

INDENTURE OF TRUST

between

**THE BOARD OF REGENTS OF HIGHER EDUCATION
FOR THE STATE OF MONTANA**

and

U.S. BANK NATIONAL ASSOCIATION,

as Trustee

Dated as of [_____], 2019

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Indenture of Trust but is for convenience of reference only.)

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INDENTURE OF TRUST

THIS INDENTURE OF TRUST dated as of the 1st day of [_____], 2019 (the “*Indenture*”), and entered into for the benefit of The University of Montana by and between The Board of Regents of Higher Education for the State of Montana (the “*Board*”), a public entity and instrumentality duly organized and existing under the Constitution of the State of Montana, and U.S. Bank National Association, a national banking association, duly organized and existing under and by virtue of the laws of the United States of America, as trustee (the “*Trustee*”);

W I T N E S S E T H:

WHEREAS, Article X, Section 9 of the Constitution of the State of Montana (the “*Constitution*”) vests the government and control of the Montana University System in the Board, and expressly grants to the Board the full power, responsibility and authority to supervise, coordinate, manage and control the Montana University System; and

WHEREAS, the Board enters into this Indenture for the purpose of exercising its powers and authority under the Constitution (i) in order to finance or refinance costs of design, construction, acquisition, renovation, improvement, repair and replacement of new and existing property and facilities, and the furnishing and equipping thereof, at or for the University (as defined below) with proceeds of Bonds (as defined below) issued by the Board for the University, as described in this Indenture, and costs and expenses incidental thereto, all in the manner hereinafter set forth, establish reserves and to pay capitalized interest with respect thereto, as determined by the Board and the University; and (ii) for other lawful and proper purposes.

WHEREAS, the execution and delivery of this Indenture under the Constitution have been in all respects duly and validly authorized by the Board; and

WHEREAS, all things necessary to constitute this Indenture a valid, legal and binding pledge and assignment of the Trust Estate heretofore and herein made for the security of the payment of the principal of, premium, if any, and interest on any Bonds issued hereunder, have been done and performed, and the execution and delivery of this Indenture have in all respects been duly authorized and approved.

NOW, THEREFORE, THIS INDENTURE OF TRUST WITNESSETH:

GRANTING CLAUSES

That the Board, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Bonds by the Holders thereof, and of the sum of one dollar, lawful money of the United States of America, to the Board duly paid by the Trustee at or before the execution and delivery of these presents, and for other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to secure the payment of the principal of, premium, if any, and interest on the Bonds according to their tenor and effect, and to secure the performance and observance by the Board of all the covenants

expressed or implied herein and in the Bonds, does hereby confirm, grant, bargain, convey, assign and reaffirm a security interest in the following to the Trustee and its successors in trust and assigns forever, for the securing of the performance of the obligations of the Board hereinafter set forth:

GRANTING CLAUSE FIRST

The Pledged Revenues, together with all right, title and interest of the Board in and to the Pledged Revenues, including, but not limited to, the present and continuing right to make claim for, collect, receive and receipt for any of the Pledged Revenues, and other sums of money payable or receivable under this Indenture, and to bring actions and proceedings thereunder or for the enforcement thereof; it being understood that all Bonds and the obligations of the Board with respect thereto, shall be secured by and be payable from the Pledged Revenues, all as specifically provided herein.

GRANTING CLAUSE SECOND

All moneys and securities from time to time held by the Trustee under the terms of this Indenture, except for moneys deposited with or paid to the Trustee for the redemption of Bonds, notice of which has been duly given and which are to be held in trust and applied by the Trustee in accordance with this Indenture for such specific purpose pursuant to the express provisions of this Indenture.

TO HAVE AND TO HOLD all and singular as the Trust Estate, whether now owned or hereafter acquired, unto the Trustee and its respective successors in said trust and assigns forever;

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the equal and proportionate benefit, security and protection of all present and future Holders of the Bonds, from time to time, issued under and secured by this Indenture, without privilege, priority or distinction as to the lien or otherwise of any of the Bonds over any of the other Bonds;

PROVIDED, HOWEVER, that if the Board, its successors or assigns, shall well and truly pay, or cause to be paid, the principal of, premium, if any, and interest on the Bonds due or to become due thereon, at the times and in the manner set forth in the Bonds according to the true intent and meaning thereof, and shall cause the payments to be made on the Bonds as required hereby, or shall provide, as permitted by this Indenture, for the payment thereof by depositing with the Trustee an amount sufficient to pay, including amounts derived from investments as authorized herein, the entire amount due or to become due thereon, and shall well and truly cause to be kept, performed and observed all of its covenants and conditions pursuant to the terms of this Indenture, and shall pay or cause to be paid to the Trustee all sums of money due or to become due to the Trustee in accordance with the terms and provisions of this Indenture, then upon the final payment or deposit thereof, this Indenture and the rights thereby granted shall cease, determine and be void; otherwise this Indenture shall remain in full force and effect.

THIS INDENTURE FURTHER WITNESSETH, and it is expressly declared, that all Bonds issued and secured under this Indenture are to be issued, authenticated and delivered and

all said property, rights and interests, including, without limitation, any amounts hereby assigned and pledged, are to be dealt with and disposed of under, upon and subject to the express terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as expressed in this Indenture, and the Board has agreed and covenanted, and does hereby agree and covenant with the Trustee and with the respective Holders of the Bonds, as follows:

ARTICLE I.

DEFINITIONS

Section 1.1. Definitions. The following terms, when used in this Indenture (including any Supplemental Indenture), have the following meanings, unless the context or use indicates another or different meaning or intent.

“*Accounts*” shall mean the trust Accounts created, established or ordered by Article III.

“*Auxiliary Facilities*” shall mean all housing, dining and other facilities now or hereafter owned by the University from which the University derives income from rents, board or both. Except as expressly provided in a Supplemental Indenture, Auxiliary Facilities do not include any facilities that are built with moneys appropriated by the State.

“*Auxiliary Facilities Gross Pledged Revenues*” shall mean all income from rents, board or both derived from Auxiliary Facilities.

“*Average Debt Service Requirement*” the average Debt Service Requirement for any Series of Bonds.

“*Board*” shall mean The Board of Regents of Higher Education for the State of Montana or, if said Board shall be abolished, the board or body succeeding to the principal functions thereof.

“*Board Representative*” shall mean the Chair, the Commissioner/Secretary or such other Person or Persons at the time designated to act on behalf of the Board by written certificate of the Board furnished to the University and the Trustee containing the specimen signatures of such Person or Persons and signed on behalf of the Board by its duly authorized agent. A Board Representative appointed hereunder may include such University Representative or University Representatives to act on behalf of the Board as the Board may determine or designate by certificate or other writing of the Board.

“*Bond Counsel*” shall mean an attorney at law or firm of attorneys of nationally recognized standing in matters pertaining to the tax-exempt nature of interest on bonds issued by states and their political subdivision and familiar with and having expertise in connection with the transactions contemplated under and by this Indenture and the Bonds, which counsel shall be selected by the Board, shall be acceptable to the University and shall be duly admitted to the practice of law before the highest court of any state of the United States or the District of Columbia.

“*Bond Insurance*” shall mean a policy or policies of insurance insuring the payment of the principal of and interest on any Series of Bonds.

“*Bond Insurer*” shall mean the issuer or issuers of any policy of Bond Insurance for any Series of Bonds Outstanding.

“*Bonds*” shall mean any bonds, notes, certificates, debentures or other evidences of indebtedness issued by the Board pursuant to Section 2.06.

“*Book-Entry System*” shall mean the system established for the registration of Bonds of any Series in the name of the Depository or its nominee as the Holder thereof pursuant to the terms and provisions of Section 2.10.

“*Business Day*” shall mean a day on which banking business is transacted, but not including any day on which banks are authorized to be closed in the city in which the Trustee has its Corporate Trust Office.

“*Chair*” means the duly appointed or elected Chair of the Board, any successor to the principal functions thereof, or in the event of absence, incapacity or inability, the person authorized by law or designated by the Board to perform the functions of the Chair.

“*Chief Financial Officer*” means the Vice President for Operations and Finance of the University, any successor to the principal functions thereof, or in the event of absence, incapacity or inability, the person authorized by law or designated by the Board or the University to perform the functions of the Vice President for Administration and Finance of the University.

“*Code*” shall mean the United States Internal Revenue Code of 1986, as from time to time amended.

“*Commissioner/Secretary*” means the duly appointed or elected Commissioner of Higher Education and Secretary to the Board of Regents, any successor to the principal functions thereof, or in the event of absence, incapacity or inability, the person authorized by law or designated by the Board to perform the functions of the Commissioner of Higher Education and Secretary to the Board of Regents.

“*Construction Fund*” shall mean the Construction Fund created in Section 3.01.

“*Corporate Trust Office*” means (i) when used with respect to the Trustee, the principal corporate trust office of the Trustee, which is currently located at [_____], or, with respect to payments on the Bonds and any exchange, transfer, or surrender of the Bonds, [_____], or such other location designated in writing by the Trustee; and (ii) with respect to any Paying Agent other than the Trustee, such office as is designated in writing to the Trustee.

“*Cost of Issuance Account*” shall mean the Cost of Issuance Account of the Construction Fund created pursuant to Section 3.01.

“*Counsel*” shall mean an attorney at law or a firm of attorneys (who may be an employee of or counsel to the Board, the University or the Trustee) duly admitted to the practice of law before the highest court of any state of the United States of America or of the District of Columbia.

“*Counterparty*” means any entity which is a party to an Interest Rate Agreement entered into by the Board and the University with respect to any Outstanding Bonds.

“*Counterparty Swap Payments*” means all regularly scheduled payments and other amounts (inclusive of amounts payable as Insured Termination Payments by the Board and the University) payable to the Counterparty under and pursuant to an Interest Rate Agreement with respect to Outstanding Bonds. Counterparty Swap Payments do not include Uninsured Early Termination Payment and other uninsured amounts payable by the Board and the University pursuant to the provisions and requirements of an Interest Rate Agreement, which shall at all times be subordinated to payment of the Debt Service Requirements for Outstanding Bonds as expressly provided in Section 5.01(e).

“*Debt Service Account*” shall mean the Debt Service Account of the Debt Service Fund created in Section 3.04.

“*Debt Service Fund*” shall mean the Debt Service Fund created in Section 3.04.

“*Debt Service Requirements*” shall mean, with respect to any Fiscal Year, the aggregate of the payments required to be made during such Fiscal Year in respect of principal of, premium, if any, and interest on Outstanding Bonds (including mandatory sinking fund payments of principal of Bonds) and any Counterparty Swap Payments; *provided* that in calculating Debt Service Requirements, the interest to become due on variable rate Bonds for any period shall be deemed to be an assumed fixed rate equal to 120% of the average interest rate outstanding on such Bonds for the most recent 12-month period; *provided, however*, that if the Bonds have not been outstanding for a 12-month period, the assumed rate shall be 120% of *The Bond Buyer* 25 Revenue Bond Index for tax-exempt debt, and for taxable debt, the average prime rate of the Trustee for the most recent 12-month period. In calculating Debt Service Requirements, effect shall be given to and there shall be deducted therefrom amounts then on deposit in the Debt Service Reserve Fund (with respect to Outstanding Bonds) or in any irrevocable escrow fund as of the date of such calculation, including moneys or securities irrevocably deposited with or for the benefit of the Trustee in trust as provided in Article XI, and which are being held for the payment of principal of and/or interest on Bonds issued under this Indenture.

“*Debt Service Reserve Fund*” shall mean the Debt Service Reserve Fund created in Section 3.05.

“*Debt Service Reserve Requirement*” shall mean, with respect to each specific Series of Bonds secured by the Debt Service Reserve Fund as provided in a Supplemental Indenture, an amount not to exceed the least of (i) 10% of the original principal amount of the applicable Series of Bonds, (ii) 125% of the Average Debt Service Requirement for the applicable Series of Bonds, (iii) the Maximum Annual Debt Service for the applicable Series of Bonds, or (iv) an amount

which, when added to the existing Debt Service Reserve Requirement for Outstanding Bonds secured by the Debt Service Reserve Fund will not cause the total Debt Service Reserve Requirement to exceed the Maximum Annual Debt Service on all Outstanding Bonds secured by the Debt Service Fund and the Series of Bonds proposed to be issued.

“*Default*” and “*Event of Default*” shall mean any event specified in Section 8.01.

“*Depository*” shall mean, with respect to any Series of Bonds for which the Book-Entry System is in effect, the Person specified in Section 2.10 as the Depository with respect to such Series of Bonds and any and all successors thereto appointed as Depository hereunder and having become such pursuant to the applicable provision of this Indenture.

“*Earnings Account*” shall mean the Earnings Account of the Rebate Fund created pursuant to Section 3.07.

“*Fiscal Year*” shall mean the twelve-month period commencing on the first day of July of any calendar year and ending on the last day of June of the next succeeding calendar year.

“*Fitch*” means Fitch, Inc. and its successors and assigns and, if such entity shall for any reason no longer perform the functions of a securities rating agency, Fitch shall be deemed to refer to any other nationally recognized rating agency selected and designated by the Board by notice to and as approved and accepted by the Trustee.

“*Funds*” shall mean the trust Funds created, established or ordered by Article III.

“*General Administrative Assessments*” shall mean all reasonable and necessary current expenses and assessments paid or accrued, consisting of indirect legal, administrative and other indirect and incidental expenses and assessments of various University departments and operations which are allocated on a pro rata or other basis to and as an expense of the University facilities, but shall not include direct legal or overhead expenses or direct administrative assessments.

“*Global Bonds*” shall have the meaning given such term in Section 2.10.

“*Governmental Obligations*” shall mean non-callable direct general obligations of, or obligations the payment of the principal of and interest on which are unconditionally guaranteed by the United States of America.

“*Holder*” or “*Registered Owner*” shall mean the Person or Persons in whose name or names a Bond shall be registered on the books of the Trustee kept for that purpose in accordance with provisions of this Indenture.

“*Indenture*” shall mean this Indenture of Trust, dated as of [_____], 2019, between the Board and the Trustee, as it may be amended, restated and supplemented from time to time, including pursuant to any Supplemental Indenture entered into in accordance with the provisions of this Indenture.

“Independent Accountant” shall mean any certified public accountant, or any firm of certified public accountants, as from time to time determined by the University and the Board, duly licensed to practice and practicing as such under the laws of the State, appointed and compensated by the University or the Board on behalf and in the name of the Board:

(a) who is, in fact, independent and not under the domination of the University or the Board,

(b) who does not have any substantial interest, direct or indirect, with the University or the Board, and

(c) who is not connected with the University or the Board as an officer or employee thereof, but who may be regularly retained to make annual or similar audits of any books or records of the University or the Board;

provided that the Office of Montana State Auditor (or any successor to State audit services) shall constitute an Independent Accountant hereunder.

“Indirect Cost Recovery Payments” shall mean those amounts, currently known as “facilities and administrative costs,” payable under a Research Contract for indirect costs to which the University is party, and as currently defined and provided for in OMB Circular No. A-21, “Cost Principles for Education Institutions,” (Revised Edition incorporating the 1979, 1982, 1986, 1991 and 1996 Regulations) (the *“Circular”*), plus any amounts payable under any such Research Contract for indirect costs as defined and provided for in any future supplement to, revisions of, or amendment to the Circular or any successor rules, regulations or circulars established by the United States of America in connection with grants, contracts and other agreements with education institutions.

“Insured Termination Payment” shall mean a Termination Payment which is insured by a Bond Insurer (who has insured the Series of Bonds described in and to which an Interest Rate Agreement relates) pursuant to a Swap Insurance Policy issued with respect to such Interest Rate Agreement.

“Interest Rate Agreement” means each ISDA Master Agreement (or equivalent agreement) as entered into by the Board and the Counterparty designated therein with respect to one or more Series of Bonds issued under the Indenture and as accepted and approved by the University.

“Land Grant Income” shall mean (i) all income, royalty and interest from the lease and use of the lands granted by an Act of Congress of the United States of America (approved in 1881) to the State for the benefit of The University of Montana-Missoula, from interest on deferred payments on the sale of said lands, from interest on the permanent funds arising from the sale of said lands and otherwise in relation to said lands, and (ii) all income, royalty and interest from the lease and use of lands granted by an Act of Congress of the United States of America to the State for the benefit of The University of Montana Western and for the benefit of Montana Tech of the University of Montana (as granted by Section 17 of the Enabling Act of the Congress of the United

States of America, approved February 22, 1889 (25 Stat. 676), as amended, to the State for the establishment and maintenance of a State School of Mines and Minerals), from interest on deferred payments on the sale of said lands, from interest on the permanent funds arising from the sale of said lands and otherwise in relation to said lands.

“*Maximum Annual Debt Service*” means the highest Debt Service Requirement for any current or succeeding Fiscal Year.

“*Moody’s*” means Moody’s Investors Service, Inc. and its successors and assigns and, if such entity shall for any reason no longer perform the functions of a securities rating agency, Moody’s shall be deemed to refer to any other nationally recognized rating agency designated by the Board by notice to the Trustee.

“*Operation and Maintenance Account*” shall mean the Operation and Maintenance Account created in Section 3.03.

“*Operation and Maintenance Expenses*” shall mean with respect to the Auxiliary Facilities and with respect to any Fiscal Year, the reasonable and necessary current expenses of the Board and the University, paid or accrued, of maintenance, repair, replacement and operation, and shall include, without limiting the generality of the foregoing, all ordinary and usual expenses of maintenance, repair, replacement and operation, which may include expenses not annually recurring, of or pertaining to the Auxiliary Facilities.

“*Opinion of Counsel*” shall mean an opinion in writing of Counsel, who may but need not be Counsel to the Board, the University or the Trustee.

“*Outstanding*” shall mean, when used with respect to Bonds, as of the date of determination, all Bonds theretofore authenticated and delivered under the Indenture, except:

(a) Bonds theretofore cancelled by the Trustee or delivered to the Trustee for cancellation as provided in Section 2.11;

(b) Bonds for whose payment or redemption money or Governmental Obligations in the necessary amount has been irrevocably deposited with the Trustee or any escrow agent in trust for the owners of such Bonds as provided in Article XI; *provided* that, if such Bonds are to be redeemed, notice of such redemption has been duly given pursuant to the Indenture or provision therefor satisfactory to the Trustee has been made;

(c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered under the Indenture; and

(d) Bonds alleged to have been destroyed, lost or stolen which have been paid as provided in Section 2.07.

“*Participant*” means, with respect to the Depository, a Person who has an account with the Depository.

“*Paying Agent*” shall mean U.S. Bank National Association, its successors and any corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party and any successor at the time serving as successor trustee hereunder.

