest on the Bonds shall (to the extent legally enforceable) bear interest at the Default Rate. Any interest on any Bond which is payable, but is not punctually paid or duly provided for, may be paid in any lawful manner, at the discretion of the Trustee. All unpaid principal and interest shall be paid on June 1, 2053.

**Section 2.04 Occurrence of a Determination of Taxability.** The Bonds shall bear interest, payable on the first Payment Date after the occurrence of a Determination of Taxability with respect to all prior periods, computed at the rate set forth in this Section (the “Taxable Interest”) (on a 360-day year, actual days elapsed basis) on the outstanding principal amount of the Bonds (as reduced from time to time) from the date of the Event of Taxability, less any interest already paid, from the date of the Event of Taxability to such Payment Date. This calculation method results in a higher effective interest rate than the numeric interest rate stated in the Bond for

Taxable Interest. Thereafter, the Bonds shall bear Taxable Interest as defined in this Section and as provided in this Section on the Bonds Outstanding on each Payment Date. Except for Taxable Interest allocable to the period between the Event of Taxability and the Payment Date immediately succeeding the Determination of Taxability (which interest shall be payable on such Payment Date immediately succeeding the Determination of Taxability), Taxable Interest payable under this Section shall be payable with respect to the same period, at the same time and in the same manner as interest payments regularly paid pursuant to this Bond Agreement.

Taxable Interest payable on the Bonds for purposes of this Section shall automatically be adjusted to a rate, as determined by the Original Purchaser in its sole and absolute discretion, equal to the interest rate on the Bonds without application of the Tax-Exempt Multiplier. Such increased rate is to be effective, retroactively, as applicable, as of the date of the Determination of Taxability. The Borrower shall also pay to the Bondowners (and any former Bondowners holding Bonds during any period subsequent to an Event of Taxability) as additional interest, the amount of penalties, additions to tax (exclusive of any taxes imposed under Section 11 or any successor provision of the Code) or interest assessed against the Bondowners (and former Bondowners) on account of a Determination of Taxability. Taxable Interest to be paid pursuant to this Section for the period between the Event of Taxability and the Payment Date immediately succeeding the Determination of Taxability shall be paid immediately following the Determination of Taxability in the same manner as interest is paid to Bondowners in accordance with this Bond Agreement.

Any Bondowner shall have the right, but not the obligation, to arrange for the contest of an allegation that an Event of Taxability has occurred, by appropriate legal proceedings. In the event no Bondowner shall contest the Event of Taxability, the Borrower shall have the option but not the obligation to do so. If (i) the Borrower shall have made any additional payments to a Bondowner or former Bondowner by reason of an Event of Taxability pursuant to this Section, and (ii) it shall be successfully claimed for the taxable year in question that the interest on the Bonds for such taxable year is excluded from the Bondowner's or former Bondowner's taxable income for federal income tax purposes (for this purpose a claim shall be deemed successful only upon the occurrence of a "determination," as defined in Section 1313(a) or any successor provision of the Code) or, if the Bondowner or former Bondowner shall not have included such interest in the Bondowner's or former Bondowner's taxable income for federal income tax purposes upon expiration of the statute of limitations provided by Section 6501 or any successor provision of the Code with respect to such taxable year, then the Bondowner or former Bondowner (as the case may be) shall pay to the Borrower the amount of any such additional payments which had been made by the Borrower to the Bondowner or former Bondowner, less any actual expenses incurred by such Bondowner or former Bondowner as a result of the alleged Event of Taxability. Upon successful challenge of an Event of Taxability, the interest rate on the Bonds shall return to the interest rate ordinarily payable hereunder as if no Event of Taxability had ever been alleged.

**Section 2.05 Prepayment of Bonds.** No Bond may be called for redemption prior to its stated maturity except as provided in Section 2.06, 2.07 or 2.08; *provided, however*, that nothing herein shall be deemed to limit the right of acceleration of Bond maturities upon the occurrence of a Bond Default.

**Section 2.06 Optional Prepayment.** The Bonds are subject to redemption prior to maturity, in whole or in part, at any time, at the option of the Borrower, with such applicable redemption premium, if any, as set forth in the Credit Agreement, upon receipt by the Trustee, not

less than 45 days prior to the Redemption Date, of a written notice from the Borrower stating that it intends to prepay the Loan on the specified Redemption Date and the giving of notice by the Trustee not less than 30 days prior to the Redemption Date, and thereby effect redemption of the Bonds being redeemed. The notice of optional redemption to be delivered by the Borrower shall describe whether and the conditions under which the call for redemption may be revoked.

Notwithstanding the foregoing, the Borrower is not required to provide notice of redemption pursuant to Section 2.10 of the Bond Agreement to effect optional sinking fund redemptions as required by Section [\_\_\_\_\_] of the Credit Agreement.

The Borrower agrees to repay the Loan on the dates and in the amounts required by Section [\_\_\_\_\_] of the Credit Agreement and to pay any prepayment penalty therein directly to the Original Purchaser.

**Section 2.07 Optional Redemption of Bonds Upon Occurrence of Certain Extraordinary Events.** The Bonds shall be subject to redemption, in whole or in part, without payment of any redemption or prepayment premium, at par plus accrued interest to the Redemption Date at the option of the Borrower, or the Bondowners by Requisite Consent, upon the occurrence of certain extraordinary events as described in this Section 2.07. If the Project is affected as set forth below, each shall have an independent option to have the Loan repaid in whole out of Net Proceeds of an insurance or condemnation award relating to destruction or damage or condemnation of all or any part of the Project, and to direct the Issuer either (i) to call for redemption and prepayment of all the Outstanding Bonds, or (ii) to call for redemption and prepayment that amount of Outstanding Bonds attributable to debt incurred for the Project as determined by the Trustee, if:

(a) The Project shall have been damaged or destroyed to such extent that, in the opinion of the Borrower expressed in a Borrower's Certificate, or in the written opinion of an independent architect acceptable to the Trustee and the Original Purchaser, filed with the Trustee and the Original Purchaser, if the Original Purchaser then owns any of the Bonds, following such damage or destruction (i) the completion of the Project will be delayed for at least 6 months, (ii) it is not practicable or desirable to rebuild, repair or restore the Project within a period of 6 consecutive months following such damage or destruction, or (iii) the Tenant is or will be thereby prevented from carrying on its normal operations for a period of at least 6 consecutive months;

(b) Title to or the temporary use of all or substantially all of the Project shall have been taken under the exercise of the power of eminent domain by any Government Authority to such extent that, in the opinion of the Borrower expressed in a Borrower's Certificate, or in the written opinion of an independent architect acceptable to the Trustee and, if the Original Purchaser then owns any of the Bonds, the Original Purchaser, (i) the completion of the Project will be delayed for at least 6 months, or (ii) the Tenant is or will be thereby prevented from carrying on its normal operations at the Project Site for a period of at least 6 consecutive months;

(c) Any court or administrative body of competent jurisdiction shall enter a final judgment, and not subject to appeal, order or decree requiring the Tenant to cease all or any substantial part of its operations at the Project Site to such extent that, in the opinion of the Borrower expressed in a Borrower's Certificate, or in the written opinion of Counsel, who is also acceptable to the Original Purchaser if the Original Purchaser then owns any of the Bonds, filed

with the Issuer and the Trustee, the Tenant is or will be thereby prevented from carrying on its normal operations at the Project Site for a period of at least 6 consecutive months;

(d) As a result of any changes in the Constitution of Wisconsin or the Constitution of the United States of America or of legislative or administrative action (whether state or federal) or by final decree, judgment or order of any court or administrative body (whether state or federal), this Bond Agreement shall have become void or unenforceable or impossible of performance in accordance with the intent and purposes of the parties as expressed herein, or unreasonable burdens or excessive liabilities shall have been imposed on the Issuer or the Borrower including, without limitation, federal, state or other ad valorem, property, income or other taxes not being imposed on the date hereof; or

(e) If it shall be discovered that the Borrower's title to the Project shall be materially defective, and the Borrower's title to the Project shall be lost by reason of such defect.

In any such case, the Borrower or Bondowners shall, to exercise their respective option hereunder, give notice to the Issuer, the Trustee and the Bondowners or the Borrower, as the case may be, in writing of its or their intent to exercise this option and specifying the proposed Redemption Date, within 30 days following discovery of the event by the party determining to exercise its option hereunder. The exercise of either party of its option to redeem the Bonds shall be binding on all parties hereto. Within 60 days after the giving of notice as set forth above, the Borrower shall deposit with the Trustee a sum sufficient, together with other funds held by the Trustee and available for such purpose (i) to redeem the Bonds, in whole or in part, as applicable at a redemption price equal to the principal amount thereof, (ii) to pay the interest which will become due on such Bonds to and including the Redemption Date, and (iii) to pay all expenses of the Issuer and the Trustee accrued and to accrue through the Redemption Date, excluding any redemption or prepayment premium.

If the Borrower shall have received proceeds of an insurance or condemnation award relating to destruction or damage or condemnation of all or any part of the Project (exclusive of proceeds of business interruption insurance), and such net proceeds exceed the amount necessary to rebuild, repair or restore the Facility, the Borrower agrees to direct the Issuer to call for redemption and prepayment of Outstanding Bonds equal to the amount of such resulting excess net proceeds.

**Section 2.08 Mandatory Redemption at Option of Original Purchaser.** The Bonds shall be subject to mandatory redemption, in whole, but not in part, on a Put Date at the option of the Original Purchaser, so long as the Original Purchaser owns all of the Outstanding Bonds. If the Bonds bear a fixed interest rate, the Borrower may request from the Original Purchaser up to 150 days but no later than 90 days prior to the Put Date the indicative interest rate for the next succeeding Reset Period. Within 60 days of such request, the Original Purchaser shall provide notice to the Borrower of the indicative interest rate for such period. Either the failure of Borrower to accept the Original Purchaser's indicative interest rate within 30 days of notice from the Original Purchaser, or failure of the Original Purchaser to provide such notice, shall be deemed to be an exercise of the Original Purchaser's right to cause a mandatory redemption on the next Put Date. The redemption price in such event shall be 100% of the principal amount of the Bonds so redeemed, plus all accrued interest to the Put Date. In the event that the Original Purchaser has exercised its right under this Section to cause a mandatory redemption of the Bonds on a Put Date and the Borrower has secured a purchaser for the Bonds on such Put Date, the Borrower may elect

to have the redemption treated as a mandatory tender, and the Bonds shall be purchased by the purchaser secured by the Borrower at a purchase price equal to 100% of the principal amount of the Bonds so purchased, plus all accrued interest to the Put Date, and upon payment of such purchase price to the Original Purchaser, the Bonds shall be treated as tendered and purchased rather than redeemed.

**Section 2.09 Purchase and Cancellation of Bonds.** The Borrower shall have the right to purchase any outstanding Bond upon agreement with the owner thereof and deliver it to the Trustee for cancellation. Also, the Trustee may purchase any outstanding Bond for cancellation in accordance with this Bond Agreement. Any such purchase and cancellation of a Bond shall *ipso facto* reduce the unpaid principal balance of the Loan on the date of such cancellation by an amount equal to the principal amount of such Bond. The reduction shall be applied to the principal installment on the Loan having the same maturity as the Bond so purchased and cancelled. Nothing in this Section 2.09 shall require the owner of any Bond to sell such Bond to the Borrower. A purchase and cancellation of Bonds under this Section 2.09 shall be deemed to be an optional prepayment of the Loan subject to Section 2.06 hereof.

**Section 2.10 Notice and Effect of Redemption.** Except for optional redemption of the Bonds pursuant to the Credit Agreement, notice of the call for any redemption of Bonds prior to maturity shall be given by the Trustee by mailing a copy of the redemption notice by first-class mail not less than 30 days nor more than 60 days prior to the Redemption Date to the Bondowner of each Bond to be redeemed at the address shown on the Bond Register; *provided, however*, that failure to give any such notice as aforesaid or any defect therein with respect to any particular Bond shall not affect the validity of any proceedings for the redemption of any other Bond.

Each redemption notice shall (i) identify the particular Bonds or portions thereof to be redeemed (including, at a minimum, certificate numbers and called amount for each certificate (for partial calls), Redemption Date, Trustee, date of issue, maturity date, and other descriptive information, if any, that accurately identifies the particular Bonds called for redemption), (ii) identify the provisions of this Bond Agreement pursuant to which the Bonds are being redeemed, (iii) identify the place of payment, (iv) state the applicable redemption price, including the premium, if any, (v) state that interest on the Bonds or portions thereof thus called for redemption will cease to accrue from and after the Redemption Date specified therein, and (vi) state that the notice of redemption may be rescinded by the Borrower and the Trustee.

If pursuant to this Bond Agreement the Trustee shall hold funds in the form of cash or Government Obligations which are available and will be sufficient in amount to pay the principal of and premium, if any, on the Bonds or portions thereof thus called for redemption and to pay the interest thereon to the Redemption Date, such Bonds or portions thereof shall cease to bear interest from and after the Redemption Date in question.

**Section 2.11 Bonds to be Limited Obligations of the Issuer.** The Bonds shall be special, limited obligations of the Issuer payable by it solely from the Pledged Revenues. The Bonds do not and shall not constitute the debt or obligation of the Issuer, the State of Wisconsin or any political subdivision thereof and do not and shall not constitute or give rise to charges against its general credit or taxing powers, are not payable in any manner from revenues raised by taxation and do not and shall not constitute an indebtedness of the Issuer, the State of Wisconsin or any political subdivision, within the meaning of any State of Wisconsin constitutional provision or statutory

limitation or restriction, and do not constitute or give rise to a charge against the general credit or taxing powers or a pecuniary liability of the Issuer, the State of Wisconsin or any political subdivision thereof. In making the agreements, provisions and covenants set forth in this Bond Agreement, the Issuer has not obligated itself, except to the extent that the Issuer is authorized to act pursuant to the Statute and except with respect to the Pledged Revenues. Neither the Issuer nor any of its officials, officers, employees, Common Council members or agents shall have any monetary liability arising out of the obligations of the Issuer hereunder or in any connection with any covenant, representation or warranty made by the Issuer herein and neither the Issuer nor its officials shall be obligated to pay any amounts in connection with the transactions contemplated hereby other than from Pledged Revenues or other monies received from the Borrower. No covenant, provision or agreement of the Issuer herein, or in the Bonds or in any other document executed by the Issuer (or any other party) in connection with the issuance, sale and delivery of the Bonds, or any obligation herein or therein imposed upon the Issuer or respecting breach thereof, shall constitute an indebtedness of the Issuer within the meaning of any constitutional provisions or statutory limitations, or shall give rise to a pecuniary liability of the Issuer or a charge against the Issuer's general credit or taxing powers, or shall obligate the Issuer, its Common Council members, its officials, its officers, employees or agents financially in any way except with respect to this Bond Agreement and the application of the Pledged Revenues therefrom and the proceeds of the Bonds.

No failure of the Issuer to comply with any term, condition, covenant or agreement herein shall subject the Issuer, its Common Council members, officials, officers, employees or agents to liability for any claim for damages, costs or other financial or pecuniary charges except to the extent that the same can be paid or recovered from this Bond Agreement or the Pledged Revenues or proceeds of the Bonds. No execution on any claim, demand, cause of action or judgment shall be levied upon or collected from the general credit, general funds or taxing powers, of the Issuer. In making the agreements, provisions and covenants set forth herein, the Issuer has not obligated itself except with respect to this Bond Agreement and the application of revenues hereunder as hereinabove provided.

It is further understood and agreed by the Borrower and the Bondowner(s) that the Issuer, its Common Council members, officials, officers, employees or agents shall incur no pecuniary liability hereunder and shall not be liable for any expenses related hereto, all of which the Borrower has agreed to pay. If, notwithstanding the provisions of this Section, the Issuer, its Common Council members, its officials, officers, employees or agents incurs any expense, or suffers any losses, claims or damages or incurs any liabilities, the Borrower hereby agrees to indemnify and hold harmless the Issuer, its Common Council members, officials, officers, employees or agents from the same and will reimburse the Issuer, its Common Council members, officials, officers, employees or agents for any such expenses, loss, claims, damages or liabilities and all legal or other expenses incurred by the Issuer, its Common Council members, officials, officers, employees or agents in relation thereto, and this covenant to indemnify, hold harmless and reimburse the Issuer, its Common Council members, officials, officers, employees or agents shall survive delivery of and payment for the Bonds and expiration or termination of this Bond Agreement. The liability of the Issuer is further restricted as provided in the Statute.

No recourse shall be had for the payment of the principal of or premium, if any, or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement in this Bond Agreement contained against any past, present or future officer, director, commissioner, Common Council member, official, employee or agent of the Issuer, or any

incorporator, officer, director, member, trustee, commissioner, Common Council member, official, employee or agent of any successor corporation or body politic, as such, either directly or through the Issuer or any successor corporation or body politic, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporators, officers, directors, trustees, commissioners, Common Council members, officials, employees or agents, as such, is hereby expressly waived and released as a condition of and consideration for the execution of this Bond Agreement and the issuance of the Bonds.

**Section 2.12 Source of Payment.** The principal of, premium, if any, and interest on the Bonds shall be payable by the Issuer solely from the Pledged Revenues.

**Section 2.13 Pledged Revenues.** The Pledged Revenues are hereby specifically, irrevocably and exclusively pledged by the Issuer to the Trustee to secure the punctual payment of the principal of, premium, if any, and interest on the Bonds, and shall be used for no other purpose except as otherwise expressly authorized herein.

