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**TRUSTEES OF CLARK UNIVERSITY**

and

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

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**INDENTURE OF TRUST**

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Dated as of November 1, 2021

**\$155,200,000**

**CLARK UNIVERSITY  
TAXABLE BONDS  
SERIES 2021**

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THIS INDENTURE OF TRUST (this “Indenture”), is made and entered into as of November 1, 2021, by and between TRUSTEES OF CLARK UNIVERSITY, a nonprofit corporation existing under the laws of The Commonwealth of Massachusetts (the “Institution”), 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, having a corporate trust office in Boston, Massachusetts, and being qualified to accept and administer the trusts hereby created (the “Trustee”);

WITNESSETH:

WHEREAS, the Institution has the requisite power to contract, to borrow money and to issue its bonds, and desires to provide for and has authorized the issuance of its Taxable Bonds, Series 2021 (the “Bonds”) in an aggregate principal amount of \$155,200,000;

WHEREAS, the proceeds of the Bonds will be used by the Institution for its general corporate purposes and consistent with its status as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, including, without limitation, (i) to finance or refinance (including through reimbursement to the Institution) the Project (as hereinafter defined) and (ii) to pay costs of issuing the Bonds; and

WHEREAS, in order to provide for the authentication and delivery of the Bonds, to establish and declare the terms and conditions upon which the Bonds are to be issued and secured and to provide for the payment of the principal or Redemption Price (as defined herein) thereof and of the interest thereon, the Institution has authorized the execution and delivery of this Indenture;

TO HAVE AND TO HOLD the same unto the Trustee and its successors in trust forever;

IN TRUST, NEVERTHELESS, upon the terms and trusts herein set forth for the benefit and security of those who shall hold or own the Bonds issued and to be issued hereunder, or any of them, without preference of any of the Bonds over any others thereof for any reason whatsoever, except as otherwise provided herein;

NOW THEREFORE, the Institution, for itself and its successors, does hereby covenant and agree to and with the Trustee and its successors in trust, for the benefit of all those who shall hold the Bonds, or any of them, as follows:

ARTICLE I

DEFINITIONS; CONTENT OF CERTIFICATES AND OPINIONS

SECTION 1.01. Definitions. Unless the context otherwise requires, the terms defined in this Section 1.01 shall, for all purposes of this Indenture and of any indenture supplemental hereto and of any certificate, opinion or other document herein mentioned, have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined.

“Additional Bonds” has the meaning set forth under Section 3.04 hereof.

“Authorized Denomination” means \$1,000 or any multiple integral thereof.

“Authorized Representative” means the Institution’s President, or Treasurer or any other Person designated as an Authorized Representative of the Institution by a Certificate of the Institution signed by any Authorized Representative, and filed with the Trustee.

“Beneficial Owner” means any Person which has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any of the Bonds (including any Person holding Bonds through nominees, depositories or other intermediaries) established to the reasonable satisfaction of the Trustee or the Institution.

“Bond Fund” means the fund by that name established pursuant to Section 5.02.

“Bonds” means the Initial Bonds and any Additional Bond authorized by, and at any time Outstanding, pursuant to this Indenture.

“Book-Entry Form” or “Book-Entry System” means a form or system, as applicable, (i) under which physical bond certificates in fully registered form are registered only in the name of a Securities Depository or its nominee as Bondholder, with the physical bond certificates held by and “immobilized” in the custody of the Securities Depository; (ii) is maintained by and the responsibility of others than the Institution or the Trustee; and (iii) is the record that identifies and records the transfer of the interests of the owners of book-entry interests in those Bonds.

“Business Day” means any day other than (i) a Saturday or Sunday or legal holiday or a day on which banking institutions in the city or cities in which the Designated Office of the Trustee is located are authorized by law or executive order to close, or (ii) a day on which the New York Stock Exchange is closed.

“Certificate,” “Statement,” “Request” and “Requisition” of the Institution mean, respectively, a written certificate, statement, request or requisition signed in the name of the Institution by the Authorized Representative. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument. If and to the extent required by Section 1.02, each such instrument shall include the statements provided for in Section 1.02.

“Code” means the Internal Revenue Code of 1986, as amended, or any successor statute thereto and any regulations promulgated thereunder.

“Commonwealth” means The Commonwealth of Massachusetts.

“Default” means any event which is or after notice or lapse of time or both would become an Event of Default.

“Designated Office” means the Designated Office of the Trustee, which as of the date of this Indenture is located at One Federal Street, 10<sup>th</sup> Floor, Boston, Massachusetts 02110, Attention: Corporate Trust Services, and such other offices as the Trustee may designate from time to time by written notice to the Institution and the Holders.

“DTC” means The Depository Trust Company, a New York corporation.

“Electronic Means” means facsimile transmission, email transmission, or other similar electronic means of communication providing evidence of transmission.

“Escrow Agent” means, U.S. Bank National Association, as escrow agent under the Refunding Escrow Agreement, and its successors in such capacity.

“Event of Default” means any of the events specified in Section 7.01.

“Holder” or “Bondholder,” whenever used herein with respect to a Bond, means the Person in whose name such Bond is registered.

“Indenture” means this Indenture of Trust, as originally executed or as it may from time to time be supplemented, modified or amended by any Supplemental Indenture.

“Indenture Fund” means the fund by that name established pursuant to Section 5.01.

"Initial Bonds" means the \$155,200,000 Clark University Taxable Bonds, Series 2021.

“Institution” means Trustees of Clark University, a nonprofit corporation existing under the laws of the Commonwealth, or said nonprofit corporation’s successor or successors.

“Interest Account” means the account by that name in the Bond Fund established pursuant to Section 5.02.

“Interest Payment Date” means July 1 and January 1 of each year, commencing July 1, 2022.

“Investment Securities” means either of the following: (i) direct nonprepayable, noncallable 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 of the United States of America), (ii) direct nonprepayable, noncallable obligations, the timely payment of the principal of and interest on which are fully guaranteed by the United States of America, including instruments evidencing a direct ownership interest in securities described in this clause such as CATS, TIGRs, and Stripped Treasury Coupons rated or assessed in the top two Rating Categories by S&P and Moody’s and held by a custodian for safekeeping on behalf of holders of such securities, and (iii) any other investment determined by the Institution.

“Make-Whole Redemption Price” means the greater of (i) 100% of the principal amount of the Bonds to be redeemed; and (ii) the sum of the present value of the remaining scheduled payments of principal and interest on any Bonds being redeemed (exclusive of interest accrued to the date of redemption) discounted to the redemption date on a semiannual basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate, plus (A) 15 basis points in the case of the Bonds maturing July 1, 2031, (B) 25 basis points in the case of the Bonds maturing July 1, 2036, (C) 20 basis points in the case of the Bonds maturing July 1, 2042, and (iv) 20 basis points in the case of the Bonds maturing July 1, 2052, plus, in each case, accrued and unpaid interest on the Bonds to be redeemed to but excluding the redemption date.

“Moody’s” means Moody’s Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and their assigns, or, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the Institution upon notice to the Trustee.

“Opinion of Counsel” means a written opinion of counsel (who may be counsel for the Institution, but not an employee thereof) satisfactory to the Trustee.

“Outstanding” when used as of any particular time with reference to Bonds, means (subject to the provisions of Section 11.08) all Bonds theretofore, or thereupon being, authenticated and delivered by the Trustee under this Indenture except (i) Bonds theretofore cancelled by the Trustee or surrendered to the Trustee for cancellation; (ii) Bonds with respect to which all liability of the Institution shall have been discharged in accordance with Section 10.02, including Bonds (or portions of Bonds) referred to in Section 11.08; and (iii) Bonds for the transfer or exchange of or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Trustee pursuant to this Indenture.

“Payment Date” means an Interest Payment Date or a Principal Payment Date.

“Person” means an individual, corporation, firm, association, partnership, trust, limited liability company or other legal entity or group of entities, including a governmental entity or any agency or political subdivision thereof.

“Principal Account” means the account by that name in the Bond Fund established pursuant to Section 5.02.

“Principal Payment Date” means a date upon which a principal payment is due on the Bonds pursuant to the provisions hereof.

“Project” means the financing and refinancing of various capital renovations, improvements, and deferred maintenance items to the Institution’s facilities, and the acquisition and installation of furnishings and equipment for such facilities, all as included from time to time in the Institution’s capital plan and located at the Institution’s main campus at 950 Main Street Worcester, Massachusetts; the refunding of the Refunded Bonds, and the payment of a fee with respect to the termination of an interest rate swap issued in connection with outstanding indebtedness of the Institution.

“Rating Agency” means Moody’s.

“Record Date” means the fifteenth day (whether or not a Business Day) of the month immediately preceding each Interest Payment Date.

“Redemption Fund” means the fund by that name established pursuant to Section 5.05.

“Redemption Price” means: (i) with respect to Bonds redeemed prior to (A) April 1, 2031 in the case of the Bonds maturing July 1, 2031, (B) April 1, 2036 in the case of the Bonds maturing July 1, 2036, (C) January 1, 2042 in the case of the Bonds maturing July 1, 2042, and



(D) January 1, 2052 in the case of the Bonds maturing July 1, 2052, in each case, the Make-Whole Redemption Price, and (ii) with respect to Bonds redeemed on or after (A) April 1, 2031 in the case of the Bonds maturing July 1, 2031, (B) April 1, 2036 in the case of the Bonds maturing July 1, 2036, (C) January 1, 2042 in the case of the Bonds maturing July 1, 2042, and (D) January 1, 2052 in the case of the Bonds maturing July 1, 2052, in each case, 100% of the principal amount of the Bonds to be redeemed.

“Refunded Bonds” means collectively: (i) the \$50,255,000 Massachusetts Development Finance Agency Variable Rate Demand Revenue Bonds, Clark University Issue, Series 2008; (ii) the \$17,895,000 Massachusetts Development Finance Agency Revenue Bonds, Clark University Issue, Series 2015 designated for redemption pursuant to the Refunding Trust Agreement; and (iii) the \$10,750,000 Massachusetts Development Finance Agency Revenue Bonds, Clark University Issue, Series 2020.

“Refunding Escrow Agreement” means the Refunding Escrow Agreement, dated as of November 24, 2021, pertaining to the Series 2015 Bonds by and among the Massachusetts Development Finance Agency, the Refunding Trustee, the sole bondowner of the Series 2015 Bonds, and the Institution.

“Responsible Officer” means any officer of the Trustee assigned to administer its duties hereunder.

“S&P” means S&P Global Ratings, its successors and their assigns, or, if such rating agency shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the Institution upon notice to the Trustee.

“Securities Depository” means DTC and its successors and assigns, or any other securities depository selected or substituted as set forth in Section 2.10, which agrees to follow the procedures required to be followed by such securities depository in connection with the Bonds.

"Series 2008 Bonds" means the \$50,255,000 Massachusetts Development Finance Agency Variable Rate Demand Revenue Bonds, Clark University Issue, Series 2008.

"Series 2015 Bonds" means the \$17,895,000 Massachusetts Development Finance Agency Revenue Bonds, Clark University Issue, Series 2015.

"Series 2020 Bonds" means the \$10,750,000 Massachusetts Development Finance Agency Revenue Bonds, Clark University Issue, Series 2020.