“*Permitted Investments*” shall mean any of the following investments that are lawful at the time of investment of any monies in any such investment:

(a) Direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury), or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America;

(b) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (and, in the case of stripped securities, only those stripped securities stripped by the federal agency itself): U.S. Export-Import Bank (Eximbank), as to direct obligations or fully guaranteed certificates of beneficial ownership; Farmers Home Administration (FmHA), as to certificates of beneficial ownership; Federal Financing Bank; Federal Housing Administration Debentures (FHA); General Services Administration, as to participation certificates; Government National Mortgage Association (GNMA or “*Ginnie Mae*”), as to GNMA-guaranteed mortgage-backed bonds and GNMA-guaranteed pass-through obligations; U.S. Maritime Administration, as to Guaranteed Title XI financing; and U.S. Department of Housing and Urban Development (HUD), as to project notes, local authority bonds, new communities debentures-U.S. government guaranteed debentures, and U.S. public housing notes and bonds (as to U.S. government guaranteed public housing notes and bonds);

(c) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following government agencies of the United States of America (non-full faith and credit agencies, and, in the case of stripped securities, only those stripped securities stripped by the federal government agency itself): Federal Home Loan Bank System, as to senior debt obligations; Federal Home Loan Mortgage Corporation (FHLMC or “*Freddie Mac*”), as to participation certificates and senior debt obligations; Federal National Mortgage Association (FNMA or “*Fannie Mae*”), as to mortgage-backed securities and senior debt obligations; Resolution Funding Corp. (REFCORP) obligations; and Farm Credit System, as to consolidated system-wide bonds and notes;

(d) direct and general obligation bonds or notes issued by any state of the United States of America or any municipality or political subdivision of any such state, which obligations are rated in one of the two highest rating categories of either S&P, Moody’s or Fitch;

(e) commercial paper rated, at the time of purchase, “A-1” or better by S&P or “Prime-1” or better by Moody’s;

(f) U.S. dollar denominated deposit accounts, demand or time deposits in, certificates of deposit of, or bankers’ acceptances issued by any depository institution or trust company organized under the laws of the United States or any State thereof (including any federal or state branch or agency of a foreign depository institution or trust company) and subject to supervision and examination by federal and/or state banking authorities (including, if applicable, the Trustee or any agent thereof acting in its commercial capacity); *provided* that the long-term unsecured debt obligations of such depository institution or trust company at the time of such investment, or contractual commitment providing for such investment, are at all times assigned at least “Aa1” by Moody’s and “AA” by S&P;

(g) Investment agreements, including guaranteed investment contracts, *provided* that the long-term unsecured debt obligations of the provider of such agreement is assigned a rating at least equal to the rating on the applicable Bonds or, if the Bonds are not rated, at least “Aa1” by Moody’s and “AA” by S&P;

(h) obligations of any state of the United States, any political subdivision thereof or any agency or instrumentality thereof, if such obligations are secured by direct obligations of, or obligations the principal and interest on which are fully or unconditionally guaranteed by, the United States of America, and the principal of and interest on which will be sufficient to pay when due the principal and interest on such obligations;

(i) federal funds or bankers acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and unguaranteed obligation rating of “Prime-1” or “A3” or better by Moody’s and “A-1” or “A” or better by S&P;

(j) investments in a money market fund rated AAAM or AAAM-G or better by S&P, which may include funds for which the Trustee or its affiliates provide investment advisory or other management services and for which they may assess a fee; and

(k) a State investment fund with respect to which the Board and the University have determined that investments therein are authorized or permitted by State law, which determination shall be at the discretion of the Board and the University, if permitted by law to be held by a third-party fiduciary.

“*Person*” shall mean any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof.

“Pledged Revenues” shall mean:

(a) Auxiliary Facilities Gross Pledged Revenues remaining after related charges for payment of Operation and Maintenance Expenses as set forth in Section 5.01(a) (exclusive of General Administrative Assessments, it being the intent of this Indenture, as expressly provided in Section 5.01(a) that General Administrative Assessments shall be accounted for and paid as an Operation and Maintenance Expense subject to the deposit of Pledged Revenues in the manner required by and provided for in Section 5.01(a));

(b) all unrestricted revenues of the University not constituting Auxiliary Facilities Gross Pledged Revenues; and

(c) Land Grant Income and Indirect Cost Recovery Payments relating to Research Contracts.

Notwithstanding the foregoing, Pledged Revenues shall exclude revenues from (i) tuition charges; (ii) associated student activities fees which are under the direct control of student associations; (iii) proceeds of the levy of any general (ad valorem) property taxes; and (iv) grants or appropriations from the State Legislature.

Upon the addition or deletion of any revenues, fees or income from Pledged Revenues pursuant to Section 7.03, this definition of Pledged Revenues shall be deemed to be amended accordingly without further action by the Board, the University or any Holder.

“Project” or *“Projects”* shall mean the design, construction, acquisition, renovation, improvement, repair, replacement, furnishing and equipping of Auxiliary Facilities or other facilities financed or refinanced with proceeds of Bonds issued by the Board for the University, as described in this Indenture.

“Rebate Amount” shall mean, with respect to Tax-Exempt Bonds, the amount certified by the University to be the required rebate to the United States of America as calculated under Section 148(f)(2) of the Code.

“Rebate Fund” means the Rebate Fund created pursuant to Section 3.07.

“Record Date” shall mean (unless otherwise provided in the applicable Supplemental Indenture) the close of Business on the fifteenth day of the calendar month next preceding any interest payment date for Bonds, whether or not such fifteenth day is a Business Day.

“Redemption Account” shall mean the Redemption Account of the Debt Service Fund created in Section 3.04.

“Redemption Price” shall mean, with respect to any Bond (or portion thereof), the principal amount of such Bond (or portion thereof), plus the applicable premium and accrued and

unpaid interest to the redemption date, payable upon redemption pursuant to the provisions of such Bond and this Indenture.

“*Registrar*” shall mean U.S. Bank National Association, its successors and any corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party and any successor at the time serving as successor trustee hereunder.

“*Regulations*” shall mean the Income Tax Regulations promulgated or proposed by the Department of the Treasury pursuant to the Code from time to time.

“*Repair and Replacement Fund*” shall mean the Repair and Replacement Fund created in Section 3.06.

“*Repair and Replacement Reserve Requirement*” shall mean the amount required to be deposited and maintained in the Repair and Replacement Fund pursuant to the provisions of this Indenture while Bonds are Outstanding under this Indenture; the Repair and Replacement Reserve Requirement required to be maintained by this Indenture shall be in the minimum amount of \$500,000.

“*Research Contract*” shall mean an agreement between the University and the United States of America or any agency or department thereof, or state or local governments, foundations or corporations, pursuant to which the University is to receive payments in the form of grants or otherwise on account of the costs and expenses, including Indirect Cost Recovery Payments, incurred or to be incurred in connection with the performance of scientific, cultural or other research or study or instruction or public service projects identified in such agreement.

“*Reserve Fund Credit Facility*” shall mean a letter or line of credit, surety bond, insurance policy, or similar instrument which may be utilized in the Debt Service Reserve Fund.

“*Responsible Officer*” when used with respect to the Trustee means any officer within the Corporate Trust Department (or any successor group or department of the Trustee) including any vice president, assistant vice president, assistant secretary or any other officer or assistant officer of the Trustee customarily performing functions similar to those performed by the Persons who at the time shall be such officer respectively and also means, with respect to a particular corporate trust matter, any other officer of the Trustee to whom such matter is referred by the Trustee because of such Person’s knowledge of and familiarity with the particular subject.

“*Revenue Account*” shall mean the Revenue Account created in Section 3.02.

“*S&P*” means S&P Global Ratings and its successors and assigns and, if such corporation shall for any reason no longer perform the functions of a securities rating agency, S&P shall be deemed to refer to any other nationally recognized rating agency selected and designated by the Board by notice to and as approved and accepted by the Trustee.

“*Series*” means all Bonds of like designation authenticated and delivered on original issuance at the same time pursuant to a Supplemental Indenture and any Bond or Bonds thereafter delivered in lieu of or as substitution for any of such Bonds pursuant to this Indenture.

“*State*” shall mean the State of Montana, in the United States.

“*Supplemental Indenture*” means any agreement hereafter authorized and entered into between the Board and the Trustee which amends, modifies or supplements and forms a part of this Indenture.

“*Swap Insurance Policy*” shall mean an Interest Rate Swap Insurance Policy issued by a Bond Insurer with respect to an Interest Rate Agreement for the Series of Outstanding Bonds described in such Interest Rate Agreement.

“*Tax-Exempt Bonds*” shall mean, with respect to interest on any Bonds, that such interest is excluded from gross income for federal income tax purposes; *provided, however*, that such interest may be includable as an item of tax preference or otherwise includable directly or indirectly for purposes of calculating other tax liabilities, including any alternative minimum tax or environmental tax, under the Code.

“*Tax Certificate*” means any agreement or certificate of the Board executed in connection with the exclusion from federal income taxes of interest received on Tax-Exempt Bonds by the Holders thereof.

“*Termination Account*” shall mean the Termination Account of the Debt Service Fund created in Section 5.01(e).

“*Termination Payment*” shall mean the payment obligation, if any, which may be payable by the Board and the University upon early termination of an Interest Rate Agreement by the Board and the University and (i) in the case of an Insured Termination Payment, such payments shall be made on a parity with payment of the Debt Service Requirements of Outstanding Bonds, and (ii) in the case of an Uninsured Early Termination Payment and other uninsured amounts becoming due and payable by the Board and the University pursuant to the provisions and requirements of an Interest Rate Agreement, such payments shall at all times be subordinated to payment of the Debt Service Requirements for Outstanding Bonds as expressly provided in Section 5.01(e).

“*Trustee*” shall mean U.S. Bank National Association, its successors and any Person resulting from or surviving any consolidation or merger to which it or its successors may be a party and any successor at the time serving as successor Trustee hereunder.

“*Trust Estate*” shall mean the property conveyed to the Trustee pursuant to the Granting Clauses of this Indenture.

“*Uninsured Early Termination Payments*” shall mean any Termination Payment payable to a Counterparty under and pursuant to an Interest Rate Agreement other than Insured Termination Payments.

“*University*” or “*The University of Montana*” or “*Campuses*” shall mean, collectively, the multi-campus institution of higher learning commonly known as The University of Montana, a unit of the Montana University System, known by the names of and having campuses located as follows: (i) The University of Montana Missoula, which is located in the City of Missoula, in the County of Missoula and the State of Montana, (ii) Montana Technological University, which is located in the City of Butte, in the County of Silver Bow and the State of Montana, (iii) The University of Montana Western which is located in the City of Dillon, in the County of Beaverhead and the State of Montana, (iv) Helena College University of Montana, which is located in the City of Helena, in the County of Lewis and Clark and the State of Montana, (v) any other college, university, institution or other educational entity (including any vocational and technical or similar institution) which may hereafter be added to and which shall be deemed and designated to constitute, by action and the exercise of the authority vested in the Board, an integral part and a college or division of The University of Montana, and (vi) any successor educational institution to the University.

“*University Representative*” shall mean the President of the University, the Chief Financial Officer, or such other Person or Persons at the time designated to act on behalf of the University by written certificate of the Board or the University furnished to the Trustee.

Section 1.2. Construction. This Indenture, except where the context by clear implication otherwise requires, shall be construed as follows:

- (a) Words in the singular number include the plural, and words in the plural include the singular.
- (b) Words in the masculine gender include the feminine and the neuter, and when the sense so indicates, words of the neuter gender refer to any gender.
- (c) Articles, sections, subsections, paragraphs and subparagraphs mentioned by number, letter or otherwise, correspond to the respective articles, sections, subsections, paragraphs and subparagraphs of this Indenture so numbered or otherwise so designated.
- (d) The titles to articles, sections and subsections in this Indenture are inserted only as a matter of convenience and ease in reference and in no way define, limit or describe the scope or intent of any provisions of this Indenture.
- (e) Any Bonds held by or in the name of the Board or the University and payable from any Pledged Revenues under this Indenture shall not be deemed to be Outstanding for the purpose of consents hereunder or for any other purpose provided herein.

(f) The words “herein,” “hereof” and “hereunder” and words of similar import, without reference to any particular article, section, subdivision, paragraph or subparagraph, refer to this Indenture as a whole rather than to any particular article, section, subdivision, paragraph or subparagraph hereof; where such words are used with reference to a particular article, section, subdivision, paragraph or subparagraph of this Indenture, such reference, by definition, shall be construed to refer to the identical article, section, subdivision, paragraph or subparagraph contained in this Indenture and in any indenture supplemental thereto or amendatory thereof, unless the context clearly requires otherwise.

Section 1.3. Computations. Unless the facts shall then be otherwise, all computations required for the purposes of this Indenture shall be made on the assumption that: (i) the principal of, premium, if any, and interest on all Bonds shall be paid as and when the same become due; and (ii) all credits required by this Indenture to be made to any Fund or Account shall be made in the amounts and at the times required.

Section 1.4. Compliance Certificates and Opinion. Upon any application or request by the Board to the Trustee to take any action under any provision of this Indenture, the Board shall furnish the Trustee with a certificate of a Board Representative stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and, upon the reasonable request of the Trustee, an Opinion of Counsel stating that in the opinion of such Counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request under any provision of this Indenture pursuant to which the furnishing of such documents is specifically required by such provision, no additional certificate or opinion need be furnished.

Except as provided in Section 1.05, every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

- (1) a statement specifically identifying the provisions or sections of this Indenture requiring such certificate;
- (2) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;
- (3) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (4) a statement that in the opinion of each such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with;
- (5) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with; and

- (6) a statement that such Person is authorized to deliver such certificate.

Any Opinion of Counsel may be qualified by reference to the constitutional powers of the United States of America, the police and sovereign powers of the State, judicial discretion and bankruptcy, insolvency, reorganization, moratorium, and other laws affecting creditors' rights or public corporations generally and other customary exceptions and qualifications as to the matters set forth therein.

Section 1.5. Form of Documents Delivered to Trustee. In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of a Board Representative may be based, insofar as it relates to legal matters, upon a certificate or Opinion of, or representations by, Counsel. Any Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, a Board Representative stating that the information with respect to such factual matters is in the possession of the Board.

Where any Person is required to make, give or execute two or more requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

ARTICLE II.

THE BONDS

Section 2.1. Issuable in Series; Form of Bonds. The aggregate principal amount of Bonds that may be authenticated and delivered under this Indenture is unlimited. Bonds may be issued in one or more Series. Bonds of a Series shall be issued pursuant to a Supplemental Indenture in accordance with Section 2.06 detailing the terms thereof pursuant to the authority granted by the Board. All Bonds of a Series shall be identical except as may be set forth in a Supplemental Indenture. Bonds may differ between Series in respect of any matters.

Bonds of a Series shall be substantially in the form set forth in Exhibit A to this Indenture or in such other form as shall be established by or pursuant to a Supplemental Indenture, in each case, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, 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 Depository therefor or as may, consistent herewith, be determined by the person executing such Bonds as evidenced by his or her execution of such Bonds. Any definitive Bonds shall be printed, lithographed or engraved or produced by any combination of these methods or may be produced in any other manner.

Section 2.2. Execution. The Bonds shall be executed on behalf of the Board with the manual or facsimile signature of its Chair and attested by the manual or facsimile signature of the Commissioner/Secretary and shall have impressed or imprinted thereon the corporate seal of the Board or a facsimile thereof. In case any officer, whose signature shall appear on a Series of Bonds shall cease to be such officer before the delivery of such Bonds, such signature shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery.

Section 2.3. Sources of Security; Limited Obligations. The Bonds, together with interest thereon, shall be special, limited obligations of the Board payable, equally and ratably, as to the Debt Service Requirements thereof, on a first lien basis, from Pledged Revenues (except to the extent paid out of moneys attributable to Bond proceeds of a particular Series of Bonds or any other amounts deposited to any Funds or Accounts created hereunder, together with the income from the temporary investment thereof, which are specifically designated for payment of a particular Series of Bonds).

The Bonds, as to payment of the Debt Service Requirements thereof, shall be a valid claim of the respective holders thereof only against the Trust Estate held by the Trustee, as expressly provided in this Indenture, and as pledged and assigned by this Indenture for the equal and ratable payment of the Bonds, as to the Debt Service Requirements thereof, as expressly provided in this Indenture, and the Pledged Revenues shall be used for no other purpose than to pay the principal of, premium, if any, and interest on the Bonds, as to the Debt Service Requirements thereof, except as is otherwise expressly authorized in the Indenture.

The Bonds are not obligations, general, special or otherwise, of the State of Montana, do not constitute a debt, legal, moral or otherwise, of the State of Montana, and are not enforceable against the State of Montana, nor shall payment therefor be enforceable out of any funds of the Board or University other than the Pledged Revenues pledged thereto by this Indenture. This Indenture does not pledge or mortgage any property constituting part of the University other than the Auxiliary Facilities Gross Pledged Revenues and the Pledged Revenues. The issuance of the Bonds shall not, directly, indirectly or contingently, obligate the State or any agency, instrumentality or political subdivision thereof to levy any form of taxation therefor or to make any appropriation, legislative or otherwise, for their payment. The Board has no taxing power.

Section 2.4. Authentication. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Indenture unless and until a certificate of authentication and registration on such Bond, substantially in the form set forth in the applicable Supplemental Indenture, shall have been duly executed by the Trustee, and such executed certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture. The certificate of authentication and registration of the Trustee on any Bond shall be deemed to have been executed by the Trustee if signed by any authorized representative of the Trustee, but it shall not be necessary that the same representative of the Trustee sign the certificate of authentication and registration on all of the Bonds of a Series issued under this Indenture.

Section 2.5. Form of Bonds and Temporary Bonds. Bonds of any Series issued under this Indenture may be initially issued in temporary form exchangeable for definitive Bonds of the

same Series when ready for delivery. The temporary Bonds shall be of such denomination or denominations, in fully registered form without coupons, as may be determined by the Board, and may contain such reference to any of the provisions of this Indenture as may be appropriate. Every temporary Bond shall be executed by the Board and be authenticated by the Trustee upon the same conditions and in substantially the same manner as the definitive Bonds. If the Board issues temporary Bonds, the Board shall execute and furnish definitive Bonds without delay and thereupon the temporary Bonds shall be surrendered for cancellation in exchange therefor at the Corporate Trust Office of the Trustee and the Trustee shall authenticate and deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of the same Series and maturity of authorized denominations. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under this Indenture as definitive Bonds of the same Series authenticated and delivered hereunder.

Section 2.6. Issuance of Bonds.

(a) One or more Series of Bonds may be issued, authenticated and delivered under this Indenture from time to time for one or more of the following purposes: (i) refunding, in whole or in part, any one or more Series of Outstanding Bonds, or (ii) financing or refinancing costs of any Projects and costs and expenses incidental thereto, and in the case of (i) or (ii), establishing reserves and paying capitalized interest with respect thereto, as determined by the Board and the University. As a condition to the issuance of Bonds, the balance in the Debt Service Reserve Fund shall be increased, if required by a Supplemental Indenture, from proceeds of the Bonds or from other available funds of the Board and the University, to an amount equal to the Debt Service Reserve Requirement with respect to the Outstanding Bonds and Bonds.

Specifically, the issuance of any Series of Bonds shall have been authorized under and pursuant to and shall be in compliance with the Constitution and applicable laws of the State and under and pursuant to this Indenture and shall have been provided for by a Supplemental Indenture which shall specify the following:

- (i) The purpose for which such Series of Bonds is to be issued and the Funds or Accounts in to which the proceeds thereof are to be deposited;
- (ii) The authorized principal amount and designation of each Series of Bonds and the denomination or denominations thereof;
- (iii) The date, the maturity date or dates, the interest payment dates and the dates on which mandatory sinking fund payments are due, if any, for such Series of Bonds;
- (iv) The redemption premiums and redemption terms, if any, for such Series of Bonds;
- (v) The form of the Bonds of such Series;

(vi) The amount, if any, to be deposited in the Debt Service Reserve Fund for such Bonds;

(vii) The description of the Bonds and the place of payment thereof;

(viii) The amount and due date of each mandatory sinking fund payment, if any, for such Bonds; and

(ix) Such other provisions that are appropriate or necessary with respect to such Series of Bonds.