**Section 2.14 Form of Bonds.** The Bonds shall be issuable only as fully registered Bonds substantially in the form set forth in Exhibit B attached hereto, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Bond Agreement and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon, as may be required to comply with the rules of any securities exchange, or as may, consistently herewith, be determined by the officers executing such Bonds as evidenced by their execution of the Bonds. There may be printed or otherwise reproduced on any Bond form (i) the legal opinion of Bond Counsel, (ii) customary “back panel” summary information, (iii) restrictions on transfer in form approved by the Trustee as required in particular instances, and (iv) any other information deemed necessary or appropriate by the Issuer or the Trustee with the approval of Bond Counsel to give notice of information to Bondowners. Pending the preparation of definitive Bonds the Issuer may execute and the Trustee shall authenticate and deliver temporary Bonds, substantially of the tenor of the definitive Bonds in lieu of which they are issued, in fully registered form, with such appropriate insertions, omissions, substitutions and other variations as the Issuer’s Highest Elected Official and Clerk may determine, as evidenced by their manual signing of such Bonds. If temporary Bonds are issued, the Trustee will cause definitive Bonds to be prepared without unreasonable delay. After the preparation of definitive Bonds, the temporary Bonds shall be exchangeable for definitive Bonds upon surrender of the temporary Bonds at the Trustee’s Principal Office without charge to the Bondowner. Upon surrender for cancellation of any one or more temporary Bonds, the Issuer shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Bonds of authorized denominations. Until so exchanged the temporary Bonds shall in all respects be entitled to the same benefits hereunder as definitive Bonds, and the principal of, premium, if any, and interest thereon, when and as payable, shall be paid to the Bondowners of the temporary Bonds.

**Section 2.15 Execution of Bonds.** The Bonds shall be executed on behalf of the Issuer by its Highest Elected Official under the official seal of the Issuer attested to by its Clerk. The signatures of the Issuer’s Highest Elected Official and Clerk on the Bonds may be manual or facsimile, so long as at least one of said signatures is manual. The official seal of the Issuer on the Bonds may be actually impressed or imprinted or may be reproduced thereon by facsimile.



Bonds bearing the manual or facsimile signatures of the persons who were the Issuer's Highest Elected Official and Clerk at the time of the execution thereof shall be valid and sufficient for all purposes notwithstanding that such persons or either of them have ceased to hold such offices prior to the authentication and delivery of the Bonds or did not hold such offices at the date of the Bonds. For this purpose a Bond executed by facsimile signature shall be deemed to have been executed on the date of the printing thereof.

**Section 2.16 Authentication.** No Bond shall be entitled to any benefit hereunder or be valid for any purpose unless there appears on such Bond a certificate of authentication substantially in the form set forth in Exhibit B, executed on behalf of the Trustee with the manual signature of an authorized signatory of the Trustee. Such certificate of authentication executed as aforesaid on a Bond shall be conclusive evidence that such Bond has been authenticated and delivered hereunder.

**Section 2.17 Provision for Registration, Transfer and Exchange of Bonds.** The Trustee shall cause a register (herein sometimes referred to as the "Bond Register") to be kept for the purpose of providing for the registration and transfer of Bonds in accordance with the provisions of this Section 2.17 and such reasonable additional regulations as the Trustee may prescribe. Subject to such regulations, any Bondowner may cause its address on the Bond Register to be changed by giving written notice to the Trustee. At reasonable times and under reasonable regulations established by Trustee, the Bond Register may be inspected and copied by the Borrower, the Issuer or by Bondowners (or a designated representative thereof) of 10% or more in aggregate principal amount of Bonds then Outstanding, the authority of such designated representative to be evidenced to the satisfaction of Trustee.

The Bonds shall be fully negotiable. Any Bond may be transferred, but only by a written assignment duly executed by the Bondowner or by such Bondowner's duly authorized legal representative. Upon presentation and surrender of the Bond together with said executed form of assignment at the Trustee's Principal Office, the Trustee shall register the transfer in the Bond Register; *provided, however*, that the Trustee shall have no obligation to register the transfer unless the executed assignment shall be satisfactory to it in form and substance. Upon registration of the transfer of a Bond, the Trustee shall cancel the surrendered Bond and the Issuer shall issue, and the Trustee shall authenticate, one or more new Bonds of authorized denominations of the same maturity and interest rate and in the same aggregate outstanding principal amount as the surrendered Bond.

The Bondowner requesting any registration of transfer or exchange of Bonds shall pay with respect thereto any resulting tax or governmental charge. All such payments shall be conditions precedent to the exercise of the Bondowner's rights of registration of transfer or exchange. The Trustee shall not be required to register the transfer or to exchange any particular Bond after such Bond has been selected for redemption. All registrations of transfer and exchanges of Bonds shall be accomplished in such manner that no increase or decrease in interest payable on the Bonds results therefrom.

**Section 2.18 Persons Treated as Bondowners.** The Issuer and the Trustee may treat the person in whose name any Bond is registered as the absolute owner of such Bond for the purpose of receiving payment of the principal of, premium, if any, and interest thereon and for all other purposes whatsoever, whether or not such Bond is overdue and irrespective of any actual, implied or imputed notice to the contrary.

**Section 2.19 Manner of Payment of Bonds.** Notwithstanding the foregoing or anything to the contrary contained herein, the payment of principal, premium or prepayment penalty, if any, redemption price, and interest on Bonds shall be payable by the Borrower to the Original Purchaser in the manner provided in the Credit Agreement or as otherwise agreed to in writing by the Borrower and Original Purchaser and acknowledged by the Trustee, including but not limited to, payments made by the Borrower directly to the Original Purchaser. If payments are made directly by the Borrower to the Original Purchaser, the Original Purchaser shall provide the Trustee with a receipt or other written evidence detailing the date and amount of each payment. The interest on any Bond and the principal which is payable and is punctually paid or duly provided for, on any Payment Date shall be paid by check drawn by the Borrower payable to the order of the person in whose name that Bond is registered as of the close of business on the Record Date for such interest and mailed to such person at the address shown on the Bond Register, initially, the Original Purchaser. Any interest on any Bond which is payable, but is not punctually paid or duly provided for, may be paid in any lawful manner, at the discretion of the Trustee. The principal of, premium, if any, and interest on all Bonds shall be paid in lawful money of the United States of America.

In any case where the date of maturity of interest on or principal of the Bonds or the date fixed for redemption of any Bonds shall be, in the city in which the Trustee's Principal Office is located, a Saturday, Sunday or a legal holiday, the payment of principal, premium, if any, and interest need not be made on such date in such city but may be made on the next succeeding Business Day.

Interest on any Bond which is payable, and is punctually paid or duly provided for, on any Redemption Date that is not a regularly scheduled Payment Date, shall be paid by check or wire transfer drawn by the Borrower, payable to the order of the person in whose name the Bond is registered at the close of business on the day next preceding such Redemption Date, initially the Original Purchaser.

**Section 2.20 Mutilated, Lost, Stolen or Destroyed Bonds.** In the event any Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the Trustee may authenticate a new Bond of like date, maturity and denomination as the Bond mutilated, lost, stolen or destroyed. In the case of any lost, stolen or destroyed Bond, there shall first be furnished to the Issuer and the Trustee evidence of such loss, theft or destruction satisfactory to the Issuer and the Trustee, together with indemnity satisfactory to them. In the event any such Bond shall have matured, the Trustee instead of issuing a substitute Bond may pay the same without surrender thereof. The Issuer and the Trustee may charge the Bondowner of such Bond with their reasonable fees and expenses in this connection.

**Section 2.21 Trustee Designated as Bond Registrar.** The Trustee shall be the bond registrar for and in respect of all Bonds.

**Section 2.22 Disposition of Bonds Upon Payment; Safekeeping of Bonds Surrendered for Exchange.** All Bonds fully paid, fully redeemed or purchased by the Trustee for cancellation under the provisions hereof shall be cancelled when such final payment, redemption or purchase is made, and such cancelled Bonds shall be delivered to the Trustee. All cancelled Bonds shall be destroyed by the Trustee by shredding or other suitable means, and the Trustee shall execute a certificate of destruction in duplicate describing the Bonds so destroyed and one executed certificate shall be filed with the Issuer and the other executed certificate shall be retained by the Trustee.

**Section 2.23 Delivery of Bonds.** Upon the execution and delivery of this Bond Agreement, the Issuer shall issue and execute and deliver the Bonds to the Trustee, and the Trustee shall authenticate such Bonds and deliver them to the purchaser(s) as may be directed by the Issuer.

Prior to the delivery of the Bonds by the Trustee there shall be filed with the Trustee:

- (a) A certified copy of the Resolutions of the Issuer authorizing the issuance of the Bonds and the execution and delivery of this Bond Agreement;
- (b) An original of this Bond Agreement, executed in counterparts; and
- (c) A request and authorization to the Trustee, executed on behalf of the Issuer by its Highest Elected Official or Clerk, to deliver the Bonds to the purchaser(s) therein identified, in the form and amount requested upon payment to the Trustee, for the account of the Issuer, of a specified sum plus accrued interest on the Bonds to date of delivery thereof.

**Section 2.24 Parity.** This Bond Agreement is for the equal and ratable benefit and security of all Bonds issued and to be issued hereunder. All Bonds shall be of equal rank, and no Bondowner shall be accorded a preference or priority over any other Bondowner except as expressly authorized or provided herein.

**Section 2.25 Discharge.** If the Issuer shall pay or cause to be paid from the Pledged Revenues the principal, premium, if any, and interest due or to become due on the Bonds at the times and in the manner stipulated therein, and if the Issuer shall not then be in default in any of the covenants and promises in the Bonds and in this Bond Agreement expressed as to be kept, performed and observed by it or on its part, and shall pay or cause to be paid to the Trustee all sums of money due or to become due according to the provisions hereof, then these presents and the estate and rights hereby granted shall cease, terminate and be void, whereupon the Trustee shall cancel and discharge the lien of this Bond Agreement and execute and deliver to the Issuer such instruments in writing as shall be requisite to cancel and discharge the lien hereof, and reconvey, release, assign and deliver unto the Issuer any and all the estate, right, title and interest in and to any and all property conveyed, assigned or pledged to the Trustee or otherwise subject to the lien of this Bond Agreement, except moneys or securities held by the Trustee in separate segregated trust accounts pursuant to this Bond Agreement for the payment of the principal of, premium, if any, and interest on unrepresented Bonds.

Any Bonds shall be deemed to be paid when payment of the principal of and premium, if any, on such Bond, plus interest thereon to the due date thereof (whether such due date be by reason of maturity or upon redemption as provided herein, or otherwise) either (a) shall have been made or caused to be made in accordance with the terms hereof, or (b) shall have been provided for by irrevocably depositing with the Trustee, in trust and irrevocably setting aside exclusively for such payment, (i) cash, without regard to any investment or reinvestment thereof, sufficient to make such payment or (ii) Defeasance Obligations which are not callable prior to maturity by the issuer thereof or anyone acting on its behalf maturing as to principal and interest in such amounts and at such times, without regard to any investment or reinvestment thereof, as will provide sufficient moneys, together with any uninvested cash, to make such payment, and all necessary and proper fees and expenses of the Trustee pertaining to the Bond with respect to which such deposit is made. At such time as a Bond shall be deemed to be paid hereunder as aforesaid, it shall no longer be deemed to be

outstanding hereunder and shall no longer be secured by or entitled to the benefits hereof, except for the purposes of any such payment from such moneys or Defeasance Obligations.

Notwithstanding the foregoing, no deposit under clause (b) of the immediately preceding paragraph shall be deemed a payment of such Bonds as aforesaid until:

(a) The deposit shall have been made under the terms of an escrow trust agreement or a supplement to this Bond Agreement in form and substance satisfactory to the Trustee consistent herewith and a verification report with respect to the sufficiency of such deposit prepared by an independent certified public accountant shall have been delivered to the Trustee;

(b) In the case of an escrow trust deposit with respect to Bonds subject to redemption prior to maturity at the option of the Borrower, the Borrower shall have delivered an irrevocable Borrower's Certificate designating when such Bonds are to be paid or redeemed under terms of such escrow trust agreement;

(c) In case of Bonds which are to be redeemed prior to maturity from such escrow trust deposit, a redemption notice meeting the requirements of Section 2.10 and stating that such Bonds are being redeemed from a deposit made pursuant to this Section 2.25 shall either (i) have been given, or (ii) shall have been provided for by delivery to the Trustee of irrevocable instructions for the giving of such notice;

(d) The Trustee shall have been furnished with an opinion of Bond Counsel to the effect that the payment of the Bonds in accordance with said escrow trust agreement will not adversely affect the excludability from gross income of the Bondowners for federal income tax purposes and will not cause the Bonds to be classified as "arbitrage bonds" under Section 148 of the Code; and

(e) The Trustee shall have covenanted to give notice of such deposit to the Bondowner of each Bond outstanding at the address shown on the Bond Register.

All moneys or Defeasance Obligations set aside and held in trust pursuant to the provisions of this Article for the payment of Bonds (including interest and premium thereon, if any) shall be applied to and used solely for the payment of the particular Bonds (including interest and premium thereon, if any) with respect to which such moneys and Defeasance Obligations have been so set aside in trust.

If moneys or Defeasance Obligations have been deposited or set aside with the Trustee pursuant to this Article for the payment of Bonds and the interest and premium, if any, thereon and such Bonds and the interest and premium, if any, thereon shall not have in fact been actually paid in full, no amendment to the provisions of this Section 2.25 shall be made without the consent of the Bondowner of each of the Bonds affected thereby.

## **ARTICLE III**

### **FUNDS AND ACCOUNTS**

**Section 3.01 Application of Proceeds of Bonds.** The Trustee shall deposit the amount received by it for the account of the Issuer on the Original Issue Date into the Project Fund. On the Original Issue Date, and if the total principal amount of the Bonds is not funded on the Original Issue Date, on such dates as determined by the Borrower and Original Purchaser thereafter, the Borrower shall submit Borrower's Requisitions meeting the requirements of and submitted in accordance with Section 4.02. The Original Purchaser shall review such Borrower's Requisitions and if, in the Original Purchaser's absolute discretion the Original Purchaser shall approve a Borrower's Requisition, the Original Purchaser shall forward the amount of such Borrower's Requisition to the Trustee for deposit into the Project Fund. If the principal amount of the Bonds up to the Bond Amount has not been funded by December 31, 2023, the Borrower shall submit a Borrower's Requisition requesting that all remaining available amounts desired to be drawn in a cumulative amount up to the Bond Amount be deposited into the Project Fund on or before December 31, 2023.

**Section 3.02 Project Fund.** There is hereby created by the Issuer and ordered established with the Trustee a Trust Fund to be designated with the name of the Bonds and the label "Project Fund." The Trustee shall deposit into the Project Fund, from time to time when and as received, the amounts specified in Section 3.01 and any additional moneys which the Borrower may deliver to the Trustee from time to time with the instruction that such moneys be deposited into the Project Fund.

The Trustee is hereby authorized and directed to disburse moneys from the Project Fund to pay (or reimburse the Borrower for) Project Costs and to make transfers to the Rebate Credit Account in accordance with Section 3.06. Except as otherwise provided below, such disbursements shall be made only upon a Borrower's Requisition made by or on behalf of the Borrower meeting the requirements of and submitted in accordance with Section 4.02.

In addition, disbursements from the Project Fund shall be subject to such further terms and conditions between the Borrower and the Original Purchaser as may be contained in the Credit Agreement.

If an Event of Default shall have occurred and be continuing, the Trustee (without any authorization from the Borrower) may, if the Trustee has accelerated the Bonds under Section 8.02, apply moneys in the Project Fund in accordance with Section 8.06.

Upon the closing of the Project Fund in accordance with Section 4.05, any remaining balance in the Project Fund shall be transferred to the Bond Fund.

**Section 3.03 Bond Fund.** There is hereby created by the Issuer and ordered established with the Trustee a Trust Fund to be designated with the name of the Bonds and the label "Bond Fund."

The Trustee shall deposit into the Bond Fund, when and as received:

(a) All payments from or for the account of the Borrower on the Loan (except prepayments of principal and the premium, if any, thereon required to be deposited into the Redemption Fund pursuant to Section 3.04) pursuant to Section 4.06; and

(b) Moneys required to be transferred to the Bond Fund from other Trust Funds or from Pledged Revenues in accordance with this Bond Agreement.

The Issuer covenants that it will cause to be deposited into the Bond Fund, but solely from Pledged Revenues, amounts sufficient to pay when due the principal of and interest on the Bonds. Except as otherwise expressly provided herein, moneys in the Bond Fund shall be used solely for the payment of principal of and interest on the Bonds when due at stated maturity, upon redemption prior to maturity, upon acceleration of maturity, or otherwise in accordance with the terms hereof and to make transfers to the Rebate Credit Account in accordance with Section 3.06. The Issuer hereby authorizes and directs the Trustee to withdraw sufficient moneys from the Bond Fund to pay the Bonds and the interest thereon as the same become due and payable.

**Section 3.04 Redemption Fund.** There is hereby created by the Issuer and ordered established with the Trustee a Trust Fund to be designated with the name of the Bonds and the label “Redemption Fund.”

The Trustee shall deposit into the Redemption Fund, when and as received:

(a) All prepayments of principal by the Borrower on the Loan pursuant to Section 4.10, together with the premium, if any, thereon; and

(b) Moneys required to be transferred to the Redemption Fund from other Trust Funds in accordance with this Bond Agreement.

The Issuer hereby authorizes and directs the Trustee to (i) transfer funds from the Redemption Fund to the Bond Fund when and as required to pay the principal of any Bonds called for redemption in accordance with this Bond Agreement; (ii) withdraw funds from the Redemption Fund to pay any premiums payable on Bonds called for redemption in accordance with this Bond Agreement; and (iii) transfer funds from the Redemption Fund to the Bond Fund to pay the final payment of principal on the Bonds at the last maturity thereof. Except to the extent moneys in the Redemption Fund are needed for the purposes described in the foregoing clauses (i) and (ii), the Trustee is authorized to use funds in the Redemption Fund for the purchase of Bonds for cancellation; provided that such purchases shall be made only to the extent authorized by the Borrower in a Borrower’s Certificate; and provided further that the purchase price for any Bond so purchased shall not exceed the principal amount thereof plus any accrued and unpaid interest thereon.

**Section 3.05 Insurance and Condemnation Proceeds Fund.** There is hereby created by the Issuer and ordered established with the Trustee a Trust Fund to be designated with the name of the Bonds and the label “Insurance and Condemnation Proceeds Fund.”

The Trustee shall deposit into the Insurance and Condemnation Proceeds Fund, when and as received, the Net Proceeds of title insurance claims, casualty insurance claims and eminent domain awards in accordance with and to the extent provided herein.