“Special Record Date” means the date established by the Trustee pursuant to Section 2.02 as the record date for the payment of defaulted interest on the Bonds.

“Supplemental Indenture” means any indenture hereafter duly authorized and entered into between the Institution and the Trustee, supplementing, modifying or amending this Indenture; but only if and to the extent that such Supplemental Indenture is specifically authorized hereunder.

“Treasury Rate” means, as of any redemption date, the yield to maturity as of such redemption date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two Business Days prior to the redemption date (excluding inflation indexed securities) (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from the redemption date to the maturity date of the Bond to be redeemed; provided, however, that if the period from the redemption date to such maturity date is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

“Trustee” means 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, or its successor or successors, as Trustee hereunder as provided in Section 8.01.

“Underwriter” means Goldman Sachs & Co. LLC.

“Uniform Commercial Code” means the Uniform Commercial Code as in effect in the Commonwealth from time to time.

SECTION 1.02. Content of Certificates. Every certificate provided for in this Indenture to be given by or on behalf of the Institution with respect to compliance with any provision hereof shall include: (i) a statement that the Person making or giving such certificate has read such provision and the definitions herein relating thereto; (ii) a brief statement as to the nature and scope of the examination or investigation upon which the certificate is based; (iii) a statement that, in the opinion of such Person, he or she has made or caused to be made such examination or investigation as is necessary to enable him or her to express an informed opinion with respect to the subject matter referred to in the instrument to which his or her signature is affixed; and (iv) a statement as to whether, in the opinion of such Person, such provision has been complied with.

Any such certificate made or given by an officer of the Institution may be based, insofar as it relates to legal, accounting or management matters, upon a certificate or opinion of or representation by counsel, an accountant or a management consultant, unless such officer knows, or in the exercise of reasonable care should have known, that the certificate, opinion or representation with respect to the matters upon which such certificate or statement may be based, as aforesaid, is erroneous. Any such certificate or opinion made or given by counsel, an accountant or a management consultant may be based, insofar as it relates to factual matters (with respect to which information is in the possession of the Institution) upon a certificate or opinion of or representation by an officer of the Institution, unless such counsel, accountant or management consultant knows, or in the exercise of reasonable care should have known, that the certificate or opinion or representation with respect to the matters upon which such Person’s certificate or opinion or representation may be based, as aforesaid, is erroneous. The same officer of the Institution, or the same counsel, accountant or management consultant, as the case may be, need not certify to all of the matters required to be certified under any provision of this Indenture, but different officers, counsel, accountants or management consultants may certify to different matters, respectively.

SECTION 1.03. Interpretation.

(A) Unless the context otherwise indicates, words expressed in the singular shall include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and shall be deemed to mean and include the neuter, masculine or feminine gender, as appropriate.

(B) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

(C) All references herein to “Articles,” “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture; the words “herein,” “hereof,” “hereby,” “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II

THE BONDS

SECTION 2.01. Authorization of Bonds. An issue of Bonds to be issued hereunder in order to obtain funds to carry out the purposes indicated herein for the benefit of the Institution is hereby created. The Bonds are designated as the “Clark University Taxable Bonds, Series 2021.” The aggregate principal amount of Initial Bonds that may be issued and Outstanding under this Indenture shall not exceed One Hundred Fifty-Five Million Two Hundred Thousand Dollars (\$155,200,000). This Indenture constitutes a continuing agreement with the Holders from time to time of the Bonds to secure the full payment of the principal or Redemption Price of and interest on all such Bonds subject to the covenants, provisions and conditions contained herein and in the Bonds.

SECTION 2.02. Terms of the Bonds.

(A) The Bonds shall be issued as fully registered Bonds in Authorized Denominations. For any sales made outside the United States, the minimum purchase and trading amount is 150 units (*i.e.* a minimum aggregate principal amount of \$150,000). The Bonds shall be registered under a global book-entry system initially in the name of Cede & Co., as nominee of the Securities Depository. Registered ownership of the Bonds, or any portion thereof, may not thereafter be transferred except as set forth in Section 2.10. The Bonds are exempt from registration pursuant to Section 3(a)(4) of the Securities Act of 1933. The Bonds shall be dated as of the date of first authentication and delivery by the Trustee and shall be numbered from R-1 upward. The Bonds will mature, be subject to mandatory sinking fund redemption, as applicable, and will bear interest as set forth below:

The Bonds shall mature on July 1 of each of the years in the amounts and shall bear interest at the rates per annum as follows:

<u>Year</u>	<u>Interest Rate</u>	<u>Principal Amount</u>
2031	2.613%	\$5,640,000
2036	3.113	24,525,000
2042	3.216	39,460,000
2052*	3.316	85,575,000

\*Maturity Year

The Bonds maturing July 1, 2031, July 1, 2036, July, 2042, and July 1, 2052 are subject to redemption from sinking fund installments at their principal amounts, without premium, plus accrued interest to the redemption date on July 1 of each of the years and in the principal amounts as follows:

\$5,640,000 Term Bond Due July 1, 2031

<u>Year</u>	<u>Principal Amount</u>	<u>Year</u>	<u>Principal Amount</u>
2029	\$1,000,000	2031*	\$3,105,000
2030	1,535,000		

\*Maturity Year

\$24,525,000 Term Bond Due July 1, 2036

<u>Year</u>	<u>Principal Amount</u>	<u>Year</u>	<u>Principal Amount</u>
2032	\$3,710,000	2035	\$5,655,000
2033	4,340,000	2036*	5,835,000
2034	4,985,000		

\*Maturity Year

\$39,460,000 Term Bond Due July 1, 2042

<u>Year</u>	<u>Principal Amount</u>	<u>Year</u>	<u>Principal Amount</u>
2037	\$6,070,000	2040	\$6,670,000
2038	6,265,000	2041	6,885,000
2039	6,465,000	2042*	7,105,000

\*Maturity Year

\$85,575,000 Term Bond Due July 1, 2052

<u>Year</u>	<u>Principal Amount</u>	<u>Year</u>	<u>Principal Amount</u>
2043	\$7,330,000	2048	\$8,660,000
2044	7,580,000	2049	8,960,000
2045	7,835,000	2050	9,260,000
2046	8,100,000	2051	9,575,000

2047

8,375,000

2052\*

9,900,000

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\* Maturity Year

(B) The principal or Redemption Price of the Bonds shall be payable by check or by wire transfer of immediately available funds in lawful money of the United States of America at the Designated Office of the Trustee.

Interest on the Bonds shall be payable from the later of (i) the dated date of the Bonds and (ii) the most recent Interest Payment Date to which interest has been paid or duly provided for. Payment of the interest on each Interest Payment Date shall be made to the Person whose name appears on the bond registration books of the Trustee as the Holder thereof as of the close of business on the Record Date for each Interest Payment Date, such interest to be paid by check mailed by first class mail to such Holder at its address as it appears on such registration books, or, upon the written request of any Holder of at least \$1,000,000 in aggregate principal amount of Bonds, submitted to the Trustee at least one (1) Business Day prior to the Record Date, by wire transfer in immediately available funds to an account within the United States designated by such Holder. Notwithstanding the foregoing, as long as the Securities Depository is the Holder of all or part of the Bonds in Book-Entry Form, said principal or Redemption Price and interest payments shall be made to the Securities Depository by wire transfer in immediately available funds. CUSIP number identification shall accompany all payments of principal or Redemption Price and interest whether by check or by wire transfer.

(C) The Bonds shall bear interest from their dated date at the rates set forth above. Interest on the Bonds shall be calculated on the basis of a three hundred sixty (360)-day year consisting of twelve (12) thirty (30)-day months.

(D) Any such interest not so punctually paid or duly provided for with respect to any Bond shall forthwith cease to be payable to the Bondholder on such Record Date and shall be paid to the Person in whose name the Bond is registered at the close of business on a "Special Record Date" for the payment of such defaulted interest to be fixed by the Trustee, notice whereof to be given by first class mail to the Holders of such Bonds not less than ten (10) days prior to such Special Record Date.

(E) The Bonds shall be subject to redemption as provided in Article IV.

SECTION 2.03. Form of Bonds. The Initial Bonds, and the Trustee's certificate of authentication and assignment to appear thereon, shall be in substantially the form attached hereto as **Exhibit A**, with necessary or appropriate variations, omissions, and insertions, as permitted or required by this Indenture.

SECTION 2.04. Execution of Bonds. The Bonds shall be executed in the name and on behalf of the Institution with the manual or facsimile signature of an Authorized Representative. The Bonds shall then be delivered to the Trustee for authentication by it upon order of the Institution. In case any officer who shall have signed any of the Bonds shall cease to be such officer of the Institution before the Bonds so signed shall have been authenticated or delivered by the Trustee or issued by the Institution, such Bonds may nevertheless be

authenticated, delivered and issued and, upon such authentication, delivery and issue, shall be as binding upon the Institution as though those who signed the same had continued to be such officer of the Institution, and also any Bond may be signed on behalf of the Institution by such Person as at the actual date of execution of such Bond shall be the proper officer of the Institution although at the nominal date of such Bond any such Person shall not have been such officer of the Institution.

Only such of the Bonds as shall bear thereon a certificate of authentication substantially in the form hereinbefore recited, manually executed by an authorized signatory of the Trustee, shall be valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such certificate of the Trustee shall be conclusive evidence that the Bonds so authenticated have been duly executed, authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

SECTION 2.05. Transfer of Bonds. Any Bond may, in accordance with its terms and subject to the limitations provided in Section 2.10, be transferred upon the books required to be kept pursuant to the provisions of Section 2.07 by the Person in whose name it is registered, in person or by its duly authorized attorney, upon surrender of such Bond for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form approved by the Trustee.

Whenever any Bond or Bonds shall be surrendered for transfer, the Institution shall execute and the Trustee shall authenticate and deliver a new Bond or Bonds, for a like aggregate principal amount in Authorized Denominations. The Trustee may require the Bondholder requesting such transfer to pay any tax or other governmental charge required to be paid with respect to such transfer, and the Trustee may also require the Bondholder requesting such transfer to pay a reasonable sum to cover any expenses incurred by the Trustee or the Institution in connection with such transfer. The Trustee shall not be required to transfer (i) any Bond during the fifteen (15) days next preceding the selection of Bonds for redemption or (ii) any Bond called for redemption.

SECTION 2.06. Exchange of Bonds. Bonds may be exchanged at the Designated Office of the Trustee for a like aggregate principal amount of Bonds of other Authorized Denominations. The Trustee may require the Bondholder requesting such exchange to pay any tax or other governmental charge required to be paid with respect to such exchange, and the Trustee may also require the Bondholder requesting such exchange to pay a reasonable sum to cover any expenses incurred by the Trustee or the Institution in connection with such exchange. The Trustee shall not be required to exchange (i) any Bond during the fifteen (15) days next preceding the selection of Bonds for redemption or (ii) any Bond called for redemption.

SECTION 2.07. Bond Register. The Trustee shall keep or cause to be kept sufficient books for the registration and transfer of the Bonds, which shall at all reasonable times upon reasonable prior written notice (during regular business hours at the location where such books are kept) be open to inspection by any Bondholder, the Institution or their respective agents duly authorized in writing; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on such books, Bonds as hereinbefore provided.

SECTION 2.08. Reserved.