(b) The Trustee shall have received the following documents or money or securities, as applicable, all of such documents dated or certified, as the case may be, as of the closing date for such Series of Bonds (unless the Trustee shall accept any of such documents bearing a prior date):

(i) A certified copy of the Supplemental Indenture authorizing the issuance of such Bonds;

(ii) A copy, duly certified by the Commissioner/Secretary, of the resolution theretofore adopted by the Board authorizing the execution and delivery of such Supplemental Indenture and the issuance of such Bonds;

(iii) A certificate of the Board to the effect that no Event of Default has occurred and is continuing;

(iv) A certificate of the Board stating and confirming that the annual Pledged Revenues for the Fiscal Year preceding the issuance of the Bonds have been equal to at least 1.15 times the Maximum Annual Debt Service for all Bonds then Outstanding; such certificate shall be prepared by the Chief Financial Officer and shall be approved by the President of the University;

(v) A certificate of the Board stating that the estimated Pledged Revenues to be received in each of the three Fiscal Years following the completion of construction of the Projects to be financed with the proceeds of the Bonds (and if no Projects are to be financed, the three Fiscal Years following the date of issuance of the Bonds), including any other Projects then under construction at the University, shall equal at least 1.15 times the Maximum Annual Debt Service for all Bonds then Outstanding and the Bonds proposed to be issued. Computation of the future Pledged Revenues shall be based on actual Pledged Revenues for the Fiscal Year preceding the issuance of such Bonds, as such Pledged Revenues may be adjusted to reflect the schedule of rates, fees and charges in effect or to become effective when any Projects become revenue-producing and after giving recognition and effect to anticipated changes in Operation and Maintenance Expenses. The computation of estimates shall be made by the Chief Financial Officer and be approved by the President of the University, and such computation and certificate shall be conclusively

presumed to be accurate in determining the right of the Board to authorize, issue and sell Bonds on a parity with the Bonds then Outstanding;

(vi) A written request of the Board and of the University to the Trustee to authenticate and deliver such Bonds;

(vii) An opinion of Bond Counsel to the effect that all requirements for the issuance of such Bonds have been met and the issuance of such Bonds will not result in the interest on any Tax-Exempt Bonds Outstanding becoming includable in the gross income of the Holders thereof for purposes of federal income taxation;

(viii) A certificate of the Board containing such statements as may be reasonably necessary to show compliance with the requirements of this Indenture and any Supplemental Indenture; and

(ix) Such further documents, moneys and securities as are required by the provisions of this Indenture and any Supplemental Indenture providing for the issuance of such Series of Bonds.

(d) Nothing in this Indenture shall be construed so as to permit the issuance of bonds or other obligations, payable from the Pledged Revenues and having a lien on the Pledged Revenues superior to the first parity lien thereon of the Bonds. Nothing herein shall prevent the Board from issuing bonds or other obligations payable from such Pledged Revenues and having a lien thereon junior and inferior to the lien thereon securing payment of the Bonds.

Section 2.7. Mutilated, Lost, Stolen or Destroyed Bonds.

(a) In the event any Bond is mutilated, lost, stolen or destroyed, the Board may execute and the Trustee may authenticate a new Bond of like date, maturity and denomination as that mutilated, lost, stolen or destroyed; *provided* that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the Board and the Trustee evidence of such loss, theft or destruction satisfactory to the Board and the Trustee, together with security or indemnity satisfactory to them. In the event any lost, stolen or destroyed Bond shall have matured, instead of issuing a duplicate Bond, the Board may pay the same without surrender thereof. The Board and the Trustee may charge the Holder of such Bond with their reasonable fees and expenses in this connection. Any Bond issued pursuant to this Section 2.07 shall be deemed part of the original Series of the Bonds in respect of which it was issued and an original additional contractual obligation of the Board (whether or not, in the case of this paragraph (a), lost, stolen or destroyed Bonds shall be at any time found by anyone) and shall be entitled to the equal and proportionate rights and benefits hereunder as all other Outstanding Bonds.

(b) If after delivery of a substitute bond a bona fide purchaser of the original Bond in lieu of which such substitute Bond was issued presents for payment such original Bond, the Board and the Trustee shall be entitled to recover such substitute Bond from the Person to whom it was

delivered or any Person therefrom, except a bona fide purchaser, and the Board and the Trustee shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the Board or the Trustee in connection therewith.

Section 2.8. Registration of Bonds; Persons Treated as Owners. The Board shall cause the books for the registration and for the transfer of the Bonds as provided in this Indenture to be kept by the Trustee which is hereby constituted and appointed the Registrar with respect to the Bonds. The Board and the Trustee will treat and deem the Person in whose name any Bond is registered on the books of the Trustee, as Registrar, as the absolute owner thereof for all purposes whether or not such Bond shall be overdue, and shall not be bound by any notice to the contrary. Payment of or on account of principal of, premium, if any, or interest on any Bond shall be made only to or upon the order of the Holder or his legal representative, but such registration may be changed as herein provided. The sole registered holder of a Global Bond shall be the Depository or its nominee. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid. No Person other than a Holder shall receive a Bond evidencing the obligation of the Board to make payments of principal, premium, if any, and interest pursuant to this Indenture.

All Bonds presented for registration for transfer or exchange (if so required by the Board or the Trustee) shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, substantially in the form and with guaranty of signature substantially in the form set forth in such Bond or as may be satisfactory to the Board and the Trustee, duly executed by the Holder or by his or her duly authorized attorney. The cost of preparing each new Bond upon each exchange or transfer and other expenses of the Board or the Trustee incurred in connection therewith (except any applicable tax or other governmental charge, as hereinafter provided) shall be paid by the Board.

Upon surrender for transfer of any Bond at the Corporate Trust Office of the Trustee, duly endorsed by, or accompanied by a written instrument or instruments of transfer or exchange in form satisfactory to the Trustee and duly executed by the Holder or his attorney duly authorized in writing, the Board shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees, a new Bond or Bonds of the same Series and the same maturity for a like aggregate principal amount as the Bond surrendered for transfer. Bonds, upon surrender thereof at the Corporate Trust Office of the Trustee, together with an assignment duly executed by the Holder or his or her attorney or legal representative in such form and with guarantee of signature substantially in the form set forth in such Bond or as may be satisfactory to the Board and the Trustee, may, at the option of the Holder thereof, be exchanged at the Corporate Trust Office of the Trustee for an equal aggregate principal amount of Bonds of any authorized denomination of the same Series and the same maturity as the Bonds surrendered for exchange. The execution by the Board of any Bond of any authorized denomination shall constitute full and due authorization of such denomination, and the Trustee shall thereby be authorized to authenticate and deliver such Bond. The Trustee shall not be required to transfer or exchange any Bond during the period from the Record Date (regardless of whether such day is a Business Day) next preceding any payment date for the Bonds or during the 15-day period prior to the date of selection of Bonds for redemption or prepayment, nor to transfer or exchange any Bond after the mailing of notice

calling such Bond for redemption has been made, *provided, however*, that such transfer or exchange shall be made by the Trustee with respect to the unredeemed principal of any Outstanding Bond or with respect to any Bond or portion thereof remaining unpaid after any payment date or after any date established for redemption of Bonds.

Bonds delivered upon any registration of transfer as provided herein, or as provided in Section 2.07, shall be valid obligations of the Board, evidencing the same debt as the Bonds surrendered, shall be secured by this Indenture and shall be entitled to all of the security and benefits hereof to the same extent as the Bonds surrendered.

The Trustee shall require the payment by the Holder requesting exchange or transfer of Bonds of any tax or other governmental charge and such charges shall be paid before such new Bonds shall be delivered. Any service charge or fee for services rendered by the Trustee as Registrar which are required to be paid with respect to such exchange or transfer shall be paid by the Board under the annual accounting it receives from the Trustee for the fees, service charges and expenses of the Trustee.

Section 2.9. Nonpresentation of Bonds.

(a) In the event any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity or otherwise, or at the date fixed for redemption thereof, if funds sufficient to pay such Bond shall have been made available to the Trustee, all liability of the Board to the Holder thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such fund or funds, without liability to the Holder of such Bond for additional interest thereon, for the benefit of the Holder of such Bond who shall thereafter be restricted exclusively to such fund or funds for any claim of whatever nature of the Holder under this Indenture or on, or with respect to, said Bond. Such Bond shall be deemed to be paid for all purposes of this Indenture and any amounts held by the Trustee for the purpose of paying such Bond pursuant to this paragraph (a) shall not bear interest or otherwise be invested from and after such maturity date.

(b) Any moneys which the Trustee shall segregate and hold in trust for the payment of the principal of, premium, if any, or interest on any Bond and remaining unclaimed for six years after such principal, premium, if any, or interest any has become due and payable shall, after the expiration of such six-year period and upon the Board's written request addressed to the Trustee and signed by a Board Representative, be paid to the Board. After the payment of such unclaimed moneys to the Board, the Holder of such Bond shall look only to the Board for payment, and then only to the extent of the amount so repaid to the Board, and the Board shall not be liable for any interest thereon and shall not be regarded as a trustee of such money, and all liability of the Trustee with respect to such moneys shall thereupon cease.

Section 2.10. Book-Entry System. Prior to the issuance of any Series of Bonds, the Board may direct in a Supplemental Indenture that the Book-Entry System is to initially be in effect for such Series of Bonds, or the Board may thereafter determine that the Book-Entry System shall be in effect for such Series or for any other Series of Bonds issued hereunder. If the Board shall so

direct that the Book-Entry System shall be in effect for any Series of Bonds, then the following provisions of this Section 2.10 shall be applicable to such Series of Bonds:

(a) The Bonds shall be initially delivered as separate, single fully-registered Bonds for each maturity in global form (“*Global Bonds*”). Upon initial delivery, the ownership of the Bonds shall be registered in the name of the Depository or its nominee on the registration books maintained by the Trustee pursuant to Section 2.08. The Depository Trust Company, New York, New York (“*DTC*”) shall act as the initial Depository for the Bonds, and each Bond shall be issued to the Depository, registered in the name of Cede & Co., as the nominee for DTC, and deposited with the Trustee as custodian for Cede & Co.

(b) All notices (including any notice of redemption) and communications to be given to the Holders and all payments to be made to Holders under the Bonds shall be given or made only to the Depository, as the registered Holder of the Bonds. The rights of beneficial owners in any Bond shall be exercised only through the Depository subject to the applicable rules and procedures of the Depository. Payments to any holder of a beneficial interest in a Global Bond shall be subject to the applicable procedures of the Depository.

(c) Participants and any members thereof shall have no rights under this Indenture with respect to any Bonds held on their behalf by the Depository or by the Trustee as custodian, or under such Bonds, and the Depository may be treated by the Board, the Trustee and any agent of the Board or the Trustee as the absolute owner of such Bonds for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Board and the Trustee or any agent of the Board or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depository or impair, as between the Depository and its Participants, the operation of customary practices of such Depository governing the exercise of the rights of a holder of a beneficial interest in any Bond.

Neither the Board or the Trustee or any agent of the Board or the Trustee shall have any responsibility or liability for any act or omission of the Depository or for the payment of amounts to holders of beneficial interests in a Global Bond, for any aspect of the records relating to or payments made on account of those interests by the Depository, or for maintaining, supervising or reviewing any records of the Depository relating to such beneficial ownership.

(c) Notwithstanding any other provisions of this Indenture, a Global Bond may not be transferred as a whole or in part except (i) by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository and (ii) for exchange of a Global Bond for one or more definitive Bonds in accordance with Section 2.10(d).

(d) If (i) the Depository notifies the Board at any time that the Depository is unwilling or unable to continue as depository for the Bonds and a successor depository is not appointed within 90 days or (ii) the Depository ceases to be registered as a clearing agency under the Securities Exchange Act of 1934, as amended, and a successor depository is not appointed within 90 days, the Board shall execute, and the Trustee, upon receipt of an certificate of the Board for the authentication and delivery of such Bonds, shall authenticate and deliver definitive Bonds to each beneficial owner of interests in the related Global Bonds in an aggregate principal amount equal to the aggregate principal amount of such Global Bonds in exchange for such Global Bonds, and upon delivery of the Global Bonds to the Trustee such Global Bonds shall be canceled.

Definitive Bonds issued in exchange for all or a part of the Global Bonds pursuant to this 2.09(d) shall be registered in such names and in such authorized denominations as the Depository, pursuant to instructions from its Participants shall instruct the Trustee. Upon execution and authentication, the Trustee shall deliver such definitive Bonds to the Persons in whose names such definitive Bonds are so registered.

Section 2.11. Cancellation. Bonds surrendered for payment, redemption or exchange, and Bonds purchased from any moneys held by the Trustee under this Indenture or surrendered to the Trustee by the Board or the University, shall be promptly canceled and shall not be reissued. The Trustee shall deliver all such canceled Bonds to the Board.

Section 2.12. CUSIP Numbers. Neither the Board, the University nor the Trustee shall be liable for any defect or inaccuracy in the CUSIP number that appears on any Bond or in any redemption notice. As provided in Section 6.03, the Trustee may include in any redemption notice a statement to the effect that the CUSIP numbers on the Bonds have been assigned by an independent service and are included in such notice for the convenience of the Holder of the Bonds, but that neither the Board, the University nor the Trustee shall be liable for any inaccuracies in such numbers.

ARTICLE III.

CREATION OF FUNDS AND ACCOUNTS

Section 3.1. Construction Fund. There is hereby created, ordered and established with the Trustee, a special trust Fund in the name of the Board designated “Construction Fund” (the “*Construction Fund*”). There is hereby created, ordered and established within the Construction Fund, a special trust Account in the name of the Board designated “Cost of Issuance Account” (the “*Cost of Issuance Account*”). The Trustee shall create and establish such additional Accounts and/or subaccounts within the Construction Fund as the Board and the University shall hereafter direct from time to time.

Section 3.2. Revenue Account. There is hereby created, ordered and established with the State Treasurer, a special Account in the name of the University designated “Revenue Account—The University of Montana” (the “*Revenue Account*”). For accounting purposes, the Revenue Account may be redesignated by a different name or names, and such subaccounts may be created

and established within the Revenue Account, in each instance by and as the Board, the University and the State Treasurer shall deem appropriate from time to time.

Section 3.3. Operation and Maintenance Account. There are hereby created, ordered and established with the State Treasurer, a special Account in the name of the University designated “Operation and Maintenance Account—The University of Montana Auxiliary Facilities” (the “*Operation and Maintenance Account*”). For accounting purposes, the Operation and Maintenance Account may be redesignated by a different name or names, and such subaccounts may be created and established within the Operation and Maintenance Account, in each instance by and as the Board, the University and the State Treasurer shall deem appropriate from time to time.

Section 3.4. Debt Service Fund. There is hereby created, ordered and established with the Trustee, a special trust Fund in the name of the Board designated “Debt Service Fund” (the “*Debt Service Fund*”), which shall consist of the Debt Service Account and the Redemption Account. The Trustee shall create and establish such additional Accounts and/or subaccounts within the Debt Service Fund as the Board and the University shall hereafter designate and direct from time to time.

Section 3.5. Debt Service Reserve Fund. There is hereby created, ordered and established with the Trustee, a special trust Fund in the name of the Board designated “Debt Service Reserve Fund (the “*Debt Service Reserve Fund*”). The Trustee shall create and establish such Accounts and/or subaccounts within the Debt Service Reserve Fund as the Board and the University shall designate and direct from time to time.

Section 3.6. Repair and Replacement Fund. There is hereby created, ordered and established with the Trustee, a special trust Fund in the name of the Board designated “Repair and Replacement Fund” (the “*Repair and Replacement Fund*”). The Trustee shall create and establish such Accounts and/or subaccounts within the Repair and Replacement Fund as the Board and the University shall hereafter designate and direct from time to time.

Section 3.7. Creation of the Rebate Fund. There is hereby created, ordered established with the Trustee, a special trust Fund in the name of the Board designated “Rebate Fund” (the “*Rebate Fund*”). There is hereby created, ordered and established within the Rebate Fund, a special trust Account in the name of the Board designated “Earnings Account” (the “*Earnings Account*”). The Trustee shall create and establish such additional Accounts and/or subaccounts within the Rebate Fund as the Board and the University shall hereafter direct from time to time.

ARTICLE IV.

USE OF FUNDS

Section 4.1. Use of Construction Fund.

(a) So long as an Event of Default shall not have occurred and be continuing, proceeds of Bonds and funds and monies (if any) of the Board and the University deposited and held in the

Construction Fund shall be paid out by the Trustee in order to pay the cost of the Projects financed from the proceeds of the Bonds and such funds and monies (if any). Each disbursement made by the Trustee from the Construction Fund shall be made within three Business Days (or within such longer period as is reasonably required to liquidate and sell investments in the Construction Fund if required to make such payment) after the receipt by the Trustee of the written certificate and request of the University Representative, substantially in the form set forth in Appendix A to this Indenture and stating that the Trustee shall disburse sums from the Construction Fund as directed by and in the manner specified by and at the direction of the University Representative to the Person designated in such written request, and that the amount set forth therein is justly due and owing and constitutes a cost of a Project and identifying the Account or subaccount within the Construction Fund from which each such disbursement is to be made.

(b) So long as an Event of Default shall not have occurred and be continuing, proceeds of the Bonds deposited in the Cost of Issuance Account within the Construction Fund shall be paid out by the Trustee in the manner provided herein. Each disbursement from the Cost of Issuance Account shall be made within three Business Days (or within such longer period as is reasonably required to liquidate and sell investments in the Cost of Issuance Account if required to make such payment) after the receipt by the Trustee of the written certificate and request of the University Representative, substantially in the form set forth in Appendix B to this Indenture and stating: (i) the amount(s) to be paid as costs of issuance, (ii) the Person(s) to whom such amounts are to be paid, and (iii) that such amount(s) are due and owing to such Person(s). Amounts, if any, remaining in the Cost of Issuance Account after payment of all costs of issuance of such Series of Bonds (as evidenced by a written certificate of a University Representative) shall be transferred to the Construction Fund (and the applicable Account or subaccount therein) or as otherwise directed by the University.

(c) Upon receipt of each request referred to in subsections (a) and (b) above, the Trustee shall pay the obligation set forth in such request out of moneys in the Construction Fund (and the applicable Account or subaccount therein). In making such payments, the Trustee may conclusively rely upon such request.

(d) The Trustee and the University shall keep and maintain adequate records pertaining to the Construction Fund (and each Account and subaccount therein) and all disbursements therefrom.

(e) Upon completion of any Project for which moneys have been deposited to the Construction Fund and payment of all costs and expenses incident thereto (as evidenced by a written certificate of a University Representative), any balance remaining in the Construction Fund with respect to such Project shall be deposited in the Debt Service Fund (and the applicable Account or subaccount therein).

Section 4.2. Use of Operation and Maintenance Account. The Board and the University shall make such transfers and deposits to the Operation and Maintenance Accounts, from the Auxiliary Facilities Gross Pledged Revenues, as and when received, to pay the Operation and Maintenance Expenses as the same become due and payable, and whereupon they shall be

promptly paid. Any surplus remaining at the end of the Fiscal Year and not needed for payment of such Operation and Maintenance Expenses shall be transferred to the Revenue Account.

Section 4.3. Use of Debt Service Fund.

(a) The Trustee shall make deposits, as and when received, as follows: (i) if authorized by a Supplemental Indenture authorizing the issuance of Bonds, an additional amount from the proceeds of such Bonds shall be deposited in the Debt Service Fund (and the applicable Account or subaccount therein); (ii) all moneys payable by the Board as specified in Section 5.01(b) shall be deposited in the Debt Service Fund (and the applicable Account or subaccount therein); (iii) any amount in the Construction Fund (and the applicable Account or subaccount therein) which shall be transferred to the Debt Service Fund (and the applicable Account or subaccount therein) to the extent required by Section 4.01(e) upon completion of the applicable Project; and (iv) all other moneys received by the Trustee under this Indenture when accompanied by directions from the Person depositing such moneys that such moneys are to be paid into the Debt Service Fund (and the applicable Account or subaccount therein), shall be deposited into the Debt Service Fund.