The Trustee is hereby authorized and directed to use moneys in the Insurance and Condemnation Proceeds Fund in accordance with directions from the Borrower in a Borrower's Certificate, with the Original Purchaser's consent so long as the Original Purchaser owns all of the Bonds (subject, however, to the rights of the Bondowners to require prepayment on the Bonds pursuant to Section 2.07), for any of a combination of the following purposes:

(a) To pay or reimburse the Borrower for the costs of repairing, restoring, replacing or rebuilding any portion of the Project or the Project Equipment damaged or destroyed by fire or other casualty, provided that such disbursements shall be made only upon a Borrower's Requisition substantially in the same form and manner as provided for disbursements from the Project Fund, *provided, however*, that such new property shall be subject to the Mortgage (as defined in the Credit Agreement) to the satisfaction of the Trustee and the Original Purchaser;

(b) To pay or reimburse the Borrower for the costs of acquiring or constructing other land and facilities in the City of Waukesha, Wisconsin to replace any property destroyed by fire or other casualty, taken by eminent domain or lost by reason of title defect, provided that such disbursements shall be made only upon a Borrower's Requisition substantially in the same form and manner as provided for disbursements from the Project Fund; or

(c) To transfer to the Redemption Fund if the Borrower elects to prepay, or the Bondowners elect to require prepayment of, all of the Loan pursuant to Section 2.07.

**Section 3.06 Rebate Credit Account; Arbitrage.** There is hereby created and established a "Rebate Credit Account" which shall be held by the Trustee and which shall be used solely for the purpose of making payments in accordance with the requirements of Section 148 of the Code, and applicable regulations thereunder. Unless the Trustee shall have received a "Notice to Trustee of Exception to Excess Earnings Report Requirement" as described in the Borrower's Tax Matters Closing Certificate, on each Computation Date, the Borrower shall compute or cause to be computed the amount of any rebatable arbitrage incurred during the previous computation period. Computation Dates shall be [June 30, 2028] (or such other date as the Borrower may elect as permitted by Section 148 of the Code and applicable regulations) and each fifth anniversary of such date thereafter (each a "Computation Date") so long as any of the Bonds are outstanding after such Computation Date. The final Computation Date shall be the date the last Bond is paid for and redeemed. The computation period shall be, as of each Computation Date, the period from the next previous Computation Date (or from the Original Issue Date, for the first computation period).

The amount computed to be rebatable arbitrage as of each Computation Date (the "Rebate Credit Amount") shall be paid by the Borrower to the Trustee for deposit to the Rebate Credit Account as of such Computation Date. The Borrower has agreed in Section 4.07 to fund the deficiency if the amounts on deposit in the funds and accounts created by this Bond Agreement and available for this purpose are less than the Rebate Credit Amount. The Trustee is authorized to hire such experts as it deems necessary to make this calculation, which shall be an expense of the Trustee paid by the Borrower under Section 4.07. All earnings from the reinvestment of any amounts in the Rebate Credit Account shall remain in the Rebate Credit Account.

Within 60 days of each Computation Date, the Borrower shall cause the Trustee to pay to the United States at least 90% of the rebatable arbitrage as of such Computation Date, and within 60 days of the final Computation Date, the Borrower shall cause the Trustee to pay to the United States all of the rebatable arbitrage as of the final Computation Date and any income attributable to such rebatable arbitrage; *provided, however*, that no such income shall be included in the final rebate payment if such income is less than \$300. The Trustee shall pay such amounts by check or draft to the United States; and file a copy of the Form 8038 received from the Borrower with respect to the Bonds and a statement summarizing the determination of the amount required to be paid to the United States with the Internal Revenue Service Center, Ogden, Utah 84201.

Notwithstanding anything to the contrary in this Section, rebatable arbitrage shall be calculated and paid as provided in Section 148(f) of the Code and applicable regulations thereunder. In the event either the Issuer or the Borrower is of the opinion (supported by an opinion of Bond Counsel) that it is necessary or advisable to restrict or limit the yield on the investment of any moneys held in any Trust Fund in order to avoid the Bonds being considered “arbitrage bonds” within the meaning of Section 148(f) of the Code, the Issuer may (and shall if so requested by the Borrower) issue to the Trustee a written certificate to such effect together with appropriate written instructions, in which event the Trustee shall take such action as is necessary so to restrict or limit the yield on such investment in accordance with such certificate and instructions, irrespective of whether the Trustee shares such opinion.

**Section 3.07 Trust Funds Held in Trust.** All Trust Funds shall be held in trust in the custody of the Trustee, subject to the provisions hereof which permit disbursements from the Trust Funds. All moneys and securities held in Trust Funds, except the Rebate Credit Account, shall be subject to the first lien of this Bond Agreement thereon and shall not be subject to lien, attachment, garnishment or other claims or proceedings by other creditors of the Borrower or the Issuer (other than the Original Purchaser and the Trustee for the benefit of the Bondowners).

**Section 3.08 Permitted Investment of Trust Funds.** Moneys held in the Trust Funds, upon the direction of the Borrower, shall be separately invested and reinvested by the Trustee in accordance with this Article. Each investment shall be held by or under the control of the Trustee and shall be deemed at all times to be part of the particular Trust Fund in which such moneys were held. Income, profit and loss from any such investment shall be credited or charged to the particular Trust Fund for whose account the investment was made.

All such investments and reinvestments shall be made in Qualified Investments having a maturity not later than the estimated time when the moneys so invested will be needed for the purposes of the Trust Fund of which they are a part.

The Trustee may make and execute any such investment through its own bond department, money center or other investment operation or through the bond department, money center or investment operation of any affiliated bank.

The Issuer and the Borrower acknowledge that to the extent that regulations of the Comptroller of the Currency or other applicable regulatory agency grant the Issuer the right to receive brokerage confirmations of security transactions at no additional cost, the Issuer waives receipt of such confirmations. Trustee shall furnish to the Borrower periodic statements which include detail of all investment transactions made by the Trustee.



## **ARTICLE IV**

### **TERMS OF LOAN**

**Section 4.01 Amount and Source of Loan.** The Issuer will lend to the Borrower and the Borrower will borrow from the Issuer, upon the terms and conditions specified herein, the Bond Proceeds by causing such Bond Proceeds to be credited to the Project Fund under Section 3.01 for disbursement in accordance with Section 4.02. The Issuer shall be obligated to lend only moneys transferred to the Trustee from the Original Purchaser for deposit in the Project Fund, as evidenced by the Original Purchaser's approval of a Borrower's Requisition in the form set forth in Exhibit D attached hereto. The outstanding principal amount of the Loan shall at all times be in balance with the principal amount of the Bonds Outstanding.

**Section 4.02 Withdrawals from the Project Fund.** As limited by Section 3.02, the Issuer has authorized and directed the Trustee to disburse money from the Project Fund in payment or reimbursement of Project Costs certified by the Borrower, or otherwise satisfactorily established, to be due and payable or to have been paid or incurred by or on behalf of the Borrower. The Trustee shall not disburse any funds from the Project Fund except upon receipt of a Borrower's Requisition in the form attached hereto as Exhibit D, approved and funded by the Original Purchaser.

In addition, the Borrower recognizes the right of the Trustee or the Original Purchaser to require additional documentation regarding the progress of the Project, absence of liens, percentage of completion, incurrence of costs and similar matters prior to disbursing moneys from the Project Fund, where deemed reasonably necessary. Such documents may include without limitation:

- (a) Evidence (which may be in the form of acknowledgments of governmental authorities having jurisdiction over the Project, or of public utilities) that all off-site and on-site utilities, including without limitation those for electricity, natural gas, water and sewage, are available to the Project;
- (b) Copies of licenses, permits and all certificates required by any governmental authority in connection with the construction of the Project; and
- (c) If requested by the Trustee, a statement by the Borrower and any subcontractor as to its subcontract, in form and in substance satisfactory to the Trustee, setting forth the names, addresses and amounts due or to become due, the amounts previously paid to every subcontractor, person, firm or corporation furnishing materials or performing labor entering into the construction of any part of the Project and lien waivers duly executed in a form acceptable to the Trustee, delivered before or contemporaneously with the Trustee's disbursement of Bond Proceeds.

**Section 4.03 Establishment of Completion Date.** The Completion Date shall be the date on which the Trustee shall acknowledge receipt of the following items, which the Borrower shall furnish to the Trustee with respect to the Project:

- (a) A certificate signed by the Borrower or an independent architect stating, or other satisfactory evidence establishing, that the construction, acquisition, purchase, improving, equipping, furnishing or installation of the Project has been completed, but that the certificate is

given without prejudice to any rights against third parties which exist at the date thereof or which may subsequently come into being;

(b) A certificate signed by the Borrower stating, or other satisfactory evidence establishing, that the entire Project Costs have been paid or are then due and payable pursuant to Section 4.02;

(c) If necessary, a certificate of occupancy for the Project issued by the governmental authority having jurisdiction; and

(d) Any other documents required by the Credit Agreement.

**Section 4.04 Completion Date.** The Project shall be completed within 36 months of the Original Issue Date, and all amounts in the Project Fund shall be expended within 36 months of the Original Issue Date.

**Section 4.05 Distribution of Project Fund on Completion Date.** The Project Fund will be funded in accordance with Section 3.01 and disbursed in accordance with Section 3.02; therefore, it is not expected that there will be any proceeds of the Bonds in the Project Fund on the Completion Date. However, on the Completion Date, any balance remaining in the Project Fund shall be disbursed by the Trustee to or for the benefit of the Borrower or on its order in such amount as may be necessary (and all thereof shall be disbursed if necessary) to pay, or to reimburse the Borrower for the payment of, any Project Costs which have not been paid previously by the Borrower or have not been reimbursed to the Borrower, as the case may be, in accordance with the provisions of Section 4.02. Any balance then remaining in the Project Fund in excess of amounts, if any, disbursed as provided above, shall be transferred to the Bond Fund and shall be used to pay principal and interest on the Bonds as same shall become due and payable within 90 days of the Completion Date.

**Section 4.06 Repayment of Loan.** The Borrower will pay to the Trustee at the Trustee's Principal Office for the account of the Issuer, and for deposit in the Bond Fund, in immediately available funds on each Payment Date, the exact amount of interest and principal payable on the Bonds on that Payment Date. This provision shall be construed so that the obligation of the Borrower shall never be greater than to have on deposit in the Bond Fund on any Payment Date the exact amount of principal and interest due on the Bonds on that Payment Date (in addition to the amount of additional payments required by Section 2.04 and Section 4.07 and amounts necessary to provide for the mandatory redemption of Bonds at the time and in the manner provided herein). In the event the Borrower should fail to make any of the payments required in this Section 4.06, the item so in default shall continue as an obligation of the Borrower until the amount in default shall have been fully paid, and the Borrower agrees to pay such amount with interest thereon (including, to the extent permitted by law, interest on the overdue installments of interest) at the Default Rate on those Bonds as to which such default exists. The parties agree that, provided that the Original Purchaser then owns 100% in principal amount of the Bonds Outstanding, any payment of interest and principal on the Bonds, or the purchase price in case of an optional or mandatory redemption of Bonds, that is made by the Borrower directly to the Original Purchaser shall be deemed to have been made in accordance with the first sentence of this Section 4.06. The Borrower will at all applicable times pay all amounts due hereunder sufficient to pay the principal, premium, if any, and

interest on, and the purchase price of, the Bonds when due, at maturity, upon redemption prior to maturity, acceleration or otherwise.

**Section 4.07 Additional Payments.** The Borrower will also pay the following amounts to the following persons:

- (a) To the Trustee, when due, all fees of the Trustee for services rendered hereunder and all reasonable fees and charges of counsel, accountants, engineers, consultants and others incurred in the performance on request of the Trustee of any and all services hereunder and under the No Arbitrage Certificate for which the Trustee and such other persons are entitled to payment or reimbursement; and
- (b) To the Trustee, for deposit into the Rebate Credit Account, the amount needed to be paid to comply with Section 148 of the Code and Section 3.06; and
- (c) To the Issuer, all amounts due to the Issuer pursuant to Section 4.13 of the Bond Agreement; and
- (d) To the Original Purchaser, all amounts due to the Original Purchaser hereunder and under the Credit Agreement.

**Section 4.08 Borrower's Obligations Unconditional.** The Borrower's obligations under Section 4.06 shall be in the nature of a Loan and shall be evidenced by a Promissory Note in the form set forth in Exhibit C attached hereto. All payments required of the Borrower hereunder shall be paid without notice or demand and without set-off, counterclaim, abatement, deduction or defense. Except as expressly provided herein, the Borrower will not suspend or discontinue any Loan Repayments, will perform and observe all of its other agreements in this Bond Agreement, and will not terminate this Bond Agreement for any cause, including but not limited to any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Project, eviction by paramount title, commercial frustration of purpose, bankruptcy or insolvency of the Issuer, the Trustee or the Original Purchaser, change in the tax or other laws or administrative rulings or actions of the United States of America or of the State of Wisconsin or any political subdivision thereof or failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Bond Agreement.

**Section 4.09 Credit for Accrued Interest and Investment Earnings on Bond Fund.** The accrued interest, if any, deposited in the Bond Fund pursuant to Section 3.01 shall be credited against the first payment of interest due hereunder. Any earnings from the investments of Bond Fund balances shall be applied to the payment of interest on the Bonds and credited against payments of interest hereunder at the earliest opportunity.

**Section 4.10 Prepayment of Loan.** Subject to the provisions of Section 2.09, the Borrower may at any time transmit funds directly to the Trustee, for deposit in the Redemption Fund, in addition to amounts, if any, otherwise required at that time pursuant to this Bond Agreement, and direct that the money be utilized by the Trustee to:

- (a) Provide for the redemption of Bonds as provided in Section 2.05, Section 2.06, Section 2.07 and Section 2.08; or

(b) Purchase Bonds, in accordance with the provisions of Section 2.09, which Bonds shall be cancelled by the Trustee.

**Section 4.11 Other Security.** In addition to the revenues set forth in this Bond Agreement out of which the Bonds shall be payable, the Bonds shall be secured as otherwise described herein and in the Security Documents.

**Section 4.12 Nature of Borrower's Obligations.**

(a) Notwithstanding anything in this Bond Agreement or the Promissory Note to the contrary, the obligations of the Borrower hereunder and under the Promissory Note shall be absolute and unconditional; the Borrower unconditionally and irrevocably waives each and every defense which, under principles of guarantee or suretyship law, would operate to impair or diminish such liability; and nothing whatever except actual full payment and performance to the Original Purchaser of such obligations shall operate to discharge the liability of the Borrower hereunder.

(b) Borrower's obligations hereunder include any payments required hereunder or under any of the Security Documents (including the disbursement of Bond Proceeds and the return of any deposits or other collateral) from the Original Purchaser to the Borrower.

**Section 4.13 Fees and Expenses of Issuer.** The Borrower covenants and agrees to pay to or on behalf of the Issuer the reasonable fees and expenses, including reasonable attorneys' fees, of the Issuer in connection with this Bond Agreement, the Project or the Bonds, including, without limitation, any and all fees and expenses incurred in connection with the authorization, issuance, sale and delivery of the Bonds and the administration of the Bonds, any examination, investigation or audit of the Bonds, and any assessments, levies, fines, fees or penalties assessed by any governmental agency or authority in connection with the Bonds, and the performance by the Issuer of its obligations and duties under this Bond Agreement.

**ARTICLE V**

**ISSUER'S REPRESENTATIONS AND COVENANTS**

**Section 5.01 Payment of Principal and Interest.** The Issuer covenants that it will promptly pay or cause to be paid, the principal of, and interest and premium, if any, on every Bond issued hereunder at the place, on the dates and in the manner and solely from the source provided herein and in the Bonds, according to the terms thereof. Notwithstanding the foregoing, the principal of, premium, if any, and interest on the Bonds are payable solely from the Pledged Revenues, which Pledged Revenues are hereby specifically assigned and pledged to the payment thereof in the manner and to the extent herein specified and from funds provided by the Borrower as provided herein.

**Section 5.02 Performance of and Authority for Covenants.** The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained herein, in any and every Bond executed, authenticated and delivered hereunder and in all proceedings of its governing body pertaining thereto, and it is duly authorized under the Constitution and laws of the State of Wisconsin to issue the Bonds authorized hereby, to make a

loan for the purpose of financing Project Costs, and to assign and pledge the Pledged Revenues, in the manner and to the extent herein set forth; and that all action on its part for the issuance of the Bonds and the execution and delivery of this Bond Agreement has been duly and effectively taken.

**Section 5.03 Right to Payments; Instruments of Further Assurance.** The Issuer covenants that it will defend against the claims and demands of all persons whomsoever its right to the payment of amounts due from the Borrower under this Bond Agreement and the Promissory Note, for the benefit of the Bondowners. The Issuer covenants that it will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such indentures supplemental hereto and such further acts, instruments and transfers as the Trustee may reasonably require for the better assuring, transferring, conveying, pledging, assigning and confirming unto the Trustee all and singular the rights assigned hereby and the amounts pledged hereby to the payment of the principal of, premium, if any, and interest on the Bonds. The Issuer covenants and agrees that, except as herein provided, it will not sell, convey, mortgage, encumber or otherwise dispose of any part of the revenues and receipts from this Bond Agreement and the Promissory Note nor its rights under this Bond Agreement and the Promissory Note.

**Section 5.04 Title to Project.** The Issuer acknowledges that, as between the Issuer and the Borrower, neither the Issuer nor the Trustee shall be entitled to or have any security interest in or lien upon the Project or the Borrower's title to and interest in the Project other than pursuant to the Security Documents.

**Section 5.05 Cooperation of the Issuer and Trustee.** So long as no Event of Default has occurred and is continuing and subject to the provisions in the Security Documents, the Issuer and Trustee will cooperate fully with the Borrower in filing any proof of loss with respect to any insurance policy covering casualties referred to in Section 6.05 and in the handling and conduct of any litigation arising with respect thereto, and will, to the extent they may lawfully do so, permit the Borrower to litigate in any such litigation or proceeding in the name and on behalf of the Trustee, provided that the Issuer will not be required to prosecute any such litigation. So long as no Event of Default has occurred and is continuing, the Trustee will cooperate fully with the Borrower in the handling and conduct of any prospective or pending condemnation proceedings affecting the Project, and will, to the extent it may lawfully do so, permit the Borrower to litigate in any such litigation or proceeding in the name and on behalf of the Trustee. So long as no Event of Default has occurred and is continuing, in no event will the Issuer or Trustee voluntarily settle or consent to the settlement of any proceeding arising out of any insurance claim, or any prospective or pending condemnation proceeding, with respect to the Project without the written consent of the Borrower, which consent shall not be unreasonably withheld.