SECTION 2.09. Bonds Mutilated, Lost, Destroyed or Stolen. If any Bond shall become mutilated, the Institution, at the expense of the Holder of said Bond, shall execute, and, upon the Institution's request, the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. Every mutilated Bond so surrendered to the Trustee shall be cancelled by it and delivered to, or upon the order of, the Institution. If any Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee and, if such evidence be satisfactory to it and indemnity satisfactory to the Trustee and the Institution shall be given, the Institution, at the expense of the Holder, shall execute, and the Trustee, upon the Institution's request, shall thereupon authenticate and deliver, a new Bond of like tenor in lieu of and in substitution for the Bond so lost, destroyed or stolen (or if any such Bond shall have matured or shall be about to mature, instead of issuing a substitute Bond, the Trustee may pay the same without surrender thereof). The Trustee may require payment of a sum by the Holder sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses which may be incurred by the Institution and the Trustee in complying with this Section 2.09.

SECTION 2.10. Use of Securities Depository. Notwithstanding any provision of this Indenture to the contrary:

(A) The Bonds shall be initially issued as provided in Section 2.02. Registered ownership of the Bonds, or any portion thereof, may not thereafter be transferred except:

(1) To any successor of the Securities Depository or its nominee, or to any substitute depository designated pursuant to clause (2) of this subsection (A) (a "substitute depository"); provided that any successor of the Securities Depository or substitute depository shall be qualified under any applicable laws to provide the service proposed to be provided by it;

(2) To any substitute depository designated by the Institution and not objected to by the Trustee, upon (i) the resignation of the Securities Depository or its successor (or any substitute depository or its successor) from its functions as depository or (ii) a determination by the Institution that the Securities Depository or its successor (or any substitute depository or its successor) is no longer able to carry out its functions as depository; provided that any such substitute depository shall be qualified under any applicable laws to provide the services proposed to be provided by it; or

(3) To any Person as provided below, upon (i) the resignation of the Securities Depository or its successor (or any substitute depository or its successor) from its functions as depository; provided that no substitute depository that is not objected to by the Trustee can be obtained or (ii) a determination by the Institution that it is in the best interests of the Institution to remove the Securities Depository or its successor (or any substitute depository or its successor) from its functions as depository.

(B) In the case of any transfer pursuant to clause (1) or clause (2) of subsection (A), upon receipt of the Outstanding Bonds by the Trustee, together with a Certificate of the Institution to the Trustee, Bonds shall be executed and delivered in the aggregate principal amount of the Bonds then Outstanding, registered in the name of such successor or such substitute depository, or their nominees, as the case may be, all as specified in such Certificate of the Institution. In the case of any transfer pursuant to clause (3) of subsection (A), upon receipt of the Outstanding Bonds by the Trustee together with a Certificate of the Institution to the Trustee, new Bonds shall be executed and delivered in such denominations and registered in the names of such persons as are requested in such a Certificate of the Institution, subject to the limitations of Section 2.02, provided the Trustee shall not be required to deliver such new Bonds within a period less than sixty (60) days from the date of receipt of such a Certificate of the Institution.

(C) In the case of a partial redemption or refunding of the Bonds evidencing a portion of the principal amount Outstanding, the Securities Depository shall make an appropriate notation on the Bonds indicating the date and amounts of such reduction in principal, in form acceptable to the Trustee.

(D) The Institution and the Trustee shall be entitled to treat the Person in whose name any Bond is registered as the Bondholder thereof for all purposes of the Indenture and any applicable laws, notwithstanding any notice to the contrary received by the Institution or the Trustee.

(E) So long as the Outstanding Bonds are registered in the name of Cede & Co. or its registered assign, the Institution and the Trustee shall cooperate with Cede & Co., as sole registered Bondholder, and its registered assigns, in effecting payment of the principal or Redemption Price of and interest on the Bonds by arranging for payment in such manner that funds for such payments are properly identified and are made immediately available on the date they are due, all in accordance with the letter of representations of the Institution to the Securities Depository or as otherwise agreed by the Trustee and the Securities Depository.

### ARTICLE III

#### ISSUANCE OF BONDS; APPLICATION OF PROCEEDS

SECTION 3.01. Issuance of Initial Bonds. At any time after the execution of this Indenture, the Institution may execute and the Trustee shall, upon Request of the Institution, authenticate and deliver the Initial Bonds in the aggregate principal amount of One Hundred Fifty-Five Million Two Hundred Thousand Dollars (\$155,200,000)]

SECTION 3.02. Application of Proceeds of Initial Bonds. The proceeds from the sale of the Initial Bonds (net of underwriter's discount and original issue discount, if any) of \$154,805,643.90 shall be applied by the Underwriter as follows:

- (a) \$30,480,808.41, the amount required to redeem the Series 2008 Bonds, shall be wired to U.S. Bank National Association, as the successor trustee for the Series 2008 Bonds to be deposited by the trustee in the Bond Fund of the



Series 2008 Bonds to be used by the trustee to reimburse the letter of credit bank for amounts drawn under the credit facility for payment of the redemption price for the Series 2008 Bonds;

- (b) \$ 13,291,520.00, the amount required to refund the Series 2015 Bonds, shall be deposited with the Escrow Agent and applied in accordance with the provisions of the Refunding Escrow Agreement;
- (c) \$9,838,377.67, the amount required to refund the Series 2020 Bonds, shall be wired to JPMorgan Chase Bank, N.A.
- (d) \$457,091.00, the amount required to pay the fee required to terminate the interest rate swap with respect to the Series 2028 Bonds, shall be wired to Barclays Bank PLC; and
- (e) \$100,737,846.82, the remainder, shall be wired by the Underwriters to the Institution.

SECTION 3.03. Validity of Bonds. The recital contained in the Bonds that the same are issued pursuant to the Indenture shall be conclusive evidence of their validity and of compliance with the provisions of the Indenture in their issuance.

SECTION 3.04. Additional Bonds.

(a) The Institution may, from time to time, without the consent of the Bondholders, issue additional bonds under this Indenture. Additional Bonds shall be authorized by a Supplemental Indenture. Each Supplemental Indenture authorizing the issuance of Additional Bonds shall specify the following: (i) the authorized principal amount of Additional Bonds to be issued; (ii) the first interest payment date for the Additional Bonds; (iii) directions for the applications of the proceeds of the Additional Bonds; and (iv) such other provisions as the Institution deems advisable.

(b) The Additional Bonds so authorized shall be issued from time to time and in such amounts as directed by the Institution, shall be authenticated by the Trustee and shall be delivered by the Trustee to or upon the order of the Institution upon receipt of the consideration therefor. All such Additional Bonds shall mature on a maturity date of the Initial Bonds and shall bear interest at the same rate per annum as the applicable Initial Bonds. Additional Bonds shall:

- (i) be identical in all respects to the Initial Bonds except for their date of issuance and initial interest payment date;
- (ii) without limiting the foregoing, be subject to redemption at the same times and at the same Redemption Price as the Initial Bonds, provided that the mandatory sinking fund redemptions for any Additional Bonds shall be structured in a manner that produces a weighted average life for such Additional Bonds that is equal to the remaining weighted average life of the Initial Bonds as of the issuance date of such Additional Bonds; and

- (iii) following the initial interest payment date for the applicable Additional Bonds, or upon issuance, if such Additional Bonds are issued on an interest payment date, bear the same CUSIP identifier(s) as the applicable Initial Bonds.

## ARTICLE IV

### REDEMPTION OF BONDS; BOOK-ENTRY SYSTEM

SECTION 4.01. Terms of Optional Redemption. The Bonds are subject to optional redemption prior to maturity at the written direction of the Institution to the Trustee at least thirty-five (35) days before the redemption date. Such redemption shall be in accordance with the terms of the Bonds, as a whole or in part on any Business Day as directed by the Institution at the Redemption Price, as described in the form of Bonds in **Exhibit A**.

At the request of the Trustee to the Institution, the Redemption Price of Bonds to be redeemed pursuant to this Article IV shall be determined by an independent accounting firm, investment banking firm or financial advisor retained by the Institution at the Institution's expense to calculate such Redemption Price. The Trustee and the Institution may conclusively rely on the determination of such Redemption Price by such independent accounting firm, investment banking firm or financial advisor and shall not be liable for such reliance.

SECTION 4.02. Terms of Mandatory Redemption. The Bonds shall be redeemed from sinking fund installments without premium, plus accrued interest to the date of redemption, on the dates and in the amounts set forth in the Form of Bonds in **Exhibit A**.

SECTION 4.03. Selection of Bonds for Redemption.

If the Bonds are registered in Book-Entry Form and so long as the Securities Depository or a successor securities depository is the sole registered owner of the Bonds, if less than all of the Bonds are called for prior redemption, the particular Bonds or portions thereof to be redeemed shall be allocated on a pro rata pass-through distribution of principal basis in accordance with the Securities Depository procedures, provided that, so long as the Bonds are held in Book-Entry Form, the selection for redemption of such Bonds shall be made in accordance with the operational arrangements of the Securities Depository then in effect and, if the Securities Depository operational arrangements do not allow for redemption on a pro rata pass-through distribution of principal basis, the Bonds will be selected for redemption, in accordance with the Securities Depository procedures, by lot or in such other manner as in accordance with the applicable arrangements of the Securities Depository.

The Institution intends that redemption allocations made by the Securities Depository be made on a pro rata pass-through distribution of principal basis as described above. However, neither the Institution nor the Underwriter can provide any assurance that the Securities Depository, the Securities Depository's direct and indirect participants or any other intermediary will allocate the redemption of Bonds on such basis.

For purposes of calculation of the pro rata pass-through distribution of principal, “pro rata,” means, for any amount of principal to be paid, the application of a fraction to each denomination of the respective Bonds where (i) the numerator is equal to the amount due to the respective bondholders on a payment date, and (ii) the denominator is equal to the total original par amount of the respective Bonds.

If the Bonds are no longer registered only in Book-Entry Form, each owner will receive an amount of Bonds equal to the original face amount then beneficially held by that owner, registered in such investor’s name. Thereafter, any redemption of less than all of the Bonds of any maturity will continue to be paid to the registered owners of such Bonds on a pro-rata basis, based on the portion of the original face amount of any such Bonds to be redeemed.

SECTION 4.04. Notice of Redemption.

(A) Notice of redemption shall be sent by the Trustee using Electronic Means or by first-class mail not less than thirty (30) days, (or, if longer, the minimum number of days necessary to comply with the operational requirements of the Securities Depository then in effect) nor more than sixty (60) days prior to the redemption date, to the respective Holders of any Bonds designated for redemption at their addresses appearing on the bond registration books of the Trustee. The Institution shall provide the Trustee notice of redemption using Electronic Means or by first-class mail not less than thirty-five (35) days prior to the redemption date. If the Bonds are no longer held by the Securities Depository or its successor or substitute, the Trustee shall also give notice of redemption by first-class mail to such securities depositories and/or securities information services as shall be designated in a Certificate of the Institution. Each notice of redemption shall state the date of such notice, the date of issue of the Bonds, the redemption date, the method of calculating the Redemption Price (if applicable), the place or places of redemption (including the name and appropriate address or addresses of the Trustee), the maturity (including CUSIP number, if any), and, in the case of Bonds to be redeemed in part only, the portion of the principal amount thereof to be redeemed. Each such notice shall also state that on said date there will become due and payable on each of said Bonds the Redemption Price thereof or of said specified portion of the principal amount thereof in the case of a Bond to be redeemed in part only, and that from and after such redemption date interest thereon shall cease to accrue, and shall require that such Bonds be then surrendered.