In the event the balance of moneys in the Debt Service Fund is insufficient to pay the Debt Service Requirements for Outstanding Bonds (as to principal of, premium, if any, and interest on the Bonds) when due and payable, moneys shall be transferred into the Debt Service Fund from the Debt Service Reserve Fund, but only to the extent provided in Section 4.04.

(b) Except as provided in Section 8.04 and as provided in this Section 4.03, moneys in the Debt Service Fund shall be expended solely as follows: (i) moneys in the Debt Service Account shall be used to pay principal of (including mandatory sinking fund payments) and interest on the Bonds as the same mature or become due pursuant to the terms of this Indenture [and shall be used to pay Counterparty Swap Payments]; and (ii) moneys in the Redemption Account shall be used to pay the Redemption Price on the Bonds as the same become due upon redemption in advance of maturity pursuant to the terms of this Indenture and such redemption of Bonds in advance of maturity shall be accounted for separately by the Trustee from the payments made by the Trustee pursuant to clause (i) of this paragraph (b).

The Board hereby authorizes and directs the Trustee to withdraw sufficient funds from the Debt Service Account to pay the Debt Service Requirements and to make said funds so withdrawn available to the Trustee and any Paying Agent for the purpose of paying said Debt Service Requirements.

(c) After payment in full of the Debt Service Requirements (or after provision has been made for the payment thereof as provided in this Indenture so that such Bonds are no longer Outstanding), and the fees, charges and expenses of the Trustee and any amounts then due and payable to any Paying Agent and any other amounts required to be paid under this Indenture, all amounts remaining in the Debt Service Fund (exclusive of any amounts held in the Termination Account) shall be paid to the Board for the account of the University upon the expiration or sooner termination of this Indenture.

Section 4.4. Use of Debt Service Reserve Fund. (a) Moneys in the Debt Service Reserve Fund shall be maintained in an amount not less than the Debt Service Reserve Requirement. Amounts in the Debt Service Reserve Fund shall be used to make up any deficiencies in the Debt Service Fund as required by this Indenture, but only with respect to each specific Series of Bonds secured by the Debt Service Reserve Fund as set forth in a Supplemental Indenture. Specifically, on any date that payment of principal of, premium, if any, and interest on Outstanding Bonds is payable and the amount on hand in the Debt Service Fund is insufficient to pay all such principal, premium and interest then due on Outstanding Bonds, amounts on hand in the Debt Service Fund shall be allocated to Outstanding Series of Bonds, pro rata, in proportion to the principal of, premium, if any, and interest on Outstanding Bonds of each such Series then due. Such allocations shall be made to determine whether a deficiency exists in the Debt Service Fund requiring a transfer of funds from the Debt Service Reserve Fund in respect of each specific Series of Bonds secured thereby.

(b) If at any time the amount on deposit in the Debt Service Reserve Fund is less than the Debt Service Reserve Requirement, the Board and the University are required, under Section 5.01(c), to make payment, within one year (or as otherwise stated therein) from the date such deficiency arises, directly to the Trustee for deposit in the Debt Service Reserve Fund, the amount of any such deficiency.

(c) If Bonds are being issued pursuant to Section 2.06, the Supplemental Indenture creating the same shall provide for the deposit of such amounts (if any) as may be necessary to cause the amount on deposit in the Debt Service Reserve Fund to equal the Debt Service Reserve Requirement, if such Bonds are secured by the Debt Service Reserve Fund.

(d) Funds at any time on deposit in the Debt Service Reserve Fund in excess of the Debt Service Reserve Requirement shall be transferred to the Debt Service Fund (and the applicable Account or subaccount therein) or as otherwise directed by the University.

(e) Nothing in this Indenture shall be construed as limiting the right of the Board to substitute in whole or in part for any deposit required to be established and maintained by this Indenture in the Debt Service Reserve Fund, cash or investments or any Reserve Fund Credit Facility, *provided* that any proposed substitution of a Reserve Fund Credit Facility for any deposit required in the Debt Service Reserve Fund shall be submitted for review to Moody's, if any Bonds are then rated by Moody's, to S&P, if any Bonds are then rated by S&P, and to Fitch, if any Bonds are then rated by Fitch, and shall not cause any then-current ratings for Outstanding Bonds to be adversely affected thereby.

Section 4.5. Use of Repair and Replacement Fund. All moneys in the Repair and Replacement Fund may be drawn on and used by the Board or the University for the purpose of paying, with respect to any Auxiliary Facilities or other facilities at or for the University, the cost of unusual or extraordinary maintenance or repairs, or the cost of any renewals, renovation, improvements, expansion or replacements, or equipping or furnishing, or the cost of operation of, the Auxiliary Facilities or other facilities at or for the University, or the cost of planning,

development, construction and operation of Auxiliary Facilities or other facilities at or for the University, or for any of the purposes described in Section 5.01(f), to the extent the same are not paid as part of the ordinary and normal expense of the operation of the Auxiliary Facilities or other facilities at or for the University. However, in the event the funds in the Debt Service Fund or the Debt Service Reserve Fund shall be reduced below their requirements, funds on deposit in the Repair and Replacement Fund shall be transferred immediately to the Debt Service Fund or the Debt Service Reserve Fund, respectively, to the extent required to eliminate the deficiency in such Funds. Monies on deposit in the Repair and Replacement Fund from time to time and to be applied in accordance with the provisions of this Section 4.05 (other than for required transfers to the Debt Service Fund or the Debt Service Reserve Fund as provided in this Section 4.05), shall also be subject to immediate withdrawal for application as provided in Section 5.01 upon written demand and instruction of a University Representative.

Section 4.6. Use of Rebate Fund. (a) The Trustee shall establish and maintain with respect to each Series of Tax-Exempt Bonds, a Fund separate from any other Fund established and maintained hereunder and designated and defined herein as the Rebate Fund (with such Series designation as may be appropriate). The provisions of this Section 4.06 shall apply separately to the Rebate Fund established for each Series of Tax-Exempt Bonds. Subject to the transfer provisions provided in paragraph (e) below, all money at any time deposited in the Rebate Fund shall be held by the Trustee in trust, to the extent required to satisfy the Rebate Amount payable to the United States of America. Neither the Board, the University, the Trustee nor the Holder shall have any rights in or claim to such money. All amounts on deposit in the Rebate Fund shall be governed by this Section 4.06 and by the Tax Certificate of the Board. The Trustee shall be deemed conclusively to have complied with such provisions if it follows the written directions of the Board and University with respect thereto, and shall have no liability or responsibility to enforce compliance by the Board or the University with the terms of the Tax Certificate.

(b) Upon the University's written direction and subject to the express provisions of Section 5.01, an amount equal to the Rebate Amount, as calculated and computed by such expert as shall be appointed by the Board, shall be deposited into the Rebate Fund by the Trustee from balances in the following Funds and Accounts and in the following order of priority: (i) from the Revenue Account, (ii) from the Construction Fund, (iii) from the Repair and Replacement Fund, (iv) from the Debt Service Fund, (v) from the Debt Service Reserve Fund, so that the balance in the Rebate Fund after such deposit shall equal the Rebate Amount. Unless the Board or the University shall otherwise direct, the Trustee shall have the sole responsibility to make the computations and calculations with respect to the Rebate Amount which are described in this paragraph (b).

(c) The Trustee shall have no obligation to rebate any amounts required to be rebated pursuant to this Section 4.06, other than from moneys held in the Funds and Accounts created under this Indenture or from other moneys provided to it by the University.

(d) The Trustee shall invest all amounts held in the Rebate Fund at the written direction of the University in accordance with Section 4.07. The Trustee shall retain all earnings (calculated by taking into account net gains or losses on sales or exchanges and taking into account amortized

discount or premium as a gain or loss, respectively) on investments held in the Rebate Fund in the Earnings Account therein. Money shall not be transferred from the Rebate Fund except as provided in paragraph (e).

(e) Upon receipt of the University's written directions, the Trustee shall remit part or all of the balances in the Rebate Fund to the United States, as so directed. Such directions shall be given by the University to the Trustee at least two Business Days prior to each date such amounts are to be remitted to the United States. In addition, if the amount credited to the Rebate Fund exceeds the Rebate Amount as determined by the University, and if the University so directs in writing, the Trustee will deposit moneys into or transfer moneys out of the Rebate Fund from or into such Accounts or Funds as provided in the University's written directions. Any funds remaining in the Rebate Fund after redemption and payment of all of the Tax-Exempt Bonds and payment and satisfaction of any Rebate Amount as determined and directed by the University shall be withdrawn and remitted to the University.

(f) Notwithstanding any other provision of this Indenture, the obligation of the University to remit the Rebate Amounts to the United States and to comply with all other requirements of this Section 4.06 and the Tax Certificate shall survive the defeasance or payment in full of the Bonds.

(g) Pending payment of each Rebate Amount to the United States, moneys held in the Rebate Fund are hereby pledged by the Board and the University to secure such payments to the United States as provided herein and in the Tax Certificate, and neither the Board, the University, the Trustee, the Holders nor any other Person shall have any rights in or claim to such moneys.

Section 4.7. Investment of Funds. Each of the special Accounts and Funds designated in Article III shall be maintained as a book account and kept separate from all other Accounts and Funds as a trust account solely for the purposes herein designated therefor. The monies accounted for in such special book accounts (except for any monies accounted for in the Revenue Account and the Operation and Maintenance Account held by the State Treasurer, from time to time, for the benefit of the University and the Board) shall be in one or more bank accounts as determined and designated by the University (except as otherwise expressly stated herein). Nothing herein prevents the commingling of monies accounted for in any two or more book accounts pertaining to the Auxiliary Facilities, the Auxiliary Facilities Gross Pledged Revenues or the proceeds of securities or other monies in any bank account or investment in federal securities. Each bank account shall be continuously secured to the fullest extent required or permitted by the laws of the State for the securing of public funds and shall be irrevocable and not withdrawable by anyone for any purpose other than the respective designated purposes thereof. Each periodic payment shall be credited to the proper book Account or Fund not later than the date therefor herein designated, except that when any such date shall be a Saturday, a Sunday, or a legal holiday, then such payment shall be made on or before the next preceding Business Day. Moneys held in the Construction Fund, the Debt Service Fund, the Debt Service Reserve Fund and the Repair and Replacement Fund shall, pursuant to direction of a University Representative, be invested and reinvested by the Trustee in Permitted Investments which mature or are subject to redemption by the holder thereof prior to the date such funds are expected to be needed. Such Permitted Investments shall be

acquired by the Trustee in such manner as directed by the University Representative and such Permitted Investments shall be held by or under the control of the Trustee and shall be accounted for and deemed at all times a part of the Fund or Account in which such moneys are originally held, and the interest accruing thereon and any profit realized from such Permitted Investments shall be delivered when received to the Revenue Account (unless provided to the contrary with respect to any Fund or Account pursuant to the provisions of this Indenture) and shall be applied in accordance with Section 5.01.

The Trustee may, at the direction of a University Representative, make any and all investments permitted by the provisions of this Section 4.07 through its own bond department or short-term investment department.

Amounts held under this Indenture, if any, shall be invested in accordance with the terms hereof. The University acknowledges that, to the extent that regulations of the Comptroller of the Currency or other applicable regulatory agency grant the University the right to receive brokerage confirmations of security transactions, the University waives the right to receipt of such confirmations. The Trustee shall furnish the University periodic statements which include details of all investment transactions made by the Trustee.

Except as otherwise provided hereunder or agreed in writing among the parties hereto, the University shall retain the authority to institute, participate and join in any plan of reorganization, readjustment, merger or consolidation with respect to the issuer of any securities held under this Indenture, and, in general, to exercise each and every other power or right with respect to each such asset or investment as individuals generally have and enjoy with respect to their own assets and investment, including power to vote upon any securities.

In the event the Board shall be advised by Bond Counsel that it is necessary to restrict or limit the yield on the investment of any moneys paid to or held by the Trustee in order to avoid Tax-Exempt Bonds being considered “arbitrage bonds” within the meaning of the Code or the Regulations proposed or promulgated thereunder, or to otherwise preserve the exemption from federal income taxation of interest payable or paid on any Tax-Exempt Bonds, the Board may require the Trustee to take such steps as it may be advised by such counsel are necessary so as to restrict or limit the yield on such investment, irrespective of whether the Trustee shares such opinion, and the Trustee agrees that it will take all such steps as the Board may require.

Section 4.8. Trust Funds. All moneys and securities received by the Trustee under the provisions of this Indenture shall be trust funds under the terms of this Indenture and shall not be subject to lien or attachment of any creditor of the State or any political subdivision, body, agency or instrumentality thereof or of the Board or the University and shall not be subject to appropriation by any legislative body or otherwise. Such moneys and securities shall be held in trust and applied in accordance with the provisions of this Indenture. Unless and until disbursed pursuant to the terms of this Indenture, all such moneys and securities (and the income therefrom) shall be held by the Trustee as security for payment of the principal, premium, if any, and interest on the Bonds, the fees and expenses of the Trustee payable under this Indenture and the Rebate Amount becoming due and payable to the United States from time to time.

ARTICLE V.

APPLICATION OF PLEDGED REVENUES

Section 5.1. Application of Auxiliary Facilities Gross Pledged Revenues. Pursuant to this Section 5.01, all Pledged Revenues shall be accounted for and maintained by the University, at the direction of the Board and the University, with the State Treasurer, in the Revenue Account, and shall be expended and used only in the manner and order of priority specified below:

(a) As a first charge and lien on the Auxiliary Facilities Gross Pledged Revenues, the Board and the University shall cause to be transferred to and paid from the Operation and Maintenance Account from time to time, as the Board and the University shall determine, moneys sufficient, together with other moneys lawfully available therefor and accounted for in the Operation and Maintenance Account, to pay Operation and Maintenance Expenses (exclusive of General Administrative Assessments) as the same become due and payable, and thereupon such expenses shall be promptly paid, and, subject to and upon the making of the payments and deposits to the Debt Service Fund required by Section 5.01(b), then to the payment from such Auxiliary Facilities Gross Pledged Revenues of General Administrative Assessments, as the same become due and payable, whereupon such General Administrative Assessments shall be promptly paid.

(b) As a first charge and lien on the Pledged Revenues, the Board and the University shall, not later than one (1) Business Day prior to each principal and interest payment date for the Bonds, transfer and deposit into the Debt Service Fund, from the Revenue Account and from the other accounts (if any) in which Pledged Revenues are deposited and accounted for, sums which shall be sufficient, when added to the existing balance in the Debt Service Fund and to additional monies which may have theretofore been or shall then be deposited therein by the Board and the University, to pay the Debt Service Requirements on the Bonds and any Counterparty Swap Payments on each such payment date;

(c) As a second charge and lien on the Pledged Revenues and subject to and after the making of the deposits required by subsections (a) and (b) above, the Board and the University shall deposit to the Debt Service Reserve Fund any amounts necessary to make the amount on deposit therein equal to the Debt Service Reserve Requirement (and/or to pay or reimburse any amounts which may then be required by and under the terms of a Reserve Fund Credit Facility, as the case may be). Subject to the express provisions of Section 4.04, monies in the Debt Service Reserve Fund shall be used only to prevent deficiencies in the payment of the principal of, or interest on, each Series of Bonds secured by the Debt Service Reserve Fund (whether in the form of cash, investment or a Reserve Fund Credit Facility as expressly provided by this Indenture) and to which such monies pertain and which results from a failure to deposit into the Debt Service Fund sufficient funds to pay debt service and/or mandatory sinking fund requirements on each such Series of Bonds secured by the Debt Service Reserve Fund. If funds shall have been withdrawn

from the Debt Service Reserve Fund to pay debt service and/or mandatory sinking fund payments for any Series of Bonds secured by amounts then deposited to or held in the Debt Service Reserve Fund, the Board shall deposit Pledged Revenues in the Debt Service Reserve Fund sufficient in amount to restore such moneys so withdrawn within one year, or as to each Reserve Fund Credit Facility, within the time period required by the terms of each such Reserve Fund Credit Facility with respect to reimbursement of any amounts drawn thereon.

(d) As a third charge and lien on the Pledged Revenues, the Board and the University shall pay any amounts due and owing to a Bond Insurer pursuant to the requirements of any Bond Insurance in effect for any Series of Outstanding Bonds.

(e) As a fourth charge and lien on the Pledged Revenues, the Board and the University shall deposit to a Termination Account to be established within the Debt Service Fund any amounts necessary and required to pay any Uninsured Early Termination Payment and other uninsured amounts which shall have become due and payable by the Board and the University pursuant to the requirements and provisions of an Interest Rate Agreement then in effect with respect to any Series of Outstanding Bonds. Monies in the Termination Account shall be used only to pay any Uninsured Early Termination Payment and other uninsured amounts which shall have become due and payable by the Board and the University pursuant to the requirements and provisions of any Interest Rate Agreement and for no other purpose whatsoever.

(f) As a fifth charge and lien on the Pledged Revenues, in the event the balance in the Repair and Replacement Fund shall ever be less than the Repair and Replacement Reserve Requirement, the Board and the University shall deposit to the Repair and Replacement Fund not less than annually, by November 30 commencing in the Fiscal Year such deficiency arises and in each year thereafter, from the Revenue Account and from other available revenues, if any, after the payments required by paragraphs (a), (b), (c), (d) and (e) of this Section 5.01 shall have been made, monies equal to not less than one fifth of the difference between the balance then on deposit in the Repair and Replacement Fund and the Repair and Replacement Reserve Requirement until there is on deposit in the Repair and Replacement Fund, an amount equal to or greater than the Repair and Replacement Reserve Requirement for Bonds then Outstanding. Subject to the provisions of the following paragraph (g), this provision is not intended to limit, and shall not limit, the right of the Board and the University to deposit such additional moneys in the Repair and Replacement Fund from time to time as the Board and the University may determine and approve from time to time, or to increase or decrease the amount of the Reserve and Replacement Requirement from time to time; *provided, however*, that if the amount of the Repair and Replacement Reserve Requirement shall be decreased, adequate provision shall be made or shall have been made for maintaining the Auxiliary Facilities in good repair and operating condition.

(g) As a sixth charge and lien on the Pledged Revenues, the Board and the University shall deposit to the Rebate Fund, not less than annually, the amounts required

to be deposited thereto (*i.e.*, the Rebate Amount) by the provisions of Section 4.06 and the amounts required to be deposited to the Rebate Fund shall be rebated to the United States of America in the manner required by Sections 4.06.

(h) Subject to making the foregoing required payments and deposits, after giving effect thereto and, further, after reserving in the Revenue Account an amount equal to not more than twenty-five percent of the budgeted Operation and Maintenance Expenses for the next Fiscal Year accounted for therein, from time to time, the Board and the University may use the balance of the Pledged Revenues accounted for in the Revenue Account and/or deposited to and held in the Repair and Replacement Fund for (i) redemption or open market purchase of Outstanding Bonds for cancellation prior to maturity, (ii) refinancing, refunding, or advance refunding of any Outstanding Bonds, (iii) maintenance, renovation, improvement, expansion, furnishing, equipping and Operation and Maintenance Expenses of, and lawful capital repair or replacement expenditures to or for, any Auxiliary Facilities or any other University properties or facilities, (iv) planning, development, purchase, construction or operation of Auxiliary Facilities or any other University properties or facilities the revenues of which are pledged as part of the Auxiliary Facilities Gross Pledged Revenues under this Indenture, or (v) for any lawful expenditures as the Board or the University may direct.