**Section 5.06 Performance by Issuer.** Notwithstanding anything in this Bond Agreement to the contrary, the Issuer shall be under no obligation to take any action or execute, prepare or deliver any instrument or document until it shall have been requested to do so by the Borrower or the Trustee and shall have received assurances satisfactory to it that the Borrower or the Trustee shall pay in advance or reimburse it (at the Issuer's option) for its reasonable expenses incurred or to be incurred in connection with the taking of such action, (including reasonable attorneys' fees) and shall be indemnified against any possible liability arising out of the taking of such action. The Issuer shall not be under any obligation to perform any administrative service with respect to the Bonds or the Project, including, without limitation, record keeping and administrative services, it being understood that such services shall be performed or provided by the Borrower or the Trustee.

## ARTICLE VI

### **BORROWER'S REPRESENTATIONS AND COVENANTS**

**Section 6.01 Representations by the Borrower.** Except as stated herein, the Borrower makes the following representations as the basis for its covenants:

(a) The Borrower is a limited liability company duly organized and validly existing under the laws of the State of Wisconsin.

(b) The Borrower is authorized to execute, deliver and perform its obligations hereunder and to execute, deliver, file or record this Bond Agreement, the Promissory Note, the Credit Agreement, the Security Documents and such other papers, document or instruments as shall be necessary to carry out the intent and purposes hereof.

(c) The execution and delivery of this Bond Agreement, the Promissory Note, the Credit Agreement and the Security Documents, the consummation of the transactions contemplated by such instruments, and the fulfillment of the terms and conditions of such instruments do not and will not conflict with or result in a breach of any of the terms or conditions of the Borrower's Organizational Documents, or any mortgage, indenture, loan agreement or other restriction or of any agreement or instrument to which the Borrower is now a party or to which any property of the Borrower is subject and which breach would cause a Material Adverse Effect, and do not and will not constitute a default under any of the foregoing or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Borrower contrary to the terms of any instrument or agreement to which the Borrower is a party or by which any of its property or assets is bound and which breach would cause a Material Adverse Effect.

(d) The assistance in the financing of the Project by the Issuer has been and is a substantial inducement to the Borrower to undertake the Project.

(e) The Bond Proceeds to be credited to the Project Fund in accordance with Section 3.02 are estimated, on the date hereof, to be sufficient, with other amounts to be provided by the Borrower, to pay Project Costs.

(f) The Borrower does not rely on any warranty of the Issuer, the Trustee or the Original Purchaser either express or implied, that the Project will be suitable to the Borrower's needs.

(g) There is not pending any suit, action or proceeding against or affecting the Borrower before or by any court, arbitrator, administrative agency or other governmental authority which materially and adversely affects the validity, as to the Borrower, of any of the transactions contemplated by this Bond Agreement, the Promissory Note, the Credit Agreement and the Security Documents or the ability of the Borrower to perform its obligations hereunder or as contemplated by this Bond Agreement.

(h) To the best of Borrower's knowledge after due inquiry, the Project as designed and proposed to be operated meets, on the date hereof, all material Requirements of Law, including requirements of any federal, state, county, city or other governmental authority

having jurisdiction over the Borrower, the Project or its use and operation, including, without limitation, any zoning, land use or similar laws and regulations.

(i) As of the date hereof, the Borrower has, or will obtain, as required throughout the construction, equipping and operation of the Project, and will obtain all necessary approvals, whether legal or administrative, from all applicable federal, state or local entities or agencies required, for the purchase, construction, equipping and operation of the Project.

**Section 6.02 Completion of Project by the Borrower.** The Borrower agrees that once the Project has been commenced the Borrower will complete the Project as promptly as practicable, as described on Exhibit A attached hereto, subject to events of Force Majeure. “Force Majeure” shall mean any act, event or cause, except in relation to obligation to make payments under this Bond Agreement, beyond the reasonable control of the party affected by such act, event or cause, including but not limited to, by reason of strikes, lockouts, labor troubles, inability to procure material, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required to complete the Project, as described on Exhibit A attached hereto.

**Section 6.03 Payment of Project Costs by the Borrower.** The Borrower agrees that it will provide promptly any and all sums of money required to complete the Project, including without limitation all of the Project Costs, which the Issuer agrees shall be payable or reimbursable to the extent and in the manner provided in Section 4.02.

**Section 6.04 Sums for Completion.** The Issuer, the Trustee and the Original Purchaser make no representation or warranty, express or implied, that the moneys on deposit in the Project Fund will be sufficient to pay the entire Project Costs. If the Project Fund is not sufficient to pay the entire Project Costs, the Borrower shall nonetheless complete the construction, equipping, improving and installation of the Project and pay all costs incurred therefor without further reimbursement from the Issuer, the Trustee or the Original Purchaser. No payments by the Borrower under this Section 6.04 shall reduce the obligations of the Borrower or offset any other payment required to be made by the Borrower hereunder.

**Section 6.05 Borrower to Repair, Replace, Rebuild or Restore.** If there are any Outstanding Bonds when all or any part of the Project is taken by eminent domain, or destroyed or damaged, and unless the Borrower exercises its independent options to direct the redemption of any or all Outstanding Bonds pursuant to Section 2.06, the following subsections shall apply:

(a) The Borrower shall proceed promptly, subject to the provisions of subsection (b) of this Section 6.05, to replace, repair, rebuild and restore the Project to substantially the same condition as existed before the taking or event causing the damage or destruction, with such changes, alterations and modifications (including substitution or addition of other property) as may be desired by the Borrower and will be suitable for continued operation of the Project for the business purpose of the Borrower, and the Borrower will pay all costs thereof.

(b) Any condemnation award or insurance claim shall be treated in accordance with the Mortgage.

(c) All buildings, improvements and equipment acquired in the repair, rebuilding, replacement or restoration of the Project, together with any interests in land acquired by the Borrower necessary for such restoration, shall be deemed a part of the Project and available for use and occupancy by the Borrower without the payment of any additional amounts other than those provided herein.

(d) The Net Proceeds of any (i) insurance attributable to damage or destruction separately incurred by property of the Borrower not comprising part of the Project, (ii) condemnation award separately awarded for damages to or taking of the property of the Borrower not comprising part of the Project, or for damages on account of the taking of or interference with the Borrower's rights to possession, use or occupancy of any property of the Borrower not constituting the Project, or (iii) title insurance insuring title to land not comprising part of the Project, shall be and remain at all times the property of the Borrower, subject to such other agreements as the Borrower may have in place with the Original Purchaser or other creditors.

**Section 6.06 Maintenance of Property; Insurance.** The Borrower shall:

(a) Keep all Property useful and necessary in its business, whether leased or owned, in all material respects in good condition, repair and working order (ordinary wear and tear excepted) and from time to time make or cause to be made all needed and proper repairs, renewals, replacements, additions and improvements so that the business carried on in connection therewith may be properly and advantageously conducted at all times.

(b) Maintain with good, reputable and financially sound insurance underwriters insurance of such nature and in such amounts as is customarily maintained by companies engaged in the same or similar business and such other insurance as may be required by law or as may be required in the Security Documents.

(c) Have the Original Purchaser named as an additional insured.

**Section 6.07 Compliance with Zoning Laws.** The use of the Project shall at all times be and continue to be in material compliance with all applicable zoning laws and ordinances. The Borrower shall not initiate or acquiesce in any zoning reclassification, or seek any conditional use permit or variance without the written consent of the Trustee and the Original Purchaser while it remains a Bondowner.

**Section 6.08 Indemnification and Non-Liability of the Issuer.** The Borrower agrees to indemnify and save harmless the Issuer, the Original Purchaser and the Trustee and each of their respective officers, commissioners, Common Council members, officials, agents and employees and any other person who controls or is controlled by or is under common control with the Issuer, the Original Purchaser or the Trustee within the meaning of the 1933 Act (as hereinafter defined) (collectively, the "Indemnified Parties") from and against any and all losses, damages, costs, charges, expenses (including attorney's fees), causes of action, suits, claims, demands, judgments and liabilities arising from:



(a) Any injury to or death of any person or damage to property in or upon the Project or growing out of or connected with the use, nonuse, condition or occupancy of the Project;

(b) Violation of any agreement, warranty, covenant or condition of this Bond Agreement, except those knowingly violated by such Indemnified Party;

(c) Violation of any contract, agreement or restriction by the Borrower relating to the Project which shall have existed at the commencement of the term of this Bond Agreement;

(d) Violation of any law, ordinance, regulation or court order by the Borrower affecting the Project or a part thereof or the ownership, occupancy or use of the Project;

(e) Any statement or information relating to the expenditure of the Bond Proceeds contained in the "Borrower's Tax Matters Closing Certificate" or similar document furnished by the Borrower to the Issuer, the Original Purchaser or the Trustee which, at the time made, is misleading, untrue or incorrect in any material respect;

(f) Any audit or investigation of the Bonds by the Internal Revenue Service or the United States Department of the Treasury or the Securities and Exchange Commission, except (with respect to the Trustee or the Original Purchaser) for the gross negligence or willful misconduct of the Trustee or the Original Purchaser and each of their respective officers, commissioners, agents and employees and any other person who controls or is controlled by or is under common control with the Trustee or the Original Purchaser within the meaning of the 1933 Act;

(g) Any statement or information furnished to the Original Purchaser of the Bonds or any other owner of the Bonds by the Borrower; and

(h) Any other event or circumstance relating to the Project or the Bonds not described above not resulting from the gross negligence or willful misconduct of such Indemnified Party.

The Borrower also agrees to indemnify, defend and hold harmless the Indemnified Parties against any and all losses, claims, damages or liability to which the Indemnified Parties may become subject under any law in connection with the issuance and sale of the Bonds, including without limitation the violation of any securities laws, the carrying out of the transactions contemplated by this Bond Agreement, and the conduct of any activity in connection with the Project, including claims for which the Indemnified Parties may be or may be claimed to be liable, and to reimburse the Indemnified Parties for any out-of-pocket legal and other expenses (including reasonable counsel fees) incurred by the Indemnified Parties in connection with investigating any such losses, claims, damages or liabilities, or in connection with defending any actions relating thereto, except for the gross negligence or willful misconduct of the Trustee or the Original Purchaser and each of their respective officers, commissioners, agents and employees and any other person who controls or is controlled by or is under common control with the Trustee or the Original Purchaser within the meaning of the 1933 Act. The Indemnified Parties agree, at the request and expense of the Borrower, to cooperate in the making of any investigation in defense of any such claim and promptly to assert any or all of the rights and privileges and defenses identified in writing by the

Borrower which may be available to the Indemnified Parties. These provisions shall survive payment of the Bonds and termination of this Bond Agreement.

In the event of settlement of any litigation commenced or threatened, such indemnity shall be limited to the aggregate amount paid under a settlement effected with the written consent of the Borrower, plus costs.

The obligations of the Issuer created by or arising out of this Bond Agreement shall not be general obligations of the Issuer, do not constitute or give rise to charges against its general credit, and are not payable in any manner from revenues raised by taxation.

Whether or not caused in whole or in part by the action or inaction of any indemnified party, the Borrower will pay, and will protect, indemnify and save the Issuer, the Trustee and their respective officers and employees harmless from and against any and all liabilities, losses, damages, costs and expenses (including attorneys' fees and expenses of the Issuer and the Trustee), causes of action, suits, claims, demands and judgments of whatever kind and nature (including those arising or resulting from any injury to or death of any person or damage to property) arising from or in any manner directly or indirectly growing out of or connected with the following:

- (i) the use, non-use, condition or occupancy of any of the Project, any repair, construction, alteration, renovation, relocation, remodeling and equipping thereof or thereto, or the condition of any of the Project, including adjoining sidewalks, streets or alleys and any equipment at any time located on the Project or used in connection therewith, but which are not the result of the negligence or willful misconduct of the Issuer;
- (ii) violation of any agreement, warranty, covenant or condition of this Bond Agreement;
- (iii) violation of any contract, agreement or restriction by the Borrower relating to the Project;
- (iv) violation of any law, ordinance, regulation or court order affecting any of the Project or the ownership, occupancy or use thereof;
- (v) any state or federal audit, examination or investigation of the Bonds;
- (vi) the administration or enforcement of any of the provisions of the Bond Agreement; and
- (vii) any other event or circumstance relating to the Project or the Bonds.

Such indemnity shall extend to each person, if any, who "controls" the Issuer, as that term is defined in Section 15 of the Securities Act of 1933, as amended.

The Issuer shall promptly notify the Borrower in writing of any claim or action brought against the Issuer, or any controlling person, as the case may be, in respect of which indemnity may be sought against the Borrower, setting forth the particulars of such claim or action, and the Borrower will assume the defense thereof, including the employment of counsel reasonably

satisfactory to the Issuer, or such controlling person, as the case may be, and the payment of all expenses.

In its discretion, the Issuer or any such controlling person shall have the right to employ separate counsel in any circumstances described in this Section 6.08. The fees and expenses of such legal counsel shall be included within the costs indemnified pursuant to this Section, irrespective of whether the Borrower shall have consented to such separate representation or any settlement of any such action.

All amounts payable to or with respect to the Issuer under this Section shall be deemed to be fees and expenses of the Issuer for purposes of the provisions hereof.

The obligations of the Borrower under this Section 6.08 shall survive the termination of this Bond Agreement.

Notwithstanding anything herein contained to the contrary by implication or otherwise, any obligations of the Issuer created by or arising out of this Bond Agreement do not give rise to a pecuniary liability of the Issuer or a charge against its general credit or the Issuer's taxing powers, including, but not limited to (i) liability for failure to investigate or negligence in the investigation of the financial position or prospects of the Borrower, a user of the Project or any other person or for failure to consider, or negligence concerning, the adequacy of terms of, or collateral security for, the Bonds or any related agreement to protect interests of holders of the Bonds; and (ii) any liability in connection with the issuance or sale of the Bonds. In addition, this Bond Agreement shall not give rise to any personal liability of any member of the Issuer's governing body or of any officers, agents, employees or officials of the Issuer of the Bonds or for any act or omission related to the authorization or issuance of the Bonds.

**Section 6.09 Assurance of Tax Exemption.** In order to assure that the interest on the Bonds shall at all times be free from Federal income taxation, the Borrower covenants with the Issuer, the Trustee and all Bondowners that it will:

(a) Not use the proceeds of the Bonds in such a manner as to cause the Bonds to be classified “arbitrage bonds” under Section 148 of the Code and applicable regulations.

(b) Comply with and fulfill all other requirements and conditions of the Code and regulations and rulings relating to the Project and not take any action, or refrain from taking any action, or permit others to take any action or refrain from taking any action if the result thereof would be to cause the interest on the Bonds to be included in the gross income of a Bondowner.

**Section 6.10 Nondiscrimination; Compliance with Wisconsin Statutes Section 66.1103(11)(b)1m.** The Borrower agrees that all contracts and subcontracts for construction of the Project shall include a clause prohibiting discrimination in employment and subcontracting. The Project shall not be used for any purpose which includes any act of employment discrimination as specified under Section 111.322 of the Wisconsin Statutes.

**Section 6.11 Position Openings; Compliance with Section 66.1103(6m) of the Wisconsin Statutes.** The Borrower shall comply with Section 66.1103(6m) of the Wisconsin Statutes relating to notification of position openings.

**Section 6.12 Job Shifting Requirements; Compliance with Section 66.1103(4s)(b) of the Wisconsin Statutes.** The Borrower shall comply with the requirements of Section 66.1103(4s)(b) of the Wisconsin Statutes with respect to offers of employment at the Project Site.

**Section 6.13 Job Protection Estimates; Reporting Compliance with Section 66.1103(4m)(b) of the Wisconsin Statutes.** The Borrower shall submit to the Wisconsin Economic Development Corporation, within 12 months after the Project is completed or two years after the Bond is issued, whichever is sooner, a report regarding the net number of jobs eliminated, created or maintained on the Project Site and elsewhere in the State as a result of the Project, as required by Section 66.1103(4m)(b) of the Wisconsin Statutes.

**Section 6.14 Legal Existence; Compliance with Laws; Maintenance of Business; Taxes.** The Borrower shall maintain its legal existence as a limited liability company and the Borrower will not dissolve or otherwise dispose of all or substantially all its assets or consolidate with or merge into another legal entity or permit one or more other legal entities to consolidate with or merge into it, except that the Borrower may, without violating the foregoing, consolidate with or merge into any other legal entity, or permit one more other legal entities to consolidate with or merge into it, or transfer all or substantially all its assets to another such legal entity (and thereafter be released of all further obligation under this Bond Agreement and dissolve or not dissolve as the Borrower may elect) if (i) the resulting, surviving or transferee legal entity, as the case may be, is a legal entity established and duly existing under the laws of one of the states of the United States of America, (ii) such resulting, surviving or transferee legal entity expressly assumes in writing all of the obligations of the Borrower contained in this Bond Agreement, the Promissory Note, the Loan Documents, the Credit Agreement and the Security Documents, (iii) the Original Purchaser while it remains a Bondowner shall have consented in writing to such transaction, which consent shall not be unreasonably withheld, conditioned or delayed, and (iv) the resulting, surviving or transferee entity shall have net assets immediately following such transaction at least equal to or greater than that of the Borrower immediately prior to such transaction.

**Section 6.15 Financial Statements.** The Borrower shall maintain a standard and modern system of accounting in accordance with sound accounting practice, and furnish to the Issuer and the Original Purchaser such information respecting the business, assets and financial condition of the Borrower as the Issuer may reasonably request and, without request furnish to the Original Purchaser such financial statements and other information as and when required under the terms of the Credit Agreement.