(B) Notice of redemption of Bonds shall be given by the Trustee, at the expense of the Institution, for and on behalf of the Institution.

(C) Failure by the Trustee to give notice pursuant to this Section 4.04 to any one or more of the securities information services or depositories designated by the Institution, or the insufficiency of any such notice shall not affect the sufficiency of the proceedings for redemption. Failure by the Trustee to mail notice of redemption pursuant to this Section 4.04 to any one or more of the respective Holders of any Bonds designated for redemption shall not affect the sufficiency of the proceedings for redemption with respect to the Holders to whom such notice was mailed.

(D) The Institution may instruct the Trustee to provide conditional notice of redemption, which may be conditioned upon the receipt of moneys or any other event.

Additionally, any notice given pursuant to this Section 4.04 may be rescinded by written notice given to the Trustee by the Institution no later than five (5) Business Days prior to the date specified for redemption. The Trustee shall give notice of such rescission, as soon thereafter as practicable, in the same manner, to the same Persons, as notice of such redemption was given pursuant to this Section 4.04.

SECTION 4.05. Partial Redemption of Bonds. Upon surrender of any Bond redeemed in part only, the Institution shall execute (but need not prepare) and the Trustee shall prepare or cause to be prepared, authenticate and deliver to the Holder thereof, at the expense of the Institution, a new Bond or Bonds of Authorized Denominations, equal in aggregate principal amount to the unredeemed portion of the Bond surrendered.

SECTION 4.06. Effect of Redemption.

(A) Notice of redemption having been duly given as aforesaid, and moneys for payment of the Redemption Price of the Bonds (or portion thereof) together with interest thereon to the date of redemption so called for redemption being held by the Trustee, on the date fixed for redemption designated in such notice, the Bonds (or portion thereof) so called for redemption shall become due and payable at the Redemption Price (determined as specified in such notice), interest on the Bonds so called for redemption shall cease to accrue, said Bonds (or portion thereof) shall cease to be entitled to any benefit or security under this Indenture, and the Holders of said Bonds shall have no rights in respect thereof except to receive payment of said Redemption Price from funds held by the Trustee for such payment.

(B) All Bonds redeemed pursuant to the provisions of this Article IV shall be cancelled by the Trustee upon surrender thereof and delivered to, or upon the order of, the Institution.

SECTION 4.07. Registration of Bonds in the Book-Entry System.

(A) The provisions of this Section 4.07 shall apply with respect to any Bond registered to Cede & Co. or any other nominee of the Securities Depository while the Book-Entry System is in effect.

(B) On the date of original delivery thereof, the Bonds shall be registered in the registry books of the Trustee in the name of Cede & Co., as nominee of the Securities Depository as agent for the Institution in maintaining the Book-Entry System. With respect to Bonds registered in the registry books kept by the Trustee in the name of Cede & Co., as nominee of the Securities Depository, the Institution and the Trustee shall have no responsibility or obligation to any Participant (which means securities brokers and dealers, banks, trust companies, clearing corporations and various other entities, some of whom or their representatives own the Securities Depository) or to any Beneficial Owner (which means, when used with reference to the Book-Entry System, the Person who is considered the Beneficial Owner of the Bonds pursuant to the arrangements for book entry determination of ownership applicable to the Securities Depository) with respect to the following: (1) the accuracy of the records of the Securities Depository, Cede & Co. or any Participant with respect to any ownership interest in the Bonds, (2) the delivery to any Participant, any Beneficial Owner or any other Person, other than the Securities Depository,

of any notice with respect to the Bonds, including any notice of redemption, or (3) the payment to any Participant, any Beneficial Owner or any other Person, other than the Securities Depository, of any amount with respect to the principal or Redemption Price of and interest on the Bonds only to or upon the order of the Securities Depository, and all such payments shall be valid and effective fully to satisfy and discharge the Institution's obligations with respect to the principal or Redemption Price of and interest on the Bonds to the extent of the sum or sums so paid. No Person other than the Securities Depository shall receive an authenticated Bond evidencing the obligation of the Institution to make payments of principal or Redemption Price and interest pursuant to this Indenture. Upon delivery by the Securities Depository to the Trustee of written notice to the effect that the Securities Depository has determined to substitute a new nominee in place of Cede & Co., the words "Cede & Co." in this Indenture shall refer to such new nominee of the Securities Depository. The Trustee may conclusively rely and shall be fully protected in conclusively relying upon information furnished by the Securities Depository with respect to its members, Participants and any Beneficial Owners.

(C) In the event the Institution determines that it is in the best interests of the Beneficial Owners that they be able to obtain Bond certificates, the Institution may so notify the Securities Depository and the Trustee, whereupon the Securities Depository will notify the Participants of the availability through the Securities Depository of Bond certificates. In such event, the Trustee shall issue, transfer and exchange Bond certificates as requested by the Securities Depository in appropriate amounts and in authorized denominations. Whenever the Securities Depository requests the Institution and the Trustee to do so, the Trustee and the Institution will cooperate with the Securities Depository in taking appropriate action after reasonable notice to make available Bonds registered in whatever name or names the Beneficial Owners transferring or exchanging Bonds shall designate.

(D) Notwithstanding any other provision of this Indenture to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of the Securities Depository, all payments with respect to the principal of and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, to the Securities Depository as provided in the Representation Letter from the Institution to DTC, which is on file with the Institution.

## ARTICLE V

### FUNDS AND ACCOUNTS

#### SECTION 5.01. Establishment and Pledge of Indenture Fund.

(A) The Trustee hereby establishes for the sole benefit of the Bondholders, a master fund referred to herein as the "Indenture Fund" containing the Bond Fund and the Redemption Fund and each of the accounts contained therein. The Indenture Fund and each of the funds and accounts in the Indenture Fund shall be identified on the books of the Trustee with reference hereto and shall be maintained by the Trustee and held in trust apart from all other moneys and securities held under this Indenture or otherwise, and the Trustee shall have the exclusive and sole right of withdrawal therefrom in accordance with the terms of this Indenture. All amounts deposited with the Trustee pursuant to this Indenture shall be held, disbursed, allocated and applied by the Trustee only as provided in this Indenture.

(B) Subject only to the provisions of this Indenture permitting or requiring the application thereof for the purposes and on the terms and conditions set forth herein, the Indenture Fund and all amounts held therein are hereby pledged, assigned and transferred by the Institution to the Trustee for the benefit of the Bondholders to secure the full payment of the principal or Redemption Price of and interest on the Bonds in accordance with their terms and the provisions of this Indenture. The Institution hereby grants to the Trustee a security interest in and acknowledges and agrees that the Indenture Fund and all amounts on deposit therein shall constitute collateral security to secure the full payment of the principal or Redemption Price of and interest on the Bonds in accordance with their terms and the provisions of this Indenture. For purposes of creating, perfecting and maintaining the security interest of the Trustee on behalf of the Bondholders in and to the Indenture Fund and all amounts on deposit therein, the parties hereto agree as follows:

(1) this Indenture shall constitute a “security agreement” for purposes of the Uniform Commercial Code;

(2) the Trustee shall maintain on its books records reflecting the interest, as set forth in this Indenture, of the Bondholders in the Indenture Fund and/or the amounts on deposit therein; and

(3) the Indenture Fund and the amounts on deposit therein and any proceeds thereof shall be held by the Trustee acting in its capacity as an agent of the Bondholders, and the holding of such items by the Trustee (including the transfer of any items among the funds and accounts in the Indenture Fund) is deemed possession of such items on behalf of the Bondholders.

(C) Nothing in this Indenture or in the Bonds, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or otherwise in the assets of the Institution other than in any interest of the Institution in the Indenture Fund and/or the amounts on deposit therein. No recourse for the payment of the principal or Redemption Price of or interest on any Bond, or for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Institution in this Indenture or in any Supplemental Indenture or in any Bond, or because of the creation of any indebtedness represented thereby, shall be had against any employee, agent, or officer, as such, past, present or future, of the Institution or of any successor entity, either directly or through any successor entity, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Bonds.

(D) No officer or agent of the Institution, nor any Person executing the Bonds, shall in any event be subject to any personal liability or accountability by reason of the issuance of the Bonds.

SECTION 5.02. Bond Fund.

(A) Upon the receipt thereof, the Trustee shall deposit all payments received from the Institution (other than proceeds from the sale of the Bonds that are to be applied pursuant to Section 3.02, amounts that are to be applied pursuant to Section 5.05 or income or profit from investments which are to be applied pursuant to Section 5.07) in a special fund designated the “Bond Fund” which the Trustee shall establish and maintain and hold in trust and which shall be disbursed and applied only as authorized in this Article V.

(B) At the times specified below, the Trustee shall allocate within the Bond Fund in the following order of priority the following amounts to the following accounts or funds, each of which the Trustee shall establish and maintain and hold in trust and each of which shall be disbursed and applied only as hereinafter authorized:

(1) On each Interest Payment Date, the Trustee shall deposit in the “Interest Account” the aggregate amount of interest becoming due and payable on such Interest Payment Date, until the balance in said account is equal to said aggregate amount of interest; and

(2) On each Principal Payment Date, the Trustee shall deposit in the “Principal Account” the aggregate amount of principal becoming due and payable on the Principal Payment Date, until the balance in said account is equal to said aggregate amount of such principal.

(C) At least six (6) but not more than twenty (20) Business Days before each Interest Payment Date, the Trustee shall determine the amount, if any, credited or to be credited to the Bond Fund during the period from the day after the last Interest Payment Date to the next succeeding Interest Payment Date from any source. The Trustee may, but shall not be required to, give notice to the Institution of such amount and the amount due, which notice shall be mailed, sent by facsimile transmission or delivered in such manner that the Institution will receive such notice by the Business Day before such next succeeding Interest Payment Date. Failure to provide the Institution with a notice as provided in this paragraph (C) or any defect in the notice to the Institution, shall not affect the amount due by the Institution. Any oral or telephonic notice may, but shall not be required to be supplemented by notice given in accordance with the preceding sentence.

(D) The Institution may at any time surrender to the Trustee for cancellation by it any Bonds that the Institution may have acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired. All Bonds after such surrender and cancellation shall be destroyed by the Trustee.

SECTION 5.03. Interest Account. All amounts in the Interest Account of the Bond Fund shall be used and withdrawn by the Trustee solely for the purpose of paying interest on the Bonds as it shall become due and payable (including accrued interest on any Bonds redeemed prior to maturity pursuant to this Indenture).

SECTION 5.04. Principal Account. All amounts in the Principal Account of the Bond Fund shall be used and withdrawn by the Trustee solely to pay principal on the Bonds on each Principal Payment Date.

SECTION 5.05. Redemption Fund.

(A) Upon the receipt thereof, the Trustee shall deposit the following amounts in a special fund designated the “Redemption Fund” which the Trustee shall establish and maintain and hold in trust:

(1) all moneys deposited by the Institution with the Trustee directed to be deposited in the Redemption Fund; and

(2) all interest, profits and other income received from the investment of moneys in the Redemption Fund.