ARTICLE VI.

REDEMPTION AND PAYMENT OF BONDS

Section 6.1. Redemption Dates and Prices. Bonds may not be called for redemption by the Board except as provided in the Supplemental Indenture providing for their issuance and as set forth in Section 6.02.

Section 6.2. Mandatory Redemption Upon Sale of Auxiliary Facilities. Upon the sale of any or all of the Auxiliary Facilities, the Board and the University shall furnish a certificate to the Trustee stating the average annual Auxiliary Facilities Gross Pledged Revenues received by the Board and the University from such Auxiliary Facilities, based upon the last three Fiscal Years preceding the sale of such Auxiliary Facilities, as reported in the University's annual financial statements which have been certified by an Independent Accountant. Upon the sale of any or all of the Auxiliary Facilities, the proceeds of such sale shall, pursuant to the provisions of this Section 6.02 and at the written direction of the Board and the University, be applied to the redemption of Bonds Outstanding or directed to the acquisition of other revenue producing Auxiliary Facilities or other facilities or improvements, or to the modernization or renovation of other revenue producing facilities, the income of which is pledged by this Indenture, but the proceeds of such sale need not be so applied (i) if, after giving effect to such sale, the Board and the University shall be in compliance with the rate maintenance covenant set forth in Section 7.01 during the Fiscal Year of such sale and in the Fiscal Year immediately thereafter, or (ii) if the Auxiliary Facilities that are sold are determined by the Board and the University to be obsolete or have become economically obsolete to operate, or (iii) if the total value of any Auxiliary Facilities which are sold or otherwise disposed of shall be five percent (5%) or less of the total value of all Auxiliary Facilities at the time of such sale or disposition. If any redemption of Bonds shall be made pursuant

to this Section 6.02, the portion of the proceeds from the sale of such Auxiliary Facilities equal to the ratio of the Auxiliary Facilities Gross Pledged Revenues from such Auxiliary Facilities during the Fiscal Year in which such sale occurs to the average Auxiliary Facilities Gross Pledged Revenues from such Auxiliary Facilities during the last three Fiscal Years shall be applied for the purpose of redeeming Outstanding Bonds on a succeeding interest payment date following this calculation and for which notice of redemption may be given in accordance with the requirements of this Indenture. The Redemption Price for Bonds redeemed pursuant to this Section 6.02 shall equal the principal amount of the Bonds redeemed and accrued and unpaid interest to the redemption date, but without premium. If less than all Bonds Outstanding are to be redeemed pursuant to this Section 6.02, the Bonds redeemed shall be selected by lot or such other method as the Trustee in its sole discretion shall deem fair and appropriate or in accordance with the procedures of the Depository, and redeemed on a reasonably proportionate basis from among all then Outstanding maturities of the Bonds, such basis to be determined and effectuated as nearly as practicable by the Trustee by multiplying the total amount of moneys available to redeem Bonds on the date fixed for redemption by the ratio which the principal amount of all Bonds Outstanding in each maturity bears to the principal amount of all Bonds then Outstanding; *provided, however*, that the Bonds shall be redeemed only in integral multiples of \$5,000. The Board may decrease such mandatory redemption upon the sale of any Auxiliary Facilities by the principal amount of any Bonds acquired by the Board or the University and delivered to the Trustee for cancellation, or if the same shall have been previously canceled by the Trustee, and if such delivery or cancellation shall have occurred not less than 45 days prior to the date fixed for redemption and if such principal amount has not theretofore been applied as a credit against any Bonds subject to mandatory redemption upon the sale of any Auxiliary Facilities.

Section 6.3. Notices of Redemption; Provisions Relating to Redemption.

(a) In the event any of the Bonds are called for redemption, the Trustee shall give notice, in the name of the Board, of redemption to the respective Holders of the Bonds designated for redemption at their addresses as shown on the registration books of the Trustee. Each notice of redemption shall state (A) the Bonds to be redeemed, including the Series designation, CUSIP numbers and certificate numbers of Bonds to be redeemed, the original issue date or dates for the Bonds (as applicable), and the interest rates and maturity dates for the Bonds to be redeemed, (B) the redemption date, (C) the Redemption Price or Redemption Prices (as applicable), (D) the place or places where amounts due upon such redemption will be payable (which shall be the address of the Corporate Trust Office of the Trustee), and (E) if such notice of redemption is conditional, the conditions that must be satisfied in order for the redemption to occur. Each such notice given pursuant to this Section 6.03 shall also state that on the redemption date designated in the notice, and upon the satisfaction of any condition stated therein, there will become due and payable on each of the Bonds, the Redemption Price or Redemption Prices thereof, and that from and after such redemption date interest thereon shall cease to accrue and shall require that each Bond being redeemed, in whole or in part, be surrendered at the Corporate Trust Office of the Trustee. Each notice of redemption shall be given by the Trustee, at the expense of the Board, not less than thirty (30) nor more than sixty (60) days prior to the date fixed for redemption to the Holders of the Bonds to be redeemed. With respect to any notice of optional redemption of Bonds, unless upon the giving of such notice such Bonds shall be deemed to have been paid within the

meaning of Article XI, such notice may state that such redemption shall be conditioned upon the receipt by the Trustee on or prior to the date fixed for such redemption of money sufficient to pay the Redemption Price of the Bonds to be redeemed or upon the satisfaction of any other condition stated therein, and that if such money shall not have been so received or such condition shall not have been so satisfied, such notice shall be of no force and effect, and the Board shall not be required to redeem such Bonds. In the event that such notice of redemption contains such a condition and such money is not so received or such condition is not so satisfied, the redemption shall not be made and the Trustee shall within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such money was not so received and that such redemption was not made. If a notice of redemption shall not be conditional, or if the conditions of a conditional notice of redemption shall have been satisfied, then upon presentation and surrender of the Bonds so called for redemption at the place or places of payment, such Bonds shall be redeemed.

(b) Any Bonds which have been duly selected for redemption and which are deemed to be paid in accordance with Article XI shall cease to bear interest on the specified redemption date.

(c) Neither the failure of any Holder to receive any notice of redemption nor any defect in any such notice shall affect the validity of the proceedings for such redemption or the cessation of accrual of interest from and after the applicable redemption date as provided herein.

(d) Bonds to be redeemed as provided in Sections 6.01 and 6.02 which are not delivered by the Holder thereof to the Trustee on the date on which such Bonds are to be redeemed shall nonetheless be deemed to have been delivered by the Holder thereof for redemption and to have been redeemed from funds prescribed therefor. If a Bond is redeemed on or after a Record Date but on or prior to the related interest payment date, then any accrued and unpaid interest to the redemption date shall be paid to the Person in whose name such Bond was registered at the close of business on such Record Date, and no additional interest shall be payable to Holders whose Bonds shall be subject to redemption by the Board.

(e) Any moneys which shall not be used to pay the Redemption Price of Bonds shall be held and disposed of by the Trustee in the same manner as prescribed in Section 2.09. The Trustee shall promptly return to the Board any money deposited with the Trustee by the Board in excess of the amounts necessary to pay the redemption or price of, and accrued and unpaid interest on, all Bonds to be redeemed.

Section 6.4. Payment of Redemption Price. For the redemption of any of the Bonds, the Board and the University shall cause to be deposited in the Redemption Account of the Debt Service Fund, an amount sufficient to pay the principal of, premium, if any, and interest due on the Bonds called for redemption on the date fixed for such redemption. The obligation of the Board to cause any such deposit to be made hereunder shall be reduced by the amount of moneys in the Redemption Account of the Debt Service Fund or any Account created pursuant to the provisions of Article XI and available for and used on such redemption date for payment of the principal of and interest (and premium, if any) on the Bonds to be redeemed.

Section 6.5. Partial Redemption of Bonds. Upon surrender of any Bond to be redeemed in part only, the Trustee shall authenticate and deliver to the Holder, at the expense of the Board, a new Bond or Bond of authorized denominations equal in aggregate principal amount to the unredeemed portion of principal of the Bond surrendered, with the same interest rate and the same maturity.

Section 6.6. Selection of Bonds. If less than all of the Outstanding Bonds are to be redeemed, the Trustee shall redeem such Bonds as shall be directed in writing by the Board and the University. If less than all Bonds of a single maturity are to be redeemed, Bonds of that maturity shall be redeemed by lot or such other method as the Trustee in its sole discretion shall deem fair and appropriate or in accordance with the procedures of the Depository; *provided, however,* that the Bonds shall be redeemed only in authorized denominations as set forth in the Supplemental Indenture authorizing such Bonds.

ARTICLE VII.

GENERAL COVENANTS

Section 7.1. Rate Maintenance Covenant; Rules and Adequacy of Charges for Use of Auxiliary Facilities. Pursuant to the provisions of this Section 7.01, the Board covenants that it will establish and maintain, so long as any of the Bonds remain Outstanding, such rules and such rental rates, fees and charges for the use of the Auxiliary Facilities and such rules as are required with respect thereto as shall be necessary to assure maximum occupancy and/or utilization and optimum use of the same and the services afforded thereby, as shall provide and generate sufficient Auxiliary Facilities Gross Pledged Revenues for payment of annual Operation and Maintenance Expenses and, together with the other Pledged Revenues pledged by this Indenture, as shall provide and generate sufficient Pledged Revenues for payment of the Debt Service Requirements on the Bonds Outstanding, to maintain the Debt Service Reserve Fund and the Repair and Replacement Fund in the minimum amounts required by this Indenture, and to make all other payments and charges as are required or permitted under this Indenture. The Board further covenants that, so long as any of Bonds remain Outstanding, there shall be charged against users of services pertaining to uses of the Auxiliary Facilities, such fees, rates and other charges so that the Auxiliary Facilities Gross Pledged Revenues shall be at least sufficient, together with all other Pledged Revenues pledged under this Indenture (and after giving effect to the sale of any Auxiliary Facilities in any Fiscal Year Bonds are Outstanding under this Indenture), to meet the requirements of this Section 7.01 and to pay in each Fiscal Year:

(a) *Operation and Maintenance Expenses.* An amount of Auxiliary Facilities Gross Pledged Revenues equal to the annual Operation and Maintenance Expenses for such Fiscal Year and which are payable from the Auxiliary Facilities Gross Pledged Revenues;

(b) *Principal and Interest on Bonds.* An amount equal to not less than one hundred percent (100%) of the Debt Service Requirements (exclusive of Termination Payments) due and payable on the Bonds payable from the Pledged Revenues in such Fiscal Year (excluding any reserves therefor); and

(c) *Deficiencies.* Any amounts required to meet then existing deficiencies or requirements pertaining to any Fund or Account (including the Termination Account) created under this Indenture relating to the Auxiliary Facilities Gross Pledged Revenues or the Pledged Revenues or any part thereof, and the application thereof or any securities payable therefrom; but the foregoing rate maintenance covenant is subject to compliance by the Board with any legislation of the United States or the State (exclusive of any legislation the subject matter of which is the appropriation of any of the Auxiliary Facilities Gross Pledged Revenues or the Pledged Revenues) or any regulation or other action taken by the federal government or any State agency or political subdivision of the State pursuant to such legislation (exclusive of any legislation the subject matter of which is the appropriation of any of the Auxiliary Facilities Gross Pledged Revenues or the Pledged Revenues), in the exercise of the police power thereof for the public welfare, which legislation (exclusive of any legislation the subject matter of which is the appropriation of any of the Auxiliary Facilities Gross Pledged Revenues or the Pledged Revenues), regulation or action limits or otherwise inhibits the amounts of fees, rates and other charges due to the Board and the University for the use of or otherwise pertaining to all services rendered by the Auxiliary Facilities or to the Auxiliary Facilities Gross Pledged Revenues or to the Pledged Revenues, including, without limitation, increases in the amounts of such charges. All of the Auxiliary Facilities Gross Pledged Revenues including any revenues received from the University or the Board, shall be subject to distribution to the payment of Operation and Maintenance Expenses and then, together with the other Pledged Revenues, to payment of the Debt Service Requirements of the Outstanding Bonds and all other securities payable from the Pledged Revenues, including reasonable reserves therefor, as in this Indenture specifically provided and in the manner specifically set forth and provided in this Indenture.

(d) *Carry Over of Pledged Revenues.* In computing the amount required to meet and comply with the rate maintenance covenant required by the foregoing paragraph (b) of this Section 7.01, and in determining the sufficiency of fees, rates and charges of the Board and the University, there shall be included the amount, if any, of Pledged Revenues, carried over by the Board and the University from the previous Fiscal Year which are required to be deposited and which are actually deposited with the Trustee by the Board and the University, to the Debt Service Fund and which are unconditionally and irrevocably required to be applied by the Trustee to payment of principal and interest on and other amounts, if any, becoming due and payable with respect to, any Bonds payable from Pledged Revenues in the comparable Fiscal Year during which such deposit of excess Pledged Revenues is made by the Board and the University.

Section 7.2. First Lien Bonds; Equality of Lien. The Bonds constitute an irrevocable first lien (but not necessarily an exclusive first lien) upon the Pledged Revenues, and the Board covenants that the Bonds as to their Debt Service Requirements are equally and ratably secured by the first lien created on such Pledged Revenues and shall not be entitled to any priority one over the other in the application of the Pledged Revenues regardless of the time or times of the issuance of Bonds or other such securities, it being the intention of the Board that there shall be no priority

among any Series of Bonds and any such additional parity first lien securities regardless of the fact that they may be actually issued and delivered at different times.

Section 7.3. Additions and Deletions from Auxiliary Facilities Gross Pledged Revenues and Pledged Revenues. The Board reserves the right to include in Auxiliary Facilities Gross Pledged Revenues and Pledged Revenues, at its sole option, in the future, other sources of revenue or income excluded in the definition of Auxiliary Facilities Gross Pledged Revenues or Pledged Revenues. The addition of Auxiliary Facilities Gross Pledged Revenues or Pledged Revenues shall be evidenced by a certificate executed by a University Representative identifying the items to be added.

The Board reserves the right to remove, at its sole option, in the future, any revenues from Pledged Revenues, so long as no more than 10% of the Pledged Revenues (based on the University's most recent audited financial statements) are removed in any Fiscal Year. The removal of Pledged Revenues shall be evidenced by a certificate executed by a University Representative identifying the items to be deleted.

Section 7.4. Payment of Principal and Interest. The Board covenants that it will promptly pay the principal of, premium, if any, and interest on every Bond issued under this Indenture at the place, on the dates, in the manner and from the sources provided herein and in said Bonds according to the true intent and meaning hereof and thereof. The principal, premium, if any, and interest on the Bonds are payable solely from the Pledged Revenues, as the first charge thereon (but not necessarily an exclusive first charge) after payment from the Auxiliary Facilities Gross Pledged Revenues of the Operation and Maintenance Expenses (except to the extent paid out of moneys attributable to Bond proceeds or other Funds created under this Indenture or the income from the temporary investment thereof), which payments are hereby specifically pledged and assigned to the payment thereof in the manner and to the extent specified in this Indenture, and nothing in the Bonds or in this Indenture shall be considered as pledging any other funds or assets of the Board or University for the payment of the Bonds except for the Pledged Revenues pledged for such purpose under this Indenture. The Bonds are not obligations, general, special or otherwise, of the State of Montana, do not constitute a debt, legal, moral or otherwise, of the State of Montana, and are not enforceable against the State of Montana, nor shall payment therefor be enforceable out of any funds of the Board or University other than the Pledged Revenues pledged thereto by this Indenture. This Indenture does not pledge or mortgage any property constituting part of the University other than the Auxiliary Facilities Gross Pledged Revenues and the Pledged Revenues.

The University acknowledges that in order for the Trustee to make funds for such payments immediately available to the Depository on the date they are due, the Board and the University shall ensure the funds for such payments are remitted and made immediately available to the Trustee, no later than 1:00 p.m. Eastern Time on the date they are due to the Depository or its nominee in order for the Trustee to conform to the payment guidelines of the Depository. Funds for such payments received by the Trustee after 1:00 p.m. Eastern Time on the date they are due to the Depository or its nominee may not be assured of timely payment and payment notification to the Depository for subsequent allocation to the Holders.

Section 7.5. List of Holders. The Trustee will keep on file at its Corporate Trust Office a list of the names and addresses of Holders of all Bonds which are from time to time registered on the registration books in the hands of the Trustee as Registrar for the Bonds. At reasonable times and reasonable regulations established by the Trustee, said list may be inspected and copied by the Board or by the Holders (or a designated representative thereof) of 10% or more in principal amount of Bonds then Outstanding, such ownership and the authority of any such designated representative to be evidence to the reasonable satisfaction of the Trustee.

Section 7.6. Designation of Additional Paying Agents. The Board hereby covenants and agrees to cause the necessary arrangements to be made through the Trustee and to be thereafter continued for the designation of alternate Paying Agents, if any, and for the making available of funds hereunder, but only to the extent such funds are made available to the Board from Bond proceeds or other Funds created hereunder or the income from the temporary investment thereof, for the payment of such of the Bonds as shall be presented, when due, at the Corporate Trust Office of the Trustee, or its successor in trust hereunder, or at the Corporate Trust Office of said alternate Paying Agents.

Section 7.7. Payment of Debt Service Requirements and Operation and Maintenance Expenses. Notwithstanding any other provisions of this Indenture, nothing herein shall be construed to prevent the Board from paying all or any part of the Operation and Maintenance Expenses from any funds available to the Board and the University for such purpose, or from depositing any funds available to the Board for such purpose in the Debt Service Fund for the payment of principal of, premium, if any, or interest on any Bonds issued under the provisions of this Indenture or for the redemption of any such Bonds, as such Bonds are made payable by the terms thereof and of this Indenture from the Debt Service Fund.

Section 7.8. Payment of Taxes. The Board covenants that all taxes and assessments or other municipal or governmental charges lawfully levied or assessed upon the Auxiliary Facilities or upon any part thereof or upon any income therefrom will be paid when the same shall become due, that no lien or charge upon the Auxiliary Facilities or any part thereof or upon any of the Auxiliary Facilities Gross Pledged Revenues thereof or upon the Pledged Revenues, except for the lien and charge thereon created under this Indenture and securing Bonds, will be created or permitted to be created ranking equally with or prior to the Bonds (except for the parity lien thereon of Bonds issued from time to time under this Indenture and under Supplemental Indentures hereto and Counterparty Swap Payments, in the manner expressly provided for herein) and that all lawful claims and demands for labor, materials, supplies or other objects which, if unpaid, might by law become a lien upon the Auxiliary Facilities or any part thereof or upon the Auxiliary Facilities Gross Pledged Revenues thereof or upon the Pledged Revenues will be paid or discharged, or adequate provision will be made for the payment or discharge of such claims and demands within 60 days after the same shall accrue; *provided, however*, that nothing in this Section 7.09 shall require any such lien or charge to be paid or discharged or provision made therefor so long as the validity of such lien or charge shall be contested in good faith and by appropriate legal proceedings.