**Section 6.16 Certain Financial Covenants.** The Borrower shall timely perform and observe the covenants, affirmative and negative, set forth in the Credit Agreement, the Promissory Note and any Obligation of the Borrower, whether existing on the date of this Bond Agreement or hereafter entered into, all as such covenants may be amended and restated from time to time. If at any time, there is no such Credit Agreement, Promissory Note or Obligation in effect, then the foregoing sentence shall apply with respect to such covenants as are contained in the last such Credit Agreement, Promissory Note or Obligation to have been in effect.

**Section 6.17 Inspection of Property and Records.** At any reasonable time following reasonable notice, not more often than twice per year if no Event of Default exists and is continuing, and as often as may be reasonably desired and at the Borrower's expense after an Event of Default which is continuing, the Borrower shall permit representatives of the Issuer, the Trustee, and the Original Purchaser to visit its Property, examine its books and records and discuss its affairs, finances and accounts with its officers and independent certified public accountants (who shall be instructed by the Borrower to make available to the Issuer, the Trustee, and the Original Purchaser or their agents the work papers of such accountants) and the Borrower shall facilitate such inspection and examination.

**Section 6.18 Appraisals.** If and to the extent at any time required of the Original Purchaser by any Government Authority or Requirements of Law, the Borrower shall permit an independent appraiser selected by the Original Purchaser to conduct appraisals of the Property at any reasonable time following reasonable notice, at the Borrower's reasonable expense. The Borrower shall facilitate such appraisals and may obtain copies of, but may not rely, on such appraisals for any purpose.

**Section 6.19 Covenants.** During the term of this Bond Agreement, the Borrower shall comply with all covenants in the Credit Agreement.

**Section 6.20 Approval of Borrower's Requisitions.** The Borrower hereby acknowledges and agrees that the approval required of the Original Purchaser to funding transfers, as provided in Sections 3.01, 3.02, 4.01 and 4.02, and as provided in Exhibit D (Form of Borrower's Requisition) to the Bond Agreement, shall be solely within the Original Purchaser's discretion, provided that such approval shall not be unreasonably withheld.

## **ARTICLE VII** **POWERS AND DUTIES OF TRUSTEE**

**Section 7.01 Acceptance of Trusts.** The Trustee hereby accepts the trusts imposed upon it by this Bond Agreement, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions, and no implied covenants or obligations shall be read into this Bond Agreement against the Trustee:

(a) The Trustee, prior to the occurrence of any Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth herein. In case an Event of Default has occurred (which has not been cured) the Trustee shall exercise such of the rights and powers vested in it by this Bond Agreement, and use the same degree of care and skill in its exercise, as a reasonable and prudent person would exercise or use under the circumstances in the conduct of personal affairs.

(b) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents or employees but shall be answerable for the conduct of the same in accordance with the standard specified above, and shall be entitled to act upon the opinion or advice of its Counsel concerning all matters of trust hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents and employees as may reasonably be employed in connection with the trust hereof. Such reasonable

compensation for counsel shall be paid by the Borrower. The Trustee may act upon an opinion of independent counsel and shall not be responsible for any loss or damage resulting from any action or nonaction by it taken or omitted to be taken in good faith in reliance upon such opinion of independent Counsel.

(c) The Trustee shall not be responsible for any recital herein or in the Bonds (except in respect to the certificate of authentication of the Trustee endorsed on the Bonds) or for the validity of the execution by the Issuer of this Bond Agreement or of any supplements hereto or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, and the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions or agreements on the part of the Issuer or on the part of the Borrower in connection with this Bond Agreement, except as hereinafter set forth; and 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 3.08.

(d) The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder. The Trustee may become a Bondowner with the same rights which it would have if not Trustee. The Trustee may in good faith buy, sell, own and deal in any of the Bonds and may join in any action which any Bondowner may be entitled to take with like effect as if the Trustee were not a party to this Bond Agreement.

(e) The Trustee shall be protected in acting in good faith upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons. Any action taken by the Trustee pursuant to this Bond Agreement upon the request, authority or consent of any person who at the time of making such request or giving such authority or consent is the Bondowner of any Bond, shall be conclusive and binding upon all future Bondowners of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(f) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate signed on behalf of the Issuer by its Highest Elected Official or Clerk or such other person as may be designated for such purpose in writing and signed by the Highest Elected Official and the Clerk or such other person as may be designated for such purpose by resolution of the Issuer as sufficient evidence of the facts therein contained; and prior to the occurrence of a default of which the Trustee has been notified as provided in subsection (h) of this Section 7.01, or of which by said subsection it is deemed to have notice, shall also be at liberty to accept and rely upon a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of the Issuer's Clerk under the Issuer's seal, if any, to the effect that a resolution in the form therein set forth has been adopted by the Issuer as conclusive evidence that such resolution has been duly adopted, and is in full force and effect. The resolutions, orders, opinions, certificates and other instruments provided for herein may be accepted by the Trustee as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection and authority to the Trustee for the withdrawal of cash and the taking or omitting of any other action hereunder.

(g) The permissive right of the Trustee to do things enumerated herein shall not be construed as a duty unless failure to take such action would be a violation of the Trustee's duty to mitigate damages, and the Trustee shall not be answerable for other than its gross negligence, willful default or willful misconduct.

(h) The Trustee shall not be presumed to have knowledge of any default or Event of Default hereunder except failure to pay the principal of, premium, if any, and interest on the Bonds, unless the Trustee shall be specifically notified in writing of such default by the Borrower, the Issuer, the Original Purchaser or the Bondowners of at least 25% in aggregate principal amount of Bonds Outstanding.

(i) At any and all reasonable times the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right, but shall not be required, to inspect all books, papers and records of the Issuer pertaining to the Bonds and to take such memoranda from and in regard thereto as may be desired.

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

(k) Notwithstanding anything contained elsewhere herein, the Trustee shall have the right, but shall not be required, to demand, in respect of the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Bond Agreement, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required, as a condition of such action by the Trustee deemed desirable for the purpose of establishing the right of the Issuer to the authentication of any Bonds, the withdrawal of any cash, or the taking of any other action by the Trustee.

(l) Before taking any action hereunder, the Trustee may require that satisfactory indemnity be furnished to it for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful default, by reason of any action so taken.

(m) All moneys received by the Trustee shall, until used or applied or invested as herein provided, be held in trust in the manner and for the purposes for which they were received but need not be segregated from other funds except to the extent required by this Bond Agreement or law. The Trustee shall not be under any liability for interest on any moneys received hereunder except such as may be agreed upon.

**Section 7.02 Specific Duty of Trustee to File Continuation Statements.** The Trustee shall not be responsible for filing or for the sufficiency or accuracy of any financing statements initially filed to perfect security interests granted under this Bond Agreement. The Trustee shall file continuation statements with respect to each Uniform Commercial Code financing statement relating to the Trust Funds filed at the time of the issuance of the Bonds; provided that a copy of the filed initial financing statement is timely delivered to the Trustee. In addition, unless the Trustee shall have been notified in writing by the Issuer that any such initial filing or description of collateral was or has become defective, the Trustee shall be fully protected in (a) relying on such initial filing and descriptions in filing any financing or continuation statements or modifications thereto pursuant

to this Section and (b) filing any continuation statements in the same filing offices as the initial filings were made. The Borrower shall be responsible for the reasonable costs incurred by the Trustee in the preparation and filing of all continuation statements hereunder.

**Section 7.03 Notice to Bondowners if an Event of Default Occurs.** If a default occurs of which the Trustee is by Section 7.01(h) presumed to have knowledge, then the Trustee shall give written notice thereof by first-class mail to the Bondowners of all Bonds then Outstanding.

**Section 7.04 Intervention by Trustee.** In any judicial proceedings to which the Issuer is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of Bondowners of the Bonds, the Trustee may intervene on behalf of Bondowners and shall do so if requested in writing by the Bondowners of at least 25% in aggregate principal amount of all Bonds then Outstanding, provided that the Trustee shall first have been offered such reasonable indemnity against such liability as it may incur in or by reason of such proceedings. The rights and obligations of the Trustee under this Section 7.04 are subject to the approval of a court of competent jurisdiction.

**Section 7.05 Successor Trustee.** Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, ipso facto, shall be and become a successor Trustee hereunder and vested with all of the title to the whole property or trust estate and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

**Section 7.06 Resignation by Trustee.** The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving 30 days' prior written notice to the Issuer and the Borrower, and by first-class mail to each Bondowner. Such resignation shall take effect, however, only upon the appointment of a successor Trustee (or a temporary Trustee as provided in Section 7.08) by the Bondowners or by the Issuer and the acceptance of such appointment. If a successor Trustee has not been appointed by the end of the 30-day period, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee, and the costs, expenses and reasonable attorneys' fees which are incurred in connection with such a proceeding shall be paid by the Borrower.

**Section 7.07 Removal of Trustee.** The Trustee may be removed at any time, by an instrument or concurrent instruments in writing delivered to the Trustee and to the Issuer, and signed by the Bondowners of a majority in aggregate principal amount of Bonds then Outstanding.

**Section 7.08 Appointment of Successor Trustee by Bondowners; Temporary Trustee.** In case the Trustee hereunder shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by the Bondowners of a majority in aggregate principal amount of Bonds then Outstanding by an instrument or concurrent instruments in writing signed by such Bondowners, or by their attorneys-in-fact, duly authorized; provided, nevertheless, that in case of



such vacancy the Issuer by an instrument executed and signed by the Issuer's Highest Elected Official and attested to by its Clerk under its seal may appoint a temporary Trustee to fill such vacancy until a successor Trustee shall be appointed by the Bondowners in the manner above provided; and any such temporary Trustee so appointed by the Issuer shall immediately and without further act be superseded by the Trustee so appointed by such Bondowners. Every such Trustee appointed pursuant to the provisions of this Section 7.08 shall be a trust company or bank organized and in good standing under the laws of the United States of America or any state of the United States of America having the power and any authority to assume the duties and trusts hereby created and having a reported capital, surplus and undivided profits of not less than \$5,000,000 or assets under administration of not less than \$100,000,000 if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms. If a successor Trustee has not been appointed and has not accepted such appointment within 30 days of the resignation or removal of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee, and the costs, expenses and attorneys' fees which are incurred in connection with such a proceeding shall be paid by the Borrower as provided in Section 7.12.

**Section 7.09 Concerning Any Successor Trustee.** Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Issuer and the Borrower an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all of the properties, rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall nevertheless, on the written request of the Issuer, or of its successor, execute and deliver an instrument transferring to such successor Trustee all the properties, rights, powers, and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its successor. Should any instrument in writing from the Issuer be required by any successor Trustee for more fully and certainly vesting in such successor the properties, rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing, shall, on request, be executed, acknowledged and delivered by the Issuer.

**Section 7.10 Acquisition of Conflicting Interests by Trustee.** If the Trustee has or shall acquire any conflicting interest, the Trustee shall, within 90 days after ascertaining that it has such conflicting interest, either eliminate the same or resign by giving notice in accordance with Section 7.06 to the Issuer, the Borrower and Bondowners within such period, provided that such resignation shall become effective upon the appointment of a successor Trustee and such successor's acceptance of such appointment, and the Issuer and the Trustee agree to take prompt steps to have a successor appointed in the manner herein provided.

The Trustee shall be deemed to have a conflicting interest hereunder if it has a "conflicting interest" within the meaning of Section 3.10(b)(1) to (9), inclusive, of the Trust Indenture Act of 1939, as amended, except that the Trustee shall not be deemed to have a conflicting interest solely by reason of its having for itself or as a banker become a purchaser, seller or pledgee of the Bonds, it being understood that the Trustee may so deal with Bonds with the same rights that it would have if it were not Trustee and without liability or accountability to the Issuer or Bondowners on account thereof. Also, it may act as depositary for any purpose for any committee formed to protect the rights of Bondowners or effect or aid in any reorganization growing out of or involving the enforcement of the Bonds or this Bond Agreement whether or not any such committee shall

represent the Bondowners of a majority in aggregate principal amount of the Bonds Outstanding hereunder.

In the event that the Trustee shall fail to comply with the provisions of this Section 7.10, the Trustee shall within 10 days after the expiration of such 90-day period, transmit notice of such failure to the Bondowners.

Any Bondowner who has been a bona fide Bondowner of a Bond or Bonds for at least six months may, on behalf of himself, herself or itself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor, if the Trustee fails, after written request therefor by such Bondowner, to comply with the provisions of this Section.

**Section 7.11 Requirement of a Corporate Trustee.** Waukesha State Bank shall initially assume and perform the duties of Trustee, so long as it is the sole Bondowner. If the Original Purchaser shall cease to be the sole Bondowner, then a third-party Trustee shall be appointed. There shall at all times be one or more Trustees hereunder. One of the Trustees hereunder shall at all times be a corporate Trustee, and the corporate Trustee and any successor to the corporate Trustee, appointed as hereinbefore provided, shall be a corporation organized and doing business under the laws of the United States of America or any state or territory thereof, or of the District of Columbia, and shall be authorized under such laws to exercise corporate trust powers and be subject to supervision or examination by federal, state, territorial or District of Columbia authority and have a combined capital, surplus and undivided profits of not less than the \$5,000,000, or assets under administration of not less than \$100,000,000; *provided, however*, that the preceding combined capital, surplus and undivided profits test or assets under administration test shall not apply to the initial Trustee hereunder. If such corporate Trustee publishes reports of its condition at least annually, pursuant to law or to the requirements of any supervising or examining authority hereinbefore referred to, then for the purposes of this Section 7.11, the combined capital, surplus and undivided profits of the corporate Trustee shall be deemed its combined capital, surplus and undivided profits as the same is set forth in such corporate Trustee's most recent report of condition so published.

**Section 7.12 Trustee's Fees.** The Borrower has agreed herein to pay certain fees and expenses of the Trustee for acting as Trustee hereunder. The Trustee shall not be entitled to any payment from the Issuer for fees or expenses of the Trustee. During the continuance of an Event of Default, the Trustee shall have a first lien on Pledged Revenues, for payment of its fees and expenses in accordance with this Bond Agreement, with a right of payment therefrom prior to payment of any principal, premium, or interest on the Bonds. The Trustee shall not be entitled to any payments of fees or reimbursements of expenses which result from the negligence or willful default of the Trustee.

## **ARTICLE VIII**

### **BOND DEFAULTS AND REMEDIES**

**Section 8.01 Bond Defaults Defined.** If any of the following events occur, it is hereby defined as and declared to be and to constitute a "Bond Default":

(a) Failure to make payment of any interest on any Bond when and as that interest shall become due and payable;

(b) Failure to make payment of the principal of or any premium, to the extent applicable, on any Bond when and as that principal or premium shall become due and payable, whether at stated maturity, by redemption, pursuant to any mandatory sinking fund requirements, by acceleration or otherwise, as further provided in the Credit Agreement;

(c) A “Loan Default” shall occur under Section 9.01; or

(d) The Borrower shall fail to pay any obligation otherwise due to the Trustee or Original Purchaser (including, without limitation, the Promissory Note and the payments required by Section 4.07 and the Credit Agreement) when and as the same become due and payable, whether upon demand, at maturity, by acceleration or otherwise.

**Section 8.02 Acceleration.** Upon the occurrence of a Bond Default set forth in Section 8.01 while the Original Purchaser holds any of the Bonds, unless waived in writing by the Original Purchaser, the Trustee shall, by notice in writing delivered to the Issuer and the Borrower, declare the principal of all Bonds then Outstanding and the accrued interest thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable. Upon the occurrence of a Bond Default set forth in Section 8.01 when the Original Purchaser no longer holds any of the Bonds, the Trustee may, and upon the written request of the Bondowners of not less than 25% in the aggregate principal amount of Bonds then Outstanding shall, by notice in writing delivered to the Issuer and the Borrower, declare the principal of all Bonds then Outstanding and the accrued interest thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable.

**Section 8.03 Remedies.** Upon the occurrence of a Bond Default, the Trustee, may, in addition to acceleration as provided in Section 8.02, pursue any available remedy by action at law or suit in equity to enforce the payment of the principal of, premium, if any, and interest on the Bonds. In exercising the rights given the Trustee under this Article, the Trustee shall take such action as, in the judgment of the Trustee applying the standards described in Section 7.01, would best serve the interests of the Bondowners.

If any Bond Default shall have occurred, and if requested so to do by the Bondowners of at least 25% in aggregate principal amount of Bonds then Outstanding and if indemnified as provided in Section 7.01, the Trustee shall be obliged to exercise such one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel, shall deem most expedient in the interest of the Bondowners.

No remedy by the terms of this Bond Agreement conferred upon or reserved to the Trustee (or to the Bondowners) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Bondowners hereunder or now or hereafter existing at law or in equity or by statute.

No delay or omission to exercise any right or power accruing upon any default or event of default shall impair any such right or power or shall be construed to be a waiver of any such default

or event of default or acquiescence therein; and every such right and power may be exercised from time to time and as often as may be deemed reasonable or prudent.

No waiver of any default or Bond Default hereunder, whether by the Trustee pursuant to the provisions of Section 8.10 or by the Bondowners, shall extend to or shall affect any subsequent default or event of default or shall impair any rights or remedies consequent thereon.

**Section 8.04 Right of Bondowners to Direct Proceedings.** Anything herein to the contrary notwithstanding, the Bondowners of a majority in aggregate principal amount of Bonds then Outstanding shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement by the Trustee of the terms and conditions hereof, or for the appointment of a receiver or any other proceedings hereunder, provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Bond Agreement. The foregoing shall not prevent the Original Purchaser from enforcing its rights hereunder.

**Section 8.05 Waiver of Certain Rights.** Upon the occurrence of a Bond Default, to the extent that such rights may then lawfully be waived, neither the Issuer nor anyone claiming through it or under it, shall set up, claim or seek to take advantage of any moratorium, stay, extension or redemption laws now or hereafter in force to prevent or hinder the enforcement of this Bond Agreement, but the Issuer, for itself and all who may claim through or under it hereby waives, to the extent that it lawfully may do so, the benefit of all such laws to which it may be entitled by law.