(B) All amounts deposited in the Redemption Fund shall be used and withdrawn by the Trustee solely for the purpose of redeeming Bonds, in the manner and upon the terms and conditions specified in Section 4.01, at the next succeeding date of redemption for which notice has been given; provided that, at any time prior to the selection of Bonds for such redemption, the Trustee shall, upon direction and at the expense of the Institution, apply such amounts to the purchase of Bonds at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding accrued interest, which is payable from the Interest Account) as the Institution may direct, except that the purchase price (exclusive of accrued interest) may not exceed the Redemption Price (exclusive of accrued interest) then applicable to such Bonds (or, if such Bonds are not then subject to redemption, the par value of such Bonds); and provided further that in lieu of redemption at such next succeeding date of redemption, or in combination therewith, amounts in such account may be transferred to the Principal Account as set forth in a Request of the Institution.

SECTION 5.06. Payments by the Institution; Allocation of Funds.

(A) On or before 11:00 AM on each Payment Date, until the principal of and interest on the Bonds shall have been fully paid or provision for such payment shall have been made as provided in this Indenture, the Institution shall pay to the Trustee a sum equal to the amount payable on such Payment Date as principal of and interest on the Bonds. Such payments shall be made in federal funds or other funds immediately available at the Designated Office of the Trustee and shall be promptly deposited by the Trustee upon receipt thereof in the Bond Fund.

Each payment made pursuant to this Section 5.06(A) shall at all times be sufficient to pay the total amount of interest and principal (whether at maturity or upon acceleration) becoming due and payable on the Bonds on such Payment Date. If on any Payment Date the amounts held by the Trustee in the accounts within the Bond Fund are insufficient to make any required payments of principal of (whether at maturity or upon acceleration) and interest on the Bonds as such payments become due, the Institution shall forthwith pay such deficiency to the Trustee.

(B) The obligations of the Institution to make the payments required by Section 5.06(A) hereof and to perform and observe the other agreements on its part contained herein



shall be a general obligation of the Institution, absolute and unconditional, irrespective of any defense or any rights of set-off, recoupment or counterclaim it might otherwise have against the Trustee, and during the term of this Indenture, the Institution shall pay all payments required to be made under Section 5.06(A) as prescribed therein and all other payments required hereunder, free of any deductions and without abatement, diminution or set-off. Until such time as the principal of and interest on the Bonds shall have been fully paid, or provision for the payment thereof shall have been made as required by this Indenture, the Institution (i) will not suspend or discontinue any payments provided for in Section 5.06(A) hereof; (ii) will perform and observe all of its other covenants contained in this Indenture; and (iii) except as provided in Article IV or Article X hereof, will not terminate this Indenture for any cause, including, without limitation, the occurrence of any act or circumstances that may constitute failure of consideration, destruction of or damage to all or a portion of the projects financed with the proceeds of the Bonds, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the Commonwealth or any political subdivision of either of these, or any failure of the Trustee to perform and observe any covenant, whether express or implied, or any duty, liability or obligation arising out of or connected with this Indenture, except to the extent permitted by this Indenture.

SECTION 5.07. Investment of Moneys in Funds and Accounts Held By Trustee.

(A) Moneys held in the Indenture Fund shall be invested by the Trustee, upon written direction of the Institution, solely in Investment Securities. Investment Securities shall be purchased at such prices as the Institution may direct. All Investment Securities shall be acquired subject to the limitations as to maturities hereinafter in this Section 5.07 set forth and such additional limitations or requirements consistent with the foregoing as may be established by Request of the Institution. No Request of the Institution shall impose any duty on the Trustee inconsistent with its responsibilities hereunder. Absent receipt by the Trustee of written investment instructions from the Institution, moneys in the Indenture Fund shall remain uninvested.

(B) Moneys in such funds and accounts shall be invested in Investment Securities maturing not later than the date on which it is estimated that such moneys will be required for the purposes specified in this Indenture.

(C) All interest, profits and other income received from the investment of moneys in the Redemption Fund shall be deposited when received in the Redemption Fund. All interest, profits and other income received from the investment of moneys in the Bond Fund shall be deposited when received in the Bond Fund.

(D) Investment Securities acquired as an investment of moneys in any fund or account established under this Indenture shall be credited to such fund or account. Registrable Investment Securities held by the Trustee shall be registered in the name of the Trustee. In making any valuations of investments hereunder, the Trustee may utilize and rely on computerized securities pricing services that are available to it, including those available through its regular accounting system.

(E) The Trustee may commingle any of the funds or accounts established pursuant to this Indenture into a separate fund or funds for investment purposes only, provided that all funds or accounts held by the Trustee hereunder shall be accounted for separately as required by this Indenture. The Trustee or its affiliates may act as sponsor, depository, advisor, principal or agent in the making or disposing of any investment. The Trustee is hereby authorized, in making or disposing of any investment permitted by this Section 5.07, to deal with itself (in its individual capacity) or with any one or more of its affiliates, whether it or such affiliate is acting as an agent of the Trustee or for any third person or dealing as principal for its own account. The Trustee may sell at the best price reasonably obtainable by it, or present for redemption, any Investment Securities so purchased whenever it shall be necessary to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund or account to which such Investment Security is credited, and, subject to the provisions of Section 8.03, the Trustee shall not be liable or responsible for any loss resulting from any investment made in accordance with provisions of this Section 5.07. The Trustee shall not be responsible for any tax, fee or other charge in connection with any investment, reinvestment or the liquidation thereof.

(F) The parties hereto acknowledge that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Institution the right to receive brokerage confirmations of security transactions as they occur, the Institution specifically waives receipt of such confirmations to the extent permitted by law. The Trustee will furnish the Institution with monthly account statements detailing all funds and accounts and investment transactions made by the Trustee hereunder.

(G) The Trustee shall be entitled to conclusively rely on all written investment instructions provided by the Institution hereunder and shall have no investment discretion. The Trustee shall have no responsibility or liability for any depreciation in the value of any investment or for any cost, fee, tax or other charge for any loss, direct or indirect, resulting from any investment, reinvestment or liquidation of investment, to the extent the Trustee has acted at the written direction of the Institution with respect to such investment.

SECTION 5.08. Amounts Remaining in Funds and Accounts. When there are no longer any Bonds Outstanding, all fees, charges and expenses of the Trustee, including fees and expenses of outside counsel and internal counsel to the Trustee, have been paid or provided for, all fees and expenses of the Institution relating to this Indenture have been paid or provided for, and this Indenture has been discharged and satisfied, the Trustee shall pay any amounts remaining in any of the funds or accounts created under this Indenture to the Institution within thirty (30) days after the date of discharge and satisfaction.

## ARTICLE VI

### PARTICULAR COVENANTS; REPRESENTATIONS AND WARRANTIES

SECTION 6.01. Punctual Payment. The Trustee shall solely from funds provided by the Institution punctually pay the principal or Redemption Price and interest when due in respect of all the Bonds. When and as paid in full, all Bonds shall be delivered to the Trustee and shall be cancelled by the Trustee and delivered to, or upon the order of, the Institution.

SECTION 6.02. Compliance with Indenture. The Institution covenants not to issue, or permit to be issued, any Bonds under this Indenture in any manner other than in accordance with the provisions of this Indenture, and shall not suffer or permit any Default (within its power to prevent) to occur under this Indenture, but shall faithfully observe and perform all the covenants, conditions and requirements of this Indenture.

SECTION 6.03. Against Encumbrances. The Institution shall not create or suffer to be created any pledge, lien, charge or other encumbrance upon all or any part of the Indenture Fund or any of the amounts held therein pledged or assigned under this Indenture while any of the Bonds are Outstanding, except the pledge and assignment created by this Indenture and any statutory liens or other liens arising by operation of law. The Institution will assist the Trustee in contesting any pledge, lien, charge or other encumbrance that does not comply with the provisions of this Section 6.03.

SECTION 6.04. Power to Issue Bonds and Make Pledge and Assignment. The Institution is duly authorized to issue the Bonds and to enter into this Indenture and to pledge and assign the funds and accounts purported to be pledged and assigned under this Indenture. The Bonds are and will be legal, valid and binding obligations of the Institution in accordance with their terms, and the Institution and the Trustee shall at all times, to the extent permitted by law, defend, preserve and protect said pledge and assignment of funds and accounts and all the rights of the Bondholders under this Indenture against all claims and demands of all Persons, subject to the limitations set forth in Article VIII relating to the Trustee.

SECTION 6.05. Accounting Records and Financial Statements.

(A) With respect to each fund or account established and maintained by the Trustee pursuant to this Indenture, the Trustee shall at all times keep, or cause to be kept, proper books of record and account prepared in accordance with corporate trust accounting standards, in which complete and accurate entries shall be made of all transactions relating to the receipt, investment, disbursement, allocation and application of payments received from the Institution and the proceeds of the Bonds. Such books of record and account shall be available for inspection by the Institution and any Bondholder, or his or her agent or representative duly authorized in writing, upon reasonable notice, at reasonable hours and under reasonable circumstances.

(B) The Trustee shall, upon request, make available to each Bondholder who shall have certified such Bondholder's position to the Trustee and provided indemnity to the Trustee satisfactory to it, a complete financial statement (which need not be audited and may be its regular account statements) covering receipts, disbursements, allocation and application of any moneys (including proceeds of Bonds) in any of the funds and accounts established pursuant to this Indenture for such month; provided that, notwithstanding the foregoing, the Trustee shall not be obligated to deliver an accounting for any fund or account that has a balance of \$0.00 and has not had any activity since the last reporting. The Trustee may conclusively rely and shall be fully protected in conclusively relying upon information furnished by a Bondholder for the purposes described in this Section 6.05. The Trustee shall also, upon request, furnish a copy of a statement to the Institution for the period of time requested by the Institution.

SECTION 6.06.           Representations and Warranties of the Institution.

(A)   Corporate Organization, Authorization and Powers. The Institution represents and warrants that it is a nonprofit corporation duly organized, validly existing and in good standing under the laws of the Commonwealth with the power to enter into and perform this Indenture, that it is authorized by law to provide a program of education beyond the high school level, and that by proper corporate action it has duly authorized the execution and delivery of this Indenture. The Institution further represents and warrants that the execution and delivery of this Indenture and the consummation of the transactions contemplated herein will not conflict with or constitute a breach of or default under any bond, indenture, note or other evidence of indebtedness of the Institution, the charter or by-laws of the Institution, any gifts, bequests or devises, pledged to or received by the Institution, or any contract, lease or other instrument to which the Institution is a party or by which it is bound or cause the Institution to be in violation of any applicable statute or rule or regulation of any governmental authority.

(B)   Tax Matters. The Institution represents and warrants that (a) it is an organization described in Section 501(c)(3) of the Code and it is not a “private foundation” as defined in Section 509 of the Code; (b) it has received a letter or letters from the Internal Revenue Service to that effect; (c) such letter or letters have not been modified, limited or revoked; (d) it is in compliance with all terms, conditions and limitations, if any, contained in such letter or letters; (e) the facts and circumstances which form the basis of such letter or letters continue substantially to exist as represented to the Internal Revenue Service; and (f) it is exempt from federal income taxes under Section 501(a) of the Code. To the extent consistent with its status as a nonprofit corporation, the Institution agrees that it will not take any action or omit to take any action if such action or omission would cause any revocation or adverse modification of the Institution’s status as an organization described in Section 501(c)(3) of the Code, including, specifically, the Institution will not use any proceeds of the Bonds in any way that constitutes “private inurement” within the meaning of the Code.