Section 7.9. Insurance. The Board covenants that the Auxiliary Facilities will, to the extent lawfully and reasonably obtainable, be insured and at all times kept insured to the full insurable value thereof, in a responsible insurance company or companies authorized and qualified

under the laws of the State to assume the risks thereof, against physical loss or damage however caused until the Bonds secured hereby and the interest thereon shall have been paid or provision for such payment shall have been made. The proceeds of such insurance shall be available for, and shall to the extent necessary be applied to, the repair, replacement or reconstruction of the damaged or destroyed property, and such proceeds not required for such repair, replacement or reconstruction shall be deposited with the Trustee to the credit of the Debt Service Fund. If the proceeds of such insurance shall not be sufficient, together with other available funds, to provide for the repair, replacement or reconstruction of the damaged or destroyed property to the extent that such property shall be returned substantially to its usefulness prior to such damage or destruction, such proceeds shall be deposited with the Trustee to the credit of the Redemption Account of the Debt Service Fund and shall be applied to redemption of all or part of the Bonds then Outstanding.

The Board further covenants that it will carry or cause to be carried insurance required to be carried by the State for construction contracts, and that any proceeds of such insurance shall be applied to the construction of each Project financed under the provisions of this Indenture.

The Board further covenants that it will carry in a responsible insurance company or companies authorized and qualified under the laws of the State to assume the risks thereof, to the extent lawfully and reasonably obtainable, use and occupancy insurance on all facilities of the University. Such insurance shall be in an amount determined by the Board to be sufficient to provide a normal income therefrom, covering loss of income from any part of such housing facilities and dining facilities by reason of necessary interruption, total or partial, in the use or occupancy thereof resulting from damage to or destruction of any part thereof however caused, with such exceptions as are ordinarily required by insurers carrying similar insurance; *provided, however,* that such insurance shall cover a period of suspension of not less than 12 months and that such insurance may exclude loss during the first seven days of any total or partial interruption of use or occupancy; and *provided, further,* that if at any time the Board shall be unable to obtain such use and occupancy insurance to the extent required by this paragraph, either as to the amount of such insurance or as to the risks covered thereby, it will not constitute an Event of Default under the provisions of this Indenture if the Board shall carry such insurance to the extent reasonably and lawfully obtainable. All policies providing use and occupancy insurance of the University shall be made payable to the University. Any proceeds of use and occupancy insurance shall be deposited by the University in the Revenue Account and applied in accordance with Section 5.01.

The insurance required by this Section 7.10 may be effected under overall blanket umbrella policies of the State or the Board, but all such policies evidencing the insurance coverage required by this Section 7.10 shall be made payable to the University.

Section 7.10. Sale of Facilities. So long as any Bonds remain Outstanding, none of the Auxiliary Facilities shall be sold or otherwise disposed of by the Board or the University unless the proceeds of such sale or disposition shall be applied by the Board for the redemption of Bonds but only in accordance with and to the extent required by the provisions of Section 6.02. The proceeds of any such sale or other disposition if required to be applied to redemption of Bonds

under Section 6.02, shall be deposited to the Redemption Account of the Debt Service Fund and accounted for and applied by the Trustee as required herein.

Section 7.11. Instruments of Further Assurance. The Board and the Trustee mutually covenant that they will, from time to time, each upon the written request of the other, execute and deliver such further instruments and take or cause to be taken such further actions as may be reasonable and as may be required by the other to carry out the purposes of this Indenture; *provided, however,* that no such instruments or action shall involve any personal liability on the Trustee or members of the Board or any official thereof.

Section 7.12. Records and Annual Audit. The Board covenants that it will keep, or will cause the University to keep, accurate records and accounts of (i) all items of cost and of all expenditures relating to Projects financed under this Indenture, (ii) the Auxiliary Facilities Gross Pledged Revenues collected by it, (iii) the Operation and Maintenance Expenses paid by it, (iv) the Pledged Revenues collected by it and (v) the application of the Auxiliary Facilities Gross Pledged Revenues and the Pledged Revenues. The Board further covenants that it will prepare annual financial statements which will be certified by an Independent Accountant and which will be furnished to the Trustee promptly upon its completion. Such audit shall be available for review at the request of the Holders of ten percent (10%) in principal amount of Bonds Outstanding under this Indenture.

ARTICLE VIII.

EVENTS OF DEFAULT; REMEDIES

Section 8.1. Events of Default. Each of the following events is hereby declared an “Event of Default”:

- (a) if payment of any installment of interest on any of the Bonds shall not be made when the same shall become due and payable; or
- (b) if payment of the principal of or the premium, if any, on any of the Bonds shall not be made when the same shall become due and payable, either at maturity or by proceedings for redemption in advance of maturity or through failure to fulfill any payment to any Fund under this Indenture or otherwise; or
- (c) if an order or decree shall be entered, with the consent or acquiescence of the Board or the University, appointing a receiver or custodian for any of the Auxiliary Facilities Gross Pledged Revenues or the Pledged Revenues, or approving a petition filed against the Board or the University seeking reorganization of the Board or the University under the Federal bankruptcy laws or any other similar law or statute of the United States of America or any state thereof, or if any such order or decree, having been entered without the consent or acquiescence of the Board or the University, shall not be vacated or discharged or stayed on appeal within 60 days after the entry thereof; or

(d) if any proceeding shall be instituted, with the consent or acquiescence of the Board or the University, for the purpose of effecting a composition between the Board or the University and its or their creditors or for the purpose of adjusting the claims of such creditors pursuant to any Federal or state statute now or hereafter enacted, if the claims of such creditors are or may be under any circumstances payable from Pledged Revenues; or

(e) if (i) the Board or the University is adjudged insolvent by a court of competent jurisdiction, or (ii) an order, judgment or decree be entered by any court of competent jurisdiction appointing, without the consent of the Board or the University, a receiver, trustee or custodian of the Board or the University or of the whole or any part of its or their property and any of the aforesaid adjudications, orders, judgments or decrees shall not be vacated or set aside or stayed within 60 days from the date of entry thereof; or

(f) if the Board or the University shall file a petition or answer seeking reorganization, relief or any arrangement under the Federal bankruptcy laws or any other similar law or statute of the United States of America or any state thereof; or

(g) if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Board or the University or of the whole or any substantial part of the property of either the Board or the University, and such custody or control shall not be terminated within 60 days from the date of assumption of such custody or control; or

(h) if the Board or the University shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Bonds or in this Indenture on the part of the Board or the University to be performed, other than as set forth above in this Section 8.01, and such Default shall continue for 30 days after written notice specifying such Default and requiring the same to be remedied shall have been given to the Board or the University by the Trustee, which may give such notice in its discretion and shall give such notice at the written request of the Holders of not less than 50% in aggregate principal amount of the Bonds then Outstanding hereunder.

Section 8.2. Remedies; Rights of Holders. Upon the occurrence of an Event of Default, the Trustee may pursue any available remedy by suit at law or in equity to enforce the payment of the principal of, premium, if any, and interest on the Bonds then Outstanding or to enforce any obligations of the Board under this Indenture.

If an Event of Default shall have occurred, and if requested so to do by the Holders of 25% in aggregate principal amount of Bonds then Outstanding and indemnified as provided in Section 9.01(m), the Trustee shall exercise such one or more of the rights and powers conferred by this Section 8.02 as the Trustee, being advised by Counsel, shall deem most expedient in the interests of the Holders.

No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Holders) 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 Holders 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 Event of Default shall impair any such right or power or shall be construed to be a waiver of any 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 expedient.

No waiver of any Event of Default under this Indenture, whether by the Trustee or by the Holders, shall extend to or shall affect any subsequent Event of Default or shall impair any rights or remedies consequent thereon.

Section 8.3. Right of Holders to Direct Proceedings. Anything in this Indenture to the contrary notwithstanding, the Holders 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, the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, 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 Indenture.

Section 8.4. Application of Moneys. All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article XIII 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 and the Board, be deposited in the Debt Service Fund and all moneys so deposited in the Debt Service Fund shall be applied as follows:

(a) Unless the principal of all the Bonds shall have become 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 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 and premium, if any, on 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 of this Indenture), in the order of their due dates, with interest on such Bonds from the respective dates upon which they become 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.

(b) If the principal of all the Bonds shall have become due and payable, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, 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.

Whenever moneys are to be applied pursuant to the provisions of this Section 8.04, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amounts of such moneys available for such 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 an interest 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 paid on such dates shall cease to accrue.

Section 8.5. Remedies Vested in Trustee. All rights of action (including the right to file proof of claims) under this Indenture 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 related 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 Holders of the Bonds, and any recovery of judgment shall be for the equal benefit of the Holders of the Outstanding Bonds.

Section 8.6. Rights and Remedies of Holders. Except as provided in the last sentence of this Section 8.06, no Holder of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture 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 9.01(h), or of which by said subsection it is deemed to have notice, nor unless also such Default shall have become an Event of Default and the Holders of 25% in aggregate principal amount of Bonds then Outstanding shall have made written request to the Trustee and shall have offered 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 9.01 nor unless the Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its, his or their own name or names. 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 Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more Holders of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture 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 Holders of all Bonds then Outstanding. Nothing in this Indenture contained shall, however, affect or impair the right of any Holder to enforce the covenants of the Board to pay the principal of, premium, if any, and interest on each of the Bonds issued hereunder held by such Holder at the time, place, from the source and in the manner in said Bonds expressed.

Section 8.7. Termination of Proceedings. In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver, or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case the Board and the Trustee shall be restored to their former positions and rights under this Indenture, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 8.8. Waivers of Events of Default. The Trustee may in its discretion waive any Event of Default under this Indenture and its consequences and shall do so upon the written request of the Holders of (a) a majority in aggregate principal amount of all the Bonds then Outstanding in respect of which Default in the payment of principal of, premium, if any, or interest exist, or (b) a majority in aggregate principal amount of all Bonds then Outstanding in the case of any other Default, *provided, however,* that there shall not be waived (i) any Event of Default in the payment of the principal of any Bonds at the date of maturity specified therein, or (ii) any 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) at the rate borne by the Bonds in respect of which such Default shall have occurred on overdue installments of interest and all arrears of payments of principal and premium, if any, when due 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 proceedings 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 Board, the Trustee and the Holders 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.

TRUSTEE

Section 9.1. Acceptance of the Trusts. The Board has heretofore appointed and does hereby confirm the appointment of U.S. Bank National Association, as Trustee. The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts and duties hereby created as a corporate trustee ordinarily would perform said trusts, but only upon and subject to the following express terms and conditions, to all of which the Board agrees and the respective Holders agree by their acceptance of the delivery of the Bonds:

- (a) The Trustee, prior to the occurrence of an 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 in this Indenture and no implied covenants, fiduciary or otherwise, or obligations shall be read into this Indenture against the Trustee.

In case an Event of Default has occurred of which the Trustee is deemed to have knowledge as provided in Section 9.01(h) (which has not been cured or waived), the Trustee may exercise such of the rights and powers vested in it by this Indenture (provided that the Trustee shall be required, in case of such Event of Default, to exercise such rights or powers as are mandatorily required to be exercised by the Trustee pursuant to any provisions of this Indenture), and use the same degree of care and skill in their exercise, as a prudent and reasonable Person would exercise or use under the circumstances in the conduct of such Person's own affairs.

(i) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(A) this subsection shall not be construed to limit the effect of subsection (a) of this Section 9.01;

(B) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; and

(C) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of the required percentage (as expressly set forth herein) in principal amount of the Outstanding Bonds relating to the time, method and place of conducting any proceeding, or exercising any trust or power conferred upon the Trustee, under this Indenture.

(b) The Trustee may execute any of the trusts or powers thereof and perform any of its duties by or through attorneys, agents, accountants or receivers and shall not be answerable for the conduct of the same if such appointment is made in accordance with the standard specified herein, and shall be entitled to advice of Counsel concerning all matters of trusts hereof and the duties hereunder, and may in all cases pay and be reimbursed for such reasonable compensation to all such attorneys, agents, accountants and receivers as may reasonably be retained in connection with the trusts hereof. The Trustee may act upon the opinion or advice of Counsel. The Trustee shall not be responsible for the conduct of Counsel appointed by the Trustee if such appointment is made in good faith and without negligence, and the advice of any such Counsel shall be full and complete authorization in respect of any action taken, suffered or omitted hereunder in good faith in reliance upon such opinion or advice.

(c) The Trustee shall not be responsible or liable for the correctness of any recital herein, or in the Bonds (except in respect to the certificate of authentication of the Trustee endorsed on the Bonds), or for insuring the property herein conveyed or collecting any insurance moneys, or for the validity of the execution by the Board of this Indenture or of any additional supplements thereto or instruments of further assurance, or for the

sufficiency of the security for the Bonds issued under this Indenture, or for the value or title of property conveyed by this Indenture, or otherwise as to the maintenance of the security of this Indenture except with respect to the Trustee's obligations expressly set forth in this Indenture; 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 Board or the University; but the Trustee may (but shall have no duty to) require of the Board or the University full information and advice as to the performance of the covenants, conditions and agreements aforesaid and as to the condition of any property conveyed by this Indenture. 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 the provisions of this Indenture.

(d) The Trustee may become the Holder of Bonds secured by this Indenture with the same rights which it would have if not Trustee. The Trustee may buy, sell, own, hold and deal in any of the Bonds authorized to be issued pursuant to this Indenture, and may join in any action which any Holder may be entitled to take with like effect as if the Trustee were not a party to this Indenture. The Trustee, either as principal or agent, may also engage in or be interested in any financial or other transaction with the Board or the University or any successor Trustee, and may act as depository, trustee, or agent for any committee or body of Holders of Bonds or of other obligations of the Board as freely as if it were not the Trustee hereunder.

(e) The Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram, facsimile transmission 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 Indenture upon the request or authority or consent of any Person who at the time of making such request or giving such authority or consent is the Holder of any Bond, shall be conclusive and binding upon all future Holders of the same Bond and of any Bond or Bonds issued in exchange therefor or in place thereof.

(f) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate signed on behalf of the Board, by the Chair and attested by the Commissioner/Secretary as sufficient evidence of the facts therein contained and prior to the occurrence of an Event of Default of which the Trustee has been notified as provided in Section 9.01(h), or of which by said subsection it is deemed to have notice, shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, 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 Chair to the effect that a resolution in the form therein set forth has been adopted by the Board as conclusive evidence that such resolution has been duly adopted and is in full force and effect.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for the exercise of any discretion or power under this Indenture or for anything whatsoever in connection with the trust created hereby, except only for its own negligence or willful misconduct. The Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts. The immunities and exceptions from liability and rights to indemnity of the Trustee shall extend to its officers, directors, employees and agents.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any Event of Default under this Indenture other than an Event of Default under clause (a) or (b) of Section 8.01, unless the Trustee shall be specifically notified in writing addressed to the Corporate Trust Office of the Trustee, of such Event of Default by the Board, the University or by the Holders of at least fifty percent (50%) in the aggregate principal amount of all Bonds then Outstanding and all such notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered at the Corporate Trust Office of the Trustee, and in the absence of such notice so delivered, the Trustee may conclusively assume there is no Event of Default except as aforesaid. The Trustee may (but shall have no duty to), however, at any time, in its discretion, require of the Board and the University full information and advice as to the performance of any of the covenants, conditions and agreements contained herein. Such inquiry shall not, however, for the purposes of this Section 9.01 constitute notice of any Event of Default.

(i) At any and all reasonable times and upon reasonable prior written notice, the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right (but shall have no duty) to fully inspect all books, papers and records of the Board and the University pertaining to the Bonds, the Auxiliary Facilities Gross Pledged Revenues and the Pledged Revenues 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 the said trusts and powers or otherwise in respect of the premises.

(k) Notwithstanding anything elsewhere in this Indenture contained, 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 Indenture, any showing, 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 authentication of any Bonds, the withdrawal of any cash, or the taking of any other action by the Trustee.

(l) All moneys received by the Trustee or any Paying Agent shall, until used or applied or invested as in this Indenture provided, be held in trust for the purposes for which they were received, shall be deposited to the Fund or Account designated for deposit

thereof and need not be segregated from moneys in any other Fund or Account unless otherwise expressly required by law or by the provisions of this Indenture, including, without limitation, the provisions hereof with respect to segregation of amounts deposited to and held in the Rebate Fund. Neither the Trustee nor any Paying Agent shall be under any liability for interest on any moneys received hereunder except such as may be agreed upon.

(m) Before taking any discretionary action referred to in Article IX or in this Section 9.01 or at the request of the Holders, the Trustee may require that a satisfactory indemnity bond (or equivalent security) be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is determined (based on an admission thereof by the Trustee) or adjudicated to have resulted from its negligence or willful misconduct in connection with any such action. No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(n) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of at least twenty-five percent (25%) in principal amount of the Outstanding Bonds relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture.

(o) The Trustee shall not be bound to recognize any Person as Holder of any Bond or to take any action at its request unless such Person is shown as the Holder on the registration books for the Bonds. Any request or direction of the Board or the University mentioned herein shall be sufficiently evidenced by a request or order executed by a Board Representative or a University Representative, as the case may be.

(p) The Trustee shall have no responsibility, opinion or liability with respect to any information, statement or recital in any official statement, offering memorandum or other disclosure material prepared or distributed in connection with any offer or sale of the Bonds.

(q) The Trustee makes no representations as to the validity or sufficiency of the Bonds and shall incur no responsibility in respect thereof, other than in connection with the duties or obligations therein or in the Bonds assigned to or imposed upon it. The Trustee shall not be responsible for the validity or sufficiency of this Indenture. The Trustee shall not be liable for the sufficiency of collection of any revenues or other moneys required to be paid to it under this Indenture (except as otherwise expressly provided in this Indenture), or its right to receive moneys pursuant to this Indenture.

(r) In accepting the trusts hereby created, the Trustee acts solely as Trustee for the Holders and not in its individual capacity and all Persons, including, without limitation, the Holders, the Board and the University, having claim against the Trustee arising from this Indenture shall look only to the Funds and Accounts held by the Trustee hereunder for such payment except as otherwise provided herein (including within such exception the provisions hereof relating to the Rebate Fund). Under no circumstances shall the Trustee be liable in its individual capacity for the obligations evidenced by the Bonds. The Trustee shall not be accountable for the use or application by the Board or the University or any other party of any funds which the Trustee has released in accordance with the terms of this Indenture.

Section 9.2. Fees, Charges and Expenses of Trustee. The Trustee shall be entitled to payment and reimbursement for reasonable fees for its services rendered as Trustee under this Indenture and all advances, Counsel fees and other expenses reasonably and necessarily made or incurred by the Trustee in connection with such services. The Trustee shall be entitled to payment and reimbursement for the reasonable fees and charges of the Trustee as Paying Agent and Registrar for the Bonds as in this Indenture provided. The Trustee shall have a lien upon the Auxiliary Facilities Gross Pledged Revenues and the Pledged Revenues to secure payment by the Board of the Trustee's fees and expenses payable with respect to this Indenture, which lien shall be junior to the lien of the Bonds, *provided* that upon an Event of Default, but only upon an Event of Default, the Trustee shall have a lien on the Auxiliary Facilities Gross Pledged Revenues and Pledged Revenues and the right to payment of such fees and expenses prior to payment on account of interest or principal of, or premium, if any, on any Bond for the foregoing advances, fees, costs and expenses incurred.