**Section 8.06 Application of Moneys.** All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the cost and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Trustee or the Issuer in connection with the performance of its powers or duties under this Bond Agreement (including reasonable fees and disbursements of its counsel), be deposited into the Bond Fund and all moneys held or deposited in the Bond Fund during the continuance of a Bond Default shall be applied as follows:

(a) Unless the principal of all the Bonds has become or shall have been declared due and payable, all such moneys shall be applied:

First: To the payment to the Persons entitled thereto of all installments of interest then due on the Bonds, in the order of the maturity of the installments of such interest including interest (to the extent permitted by law) on overdue installments of interest, and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto without any discrimination or privilege; and

Second: To the payment to the Persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions hereof), in the order of their due dates, with interest (to the extent permitted by law) on such Bonds from the respective dates upon which they became due and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to

the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto without any discrimination or privilege.

Third: To the payment to the Persons entitled thereto of the unpaid premium, if any on any of the Bonds which have been called for redemption, in the order of the redemption dates, with interest (to the extent permitted by law) on such premiums from the respective dates on which such premiums became due, and, if the amount available shall not be sufficient to pay in full the premiums due on any particular redemption date, together with such interest, then to the payment ratably, according to the premium due on such date, to the persons entitled thereto without any discrimination or privilege.

(b) If the principal of all the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied first to the payment of the principal and interest then due and unpaid upon all of the Bonds, without preference or priority of principal over interest or of interest over principal, or of any installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or privilege, and secondly to the payment of the premium, if any, then due, ratably to the persons entitled thereto without any discrimination or privilege.

(c) If the principal of all the Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article then, subject to the provisions of paragraph (b) of this Section in the event that the principal of all the Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of paragraph (a) of this Section.

Whenever moneys are to be applied pursuant to the provisions of this Section 8.06, such moneys shall be applied at such times from time to time as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be a Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit and shall not be required to make payment to the Bondowner of any unpaid Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

**Section 8.07 Remedies Vested in Trustee.** All rights of action (including the right to file proof of claims) under this Bond Agreement or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any Bondowners appertaining thereto, and any recovery of judgment shall, subject to the provisions of Section 8.06, be for the equal and ratable benefit of the Bondowners of the Bonds Outstanding.

**Section 8.08 Rights and Remedies of Bondowners.** No Bondowner, other than the Original Purchaser, shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Bond Agreement or for the execution of any trust thereof or for the

appointment of a receiver or any other remedy hereunder, unless a default has occurred of which the Trustee has been notified as provided in Section 7.01(h), or of which by said subsection it is deemed to have notice, nor unless also such default shall have become a Bond Default and the Bondowners of at least a majority in aggregate principal amount of Bonds then Outstanding shall have made written request to the Trustee and shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name nor unless also they have offered to the Trustee indemnity as provided in Section 7.01 nor unless also the Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name; and such notification, request and offer of indemnity are hereby declared in every case at the option of the Trustee to be conditions precedent to the execution of the powers and trust of this Bond Agreement, and to any action or cause of action for the enforcement of this Bond Agreement, or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more Bondowners shall have any right in any manner whatsoever to affect, disturb or prejudice the security of this Bond Agreement by its, his or their action or to enforce any right hereunder except in the manner herein provided and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the Bondowners of all Bonds then Outstanding. Nothing herein contained shall, however, affect or impair (a) the right of any Bondowner to enforce the payment of the principal of and interest on any Bond at and after the stated maturity thereof, or the obligation of the Issuer to pay the principal of, premium, if any, and interest on each of the Bonds issued hereunder to the respective Bondowners at the time, place, from the source and in the manner herein and in said Bonds expressed or (b) the right of the Original Purchaser to enforce its rights hereunder.

**Section 8.09 Termination of Proceedings.** In case the Trustee shall have proceeded to enforce any right hereunder and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer, the Borrower and the Trustee shall be restored to their former positions and rights hereunder and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

**Section 8.10 Waivers of Bond Defaults.** The Trustee shall waive any Bond Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest on the Bonds upon the written request of the Bondowners of a majority in aggregate principal amount of all of the Bonds then Outstanding; *provided, however,* that there shall not be waived without the consent of the Bondowners of all the Bonds Outstanding (i) any Bond Default in the payment of the principal of any outstanding Bonds at the date of maturity specified therein or at the date fixed for the redemption thereof, or (ii) any Bond Default in the payment when due of the interest on any such Bonds unless, prior to such waiver or rescission, all arrears of interest, with interest (to the extent permitted by law) on overdue installments of interest at the Default Rate as provided in the Bonds, and/or all arrears of payments of principal, with interest (to the extent permitted by law) on overdue principal at the rate per annum provided in the Bonds, as the case may be, and all expenses of the Trustee in connection with such default shall have been paid or provided for; and in case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Trustee and the Bondowners shall be restored to their former positions and rights hereunder respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon.

## **ARTICLE IX**

### **LOAN DEFAULTS AND REMEDIES**

**Section 9.01 Loan Defaults Defined.** If any of the following events occur, it is hereby defined as and declared to be and to constitute a “Loan Default”:

(a) Default in the due and punctual payment of any installment of principal or any payment of interest or premium on the Loan or any obligation (including, without limitation, the Promissory Note and the payments required by Section 4.07 and the Credit Agreement) otherwise due hereunder when and as the same shall become due and payable, whether upon demand, at maturity, by acceleration or otherwise;

(b) The Borrower shall fail to observe or perform any of the covenants, agreements or conditions of the Borrower contained in this Bond Agreement (including the occurrence of a Bond Default) or in the Security Documents or in any provision of the Credit Agreement, which failure continues for 30 days (or the applicable cure period in such documents) following notice from the Trustee or Original Purchaser of such default;

(c) Any representation or warranty made by the Borrower herein or in any of the Loan Documents or the Security Documents or in any certificate, document or financial statement delivered to the Issuer, the Trustee or the Original Purchaser shall prove to have been incorrect in any material adverse respect as of the time when made or given;

(d) The Borrower shall (i) become insolvent or take or fail to take any action which constitutes an admission of inability to pay its debts as they mature; (ii) make an assignment for the benefit of creditors; (iii) petition or apply to any tribunal for the appointment of a custodian, receiver or any trustee for the Borrower or a substantial part of its assets; (iv) suffer any such custodianship, receivership or trusteeship to continue undischarged for a period of 30 days or more; (v) commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; (vi) by any act or omission indicate its consent to, approval of or acquiescence in any such petition, application or proceeding or order for relief or the appointment of a custodian, receiver or any trustee for it or any substantial part of any of its properties; or (vii) adopt a plan of liquidation of its assets;

(e) Any Person shall (i) petition or apply to any tribunal for the appointment of a custodian, receiver or any trustee for the Borrower or a substantial part of its assets which continues undischarged for a period of 30 days or more; or (ii) commence any proceeding against the Borrower under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, in which an order for relief is entered or which remains undismissed for a period of 30 days or more; or

(f) A Bond Default shall occur under Section 8.01 or an Event of Default shall occur under the Credit Agreement or any Loan Document or any Security Document.

**Section 9.02 Certain Notices to Borrower.** In the event that the Trustee fails to receive when due any payment of principal or interest by the Borrower on the Loan, the Trustee shall promptly give written notice thereof by facsimile transmission or other similar unsecured electronic methods or if such methods are not available then by registered or certified mail, postage prepaid, or by messenger to the Borrower specifying such failure. Such notice shall be a condition precedent to the exercise of any remedy hereunder.

**Section 9.03 Acceleration Upon Certain Circumstances.** Upon the occurrence of a Loan Default, the Trustee may, by written notice to the Borrower, declare the Loan to be immediately due and payable and/or may pursue any available remedy by suit at law or in equity to insure or realize the payment of the principal of, premium, if any, and interest under this Bond Agreement. In the event that the Trustee shall accelerate the Bonds pursuant to Section 8.02, the Trustee shall, by written notice to the Borrower, declare the entire outstanding principal balance of the Loan and the Promissory Note together with all interest accrued thereon to be due and payable, and such principal and interest shall thereupon become and be immediately due and payable.

**Section 9.04 Remedies.** Whenever any Loan Default shall have happened, the Trustee may declare all Loan Repayments for the remainder of the term of this Bond Agreement (being an amount equal to that necessary to pay in full all Outstanding Bonds, assuming acceleration of the Bonds hereunder, and all other indebtedness hereunder) to be immediately due and payable by the Borrower and may declare the entire outstanding principal balance of the Loan, together with all interest accrued thereon, to be due and payable, *provided, however*, that there may be no acceleration of the Loan unless there is an acceleration of the Bonds hereunder; and any acceleration of the Bonds hereunder shall result in an acceleration of the Loan. Upon the occurrence of a Loan Default, the Trustee may also take whatever action at law or in equity may appear necessary or appropriate to collect the Loan Repayments then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of the Borrower hereunder.

**Section 9.05 Disposition of Funds.** Any amounts collected pursuant to action taken under Section 9.03 and Section 9.04 shall be paid into the Bond Fund and applied in accordance with the provisions of Section 8.06.

**Section 9.06 Manner of Exercise.** No remedy conferred upon or reserved to the Issuer, the Trustee or the Original Purchaser hereunder is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power occurring upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Trustee or the Original Purchaser to exercise any remedy reserved to it in this Article, it shall be necessary to give only such notice as may be herein expressly required. The Issuer retains the right to exercise any right or remedy at law or in equity to restore its unassigned rights under this Bond Agreement.

**Section 9.07 Attorneys' Fees and Expenses.** In the event the Borrower should default under any of the provisions hereof and the Issuer, the Original Purchaser or the Trustee should employ attorneys or incur other expenses (including the costs and expenses of the Issuer's attorney and/or Original Purchaser's attorney) for the collection of the Loan or the enforcement of



performance of any obligation or agreement on the part of the Borrower hereunder, the Borrower shall pay to the Issuer, the Original Purchaser or the Trustee the reasonable fees of such attorneys and such other expenses so incurred.

**Section 9.08 Effect of Waiver.** In the event any agreement contained herein should be breached by any party and thereafter waived by the other parties, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach.

**Section 9.09 Waiver of Stay or Extension Laws.** The Borrower covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Bond Agreement; and the Borrower (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power granted herein to the Issuer or the Trustee, but will permit the execution of every such power as though no such law had been enacted.

## **ARTICLE X**

### **AMENDMENTS**

**Section 10.01 Amendments Without Bondowners' Consent.** The Issuer, the Original Purchaser, the Borrower and the Trustee may, without the consent of or notice to the Bondowners, agree to any supplement, amendment, change or modification of this Bond Agreement and the Promissory Note in connection with any change therein for any of the following purposes:

- (a) To add additional covenants of the Issuer or to surrender any right or power herein conferred upon the Issuer;
- (b) To add additional covenants of the Borrower or to surrender any right or power therein conferred upon the Borrower or to add additional security for the performance of its obligations;
- (c) For any purpose not inconsistent with the terms hereof or to cure any ambiguity or to correct or supplement any provision contained herein which may be defective or inconsistent with any other provision contained herein, or to make such other provisions in regard to matters or questions arising hereunder which shall not be inconsistent with the provisions hereof and which, in the judgment of the Trustee, shall not materially adversely affect the interests of the Bondowners; and
- (d) To make such other provisions in regard to matters or questions arising thereunder which shall not be inconsistent with the provisions hereof and which, in the judgment of the Trustee, shall not materially adversely affect the interests of the Bondowners.

**Section 10.02 Amendments With Bondowners' Consent.** Except as provided above, no amendment to this Bond Agreement, the Promissory Note or the Security Documents may be entered into except when consented to by the Borrower and approved by Requisite Consent of Bondowners, provided that no amendment shall be made that materially adversely affects the rights

of some but less than all the outstanding Bonds without the Requisite Consent of Bondowners so affected; and provided further that unanimous written consent of the Bondowners shall be required for any amendment with respect to (i) the amount or due date of any principal or interest payment upon any Bonds or the Loan, (ii) the mandatory redemption provisions of any Bonds, and (iii) this ARTICLE X.

If at any time the Issuer shall request the Trustee to enter into any amendment for any of the purposes of this Section 10.02, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, mail a copy of the notice by first-class mail to each Bondowner 30 days prior to entering into any amendment. Such notice shall briefly set forth the nature of the proposed amendment and shall state that copies thereof are on file at the Trustee's Principal Office for inspection by all Bondowners. If thereafter any such amendment shall have been consented to and approved as herein provided, no Bondowner shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such amendment as in this Section permitted and provided, this Bond Agreement shall be and be deemed to be modified and amended in accordance therewith.

**Section 10.03 Consent of Borrower.** Anything herein to the contrary notwithstanding, no amendment, change or modification under this Article affecting the rights or obligations of the Borrower shall be effective unless the Borrower shall have consented in writing thereto.

## **ARTICLE XI**

### **ASSIGNMENT**

In consideration of the premises, the acceptance by the Trustee of the trusts hereby created, and the purchase and acceptance of delivery of the Bonds by the Original Purchaser, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to secure the payment of the principal of, premium, if any, and interest on all Bonds at any time issued and outstanding hereunder according to their tenor and effect, and to secure the performance and observance by the Issuer of all the covenants contained in the Bonds and in this Bond Agreement, the Issuer does hereby convey, transfer, set over, pledge, assign, and grant a security interest in and confirm unto the Trustee, its successors and assigns forever, all and singular the properties, revenues and rights hereinafter described and the proceeds thereof (collectively called the "Trust Estate"), to wit:

- (a) All right, title and interest of the Issuer in, to and under this Bond Agreement and the right to receive revenues and payments from the Borrower under this Bond Agreement (except as otherwise provided herein);
- (b) All right, title and interest of the Issuer in and to the Pledged Revenues;
- (c) All right, title and interest of the Issuer in and to the Promissory Note;
- (d) All right, title and interest of the Issuer, if any, in and to the Security Documents;

(e) All right, title and interest of the Issuer in and to the Trust Funds (with the exception of the Rebate Credit Account) and the cash, securities and investments of which they are comprised; and

(f) All property which by the express provisions of this Bond Agreement is required to be subjected to the lien hereof, and any additional property that may from time to time hereafter be made subject to the lien of this Bond Agreement by the Issuer or by anyone on its behalf;

IN TRUST, for the equal and ratable benefit and security of the Bondowners without preference, priority or distinction as to lien or otherwise of any particular Bond over any other Bond, except as otherwise expressly provided herein;

PROVIDED, HOWEVER, that the Issuer reserves the right to enforce the Unassigned Rights in its own name and for its own account; and

PROVIDED, FURTHER, that if the Issuer shall pay, cause to be paid or provide for the payment of the principal of, premium, if any, and interest on the Bonds in accordance with Section 2.25, and if the Issuer shall promptly, faithfully and strictly keep, perform and observe all of its representations, covenants and agreements contained herein, then in such event this Bond Agreement and the rights hereby granted (excepting Bondowners' rights theretofore vested) shall cease, terminate and be void, otherwise to remain in full force and effect upon the trusts and subject to the conditions hereinafter set forth.

All Bonds issued and secured hereunder are to be issued, authenticated and delivered, and all Trust Funds, revenues and income hereby pledged are to be dealt with and disposed of under and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes herein expressed, and the Issuer has agreed and covenanted, and does hereby agree and covenant, with the Trustee and with the respective Bondowners from time to time of the Bonds, as set forth herein.

## **ARTICLE XII**

### **GENERAL**

**Section 12.01 Notices.** Unless otherwise expressly provided herein, all notices, certificates or other communication hereunder shall be sufficiently given and shall be deemed given when hand delivered, sent via facsimile transmission with evidence of receipt or when mailed by first class mail, postage prepaid, or by e-mail addressed as follows: (i) if to the Issuer, at the Issuer's Address; (ii) if to the Borrower, at the Borrower's Address; (iii) if to the Trustee, at the Trustee's Address; and (iv) if to the Original Purchaser, at the Original Purchaser's Address.

A duplicate copy of each notice, certificate or other communication given hereunder by either the Issuer or the Trustee shall also be concurrently given to the Borrower at the Borrower's Address.

Whenever the Trustee is required hereunder to give notice to Bondowners, it shall give such notice by first class mail to each person on the Bond Register whose Bond is affected thereby.

**Section 12.02 Consent of Bondowners.** Any consent, request, direction, approval, objection or other instrument required by this Bond Agreement to be signed and executed by the Bondowners may be in any number of concurrent writings of similar tenor and may be signed or executed by such Bondowners in person or by agent appointed in writing. Proof of the execution of any such consent, request, direction, approval, objection or other instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes hereof, and shall be conclusive in favor of the Trustee with regard to any action taken under such request for other instrument, namely: The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law had power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him the execution thereof, or by an affidavit of any witness to such execution.

**Section 12.03 Limitation of Rights.** With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Bond Agreement or the Bonds is intended or shall be construed to give to any person other than the parties hereto, the Borrower and the Bondowners any legal or equitable right, remedy or claim under or in respect to this Bond Agreement, or any covenants, conditions and provisions hereof, which are and are intended to be for the sole and exclusive benefit of the parties hereto, the Borrower and the Bondowners as herein provided.

**Section 12.04 Captions.** The captions or headings in this Bond Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions hereof.

**Section 12.05 Execution Counterparts.** This Bond Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 12.06 Severability.** In the event any provision hereof shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision.

**Section 12.07 Binding Effect.** This Bond Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Original Purchaser and the Borrower and their respective heirs, successors and assigns.

**Section 12.08 Governing Law.** This Bond Agreement shall be governed by, and interpreted in accordance with, the laws of the State of Wisconsin.

## **ARTICLE XIII**

### **AGREEMENT TO PURCHASE BONDS AND FUND BORROWER'S REQUISITIONS**

Subject to the conditions set forth in the Credit Agreement, the Original Purchaser agrees to purchase the Bonds, and to fund Borrower's Requisitions as provided in Sections 3.01, 3.02, 4.01 and 4.02 of this Bond Agreement; *provided, however*, that the Original Purchaser shall be required to fund a Borrower's Requisition only if no Event of Default is continuing hereunder and if the

Borrower has submitted to the Original Purchaser for approval a Borrower's Requisition in the form set forth in Exhibit D attached hereto.

IN WITNESS WHEREOF, the Issuer, the Borrower, the Trustee and the Original Purchaser have caused this Bond Agreement to be executed and delivered as of the date first above written.