(C)   Securities Law Status. The Institution represents and warrants that it is an organization organized and operated exclusively for charitable purposes and not for pecuniary profit; and that no part of its net earning inures to the benefit of any Person, private stockholder or individual, all within the meaning of the Securities Act of 1933, as amended. The Institution shall not take any action or omit to take any action if such action or omission would change its status as set forth in this section or the status of the Bonds as exempt from registration under the Securities Act of 1933 or the status of the Bonds as exempt from registration under the Securities Act of 1933.

(D)   Annual Reports and Other Current Information. Unless otherwise available on the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access system (“EMMA”), within two hundred ten (210) days after the close of each of its fiscal years: (i) the Institution shall furnish to the Trustee and post on Muniti, or any successor thereto or to the functions thereof copies of its annual audited financial statements, and (ii) the Institution shall post on Muniti or any successor thereto or to the functions thereof the following information: (a) applications for admissions, acceptances and matriculations for the current academic year and (b) FTE enrollment statistics (fall semester) for the current academic year. The Trustee has no duty to review such financial statements, is not considered to have notice of the content of such

financial statements or a default based on such content and does not have a duty to verify the accuracy of such statements. The Institution shall furnish to the agencies rating the Bonds such information as they may reasonably require for current reports to their subscribers.

(E) Maintenance of Corporate Existence. The Institution shall maintain its existence under the laws of the Commonwealth and shall not dissolve or dispose of all or substantially all its assets, or consolidate with or merge into another entity or entities, or permit one or more other entities to consolidate with or merge into it, except that it may consolidate with or merge into one or more other entities or permit one or more other entities to consolidate with or merge into it, or transfer all or substantially all of its assets to one or more other entities (and thereafter dissolve or not dissolve as it may elect), if (1) the surviving, resulting or transferee entity or entities each is a corporation having the status and powers set forth in Sections 6.06(A), 6.06(B) and 6.06(C), (2) the transaction does not result in a conflict, breach or default referred to in Section 6.06(A), (3) the surviving, resulting or transferee entity or entities (if not the Institution) each (a) assumes by written agreement with the Trustee all the obligations of the Institution hereunder, (b) notifies the Trustee of any change in the name of the Institution, and (c) executes, delivers, registers, records and files such other instruments the Trustee may reasonably require to confirm, perfect or maintain the security granted hereunder.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES OF BONDHOLDERS

SECTION 7.01. Events of Default. The following events shall be “Events of Default”:

(A) default in the due and punctual payment of the principal or Redemption Price of any Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by proceedings for redemption, by acceleration or otherwise;

(B) default in the due and punctual payment of any interest on any Bond when and as such interest shall become due and payable;

(C) default by the Institution in the performance or observance of any of the other covenants, agreements or conditions on its part contained in this Indenture or in the Bonds (other than a covenant, agreement or condition a default in performance or observance of which is elsewhere in this Section 7.01 specifically dealt with), if such default shall have continued for a period of sixty (60) days after written notice thereof, specifying such default and requiring the same to be remedied and stating that such notice is a “Notice of Default” under this Indenture, shall have been given to the Institution by the Trustee, or to the Institution and the Trustee by the Holders of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding;

(D) the commencement by the Institution of a voluntary case under the federal bankruptcy laws, or if the Institution shall become insolvent or unable to pay its debts as they become due, or shall make an assignment for the benefit of creditors, or shall apply for, consent

to or acquiesce in the appointment of, or taking possession by, a trustee, receiver, custodian or similar official or agent for itself or any substantial part of its property;

(E) the appointment of a trustee, receiver, custodian or similar official or agent for the Institution or for any substantial part of its property and such trustee or receiver shall not be discharged within sixty (60) days; or

(F) an order or decree for relief in an involuntary case under the federal bankruptcy laws shall be entered against the Institution, or a petition seeking reorganization, readjustment, arrangement, composition, or other similar relief as to it under the federal bankruptcy laws or any similar law for the relief of debtors shall be brought against it and shall be consented to by it or shall remain undismissed for sixty (60) days.

SECTION 7.02. Acceleration of Maturity. If an Event of Default shall occur, then, and in each and every such case during the continuance of such Event of Default, the Trustee may, and upon the request of the Holders of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding, the Trustee shall, upon notice in writing to the Institution, declare the principal of all the Bonds then Outstanding, and the interest accrued thereon, to be due and payable immediately, and upon any such declaration by the Trustee the same shall become and shall be immediately due and payable, anything in this Indenture or in the Bonds contained to the contrary notwithstanding.

Any such declaration, however, is subject to the condition that if, at any time after such declaration and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, there shall be deposited with the Trustee a sum sufficient to pay all the principal of or Redemption Price and interest on of the Bonds payment of which is overdue, with interest on such overdue principal at the rate borne by the Bonds, and the reasonable charges and expenses of the Trustee (including counsel fees), and any and all other Defaults known to the Trustee (other than in the payment of principal of and interest on the Bonds due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate shall have been made therefor, then, and in every such case, the Trustee shall, on behalf of the Holders of all of the Bonds, by written notice to the Institution, rescind and annul such declaration and its consequences and waive such Default; but no such rescission and annulment shall extend to or shall affect any subsequent Default, or shall impair or exhaust any right or power consequent thereon.

SECTION 7.03. Rights as a Secured Party. The Trustee, as appropriate, may exercise all of the rights and remedies of a secured party under the Uniform Commercial Code with respect to securities in the Indenture Fund, including without limitation the Bond Fund and the Redemption Fund, including the right to sell or redeem such securities and the right to retain the securities in satisfaction of the obligation of the Institution hereunder. Notice sent by registered or certified mail, postage prepaid, or delivered during business hours, to the Institution at least seven (7) days before an event under Uniform Commercial Code Sections 9-610 and 9-611, or any successor provision of law shall constitute reasonable notification of such event.

SECTION 7.04. Application of Moneys Collected by the Trustee. If an Event of Default shall occur and be continuing, all moneys then held or thereafter received by the Trustee

under any of the provisions of this Indenture (subject to Section 11.09) shall be applied by the Trustee as follows and in the following order:

(A) To the payment of reasonable fees and expenses of the Trustee (including reasonable fees and disbursements of its counsel) incurred in and about the performance of its powers and duties under this Indenture;

(B) To the payment of any expenses necessary in the opinion of the Trustee to protect the interests of the Holders of the Bonds; and

(C) To the payment of the principal or Redemption Price of and interest on of the Bonds then due (upon presentation of the Bonds to be paid, and stamping thereon of the payment if only partially paid, or surrender thereof if fully paid) subject to the provisions of this Indenture, as follows:

(1) Unless the principal of all of the Bonds shall have become or have been declared due and payable,

*First:* To the payment to the Persons entitled thereto of all installments of interest then due in the order of the maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment or installments due on the same date, then to the payment thereof ratably, according to the amounts due thereon, to the Persons entitled thereto, without any discrimination or preference; and

*Second:* To the payment to the Persons entitled thereto of the unpaid principal or Redemption Price of any Bonds that shall have become due, whether at maturity or by call for redemption, in the order of their due dates, with interest on the overdue principal at the rate borne by the Bonds, and, if the amount available shall not be sufficient to pay in full all the Bonds due on any date, together with such interest, then to the payment thereof ratably, according to the amounts of principal or Redemption Price due on such date to the Persons entitled thereto, without any discrimination or preference.

(2) If the principal of all of the Bonds shall have become or have been declared due and payable, to the payment of the principal and interest then due and unpaid upon the Bonds, with interest on the overdue principal at the rate borne by the Bonds, and, if the amount available shall not be sufficient to pay in full the whole amount so due and unpaid, then to the payment thereof ratably, 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, according to the amounts due respectively for principal and interest, to the Persons entitled thereto without any discrimination or preference.

SECTION 7.05. Trustee to Represent Bondholders. The Trustee is hereby irrevocably appointed as trustee and true and lawful attorney-in-fact of the Holders of the Bonds for the purpose of exercising and prosecuting on their behalf such rights and remedies as may be available to such Holders under the provisions of the Bonds, this Indenture and applicable

provisions of any law. Upon the occurrence and continuance of an Event of Default or other occasion giving rise to a right in the Trustee to represent the Bondholders, the Trustee in its discretion may, and upon the written request of the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding, and upon being indemnified to its reasonable satisfaction therefor, shall, proceed to protect or enforce its rights or the rights of such Holders by such appropriate action, suit, mandamus or other proceedings as it shall deem most effectual to protect and enforce any such right. If more than one such request is received by the Trustee from the Holders, the Trustee shall follow the written request executed by the Holders of the greatest percentage (which percentage shall be, in any case, not less than a majority in aggregate principal amount) of the Bonds then Outstanding. All rights of action under this Indenture or the Bonds or otherwise may be prosecuted and enforced by the Trustee without the possession of any of the Bonds or the production thereof in any proceeding relating thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in the name of the Trustee for the benefit and protection of all the Holders of such Bonds, subject to the provisions of this Indenture.

SECTION 7.06. Bondholders' Direction of Proceedings. The Holders of a majority in aggregate principal amount of the Bonds then Outstanding shall have the right, by an instrument or concurrent instruments in writing executed and delivered to the Trustee, and upon indemnifying the Trustee to its reasonable satisfaction therefor, to direct the time, method and place of conducting all remedial proceedings taken by the Trustee hereunder, provided that such direction shall not be otherwise than in accordance with law and the provisions of this Indenture, and that the Trustee shall have the right to decline to follow any such direction which in the opinion of the Trustee would be unjustly prejudicial to Bondholders not parties to such direction.

SECTION 7.07. Limitation on Bondholders' Right to Sue. No Holder of any Bond shall have the right to institute any suit, action or proceeding at law or in equity, for the protection or enforcement of any right or remedy under this Indenture or any applicable law with respect to such Bond, unless (1) such Holder shall have given to the Trustee written notice of the occurrence of an Event of Default; (2) the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding shall have made written request upon the Trustee to exercise the powers hereinbefore granted or to institute such suit, action or proceeding in its own name; (3) such Holder or said Holders shall have tendered to the Trustee indemnity reasonably satisfactory to it against the costs, expenses and liabilities to be incurred in compliance with such request; and (4) the Trustee shall have refused or omitted to comply with such request for a period of sixty (60) days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Trustee.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Holder of Bonds of any remedy hereunder or under law; it being understood and intended that no one or more Holders of Bonds shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Indenture or the rights of any other Holders of Bonds, or to enforce any right under this Indenture or applicable law with respect to the Bonds, except in the manner herein provided, and that all proceedings at law or in equity to enforce any such right shall be instituted, had and maintained in the manner herein provided and for the benefit and protection of all Holders of the Outstanding Bonds, subject to the provisions of this Indenture.



SECTION 7.08. Absolute Obligation of Institution. Notwithstanding any other provision of this Indenture, or in the Bonds, nothing shall affect or impair the obligation of the Institution, which is absolute and unconditional, to pay the principal or Redemption Price of and interest on the Bonds to the respective Holders of the Bonds at their respective dates of maturity, or upon call for redemption, as herein provided, or, subject to Section 7.07, affect or impair the right of such Holders to enforce such payment by virtue of the contract embodied in the Bonds.