Section 9.3. Action by Trustee. Except as otherwise expressly provided herein, the Trustee shall be under no obligation to take any action in respect of any Event of Default hereunder or toward the execution or enforcement of any of the trusts hereby created, or to institute, appear in or defend any suit or other proceeding in connection therewith, unless requested in writing so to do by the Holder of at least twenty-five percent (25%) in principal amount of the Bonds then Outstanding and, if in its opinion such action may tend to involve it in expense or liability, unless furnished, from time to time as often as it may require, with security and indemnity satisfactory to it as provided in Section 9.01(m). The Board further agrees, to the extent permitted by law, to indemnify and save the Trustee harmless against any liabilities which it may incur in the exercise and performance of its powers and duties hereunder and under any related documents, including the enforcement of any remedies and the defense of any suit, and which are not due to its negligence or its willful misconduct, including, without limitation, to indemnify and save the Trustee, its officers, employees, directors and agents harmless from and against all claims, losses, costs, expenses, liability and damages, including legal fees and expenses, arising out of (i) the use, maintenance, condition or management of, or from any work or thing done on, any Projects by the Board or the University, (ii) any breach or default on the part of the Board or the University in the performance of any of their respective obligations under this Indenture and any other agreement made and entered into for purposes of any Projects, (iii) any act of the Board or the University or of any of their respective agents, contractors, servants, employees or licensees with respect to any Projects, (iv) any act of any assignee of, or purchaser from the Board or the University or of any of its or their respective agents, contractors, servants, employees or licensees with respect to any

Projects, (v) the acquisition, construction, installation and equipping of any Projects or the authorization of payment of delivery costs or acquisition and construction costs, (vi) the actions of any other party, including but not limited to, the ownership, operation or use of any Projects by the Board or the University, (vii) the Trustee's exercise and performance of its powers and duties hereunder, (viii) the offering and sale of any Series of Bonds or (ix) any untrue statement or alleged untrue statement of any material fact, or omission or alleged omission to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, in any official statement or other offering circular utilized in connection with the sale of any Series of Bonds. Such indemnification shall include the costs and expenses of defending against any claim of liability arising under this Indenture. The duty of the Board to indemnify the Trustee and related parties hereunder and the right of the Trustee and such related parties to compensation and reimbursement therefor shall survive the termination and discharge of this Indenture or the defeasance of all Outstanding Bonds pursuant to Article XI. None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

Section 9.4. Good Faith Reliance. The Trustee shall be protected and shall incur no liability in acting or proceeding in good faith upon any resolution, notice, telegram, telex or facsimile transmission, request, consent, waiver, certificate, statement, affidavit, voucher, bond requisition or other paper or document which it shall in good faith believe to be genuine and to have been passed or signed by the proper board, body or Person or to have been prepared and furnished pursuant to any of the provisions of this Indenture or upon the written opinion of any attorney, engineer, accountant or other expert believed by the Trustee to be qualified in relation to the subject matter, and the Trustee shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements. The Trustee shall not be bound to recognize any Person as a Holder or to take any action at such Person's request unless such Person is shown as Holder on the registration books.

Section 9.5. Dealings in Bonds. The Trustee, in its individual capacity, may in good faith buy, sell, own, hold and deal in any of the Bonds issued hereunder, and may join in any action which any Holder may be entitled to take with like effect as if it did not act in any capacity hereunder. The Trustee, in its individual capacity, either as principal or agent, may also engage in or be interested in any financial or other transaction with the Board, and may act as depository, trustee or agent for any committee or body of Holders secured hereby or other obligations of the Board as freely as if it did not act in any capacity hereunder.

Section 9.6. Several Capacities. Anything in this Indenture to the contrary notwithstanding, the same entity may serve hereunder as the Trustee and in the capacities of Registrar and Paying Agent for the Bonds, and in any other combination of such capacities, to the extent permitted by law.

Section 9.7. Standard of Care. Notwithstanding any other provisions of this Article IX, the Trustee shall, during the existence of an Event of Default, of which the Trustee has notice as provided in Section 9.01(h), exercise such of rights and powers vested in it by this Indenture and

use the same degree of skill and care in their exercise as a prudent and reasonable Person would use and exercise under the circumstances in the conduct of its own affairs.

Section 9.8. Notice to Holders If Default Occurs. If a Default occurs of which the Trustee is by Section 9.01(h) required to take notice or if notice of Default be given as in said subsection (h) provided, then the Trustee shall give written notice thereof by registered or certified mail to the Holders of all Bonds then Outstanding shown by the list of Holders kept by the Trustee as Registrar.

Section 9.9. Intervention by Trustee. In any judicial proceeding to which the Board is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of Holders, the Trustee may, upon receipt of indemnity satisfactory to it, intervene on behalf of Holders and shall do so upon receipt of such indemnity if requested in writing by the Holders of at least twenty-five percent (25%) in aggregate principal amount of all Bonds then Outstanding. The rights and obligations of the Trustee under this Section 9.09 are subject to the approval of a court of competent jurisdiction.

Section 9.10. Successor Trustee by Merger or Consolidation. Any corporation or association into which a Trustee hereunder may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate 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 such Trustee is a party, *ipso facto*, shall be and become successor Trustee under this Indenture, and shall be vested with all of the title to the whole property or trust estate and all the trusts, powers, discretion, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any paper or instrument or any further act, deed or conveyance or agreement on the part of any of the parties hereto, anything in this Indenture to the contrary notwithstanding.

Section 9.11. Resignation by the Trustee. The Trustee and any successor Trustee hereunder from time to time may at any time resign and be discharged from the trusts created by this Indenture by executing any instrument in writing resigning such trust and specifying the proposed date when such resignation shall take effect, and filing the same with the Board and the University not less than 30 days before the date specified in such instrument when such resignation shall take effect, and by giving notice of such resignation by mail, not less than three weeks prior to such resignation date, to all Holders of Bonds. Any resignation by the Trustee or any successor Trustee hereunder shall only take effect upon the appointment of, and acceptance of the trusts hereby created by a successor Trustee.

Section 9.12. Removal of the Trustee. Provided that no Event of Default shall have occurred and be continuing, the Trustee may be removed upon 30 days written notice by the filing of an instrument or instruments in writing, with the Trustee so removed, executed by the Board, which instrument or instruments shall appoint a successor, or an instrument or instruments in writing executed by the Board, consenting to the appointment by the Board of a successor and accompanied by an instrument of appointment by the Board of such successor. The removal of the Trustee or a successor Trustee pursuant to the provisions of this Section 9.12 shall only take effect upon the appointment of, and acceptance of the trusts hereby created by, a successor Trustee.

Section 9.13. Judicial Appointment of Successor 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 its property or affairs shall be taken under the control of any state or federal court or administrative body, or of a receiver appointed by a court, and a successor thereto shall not have been appointed by the Board in the manner provided by Section 9.12 within thirty (30) days after the creation of such vacancy, the resigning Trustee or any Holder (on behalf of himself and all other Holders) may forthwith apply to a court of competent jurisdiction for the appointment of a successor Trustee. Such court may thereupon, after such notice, if any, as it may deem necessary and proper, appoint a successor Trustee.

Section 9.14. Qualifications of Successor Trustee. Every successor Trustee (a) shall be a national or state bank or trust company that is authorized by law to perform all the duties imposed upon it by this Indenture, (b) shall have a combined capital stock, surplus and retained earnings of at least \$100,000,000, and (c) shall be permitted under State or federal law to perform the duties of Trustee, if there can be located, with reasonable effort, such an institution willing and able to accept the trust on reasonable and customary terms. If at any time a successor Trustee shall cease to be eligible in accordance with this Section 9.14, such successor Trustee shall resign immediately in the manner and with the effect specified in this section.

Section 9.15. Provisions Concerning Any Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Board an instrument in writing accepting such appointment hereunder, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor in trust hereunder. Such predecessor shall, on the written request of the successor Trustee, execute and deliver an instrument transferring to such successor Trustee all the estates, properties, rights, powers and trusts of such predecessor under this Indenture; and, subject to the provisions of Section 9.02, every predecessor Trustee shall deliver all securities and moneys held by it as Trustee under this Indenture to its successor. Should any instrument in writing from the Board be required by any successor Trustee for more fully and certainly vesting in such successor the estates, properties, rights, powers and duties hereby vested or intended to be vested in such successor Trustee, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Board. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor under this Indenture, together with all other instruments provided for in this Article IX, shall be filed and/or recorded by the successor Trustee in each recording office, if any, where this Indenture shall have been filed and/or recorded.

Section 9.16. Trust Estate May Be Vested in Separate or Co-Trustee. It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the laws of the State) denying or restricting the right of the banking corporations, associations or trust companies to transact business as Trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture, and in particular in case of the enforcement of remedies on Default, or in case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights, or remedies herein granted to the Trustee or hold title to the Trust Estate, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an additional individual or

institution as a separate or co-trustee. The following provisions of this Section 9.16 are adapted to these ends.

In the event that the Trustee appoints an additional Person as a separate or co-trustee, each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in such separate or co-trustee, but only to the extent necessary to enable the separate or co-trustee to exercise such powers, rights, and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or co-trustee shall run to and be enforceable by either of them.

Should any deed, conveyance or instrument in writing from the Board be required by the separate trustee or co-trustee, so appointed by the Trustee for more fully and certainly vesting in and confirming to it such properties, rights, powers, trust, duties and obligations any and all such deeds, conveyances and instruments in writing shall, on request of such trustee or co-trustee, be executed, acknowledged and delivered by the Board. In case any separate trustee or co-trustee, or a successor to either, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate trustee or co-trustee so far as permitted by law shall vest in and be exercised by the Trustee until the appointment of a new trustee or a successor to such separate trustee or co-trustee.

Section 9.17. Trustee Protected in Relying Upon Resolution, Etc. The resolutions, opinions, certificates and other instruments provided for in this Indenture 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 release of property and the withdrawal of cash hereunder.

Section 9.18. Successor Trustee as Trustee of Funds, Paying Agent and Registrar. In the event of a change in the office of Trustee, the predecessor Trustee which has resigned or been removed shall cease to be Trustee of the Construction Fund, the Debt Service Fund, the Debt Service Revenue Account, the Repair and Replacement Fund and the Rebate Fund and any other Funds and Accounts provided hereunder and shall cease to be Registrar for the Bonds and Paying Agent for payment of principal of, premium, if any, and interest on the Bonds, and the successor Trustee shall become such Trustee, Registrar and Paying Agent for the Bonds unless a separate Registrar or Paying Agent shall have been appointed.

Section 9.19. Accounting.

(a) The Trustee shall render an annual accounting for each Fiscal Year accounting period ending on June 30, which accounting shall be submitted by the following September 30 to the Board and the University, showing in reasonable detail all financial transactions relating to the Trust Estate during the accounting period and made by the Trustee, and the balance in any Funds or Accounts created by this Indenture as of the beginning and close of such accounting period. On or before September 30 of each calendar year, the Trustee shall provide, upon request, to the Board or the University, and its or their independent auditors, representations as to the accuracy of the

facts contained in the financial reports that were delivered by the Trustee for the Fiscal Year just ended.

(b) The Trustee also agrees, as part of its normal and customary trust services under this Indenture, for each investment of amounts held with respect to the Bonds in the Construction Fund, Debt Service Fund, Debt Service Reserve Fund and Rebate Fund, that the Trustee shall record the purchase date of such investment, its purchase price, the accrued interest due on its purchase date, its face amount, its coupon rate, the frequency of its interest payment, its disposition price, accrued interest due on its disposition date and its disposition date, and that such information will be provided in the normal monthly statements furnished by the Trustee to the Board.

ARTICLE X.

SUPPLEMENTAL INDENTURES

Section 10.1. Supplemental Indentures Not Requiring Consent of Holders. The Board and the Trustee may, without the consent of, or notice to, any of the Holders, enter into an indenture or indentures supplemental to this Indenture for any one or more of the following purposes:

- (a) To provide for the issuance of Bonds in accordance with Section 2.06;
- (b) To cure any ambiguity or formal defect omission, defective provision or inconsistency in this Indenture or to clarify any questions arising under this Indenture which the Board or the Trustee may deem necessary or desirable and not inconsistent with the provisions of this Indenture, so long as such amendments are not prejudicial or materially adverse to the interests of the Holders or the Trustee;
- (c) To grant to or confer upon the Trustee for the benefit of the Holders any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Holders or any of them;
- (d) To confirm, as further assurance, any pledge of or lien on the Auxiliary Facilities Gross Pledged Revenues or the Pledged Revenues or any other moneys, securities or funds subject to the lien of this Indenture or to subject to this Indenture additional Auxiliary Facilities Gross Pledged Revenues, Pledged Revenues or other revenues, properties, collateral or security;
- (e) To make any other change to or to modify, alter, amend or supplement this Indenture in any other respect which is not prejudicial or materially adverse to the interests of the Holders or of the Trustee;
- (g) To evidence the appointment of a new Trustee and in connection therewith to change any times of day specified herein by which any action must be taken; and

(h) To modify, eliminate or add to the provisions of this Indenture to such extent as shall be necessary to effect the qualification of this Indenture under the Trust Indenture Act of 1939, as amended, or the registration of the Bonds under the Securities Act of 1933, as amended, or under any similar federal statute hereafter enacted, or to permit the qualification of Bonds for sale under the securities laws of the United States or any state of the United States.

Section 10.2. Supplemental Indentures Requiring Consent of Holders, Waivers and Consents of Holders. Exclusive of Supplemental Indentures covered by Section 10.01 hereof and subject to the terms and provisions contained in this Section 10.02, and not otherwise, the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to (i) consent to and approve the execution by the Board and the Trustee of such other indenture or indentures supplemental to this Indenture as shall be deemed necessary and desirable by the Board for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any Supplemental Indenture, or (ii) waive or consent to the taking by the Board of any action prohibited, or the omission by the Board of the taking of any action required, by any of the provisions of this Indenture or of any indenture supplemental hereto; *provided, however*, that nothing in this Section 10.02 contained shall permit or be construed as permitting an extension of the stated maturity or reduction in the principal amount of, or reduction in the rate of or extension of the time of paying of interest of, or reduction of any premium payable on the redemption of, any Bond, without the consent of the Holder of such Bond, or (b) a reduction in the amount or extension of the time of any payment required by any Fund established under this Indenture applicable to any Bonds without the consent of the Holders of all the Bonds which would be affected by the action to be taken, or (c) a reduction in the aforesaid aggregate principal amount of Bonds, the Holders of which are required to consent to any such waiver or Supplemental Indenture. In addition, no supplement to this Indenture shall modify the rights, duties or immunities of the Trustee, without the written consent of the Trustee.

If at any time the Board shall request the Trustee to enter into any Supplemental Indenture for any of the purposes of this Section 10.02, the Trustee shall cause notice of the proposed Supplemental Indenture to be given by mail to all Holders of Outstanding Bonds. Such notice shall briefly set forth the nature of and shall contain a summary of the provisions of the proposed Supplemental Indenture and shall state that a copy thereof is on file at the Corporate Trust Office of the Trustee for inspection by all Holders.

The Board and the Trustee may enter into such Supplemental Indenture in substantially the same form described in such notice, but only if there shall have first been delivered to the Trustee an officer's certificate of a Board Representative and an opinion of Bond Counsel stating that such Supplemental Indenture is authorized or permitted by this Indenture and the Constitution and applicable laws of the State, complies with their respective terms and, upon the execution and delivery thereof, will be valid and binding upon the Board in accordance with its terms and will not adversely affect the exemption of the Bonds from registration under the Securities Act of 1933, as amended, or this Indenture from qualification under the Trust Indenture Act of 1939, as amended.

If Holders of not less than the percentage of Bonds required by this Section 10.02 shall have consented to and approved the execution and delivery of a Supplemental Indenture as herein provided, no Holder shall have any right to object to the execution and delivery of such Supplemental Indenture, or 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 and delivery thereof, or to enjoin or restrain the Board or the Trustee from executing and delivering the same or from taking any action pursuant to the provisions thereof.

Section 10.3. Opinion of Bond Counsel. The Trustee may obtain an opinion of Bond Counsel that any such Supplemental Indenture entered into by the Authority and the Trustee complies with the provisions of this Article X and the Trustee shall be conclusively entitled to rely upon any such opinion.

Section 10.4. Effect of Supplemental Indenture. Upon the execution and delivery of any Supplemental Indenture pursuant to the provisions of this Article X, this Indenture shall be, and be deemed to be, modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Board, the University, the Trustee and all Holders of Outstanding Bonds shall thereafter be determined, exercised and enforced under this Indenture subject in all respects to such modifications and amendments.

ARTICLE XI.

DISCHARGE OF INDENTURE

If the Board shall pay or cause to be paid, or there shall be otherwise paid or provision for payment made, to or for the Holders of the Bonds, the principal of and interest due or to become due thereon at the times and in the manner stipulated therein, and shall pay or cause to be paid to the Trustee all sums of moneys due or to become due according to the provisions hereof, then these presents and the estate and rights hereby granted shall cease, determine and be void, whereupon the Trustee shall cancel and discharge the lien of this Indenture, and release, assign and deliver unto the Board any and all the estate, right, title and interest in and to any and all rights assigned or pledged to the Trustee, held by the Trustee, or otherwise subject to the lien of this Indenture, except moneys or securities held by the Trustee for the payment of the principal of and interest on the Bonds.

Any Bond shall be deemed to be paid within the meaning of this Article XI when payment of the principal of such Bond, plus interest thereon to the due date thereof (whether such due date be by reason of maturity or upon redemption as provided in this Indenture, or otherwise), either (a) shall have been made or caused to have been made in accordance with the terms thereof, or (b) shall have been provided by irrevocably depositing with or for the benefit of the Trustee, in trust and irrevocably setting aside exclusively for such payment, (i) moneys sufficient to make such payment and/or (ii) Governmental Obligations, maturing as to principal and interest in such amount and at such times (at not subject to early redemption prior to the respective maturities of such Governmental Obligations) as will insure the availability of sufficient moneys to make such payment, and all necessary and proper fees, compensation and expenses of the Trustee and the Paying Agent with respect to which such deposit is made shall have been paid or the payment

thereof provided for to the satisfaction of the Trustee. At such times as a Bond shall be deemed to be paid hereunder, as aforesaid, it shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of any such payment from such moneys and/or Governmental Obligations.

Notwithstanding the foregoing, in the case of Bonds, which by their terms may be redeemed prior to their stated maturity, no deposit under the immediately preceding paragraph shall be deemed a payment of such Bonds as aforesaid until the Board shall have given the Trustee, in form satisfactory to the Trustee, irrevocable instructions:

(i) stating the date when the principal of each such Bond is to be paid, whether at maturity or on a redemption date (which shall be any redemption date permitted by this Indenture);

(ii) to instruct the Trustee to call for redemption pursuant to this Indenture any Bonds to be redeemed prior to maturity pursuant to (i) hereof; and

(iii) to instruct the Trustee to publish and/or mail, as soon as practicable, in the manner prescribed by Article III, a notice to the Holders of such Bonds that the deposit required by this Article XI has been made (or, in the case of a conditional notice of redemption, the date on which such deposit is expected to be made) with the Trustee and that such Bonds are deemed to have been paid in accordance with this Article XI and stating the maturity or redemption date upon which moneys are to be available for the payment of the principal or Redemption Price, if applicable, on said Bonds as specified in (i) hereof.

Any moneys so deposited with the Trustee as provided in this Article XI may at the direction of Board also be invested and reinvested in Governmental Obligations, maturing in the amounts and times as hereinbefore set forth, and all income from all Governmental Obligations in the hands of the Trustee pursuant to this Article XI which is not required for the payment of the Bonds and interest thereon with respect to which such moneys shall have been so deposited, shall be deposited in the Debt Service Fund as and when realized and collected for use and application as are other moneys deposited in the Debt Service Fund.

With respect to any deposit under this Article XI for the purpose of discharging Tax-Exempt Bonds, no such deposit shall be made or accepted and no use made of any such deposit unless Trustee shall have received an opinion of Bond Counsel to the effect that such deposit and use would not cause such Tax-Exempt Bonds to be treated as arbitrage bonds within the meaning of Section 148 of the Code or in any manner cause the interest on such Tax-Exempt Bonds to become includable in the gross income of the recipients thereof for purposes of federal income taxation.