**CITY OF WAUKESHA, WISCONSIN**

[SEAL]

By: \_\_\_\_\_  
Name: Shawn N. Reilly  
Title: Mayor

By: \_\_\_\_\_  
Name: Gina Kozlik  
Title: City Clerk

**707 EXECUTIVE PLACE HOLDINGS LLC**

By: \_\_\_\_\_  
Name: Joshua R. Kozinski  
Title: Member

**WAUKESHA STATE BANK, as Trustee**

By: \_\_\_\_\_  
Name: Claire Bessette  
Title: Vice President

**WAUKESHA STATE BANK, as Original Purchaser**

By: \_\_\_\_\_  
Name: Claire Bessette  
Title: Vice President

**[Signature Page of Bond Agreement]**

City of Waukesha, Wisconsin  
Industrial Development Revenue Bonds, Series 2023  
(707 Executive Place Holdings LLC Project)

## EXHIBIT A

### PROJECT DESCRIPTION; PROJECT BUDGET

#### Project Description

The project consists of financing the (i) acquisition of land located at 707 Executive Place in the City of Waukesha, Wisconsin (the “Project Site”), (ii) construction of an approximately 48,000 square foot facility (the “Facility”) located at the Project Site to be operated by Sky High Marketing, Inc., a Wisconsin corporation, to manufacture apparel, (iii) acquisition and installation of equipment at the Facility, and (iv) payment of certain professional costs and costs of issuance.

#### Project Budget Financed with Bonds

	<u>Financed with Tax- Exempt Bonds</u>
Land	[\$_____]
Building	[\$_____]
Equipment	[\$_____]
Costs of Issuance	[\$_____]

EXHIBIT B

FORM OF BOND

REGISTERED  
NO. 1

UNITED STATES OF AMERICA  
STATE OF WISCONSIN

REGISTERED  
\$2,800,000.00

CITY OF WAUKESHA, WISCONSIN  
INDUSTRIAL DEVELOPMENT REVENUE BOND, SERIES 2023  
(707 EXECUTIVE PLACE HOLDINGS LLC PROJECT)

Maturity Date

June 1, 2053

Original Issue Date

[June 30, 2023]

REGISTERED OWNER:      WAUKESHA STATE BANK

PRINCIPAL AMOUNT:      TWO MILLION EIGHT HUNDRED THOUSAND DOLLARS  
AND NO/100 (\$2,800,000.00)

KNOW ALL MEN BY THESE PRESENTS that the City of Waukesha, Wisconsin, a municipal corporation organized under the laws of the State of Wisconsin (the “Issuer”), for value received, promises to pay, but solely from the source and as hereinafter provided and not otherwise, to the above-named registered owner, or registered assigns principal and interest hereon as provided below. Capitalized terms not defined herein shall have the same meanings as in the Bond Agreement dated as of June 1, 2023 (the “Bond Agreement”) among 707 Executive Place Holdings LLC, a Wisconsin limited liability company (the “Borrower”), the Issuer, Waukesha State Bank, as original purchaser (the “Original Purchaser”) and Waukesha State Bank, as trustee (the “Trustee”).

1.      Maturity; Repayment of Principal.

The Bonds will be issued in the aggregate principal amount of up to \$2,800,000.00 and shall mature on June 1, 2053. Principal of the Bonds shall be repaid by the Issuer from payments to be made by the Borrower pursuant to optional sinking fund redemption in such amounts and on such dates as set forth in the Credit Agreement.

Notwithstanding anything else herein to the contrary, the principal amount of the Bonds outstanding shall never exceed the aggregate amounts transferred from the Original Purchaser to the Trustee for deposit into the Project Fund pursuant to Sections 3.01 and 4.02 of the Bond Agreement, less repayments of principal made by the Issuer (solely from payments to be made by the Borrower); provided, however, that nothing in the Bond Agreement shall be construed to obligate the Borrower to proceed with the Project, and in the event the Borrower does not proceed with the Project, the Borrower shall have no obligation under the Bond Agreement, other than the repayment, together with interest for amounts advanced by the Original Purchaser.



Payments of principal in excess of the scheduled installments set forth herein and related payments of premium shall be credited against scheduled installments in inverse order with respect to the Bonds.

2. Interest on the Bonds. **[SECTION 2 IS UNDER REVIEW BY BANK]**

(a) Initial Interest Rate - Commencing on the Original Issue Date through [June 29, 2028], the Bonds shall bear interest at a fixed rate of [4.35%], calculated pursuant to the following formula:

Fixed rate on Original Issue Date: [INSERT RATE FORMULA] = [4.35%]

(b) Interest Rate Reset; Interest Rate Options - Commencing on [June 30, 2028] and on each Reset Date thereafter (which date shall also be a Put Date), the Bonds shall bear interest for such applicable Reset Period at a variable rate or fixed rate as selected by Borrower in writing, with the consent of the Original Purchaser, and delivered to the Trustee not less than 30 days nor more than 60 days (unless waived by the Borrower and the Original Purchaser) prior to the next succeeding Reset Date (provided that if no election is made by the Borrower during such notice period, then the Borrower shall be deemed to have made an election at the variable rate), which election shall be irrevocable, for such Reset Period equal to either:

(1) A variable rate, adjusted monthly, equal to:

(1-Month Term SOFR Rate + Credit Spread) x Tax-Exempt Multiplier

-OR-

(2) A fixed rate for a period of 3 years or 5 years, as selected by the Borrower, with the consent of the Original Purchaser, which shall be reset on each Reset Date, calculated pursuant to the following formula:

(3-Year Treasury Rate + Credit Spread) x Tax-Exempt Multiplier

-OR-

(5-Year Treasury Rate + Credit Spread) x Tax-Exempt Multiplier

The Bonds, if bearing interest at the variable rate, shall bear interest at the rate determined according to the above variable rate formula, adjusted monthly, during such Reset Period.

The Bonds, if bearing interest at the fixed rate, shall bear interest at the rate determined according to the above fixed rate formula for the applicable Reset Period and tenor as approved by the Original Purchaser, which election shall be irrevocable for the duration of such Reset Period. Such fixed rate shall be determined not less than two nor more than three Business Days prior to the end of the applicable Reset Period.

Notwithstanding the foregoing, the interest rate on the Bonds (i) shall never exceed the Maximum Rate and (ii) shall not be less than 4.35%.

(c) The following definitions are applicable to the foregoing formulas and to the remainder of this Section 2 and Section 8:

(i) “1-Month Term SOFR Rate” means the US Dollar-denominated 1-Month Term SOFR index currently published by CME Group (<https://www.cmegroup.com/market-data/cme-group-benchmark-administration/term-sofr.html>) on the first day of each calendar month. If the first day of any calendar month is not a Business Day, then the SOFR index used will be the US Dollar-denominated 1-Month Term SOFR index currently published by CME Group on the first Business Day preceding the first day of each calendar month. If the 1-Month Term SOFR Rate is less than zero, then it shall be deemed to be zero. Any change in the interest rate resulting from a change in the 1-Month Term SOFR Rate shall become effective without notice to Borrower. Original Purchaser may change the service providing such information at any time. If it becomes unlawful for Original Purchaser to make, maintain, or fund loans based on the 1-Month Term SOFR Rate during the term of the Bonds and Promissory Note to which this is attached, Original Purchaser may substitute a comparable index. The 1-Month Term SOFR Rate may or may not be the lowest rate charged by Original Purchaser. The stated interest rate shall be effective of the first day of the applicable Reset Date and adjusted on the same day of each consecutive month thereafter.

(ii) “Credit Spread” means such Credit Spread as determined by the Original Purchaser for a similarly situated borrower as the Borrower based on the Original Purchaser’s then-current underwriting standards, and with credit committee oversight, including, without limitation, factors such as the current credit profile, market conditions and current and historical operating performance and which Credit Spread in the opinion of Bond Counsel will not adversely affect any exemption from federal income taxation to which the Bonds would otherwise be entitled.

(iii) “Maximum Rate” means 20% per annum.

(iv) “Put Date” means each Reset Date.

(v) “Reset Date” means the first day of each Reset Period; the initial Reset Date shall be [June 30, 2028].

(vi) “Reset Period” means each period of 3 years or 5 years from each Reset Date, as selected by the Borrower, through the day preceding the next Reset Date or the maturity date of the Bonds (as applicable).

(vii) “Tax-Exempt Multiplier” means the tax-exempt multiplier determined from time to time by the Original Purchaser or as modified by change in law as shown on its internal pricing sheets for tax-exempt interest rates which are not bank-qualified pursuant to Section 265 of the Code.

(d) The Original Purchaser shall provide the Borrower and the Trustee with such information as to historical and current interest rates as the Borrower and the Trustee shall reasonably request from time to time.

(e) All determinations of the interest rate hereunder shall be final and conclusive absent manifest error.

(f) Interest on the Bonds shall be payable on the [first] day of each month, commencing on [\_\_\_\_\_ 1, 2023]. Interest on the Bond is computed on a 360-day year, actual days elapsed; that is, by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under the Bond is computed using this method. This calculation method results in a higher effective interest rate than the numeric interest rate stated in the Bond.

Interest shall accrue only on principal amounts actually deposited and from the date such amounts are actually deposited into the Project Fund pursuant to Section 3.01 and Section 4.02 of the Bond Agreement.

(g) Interest Rate Adjustment on Bonds in the Event of Change in Corporate Tax Rate. The interest rates on the Bonds shall be subject to adjustment in the event of an increase or decrease in the Corporate Tax Rate of the Original Purchaser after the Original Issue Date, with such change in the interest rate to be effective as of the date of the increase or decrease in the Corporate Tax Rate of the Original Purchaser. The rates of interest on the Bonds (other than the interest rate in effect following a Determination of Taxability) shall be decreased (in the case of an increase in the Corporate Tax Rate) or increased (in the case of a decrease in the Corporate Tax Rate) so that the effective interest rate to the Original Purchaser, after taking into account such increase or decrease in the Corporate Tax Rate shall be the same yield to the Original Purchaser as was in effect prior to such change in the Corporate Tax Rate. “*Corporate Tax Rate*” means the highest stated statutory rate of federal income tax imposed on corporations, disregarding any surcharges or surtaxes.

(h) Principal payments on the Bonds shall be payable as optional sinking fund redemptions as provided in the Credit Agreement.

(i) Overdue principal and interest on the Bonds shall (to the extent legally enforceable) bear interest at the Default Rate. Any interest on any Bond which is payable, but is not punctually paid or duly provided for, may be paid in any lawful manner, at the discretion of the Trustee. All unpaid principal and interest shall be paid on June 1, 2053.

3. Authority. This Bond has been issued pursuant to and in full compliance with the Constitution and laws of the State of Wisconsin, particularly Section 66.1103 of the Wisconsin Statutes, as amended from time to time, and by authority of resolutions adopted by the Issuer’s governing body in connection with a project and activity undertaken pursuant to said section of the Wisconsin Statutes. **THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER, PAYABLE AS HEREINAFTER PROVIDED, AND DO NOT CONSTITUTE AN INDEBTEDNESS OF THE ISSUER WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL PROVISION OR STATUTORY LIMITATION. THE BONDS DO NOT CONSTITUTE OR GIVE RISE TO A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS OF THE ISSUER, THE STATE OF WISCONSIN OR ANY POLITICAL SUBDIVISION THEREOF OR IMPOSE PECUNIARY LIABILITY UPON THE ISSUER, THE STATE OF WISCONSIN OR ANY POLITICAL SUBDIVISION THEREOF. THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS IS PAYABLE BY THE ISSUER SOLELY FROM “PLEDGED REVENUES” AS DEFINED IN THE BOND AGREEMENT (DESCRIBED BELOW), INCLUDING ALL PAYMENTS BY THE BORROWER UNDER THE BOND AGREEMENT. THE BONDS ARE A SPECIAL, LIMITED**

**OBLIGATION OF THE ISSUER AND NEITHER THE ISSUER NOR ANY OF ITS OFFICIALS, OFFICERS, EMPLOYEES, COMMON COUNCIL MEMBERS OR AGENTS SHALL HAVE ANY MONETARY LIABILITY ARISING OUT OF THE OBLIGATIONS OF THE ISSUER HEREUNDER OR IN ANY CONNECTION WITH ANY COVENANT, REPRESENTATION OR WARRANTY MADE BY THE ISSUER HEREIN AND NEITHER THE ISSUER NOR ITS OFFICIALS, OFFICERS, EMPLOYEES, COMMON COUNCIL MEMBERS OR AGENTS SHALL BE OBLIGATED TO PAY ANY AMOUNTS IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY OTHER THAN FROM PLEDGED REVENUES OR OTHER MONIES RECEIVED FROM THE BORROWER.**

No recourse shall be had for the payment of the principal of, premium, if any, or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement in the Bond Agreement contained, against any past, present or future Common Council member, officer, agent or employee of the Issuer, or any incorporator, Common Council member, officer, employee, director or trustee of any successor body, as such, either directly or through the Issuer or any successor body, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporator, Common Council member, officer, employee, director, agent or trustee, as such, is hereby expressly waived and released as a condition of and consideration for the execution of the Bond Agreement and the issuance of any of the Bonds.

The Bond is a duly authorized issue of Bonds of the Issuer, limited in aggregate principal amount to \$2,800,000.00, issued and authorized to be issued for the purpose of providing financing to the Borrower. The Bonds are all issued under and are equally and ratably secured and entitled to the protection and benefits given by and the financing is accomplished under the terms of a Bond Agreement to finance a project on behalf of the Borrower consisting of the (i) acquisition of land located at 707 Executive Place in the City of Waukesha, Wisconsin (the “Project Site”), (ii) construction of an approximately 48,000 square foot facility (the “Facility”) located at the Project Site to be operated by Sky High Marketing, Inc., a Wisconsin corporation, to manufacture apparel, (iii) acquisition and installation of equipment at the Facility, and (iv) payment of certain professional costs and costs of issuance (the “Project”), which Bond Agreement provides for principal and interest payments sufficient to provide the Issuer with revenues to pay when due the principal of and interest on the Bonds. All of the Issuer’s right, title and interest in and to the Bond Agreement (except for Unassigned Rights) has been pledged and assigned to the Trustee as security for the payment of the Bonds.

4. Occurrence of a Determination of Taxability. The Bonds shall bear interest, payable on the first Payment Date after the occurrence of a Determination of Taxability with respect to all prior periods, computed at the rate set forth in this Section (the “Taxable Interest”) (on a 360-day year, actual days elapsed basis) on the outstanding principal amount of the Bonds (as reduced from time to time) from the date of the Event of Taxability, less any interest already paid, from the date of the Event of Taxability to such Payment Date. This calculation method results in a higher effective interest rate than the numeric interest rate stated in the Bond for Taxable Interest. Thereafter, the Bonds shall bear Taxable Interest as defined in this Section and as provided in this Section on the Bonds Outstanding on each Payment Date. Except for Taxable Interest allocable to the period between the Event of Taxability and the Payment Date immediately succeeding the Determination of Taxability (which interest shall be payable on such Payment Date immediately

succeeding the Determination of Taxability), Taxable Interest payable under this Section shall be payable with respect to the same period, at the same time and in the same manner as interest payments regularly paid pursuant to the Bond Agreement.

Taxable Interest payable on the Bonds for purposes of this Section shall automatically be adjusted to a rate, as determined by the Original Purchaser in its sole and absolute discretion, equal to the interest rate on the Bonds without application of the Tax-Exempt Multiplier. Such increased rate is to be effective, retroactively, as applicable, as of the date of the Determination of Taxability. The Borrower shall also pay to the Bondowners (and any former Bondowners holding Bonds during any period subsequent to an Event of Taxability) as additional interest, the amount of penalties, additions to tax (exclusive of any taxes imposed under Section 11 or any successor provision of the Code) or interest assessed against the Bondowners (and former Bondowners) on account of a Determination of Taxability. Taxable Interest to be paid pursuant to this Section for the period between the Event of Taxability and the Payment Date immediately succeeding the Determination of Taxability shall be paid immediately following the Determination of Taxability in the same manner as interest is paid to Bondowners in accordance with the Bond Agreement.

Any Bondowner shall have the right, but not the obligation, to arrange for the contest of an allegation that an Event of Taxability has occurred, by appropriate legal proceedings. In the event no Bondowner shall contest the Event of Taxability, the Borrower shall have the option but not the obligation to do so. If (i) the Borrower shall have made any additional payments to a Bondowner or former Bondowner by reason of an Event of Taxability pursuant to this Section, and (ii) it shall be successfully claimed for the taxable year in question that the interest on the Bonds for such taxable year is excluded from the Bondowner's or former Bondowner's taxable income for federal income tax purposes (for this purpose a claim shall be deemed successful only upon the occurrence of a "determination," as defined in Section 1313(a) or any successor provision of the Code) or, if the Bondowner or former Bondowner shall not have included such interest in the Bondowner's or former Bondowner's taxable income for federal income tax purposes upon expiration of the statute of limitations provided by Section 6501 or any successor provision of the Code with respect to such taxable year, then the Bondowner or former Bondowner (as the case may be) shall pay to the Borrower the amount of any such additional payments which had been made by the Borrower to the Bondowner or former Bondowner, less any actual expenses incurred by such Bondowner or former Bondowner as a result of the alleged Event of Taxability. Upon successful challenge of an Event of Taxability, the interest rate on the Bonds shall return to the interest rate ordinarily payable hereunder as if no Event of Taxability had ever been alleged.

5. Prepayment of Bonds. No Bond may be called for redemption prior to its stated maturity except as provided in paragraphs 6, 7 and 8 herein; *provided, however*, that nothing herein shall be deemed to limit the right of acceleration of Bond maturities upon the occurrence of a Bond Default.

6. Optional Prepayment. The Bonds are subject to redemption prior to maturity, in whole or in part, at any time, at the option of the Borrower, with such applicable redemption premium, if any, as set forth in the Credit Agreement, upon receipt by the Trustee, not less than 45 days prior to the Redemption Date, of a written notice from the Borrower stating that it intends to prepay the Loan on the specified Redemption Date and the giving of notice by the Trustee not less than 30 days prior to the Redemption Date, and thereby effect redemption of the Bonds being

redeemed. The notice of optional redemption to be delivered by the Borrower shall describe whether and the conditions under which the call for redemption may be revoked.