SECTION 7.09. Termination of Proceedings. In case any proceedings taken by the Trustee or any one or more Bondholders on account of any Event of Default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee or the Bondholders, then in every such case the Institution, the Trustee and the Bondholders, subject to any determination in such proceedings, shall be restored to their former positions and rights hereunder, severally and respectively, and all rights, remedies, powers and duties of the Institution, the Trustee and the Bondholders shall continue as though no such proceedings had been taken.

SECTION 7.10. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Trustee or to the Holders of the Bonds is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

SECTION 7.11. Delay or Omission Not Waiver. No delay or omission of the Trustee or of any Holder of the Bonds to exercise any right or power arising upon the occurrence of any Default shall impair any such right or power or shall be construed to be a waiver of any such Default or an acquiescence therein; and every power and remedy given by this Indenture to the Trustee or to the Holders of the Bonds may be exercised from time to time and as often as may be deemed expedient.

SECTION 7.12. Waiver of Past Defaults. The Trustee may, and upon request of the Holders of not less than a majority in aggregate principal amount of the Outstanding Bonds shall, on behalf of the Holders of all the Bonds waive any past Default hereunder and its consequences, except a Default:

- (A) In the payment of the principal or Redemption Price of or interest on any Bond, or
- (B) in respect of a covenant or other provision of this Indenture which, pursuant to Section 9.01, cannot be modified or amended without the consent of the Holder of each Outstanding Bond affected.

Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture, but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

SECTION 7.13. Undertaking for Costs. Subject to the provisions of Section 8.06, the parties to this Indenture agree, and each Holder of any Bond by such Person's acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee

for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 7.13 shall not apply to any suit instituted by the Trustee or to any suit instituted by any Bondholder or group of Bondholders holding in the aggregate more than a majority in aggregate principal amount of the Outstanding Bonds.

SECTION 7.14. Notice of Default.

(A) Upon a Responsible Officer's actual knowledge of the existence of any Default under this Indenture, the Trustee shall notify the Institution in writing as soon as practicable, but in any event within five (5) Business Days.

(B) Upon a Responsible Officer's actual knowledge of the existence of any Default under this Indenture, the Trustee shall transmit by mail to all Bondholders, as their names and addresses appear in the bond register, notice of such Default hereunder within ninety (90) days, unless such Default shall have been cured or waived; provided, however, that, except in the case of a Default in the payment of the principal or Redemption Price of or interest on any Bond, the Trustee shall be protected in withholding such notice if and so long as Responsible Officers of the Trustee in good faith determine that the withholding of such notice is in the interest of the Bondholders; and provided, further, that in the case of any Default of the character specified in Section 7.01(C) no such notice to Bondholders shall be given until at least thirty (30) days after the occurrence thereof.

SECTION 7.15. Trustee May File Proofs of Claim.

(A) In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Institution or any other obligor upon the Bonds or the property of the Institution or of such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Bonds shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Institution for the payment of overdue principal or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(1) To file and prove a claim for the whole amount of principal (or Redemption Price) and interest owing and unpaid in respect of the Bonds and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel including expenses and fees of outside counsel and allocated costs of internal legal counsel) and of the Bondholders allowed in such judicial proceeding; and

(2) To collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any receiver, assignee, trustee, liquidator or sequestrator (or other similar official) in any such judicial proceeding is hereby authorized by each Bondholder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Bondholders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel including expenses and fees of outside counsel and allocated costs of internal legal counsel, and any other amounts due the Trustee under this Indenture.

(B) Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Bondholder any plan of reorganization, arrangement, adjustment or composition affecting the Bonds or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Bondholder in any such proceeding.

(C) The Trustee shall be entitled to participate as a member of any official committee of creditors in the matters it deems advisable.

## ARTICLE VIII

### THE TRUSTEE

#### SECTION 8.01. Duties, Immunities and Liabilities of Trustee.

(A) The Trustee shall, prior to an Event of Default, and after the curing or waiver of all Events of Default which may have occurred, perform such duties and only such duties as are specifically set forth in this Indenture, and, except to the extent required by law, no implied covenants or obligations shall be read into this Indenture against the Trustee. The Trustee shall, during the existence of any Event of Default of which it has actual knowledge (which has not been cured or waived), exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(B) The Institution may remove the Trustee at any time unless an Event of Default shall have occurred and then be continuing, and shall remove the Trustee if at any time requested to do so by an instrument or concurrent instruments in writing signed by the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding (or their attorneys duly authorized in writing) or if at any time the Trustee shall cease to be eligible in accordance with subsection (E) of this Section 8.01, or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or its property shall be appointed, or any public officer shall take control or charge of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, in each case by giving written notice of such removal to the Trustee, and thereupon shall appoint a successor Trustee by an instrument in writing.

(C) The Trustee may at any time resign by giving written notice of such resignation to the Institution and by giving the Bondholders notice of such resignation by mail at the addresses shown on the registration books maintained by the Trustee. Upon receiving such notice of

resignation, the Institution shall promptly appoint a successor Trustee by an instrument in writing. The Trustee shall not be relieved of its duties until such successor Trustee has accepted appointment.

(D) Any removal or resignation of the Trustee and appointment of a successor Trustee shall become effective upon acceptance of appointment by the successor Trustee. If no successor Trustee shall have been appointed and have accepted appointment within thirty (30) days of giving notice of removal or notice of resignation as aforesaid, the resigning Trustee or any Bondholder (on behalf of itself and all other Bondholders) may petition any court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Trustee. Any successor Trustee appointed under this Indenture shall signify its acceptance of such appointment by executing and delivering to the Institution and to its predecessor Trustee a written acceptance thereof, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Trustee, with like effect as if originally named Trustee herein; but, nevertheless at the request of the successor Trustee, such predecessor Trustee shall execute and deliver any and all instruments of conveyance or further assurance and do such other things as may reasonably be required for more fully and certainly vesting in and confirming to such successor Trustee all the right, title and interest of such predecessor Trustee in and to any property held by it under this Indenture and shall pay over, transfer, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Upon request of the successor Trustee, the Institution shall execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Trustee all such moneys, estates, properties, rights, powers, trusts, duties and obligations. Upon acceptance of appointment by a successor Trustee as provided in this subsection, the Institution shall mail or cause to be mailed (at the expense of the Institution) a notice of the succession of such Trustee to the trusts hereunder to the Bondholders at the addresses shown on the registration books maintained by the Trustee. If the Institution fails to mail such notice within fifteen (15) days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause such notice to be mailed at the expense of the Institution.

(E) Any successor Trustee shall be a trust company or bank having trust powers in the Commonwealth, having a combined capital and surplus of (or if such trust company or bank is a member of a bank holding system, its bank holding company shall have a combined capital and surplus of) at least fifty million dollars (\$50,000,000). If such bank or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this subsection the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this subsection (E), the Trustee shall resign immediately in the manner and with the effect specified in this Section 8.01.

SECTION 8.02. Merger or Consolidation. Any organization or entity into which the Trustee may be merged or converted or with which it may be consolidated, or any organization or entity resulting from any merger, conversion or consolidation to which the

Trustee shall be a party, or any organization or entity succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such organization or entity shall be otherwise qualified and eligible under subsection € of Section 8.01, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

SECTION 8.03.        Liability of Trustee.

(A)    The Trustee assumes no responsibility for the correctness of the recitals of fact herein except as they specifically apply to the Trustee, and makes no representations as to the validity or sufficiency of this Indenture or of the Bonds, nor shall the Trustee incur any responsibility in respect thereof, other than in connection with the duties or obligations herein or in the Bonds assigned to or imposed upon it except for any recital or representation specifically relating to the Trustee or its powers. The Trustee shall, however, be responsible for its representations contained in its certificate of authentication on the Bonds. The Trustee shall not be liable in connection with the performance of its duties hereunder, except for its own negligent action, negligent failure to act or willful misconduct.

(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.

(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 not less than a majority (or such lesser or greater number as this Indenture may permit to direct the Trustee) in aggregate principal amount of the Bonds at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture.

(D)    The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Bondholders pursuant to the provisions of this Indenture unless such Bondholders shall have offered to the Trustee indemnity satisfactory to it against the costs, expenses and liabilities which may be incurred therein or thereby. The permissive rights of the Trustee hereunder are not to be construed as duties. The Trustee has no obligation or liability to the Holders for the payment of interest, principal, or Redemption Price with respect to the Bonds from its own funds; but rather the Trustee's obligations shall be limited to the performance of its duties hereunder. Further, the Trustee shall have no responsibility for the use of Bond proceeds paid out in accordance with this Indenture.

(E)    Except with respect to Events of Default specified in Section 7.01(A) or Section 7.01(B), the Trustee shall not be deemed to have knowledge of any Event of Default unless and until a Responsible Officer shall have actual knowledge thereof or the Trustee shall have received written notice thereof at the Designated Office. The Trustee shall not be responsible for the validity or effectiveness of any collateral given to or held by it.

(F) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through attorneys-in-fact, agents or receivers, and shall not be answerable for the negligence or misconduct of any such attorney-in-fact, agent or receiver selected by it with due care. The Trustee shall be entitled to advice of counsel and other professionals concerning all matters of trust and its duty hereunder, but the Trustee shall not be answerable for the professional malpractice of any attorney-at-law or certified public accountant in connection with the rendering of his or her professional advice in accordance with the terms of this Indenture, if such attorney-at-law or certified public accountant was selected by the Trustee with due care.

(G) The Trustee shall have no responsibility for and makes no representation as to the validity, sufficiency or adequacy of this Indenture or the Bonds or any information, statement, or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Bonds.

SECTION 8.04. Right of Trustee to Rely on Documents. The Trustee shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, bond, statement, requisition, facsimile transmission, electronic mail or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Trustee may consult with counsel, who may be counsel of or to the Institution, with regard to legal questions, and the opinion or written advice of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

The Trustee shall not be bound to recognize any Person as the Holder of a Bond unless and until such Bond is submitted for inspection, if required, and such Person's title thereto is satisfactorily established, if disputed.

Whenever in the administration of the trusts imposed upon it by this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a Certificate of the Institution, and such Certificate shall be full warrant to the Trustee for any action taken or suffered in good faith under the provisions of this Indenture in reliance upon such Certificate, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may deem reasonable.

SECTION 8.05. Preservation and Inspection of Documents. All documents received by the Trustee under the provisions of this Indenture shall be retained in its possession and shall be subject upon prior written notice to the inspection of the Institution and any Bondholder, and their agents and representatives duly authorized in writing, at reasonable hours and under reasonable conditions.

SECTION 8.06. Compensation and Indemnification.

(A) The Institution shall pay to the Trustee from time to time such compensation for its services as agreed to by the Institution and the Trustee. The Trustee's compensation shall not

be limited by any law on compensation of a Trustee of an express trust. The Institution shall reimburse the Trustee upon request for all reasonable and documented out-of-pocket expenses incurred or made by it, including costs of collection, in addition to the compensation for its services. Such expenses shall include the reasonable compensation and expenses, disbursements and advances of the Trustee's agents, counsel, accountants and experts.