Notwithstanding any provision of any other article of this Indenture which may be contrary to the provisions of this Article XI, all moneys and/or Governmental Obligations set aside and held in trust pursuant to the provisions of this Article XII for the payment of Bonds (including interest thereon) shall be applied to and used solely for the payment of the particular Bonds (including

interest thereon) with respect to which such moneys or Governmental Obligations have been so set aside in trust.

Anything in Article IX hereof to the contrary notwithstanding, if moneys and/or Governmental Obligations have been deposited or set aside with the Trustee pursuant to this Article XI for the payment of Bonds and such Bonds shall not have in fact been actually paid in full, no amendment to the provisions of this Article XI shall be made without the consent of the Holder of each Bond affected thereby.

ARTICLE XII.

MISCELLANEOUS

Section 12.1. Consents, Etc., of Holders. Any consent, request, direction, approval, objection or other instrument required by this Indenture to be executed by the Holders may be in any number of concurrent writings of similar tenor and may be executed by the Holders in Person or by agent appointed in writing. Proof of the execution of any such consent, request, direction, approval, objection or other instrument in the writing appointing any such agent, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken under such request or 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 has power to take acknowledgments within such jurisdiction that the Person signing such writing acknowledged before him the execution thereof, or by affidavit of any witness to such execution.

Section 12.2. Limitation of Rights. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to confer upon or to give or grant to any Person other than the parties hereto and the Holders of the Bonds, any legal or equitable right, remedy or claim under or in respect to or by reason of this Indenture or any covenants, conditions and provisions contained in this Indenture and all of the covenants, conditions, stipulations, promises, agreements and provisions of this Indenture are intended to be and shall be for the sole and exclusive benefit of the parties hereto and the Holders of the Bonds as herein provided.

Section 12.3. Severability. If any provision of this Indenture shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or the Constitution or applicable laws of the State, or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or sections in this Indenture contained shall not affect the remaining portions of this Indenture, or any part thereof.

Section 12.4. Notices. It shall be sufficient service of any notice, request, complaint, demand or other paper on the Board if the same shall be duly mailed by registered or certified mail addressed to it at 560 North Park Avenue, Helena, Montana 59620-3201, Attention: Commissioner of Higher Education, or to such address as the Board may from time to time file with the Trustee, and to the University at Main Hall, Room 129, Missoula, Montana 59812, Attention: Vice President for Administration and Finance. It shall be sufficient service of any notice or other paper on the Trustee if the same shall be duly mailed by registered or certified mail addressed to its Corporate Trust Office or to such other address as the Trustee may from time to time file with the Board and the University.

Any notice or communication to a Holder shall be mailed by first-class mail (or equivalent) or by nationally recognized overnight air courier guaranteeing next day delivery to its address shown on the registration books maintained pursuant to Section 2.08 or by such other delivery system as the Trustee deems acceptable and shall be deemed to be sufficiently given if so sent within the time prescribed. Failure to send a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. Any written notice or communication that is delivered in person or mailed by first-class (or equivalent) mail to the designated address will be deemed duly given, regardless of whether the addressee receives such notice. Any notice or communication to Depository as Holder shall be given pursuant to the standing instructions from the Depository, including by electronic mail in accordance with accepted practices or procedures at the Depository.

Section 12.5. Counterparts. This Indenture 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 12.6. Applicable Law. This Indenture shall be governed exclusively by the Constitution and applicable laws of the State.

Section 12.7. Immunity of Regents and Officers. No recourse shall be had for the payment of the principal of or premium or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement in this Indenture contained against any past, present or future Regent officer, or other public official, employee, or agent of the Board or the University, or any incorporator, officer, or other public official, employee or agent of any successor body, agency or instrumentality of the State, as such, either directly or through the Board, the University or any such successor body, agency or instrumentality of the State, 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, officer, or other public official, employee or agent as such is hereby expressly waived and released as a condition of and in consideration for the execution of this Indenture and issuance of such Bonds.

Section 12.8. Holidays. If any date for the payment of principal or interest on the Bonds is a day on which banking institutions in the State of Montana are permitted to remain closed throughout (a "Holiday"), then such payment shall be due on the first day thereafter which is not a Holiday and no interest shall accrue for the period between such Holiday and such first day thereafter.

IN WITNESS WHEREOF, The Board of Regents of Higher Education for the State of Montana has caused these presents to be signed in its name and behalf by its Chair and its corporate seal to be hereunto affixed and attested by its Secretary, and to evidence its acceptance of the trusts hereby created, U.S. Bank National Association, as Trustee, has caused these presents to be signed in its name and behalf by one of its duly authorized officers, all as of the day and year first above written.

THE BOARD OF REGENTS OF HIGHER
EDUCATION FOR THE STATE OF
MONTANA

By _____

Chair

(SEAL)

ATTEST:

By _____

Commissioner/Secretary

U.S. BANK NATIONAL ASSOCIATION, as
Trustee

By _____

Title:

EXHIBIT A

[FORM OF BOND]

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

REGISTERED

REGISTERED

Number R-____

\$_____

**UNITED STATES OF AMERICA
STATE OF MONTANA**

**THE BOARD OF REGENTS OF HIGHER EDUCATION
THE UNIVERSITY OF MONTANA
[GENERAL REVENUE] [REFUNDING] BONDS
SERIES [____]**

INTEREST RATE ____%	MATURITY DATE	ISSUE DATE	CUSIP
-------------------------------	------------------	---------------	-------

Registered Owner:

Principal Amount:----- DOLLARS -----

THE BOARD OF REGENTS OF HIGHER EDUCATION FOR THE STATE OF MONTANA (the “Board”), a public body corporate and instrumentality duly created, organized and existing under and by virtue of the Constitution of the State of Montana, for value received, hereby promises to pay, solely from the special fund or funds specified herein, but without obligation otherwise, in lawful money of the United States of America, to the Registered Owner hereof identified above, or registered assigns as hereinafter provided, on the maturity date identified above, unless this Bond shall be redeemable and shall have previously been called for redemption and payment of the Redemption Price shall have been made or provided for, upon the surrender of this Bond, the principal amount identified above, and further promises to pay interest on such principal amount in like money, but solely from said special fund or funds, such interest to accrue from the Issue Date hereof, at the interest rate per annum set forth above, payable on each May 15 and

November 15, commencing [____], until payment of such principal amount, or provision therefor, shall have been made upon redemption or at maturity. The principal of this Bond is payable upon surrender hereof at the Corporate Trust Office of U.S. Bank National Association (the “Trustee”), in Seattle Washington, or at the Corporate Trust Office of any successor Paying Agent appointed under the Indenture (defined below). Interest on this Bond is payable on any interest payment date to the Registered Owner hereof as of the close of business on the fifteenth day next preceding such interest payment date (the “Record Date”) (whether or not a Business Day) and shall be paid by check or draft mailed to the Registered Owner at its address as it appears on the registration books of the Board maintained by the Trustee. If this Bond is held by a Depository, principal of, premium, if any, and interest hereon shall be payable by wire transfer of immediately available funds to the account of the Depository or its nominee in accordance with the procedures of such Depository. Interest on this Bond shall be computed on the basis of a year of 360 days consisting of twelve 30-day months.

This Bond is a special obligation of the Board and is one of the State of Montana, The Board of Regents of Higher Education, The University of Montana, [General Revenue] [Refunding] Bonds, Series [____] (the “Series [____] Bonds”) issued on behalf of the University of Montana (the “University”) in the aggregate principal amount of \$[____], pursuant to Article X, Section 9 of the Constitution of the State of Montana and the Indenture of Trust dated as of [____], 2019, between the Board and the Trustee (as heretofore and hereafter amended, supplemented and restated (the “Indenture”), including pursuant to a Series [____] Supplemental Indenture of Trust with respect to the [____] Bonds, dated as of [____] (the “Series [____] Supplemental Indenture”) between the Board and the Trustee), for the purpose of [____].

Capitalized terms used but not defined herein have the meanings assigned to such terms in the Indenture.

The Series [____] Bonds are special limited obligations of the Board, secured by a first lien on and payable solely from Pledged Revenues and certain other funds pledged and assigned by the Board under the Indenture, equally and ratably with all other Outstanding Bonds, Additional Bonds and other parity obligations. The Registered Owner hereof may not look to any general or other fund of the Board or the University for the payment of the Series [____] Bonds except the special funds pledged therefor under the Indenture. Additional Bonds and other parity obligations may be issued from time to time pursuant to, and subject to the conditions provided in, the Indenture.

To the extent and in the respects permitted by the Indenture, the Indenture and any Supplemental Indenture may be modified or amended by action of the Board taken in the manner and subject to the conditions and exceptions prescribed therein.

Reference is made to the Indenture for a description of the nature and extent of the security, the rights, duties and obligations of the Board and the Trustee, the rights of the Registered Owners of the Series [____] Bonds, the provisions governing the issuance of Additional Bonds and the terms on which the Series [____] Bonds are or may be issued and secured thereunder, all the provisions of which the Registered Owner hereof by the acceptance of this Bond assents.

This Bond is transferable, as provided in the Indenture, only upon the registration books of the Board maintained by the Trustee, by the Registered Owner hereof in person or by his attorney duly authorized in writing, upon surrender hereof together with a written instrument of transfer in a form approved by the Trustee, duly executed by the Registered Owner or his duly authorized attorney, and thereupon the Board shall issue in the name of the transferee a new registered Series [_____] Bond or Bonds of the same aggregate principal amount, series designation and maturity as the surrendered Series [_____] Bond, all as provided in the Indenture and upon the payment of the charges therein prescribed. The Board, the Trustee and any Paying Agent may treat and consider the person in whose name this Series [_____] Bond is registered as the holder and absolute owner hereof for the purpose of receiving payment of, or on account of, the principal hereof and interest due hereon and for all other purposes whatsoever.

The Series [_____] Bonds maturing on and after [_____] are subject to optional redemption prior to maturity, at the option of the Board, on any date on or after [_____] , in whole or in part, at a Redemption Price equal to the principal amount of Series [_____] Bonds being redeemed, plus accrued interest to the redemption date, without premium.

The Series [_____] Bonds maturing on [_____] and [_____] shall be subject to redemption in part by operation of sinking fund installments, at a redemption price equal to 100% of the principal amount of the Series [_____] Bonds to be redeemed, together with accrued interest to the date of redemption, on the dates and in the mandatory redemption amounts as follows:

<u>[_____] Term Bond</u>	
<u>[_____]</u> of the Year	Mandatory Redemption Amount

*Stated maturity.

<u>[_____] Term Bond</u>	
<u>[_____]</u> of the Year	Mandatory Redemption Amount

*Stated maturity.

In the event that part, but not all, of the Series [_____] Bonds that are subject to mandatory sinking fund redemption are optionally redeemed prior to maturity, the redemption price shall be credited to such sinking fund installments as the Board may direct.

No recourse shall be had for the payment of the principal of or premium or interest on any of the Series [____] Bonds or for any claim based thereon or upon any obligation, covenant or agreement in the Indenture contained against any past, present or future Regent officer, or other public official, employee or agent of the Board or the University, or any incorporator, officer, or other public official, employee or agent of any successor body, agency or instrumentality of the State of Montana, as such, either directly or through the Board, the University or any such successor body, agency or instrumentality of the State of Montana, 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, officer, or other public official, employee or agent as such is hereby expressly waived and released as a condition of and in consideration for the execution of the Indenture and issuance of the Series [____] Bonds.

It is hereby certified and recited that all conditions, acts and things required by the Constitution of the State of Montana or the Indenture to exist, to have happened or to have been performed precedent to or in the issuance of this Series [____] Bond exist, have happened and have been performed and that the issue of the Series [____] Bonds is within every limit prescribed by said Constitution.

This Bond shall not be valid until the Certificate of Authentication hereon shall have been manually signed by the Trustee.

IN WITNESS WHEREOF, THE BOARD OF REGENTS OF HIGHER EDUCATION FOR THE STATE OF MONTANA has caused this Series [_____] Bond to be executed in its name and on its behalf by its Chair, and its corporate seal to be imprinted hereon, and attested to by the Commissioner/Secretary, all as of the date set forth below.

THE BOARD OF REGENTS OF HIGHER EDUCATION
FOR THE STATE OF MONTANA

By _____
Chair

[SEAL]

ATTEST:

By _____
Commissioner/Secretary

[FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION]

This Bond is one of the Bonds described in the within mentioned Indenture and is one of the State of Montana, The Board of Regents of Higher Education, the University of Montana, [General Revenue] [Refunding] Bonds, Series [_____].

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By _____
Authorized Signature

Date of registration and authentication: _____.

[FORM OF ASSIGNMENT]

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

TEN COM	—	as tenants in common	UNIF TRANS MIN ACT—
TEN ENT	—	as tenants by the entirety	_____ Custodian _____
JT TEN	—	as joint tenants with right of survivorship and not as tenants in common	(Cust) (Minor) under Uniform Transfer to Minors Act of _____ (State)

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

FOR VALUE RECEIVED _____ hereby sells, assigns and transfers unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

(Please Print or Typewrite Name and Address of Assignee)

the within Bond of THE BOARD OF REGENTS OF HIGHER EDUCATION FOR THE STATE OF MONTANA, and does hereby irrevocably constitute and appoint _____ Attorney to register the transfer of said Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

Signature: _____

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by an “eligible guarantor institution” meeting the requirements of the Trustee, which requirements include membership or participation in STAMP or such other “signature guarantee program” as may be determined by the Trustee in addition to, or in substitution for, STAMP, all in accordance with the Securities and Exchange Act of 1934, as amended.

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 any change whatever.

APPENDIX A

FORM OF CONSTRUCTION ACCOUNT REQUISITION

**UNITED STATES OF AMERICA
STATE OF MONTANA**

**THE BOARD OF REGENTS OF HIGHER EDUCATION
THE UNIVERSITY OF MONTANA
[GENERAL REVENUE] [REFUNDING] BONDS
SERIES [_____]**

To: U.S. Bank National Association
1420 Fifth Avenue, 7th Floor
Seattle, Washington 98101
Attn: Corporate Trust Services

CERTIFICATE AND REQUISITION NO. ____

The undersigned, a University Representative of The University of Montana (the “*University*”) hereby certifies pursuant to Section 4.01 of this Indenture of Trust, dated as of [_____], 2019, as supplemented and amended (the “*Indenture*”), between The Board of Regents of Higher Education for the State of Montana (the “*Board*”) and U.S. Bank National Association, as Trustee, as follows:

- (1) I have read Section 4.01 of this Indenture and the definitions relating thereto and have reviewed appropriate records and documents of the University relating to the matters covered by this certificate and requisition (the “*Requisition*”);
- (2) To the best of my knowledge, no Default has occurred under this Indenture which has not as of the date hereof been cured;
- (3) The amount and nature and the name of the payee(s) of and for each item of Cost heretofore paid or incurred by the University and hereby requested to be reimbursed to the University pursuant to this Requisition are shown on Schedule A attached hereto;
- (4) The amount and nature of each item of Cost due and payable and hereby requested to be paid to a Person or Persons other than the University pursuant to this Certificate and Requisition are shown on Schedule A attached hereto; and
- (5) Each obligation set forth in this Certificate and Requisition has been properly incurred by the University and is a proper charge against the Construction Account (and applicable subaccount) established within the Construction Fund created by this Indenture and has not been the basis of any previous disbursement; and

(6) The amount remaining in the applicable subaccount of the Construction Account of the Construction Fund with respect to the Series _____ Bonds, after such disbursement is made, together with the amount of unencumbered Pledged Revenues, if any, which the Board and the University reasonably estimate will be deposited therein during the period of construction of the Series ____ Project, and the amount derived from the investment of moneys on deposit therein, will, together with any other monies lawfully available for payment of the costs of the Series _____ Project and after payment of the amounts requested in this Requisition, be sufficient to pay the cost of completion of the Series _____ Project, in accordance with the plans and specifications therefor currently in effect.

You are hereby requested to disburse from the Construction Account (or the appropriate subaccount therein, as applicable) of the Construction Fund the amounts shown on Schedule A and to make payments to the University and/or the Persons entitled to receipt thereof as shown on said schedules.

WITNESS my hand on behalf of The University of Montana this ____ day of _____.

THE UNIVERSITY OF MONTANA

By _____
University Representative

SCHEDULE A**ITEMS OF COST PAID BY AND TO BE REIMBURSED TO UNIVERSITY**

NATURE OF COST ITEM	PAYMENT INSTRUCTION	SUBACCOUNT	AMOUNT
			\$

TOTAL			<u>\$</u>
-------	--	--	-----------

ITEMS OF COST TO BE PAID TO PERSONS OTHER THAN UNIVERSITY

NATURE OF COST ITEM	PAYMENT INSTRUCTION	SUBACCOUNT	AMOUNT
			\$

TOTAL			<u>\$</u>
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APPENDIX B

FORM OF COST OF ISSUANCE ACCOUNT REQUISITION

**UNITED STATES OF AMERICA
STATE OF MONTANA**

**THE BOARD OF REGENTS OF HIGHER EDUCATION
THE UNIVERSITY OF MONTANA
[GENERAL REVENUE] [REFUNDING] BONDS
SERIES [_____]**

To: U.S. Bank National Association
1420 Fifth Avenue, 7th Floor
Seattle, Washington 98101
Attn: Corporate Trust Services

CERTIFICATE AND REQUISITION NO. ____

The undersigned, a University Representative of The University of Montana (the “*University*”) hereby certifies pursuant to Section 4.01 of this Indenture of Trust, dated as of [_____], 2019, as supplemented and amended (the “*Indenture*”), between The Board of Regents of Higher Education for the State of Montana (the “*Board*”) and U.S. Bank National Association, as Trustee, as follows:

(1) I have read Section 4.01 of this Indenture and the definitions relating thereto and have reviewed appropriate records and documents of the University relating to the matters covered by this certificate and requisition (the “*Requisition*”);

(2) To the best of my knowledge, no Default has occurred under this Indenture which has not as of the date hereof been cured;

(3) The amount and nature and the name of the payee(s) of and for each item of Cost heretofore paid or incurred by the University and hereby requested to be reimbursed to the University pursuant to this Requisition are shown on Schedule A attached hereto;

(4) The amount and nature of each item of Cost due and payable and hereby requested to be paid to a Person or Persons other than the University pursuant to this Certificate and Requisition are shown on Schedule A attached hereto; and

(5) Each obligation set forth in this Certificate and Requisition has been properly incurred by the University and is a proper charge against the Cost of Issuance Account created within the Construction Fund by this Indenture and has not been the basis of any previous disbursement.

You are hereby requested to disburse from the Cost of Issuance Account the amounts shown on Schedule A and make payments to the University and/or the Persons entitled to receipt thereof as shown on such schedules.

WITNESS my hand on behalf of The University of Montana this ____ day of _____.

THE UNIVERSITY OF MONTANA

By _____

University Representative

SCHEDULE A**ITEMS OF COST PAID BY AND TO BE REIMBURSED TO UNIVERSITY**

NATURE OF COST ITEM	PAYMENT INSTRUCTION	AMOUNT
		\$

TOTAL		\$
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ITEMS OF COST TO BE PAID TO PERSONS OTHER THAN UNIVERSITY

NATURE OF COST ITEM	NAME AND ADDRESS PAYEE AND PAYMENT INSTRUCTION	AMOUNT
		\$

TOTAL		\$
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