Notwithstanding the foregoing, the Borrower is not required to provide notice of redemption pursuant to Section 2.10 of the Bond Agreement to effect optional sinking fund redemptions as required by Section [\_\_\_\_\_] of the Credit Agreement.

The Borrower agrees to repay the Loan on the dates and in the amounts required by Section [\_\_\_\_\_] of the Credit Agreement and to pay any prepayment penalty therein directly to the Original Purchaser.

7. Optional Redemption of Bonds Upon Occurrence of Certain Extraordinary Events. The Bonds shall be subject to redemption, in whole or in part, without payment of any redemption or prepayment premium, at par plus accrued interest to the Redemption Date at the option of the Borrower, or the Bondowners by Requisite Consent, upon the occurrence of certain extraordinary events as described in this Section 7. If the Project is affected as set forth below, each shall have an independent option to have the Loan repaid in whole out of Net Proceeds of an insurance or condemnation award relating to destruction or damage or condemnation of all or any part of the Project, and to direct the Issuer either (i) to call for redemption and prepayment of all the Outstanding Bonds, or (ii) to call for redemption and prepayment that amount of Outstanding Bonds attributable to debt incurred for the Project as determined by the Trustee, if:

(a) The Project shall have been damaged or destroyed to such extent that, in the opinion of the Borrower expressed in a Borrower's Certificate, or in the written opinion of an independent architect acceptable to the Trustee and, if the Original Purchaser then owns any of the Bonds, the Original Purchaser, filed with the Trustee and the Original Purchaser, if the Original Purchaser then owns any of the Bonds, following such damage or destruction (i) the completion of the Project will be delayed for at least 6 months, (ii) it is not practicable or desirable to rebuild, repair or restore the Project within a period of 6 consecutive months following such damage or destruction, or (iii) the Borrower is or will be thereby prevented from carrying on its normal operations for a period of at least 6 consecutive months;

(b) Title to or the temporary use of all or substantially all of the Project shall have been taken under the exercise of the power of eminent domain by any Government Authority to such extent that, in the opinion of the Borrower expressed in a Borrower's Certificate, or in the written opinion of an independent architect acceptable to the Trustee and, if the Original Purchaser then owns any of the Bonds, the Original Purchaser, (i) the completion of the Project will be delayed for at least 6 months, or (ii) the Borrower is or will be thereby prevented from carrying on its normal operations at the Project Site for a period of at least 6 consecutive months;

(c) Any court or administrative body of competent jurisdiction shall enter a final judgment, and not subject to appeal, order or decree requiring the Borrower to cease all or any substantial part of its operations at the Project Site to such extent that, in the opinion of the Borrower expressed in a Borrower's Certificate, or in the written opinion of Counsel, who is also acceptable to the Original Purchaser if the Original Purchaser then owns any of the Bonds, filed with the Issuer and the Trustee, the Borrower is or will be thereby prevented from carrying on its normal operations at the Project Site for a period of at least 6 consecutive months;

(d) As a result of any changes in the Constitution of Wisconsin or the Constitution of the United States of America or of legislative or administrative action (whether state or federal) or by final decree, judgment or order of any court or administrative body (whether state or federal), the Bond Agreement shall have become void or unenforceable or impossible of performance in accordance with the intent and purposes of the parties as expressed herein, or unreasonable burdens or excessive liabilities shall have been imposed on the Issuer or the Borrower including, without limitation, federal, state or other ad valorem, property, income or other taxes not being imposed on the date hereof; or

(e) If it shall be discovered that the Borrower's title to the Project shall be materially defective, and the Borrower's title to the Project shall be lost by reason of such defect.

In any such case, the Borrower or Bondowners shall, to exercise their respective option hereunder, give notice to the Issuer, the Trustee and the Bondowners or the Borrower, as the case may be, in writing of its or their intent to exercise this option and specifying the proposed Redemption Date, within 30 days following discovery of the event by the party determining to exercise its option hereunder. The exercise of either party of its option to redeem the Bonds shall be binding on all parties hereto. Within 60 days after the giving of notice as set forth above, the Borrower shall deposit with the Trustee a sum sufficient, together with other funds held by the Trustee and available for such purpose (i) to redeem the Bonds, in whole or in part, as applicable at a redemption price equal to the principal amount thereof, (ii) to pay the interest which will become due on such Bonds to and including the Redemption Date, and (iii) to pay all expenses of the Issuer and the Trustee accrued and to accrue through the Redemption Date, excluding any redemption or prepayment premium.

If the Borrower shall have received proceeds of an insurance or condemnation award relating to destruction or damage or condemnation of all or any part of the Project (exclusive of proceeds of business interruption insurance), and such net proceeds exceed the amount necessary to rebuild, repair or restore the Facility, the Borrower agrees to direct the Issuer to call for redemption and prepayment of Outstanding Bonds equal to the amount of such resulting excess net proceeds.

8. Mandatory Redemption at Option of Original Purchaser. The Bonds shall be subject to mandatory redemption, in whole, but not in part, on a Put Date at the option of the Original Purchaser, so long as the Original Purchaser owns all of the Outstanding Bonds. If the Bonds bear a fixed interest rate, the Borrower may request from the Original Purchaser up to 150 days but no later than 90 days prior to the Put Date the indicative interest rate for the next succeeding Reset Period. Within 60 days of such request, the Original Purchaser shall provide notice to the Borrower of the indicative interest rate for such period. Either the failure of Borrower to accept the Original Purchaser's indicative interest rate within 30 days of notice from the Original Purchaser, or failure of the Original Purchaser to provide such notice, shall be deemed to be an exercise of the Original Purchaser's right to cause a mandatory redemption on the next Put Date. The redemption price in such event shall be 100% of the principal amount of the Bonds so redeemed, plus all accrued interest to the Put Date. In the event that the Original Purchaser has exercised its right under this Section to cause a mandatory redemption of the Bonds on a Put Date and the Borrower has secured a purchaser for the Bonds on such Put Date, the Borrower may elect to have the redemption treated as a mandatory tender, and the Bonds shall be purchased by the purchaser secured by the Borrower at a purchase price equal to 100% of the principal amount of the Bonds so purchased, plus all

accrued interest to the Put Date, and upon payment of such purchase price to the Original Purchaser, the Bonds shall be treated as tendered and purchased rather than redeemed.

9. Notice and Effect of Redemption. Except for optional redemption of the Bonds pursuant to the Credit Agreement, notice of the call for any redemption of Bonds prior to maturity shall be given by the Trustee by mailing a copy of the redemption notice by first-class mail not less than 30 days nor more than 60 days prior to the Redemption Date to the Bondowner of each Bond to be redeemed at the address shown on the Bond Register; *provided, however*, that failure to give any such notice as aforesaid or any defect therein with respect to any particular Bond shall not affect the validity of any proceedings for the redemption of any other Bond.

Each redemption notice shall (i) identify the particular Bonds or portions thereof to be redeemed (including, at a minimum, certificate numbers and called amount for each certificate (for partial calls), Redemption Date, Trustee, date of issue, maturity date, and other descriptive information, if any, that accurately identifies the particular Bonds called for redemption), (ii) identify the provisions of the Bond Agreement pursuant to which the Bonds are being redeemed, (iii) identify the place of payment, (iv) state the applicable redemption price, including the premium, if any, (v) state that interest on the Bonds or portions thereof thus called for redemption will cease to accrue from and after the Redemption Date specified therein, and (vi) state that the notice of redemption may be rescinded by the Borrower and the Trustee.

If pursuant to the Bond Agreement the Trustee shall hold funds in the form of cash or Government Obligations which are available and will be sufficient in amount to pay the principal of and premium, if any, on the Bonds or portions thereof thus called for redemption and to pay the interest thereon to the Redemption Date, such Bonds or portions thereof shall cease to bear interest from and after the Redemption Date in question.

10. Other Provisions. Except as provided in the Bond Agreement, the owners of the Bonds shall have no right to enforce the provisions of the Bond Agreement or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Bond Agreement, or to institute, appear in or defend any suit or other proceedings with respect thereto. In certain events, on the conditions, in the manner and with the effect set forth in the Bond Agreement, the principal of all Bonds issued under the Bond Agreement and then outstanding may become or may be declared due and payable before the stated maturity thereof, together with interest accrued therein. Amendments, supplements, modifications and alterations of the Bond Agreement may be made only to the extent and in the circumstances permitted by the Bond Agreement.

This Bond may be transferred in whole or in part and may be transferred only in compliance with existing state and federal securities laws, and only by a written assignment duly executed by the registered owner hereof or by such owner's duly authorized legal representative. Upon presentation and surrender of this Bond together with said executed form of assignment at the principal corporate trust office of the Trustee, the Trustee shall register the transfer of this Bond in the Bond register maintained by the Trustee; *provided, however*, that the Trustee shall have no obligation to register the transfer unless the executed assignment shall be satisfactory to it in form and substance. Upon registration of the transfer of this Bond, the Trustee shall cancel this Bond, and the Issuer shall issue, and the Trustee shall authenticate, one or more new Bonds of authorized denominations of the same maturity and interest rate and in the same aggregate outstanding principal amount as this



Bond. The Issuer and the Trustee may deem and treat the registered owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of the principal of, premium, if any, and interest due hereon and for all other purposes, and neither the Issuer, nor the Trustee nor any alternate paying agent shall be affected by any notice to the contrary.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Bond Agreement and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law, and that the issuance of this Bond and the issue of which it forms a part has been duly authorized by the Issuer and does not exceed or violate any constitutional or statutory limitation. This Bond is issued with the intent that the laws of the State of Wisconsin will govern its construction. This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Bond Agreement until the certificate of authentication hereon shall have been signed by the Trustee.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name by the signatures of its Mayor and City Clerk, and its corporate seal to be hereunto impressed.

**CITY OF WAUKESHA, WISCONSIN**

[SEAL]

By: \_\_\_\_\_  
Shawn N. Reilly, Mayor

By: \_\_\_\_\_  
Gina Kozlik, City Clerk

CERTIFICATE OF AUTHENTICATION

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

**WAUKESHA STATE BANK**, as Trustee

Date of Authentication:

[June 30, 2023]

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

Name: Claire Bessette

Title: Vice President

ASSIGNMENT

SOCIAL SECURITY OR FEDERAL  
EMPLOYER IDENTIFICATION  
NUMBER: \_\_\_\_\_

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

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the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints

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attorney-in-fact to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

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

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NOTICE: Signature(s) must be guaranteed by a member firm of the New York Stock Exchange or a commercial bank or trust company.

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NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or change whatsoever.

EXHIBIT C

FORM OF PROMISSORY NOTE

THIS PROMISSORY NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR THE APPLICABLE STATE “BLUE SKY” LAWS AND REGULATIONS OF ANY STATE AND MAY NOT BE DISPOSED OF TO ANY PERSON OTHER THAN WAUKESHA STATE BANK, UNLESS IT IS REGISTERED THEREUNDER OR THERE IS DELIVERED TO WAUKESHA STATE BANK, OR ITS SUCCESSOR AS TRUSTEE UNDER A BOND AGREEMENT DATED AS OF JUNE 1, 2023, AN OPINION OF RECOGNIZED COUNSEL SATISFACTORY TO WAUKESHA STATE BANK OR ITS SUCCESSOR AS TRUSTEE, TO THE EFFECT THAT IT MAY BE RESOLD OR OTHERWISE DISPOSED OF PURSUANT TO EXEMPTION FROM SUCH REGISTRATION REQUIREMENTS.

PROMISSORY NOTE

<u>Principal Amount</u>	<u>Original Issue Date</u>	<u>Maturity Date</u>
\$2,800,000.00	[June 30, 2023]	June 1, 2053

FOR VALUE RECEIVED, the undersigned, 707 EXECUTIVE PLACE HOLDINGS LLC, a Wisconsin limited liability company (the “Borrower”, which term shall be construed to include the heirs, personal representatives, and successors and assigns of the Borrower), hereby promises to pay to the order of the CITY OF WAUKESHA, WISCONSIN, a municipality existing under the laws of the State of Wisconsin (the “Issuer”), the principal sum of TWO MILLION EIGHT HUNDRED THOUSAND DOLLARS AND NO/100 (\$2,800,000.00) (or so much as may have been requisitioned under that certain Bond Agreement (the “Bond Agreement”) dated as of June 1, 2023 by and among the Issuer, the Borrower, Waukesha State Bank, as Trustee, and Waukesha State Bank, as Original Purchaser, which Bond Agreement secures the Bonds referenced in the Bond Agreement), payable in the same installments of principal and interest, due on the same dates and at the same interest rates and premiums, as are set forth for the Bonds in the Bond Agreement.

This Promissory Note constitutes the Promissory Note issued under the Bond Agreement, which Bond Agreement is hereby incorporated herein by this reference. Reference is hereby made to the Bond Agreement for a statement of the terms and conditions on which the Loan evidenced hereby was made, for a description of the circumstances under which there shall be credits allowed against the installments of principal and interest on this Promissory Note, and for a description of the terms and conditions upon which this Promissory Note may be prepaid or its maturity accelerated.

**707 EXECUTIVE PLACE HOLDINGS LLC**

By: \_\_\_\_\_  
Joshua R. Kozinski, Member

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned, City of Waukesha, Wisconsin, hereby assigns, without recourse, all its right, title and interest in and to the above Promissory Note to Waukesha State Bank or its successor or successors, as Trustee under the Bond Agreement referenced above.

Dated: [June 30, 2023].

**CITY OF WAUKESHA, WISCONSIN**

By: \_\_\_\_\_  
Shawn N. Reilly, Mayor

By: \_\_\_\_\_  
Gina Kozlik, City Clerk

EXHIBIT D

FORM OF BORROWER'S REQUISITION

Borrower's Requisition No. \_\_\_\_\_

Waukesha State Bank, as Trustee  
151 East St. Paul Avenue  
Waukesha, WI 53187  
Attn: Claire Bessette

Re: \$2,800,000 City of Waukesha, Wisconsin  
Industrial Development Revenue Bonds, Series 2023  
(707 Executive Place Holdings LLC Project)

This Borrower's Requisition is delivered to you pursuant to Sections 4.02 and 6.03 of the Bond Agreement dated June 1, 2023 (the "Bond Agreement") by and among the City of Waukesha, Wisconsin (the "Issuer"), 707 Executive Place Holdings LLC, a Wisconsin limited liability company (the "Borrower"), Waukesha State Bank, as trustee (the "Trustee"), and Waukesha State Bank, as original purchaser (the "Original Purchaser"). Reference is made to the Project Fund and Project Accounts created in Section 3.02 of the Bond Agreement. Any capitalized terms not defined herein shall have the same meaning as in the Bond Agreement.

The Borrower hereby requisitions an aggregate amount of \$\_\_\_\_\_ from the Project Fund. The Trustee is directed to disburse such amounts.

In support of the Borrower's Requisition, the undersigned hereby certifies as follows:

1. The amounts for which payment is being requisitioned:
  - (a) Have been incurred by the Borrower and paid (or are presently due and owing) for the specific purposes to the specific suppliers (copies of invoices, lien waivers, and certificate from project inspector, are submitted herewith) and in the specific component amounts listed in Schedule A attached hereto;
  - (b) Have been incurred by the Borrower for land or property of a character subject to the allowance for depreciation under Section 167 of the Internal Revenue Code of 1986, as amended (the "Code"), except as otherwise indicated in Schedule A attached hereto;
  - (c) Were incurred by the Borrower after March 17, 2023;
  - (d) Are chargeable to the capital account of the Project or would be so chargeable either with a proper election of the Borrower or but for a proper election by the Borrower to deduct such amounts; and
  - (e) Will not result in less than 95% of the Bond Proceeds being used for the acquisition or improvement of land, or acquisition, construction, reconstruction or improvement of property of

a character subject to the allowance for depreciation under Section 167 of the Code as required by and within the meaning of Section 144(a) of the Code and the regulations under that Section.

2. The amounts, if any, requisitioned for payment of issuance expenses:

(a) Have been incurred by the Borrower and paid (or are presently due and owing) for the specific purposes to the specific persons and in the amounts listed in Schedule B attached hereto; and

(b) Have been or will be capitalized by the Borrower for federal income tax purposes.

3. The estimated completion date of the Project now is \_\_\_\_\_.

The Borrower is not in default under the Bond Agreement, except as follows (if no default exists, so state):

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4. Nothing has occurred to the knowledge of the undersigned which will prevent the performance by the Borrower of its obligations under the Bond Agreement, except as follows (if none, so state):

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5. The Borrower certifies either (check appropriate paragraph):

☐ (a) That each item of cost included in this requisition was included in the list of Project Costs as stated in the Borrower's Certificate dated the Original Issue Date, upon which the determination of the weighted average reasonably expected economic life of the Project was made; or

☐ (b) That the reasonably expected economic life to the Borrower of the property for which payment is being requested, determined as of the later of the date on which the Bonds were issued or the date on which that property was or is expected to be placed in service, will not cause the average maturity of the Bonds to exceed 120% of the weighted average reasonably expected economic life of the property, taking into account the substituted or additional property, to be financed or refinanced, directly or indirectly, with the Bond Proceeds, determined in accordance with Section 147(b) of the Code.

6. No Borrower's Requisition has previously been submitted in respect of the costs which form a basis for this Borrower's Requisition.

7. To Borrower's knowledge, all disbursement procedures required by the Original Purchaser have been completed.

8. You are hereby requested to pay the amount requisitioned in the following manner:

(a) To the Borrower by check; or

(b) To the Borrower by deposit in its general account (No. \_\_\_\_\_)  
maintained at \_\_\_\_\_; or

(c) Other: \_\_\_\_\_  
\_\_\_\_\_.

Executed by the undersigned on \_\_\_\_\_

**707 EXECUTIVE PLACE HOLDINGS LLC**

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

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

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

Approved and funded by the transfer of \$\_\_\_\_\_ to the Trustee, as provided in Sections  
3.01, 3.02, 4.01 and 4.02 of the Bond Agreement, by the undersigned on \_\_\_\_\_.

**WAUKESHA STATE BANK,**  
as Original Purchaser

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

Its Authorized Representative