(B) 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 its rights or powers, if it has not received the agreed compensation for such services or, in cases where the Trustee has a right to reimbursement or indemnification for such performance or exercise, if it shall have reasonable grounds for believing that repayment of such funds or indemnity reasonably satisfactory to it against such risk or liability is not assured to it.

(C) The Institution further covenants and agrees to indemnify and save harmless the Trustee, and its officers, directors, employees, and agents against any loss, liability, damage, claim or expense (including counsel fees and expenses) that it may incur arising out of or in connection with (1) the exercise and performance of the Trustee's powers and duties hereunder in accordance with the provisions hereof or (2) the sale of any Bonds and the carrying out of any of the transactions contemplated by the Bonds or related documents, including the costs and expenses of enforcing this Indenture against the Institution and defending against any claim of liability, but excluding liabilities that are due to the Trustee's negligence, negligent failure to act or willful misconduct. The obligations of the Institution under this Section 8.06 shall survive resignation or removal of the Trustee under this Indenture and payment of the Bonds and discharge of this Indenture.

(D) To secure the Institution's payment obligations in this Section, the Trustee shall have a lien prior to the Bonds on all money or property held or collected by the Trustee under this Indenture other than money or property held in trust to pay principal of and interest on particular Bonds.

SECTION 8.07. Notice to Rating Agency. The Trustee shall give written notice to each Rating Agency then rating the Bonds if (1) a successor Trustee is appointed hereunder, (2) if this Indenture is amended or supplemented in any material manner, (3) if the Bonds are paid and this Indenture defeased pursuant to Section 10.01, (4) if the Bonds are accelerated pursuant to Section 7.02, or (5) if the Bonds are redeemed in whole or in part pursuant to Section 4.01, provided that the Trustee shall incur no liability for failure to give any such notice.

## ARTICLE IX

### MODIFICATION OR AMENDMENT OF THE INDENTURE

#### SECTION 9.01. Amendments Permitted.

(A) This Indenture and the rights and obligations of the Institution and of the Holders of the Bonds and of the Trustee may be modified or amended from time to time and at any time by an indenture or indentures supplemental hereto, which the Institution and the Trustee may enter into when the written consent of the Holders of a majority in aggregate principal amount of

the Bonds then Outstanding shall have been filed with the Trustee. No such modification or amendment shall (1) extend the fixed maturity of any Bond, or reduce the amount of principal thereof, or reduce the rate of interest thereon, or extend the time of payment of interest thereon, or reduce any premium payable upon the redemption thereof, without the consent of the Holder of each Bond so affected, or (2) reduce the aforesaid percentage of Bonds the consent of the Holders of that is required to effect any such modification or amendment, or permit the creation of any lien on the Indenture Fund or the amounts pledged under this Indenture prior to or on a parity with the lien created by this Indenture, or deprive the Holders of the Bonds of the lien created by this Indenture on the Indenture Fund and such amounts (except as expressly provided in this Indenture), without the consent of the Holders of all Bonds then Outstanding. It shall not be necessary for the consent of the Bondholders to approve the particular form of any Supplemental Indenture, but it shall be sufficient if such consent shall approve the substance thereof. Promptly after the execution by the Institution and the Trustee of any Supplemental Indenture pursuant to this subsection (A), the Trustee shall mail a notice, setting forth in general terms the substance of such Supplemental Indenture, to the Bondholders at the addresses shown on the registration books maintained by the Trustee. Any failure to give such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such Supplemental Indenture.

(B) This Indenture and the rights and obligations of the Institution, of the Trustee and of the Holders of the Bonds may also be modified or amended from time to time and at any time by an indenture or indentures supplemental hereto, which the Institution and the Trustee may enter into without the necessity of obtaining the consent of any Bondholders, but only to the extent permitted by law and only for any one or more of the following purposes:

(1) to provide for the issuance of Additional Bonds pursuant to Section 3.04 hereof;

(2) to add to the covenants and agreements of the Institution contained in this Indenture other covenants and agreements thereafter to be observed, to pledge or assign additional security for the Bonds (or any portion thereof), or to surrender any right or power herein reserved to or conferred upon the Institution, provided that such covenant, agreement, pledge, assignment or surrender shall not materially adversely affect the interests of the Holders of the Bonds;

(3) to make such provisions for the purpose of curing any ambiguity, inconsistency or omission, or of curing or correcting any defective provision, contained in this Indenture, or in regard to matters or questions arising under this Indenture, as the Institution or the Trustee may deem necessary or desirable and not inconsistent with this Indenture, and which shall not materially adversely affect the interests of the Holders of the Bonds;

(4) to modify, amend or supplement this Indenture or any Supplemental Indenture in such manner as to permit the qualification hereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and to add such other terms, conditions and provisions as may be permitted by said act or similar federal statute, and which shall not materially adversely affect the interests of the Holders



of the Bonds (provided, however, that such modifications, amendments, supplements and additions shall be permitted under this subsection (B) only if qualification under said act or similar federal statute is required by applicable law now or hereafter in effect); or

(5) to provide for the procedures required to permit any Bondholder, at its option, to utilize an uncertificated system of registration of its Bond or to facilitate the registration of the Bonds in the name of a nominee of the Securities Depository in accordance with the provisions of Section 2.10.

(C) The Trustee may in its discretion, but shall not be obligated to, enter into any such Supplemental Indenture authorized by subsections (A) or (B) of this Section 9.01 which materially adversely affects the Trustee's own rights, duties or immunities under this Indenture or otherwise. In signing a Supplemental Indenture, the Trustee shall receive and be fully protected in relying upon an Opinion of Counsel stating that such amendment is authorized or permitted by this Indenture.

SECTION 9.02. Effect of Supplemental Indenture. Upon the execution of any Supplemental Indenture pursuant to this Article IX, this Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Institution, the Trustee and all Holders of Bonds Outstanding shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

SECTION 9.03. Endorsement of Bonds; Preparation of New Bonds. Bonds delivered after the execution of any Supplemental Indenture pursuant to this Article IX may, and if the Institution so determines shall, bear a notation by endorsement or otherwise in form approved by the Institution and the Trustee as to any modification or amendment provided for in such Supplemental Indenture, and, in that case, upon demand of the Holder of any Bond Outstanding at the time of such execution and presentation of such Bond for the purpose at the Designated Office of the Trustee or at such additional offices as the Trustee may select and designate for that purpose, a suitable notation shall be made on such Bond. If the Supplemental Indenture shall so provide, new Bonds so modified as to conform, in the opinion of the Institution (which may be based on an Opinion of Counsel, in the sole discretion of the Institution), to any modification or amendment contained in such Supplemental Indenture, shall be prepared by the Trustee at the expense of the Institution, executed by the Institution and authenticated by the Trustee, and, subject to the provisions of Section 4.02 while the Bonds remain in the Book-Entry System, upon demand of the Holders of any Bonds then Outstanding shall be exchanged at the Designated Office of the Trustee, without cost to any Bondholder, for Bonds then Outstanding, upon surrender for cancellation of such Bonds, in equal aggregate principal amounts of the same maturity.

SECTION 9.04. Amendment of Particular Bonds. The provisions of this Article IX shall not prevent any Bondholder from accepting any amendment as to the particular Bonds held by such Bondholder, provided that due notation thereof is made on such Bonds.

## ARTICLE X

### DEFEASANCE

SECTION 10.01. Discharge of Indenture. The Bonds may be paid or discharged by the Institution or the Trustee on behalf of the Institution in any of the following ways:

- (A) by paying or causing to be paid the principal or Redemption Price of and interest on of all Bonds Outstanding, as and when the same become due and payable;
- (B) by depositing with the Trustee, in trust, at or before maturity, moneys or securities in the necessary amount (as provided in Section 10.03) to pay when due or redeem all Bonds then Outstanding; or
- (C) by delivering to the Trustee, for cancellation by it, all Bonds then Outstanding.

If the Institution shall also pay or cause to be paid all other sums payable hereunder by the Institution (including the outstanding fees and expenses of the Trustee and its counsel), then and in that case at the election of the Institution (evidenced by a Certificate of the Institution filed with the Trustee signifying the intention of the Institution to discharge all such indebtedness and this Indenture and upon receipt by the Trustee of an Opinion of Counsel to the effect that the obligations under this Indenture and the Bonds have been discharged), and notwithstanding that any Bonds shall not have been surrendered for payment, this Indenture and the pledge of the Indenture Fund and all amounts held therein made under this Indenture and all covenants, agreements and other obligations of the Institution under this Indenture (except as otherwise provided in Section 8.06) shall cease, terminate, become void and be completely discharged and satisfied and the Bonds shall be deemed paid. In such event, upon the request and at the expense of the Institution, the Trustee shall cause an accounting for such period or periods as may be requested by the Institution to be prepared and filed with the Institution and shall execute and deliver to the Institution all such instruments as may be necessary to evidence such discharge and satisfaction, and the Trustee shall pay over, transfer, assign or deliver to the Institution all moneys or securities or other property held by it pursuant to this Indenture which are not required for the payment or redemption of Bonds not theretofore surrendered for such payment or redemption.

SECTION 10.02. Discharge of Liability on Bonds. Upon the deposit with the Trustee, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 10.03) to pay or redeem any Outstanding Bond (whether upon or prior to its maturity or the redemption date of such Bond), provided that, if such Bond is to be redeemed prior to maturity, notice of such redemption shall have been given as in Article IV provided or provision satisfactory to the Trustee shall have been made for the giving of such notice, then all liability of the Institution in respect of such Bond shall cease, terminate and be completely discharged, and the Bonds shall be deemed paid, except only that thereafter the Holder thereof shall be entitled to payment of the principal or Redemption Price of and interest on such Bond by the Institution, and the Institution shall remain liable for such payments, but only out of such money or securities deposited with the Trustee as aforesaid for their payment, subject, however, to the provisions of Section 10.04.

The Institution may at any time surrender to the Trustee for cancellation by it any Bonds previously issued and delivered, which the Institution may have acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

SECTION 10.03. Deposit of Money or Securities with Trustee. Whenever in this Indenture it is provided or permitted that there be deposited with or held in trust by the Trustee money or securities in the necessary amount to pay or redeem any Bonds, the money or securities so to be deposited or held may include money or securities held by the Trustee in the funds and accounts established pursuant to this Indenture and shall be:

(A) lawful money of the United States of America in an amount equal to the principal amount of such Bonds and all unpaid interest thereon to maturity, except that, in the case of Bonds that are to be redeemed prior to maturity and in respect of which notice of such redemption shall have been given as in Article IV provided or provision satisfactory to the Trustee shall have been made for the giving of such notice, the amount to be deposited or held shall be the principal amount or Redemption Price of and all unpaid interest on of such Bonds to the redemption date; or

(B) Investment Securities described in clause (1) or (2) of the definition thereof in Section 1.01 (not callable by the holder thereof prior to maturity), the principal of and interest on which when due will provide money sufficient to pay the principal or Redemption Price of and all unpaid interest to maturity, or to the redemption date, as the case may be, on the Bonds to be paid or redeemed, as such principal or Redemption Price and interest become due; provided that, in the case of Bonds which are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as in Article IV provided or provision satisfactory to the Trustee shall have been made for the giving of such notice;

provided, in each case, that the Trustee shall have been irrevocably instructed (by the terms of this Indenture or by direction of the Institution) to apply such money to the payment of such principal or Redemption Price and interest with respect to such Bonds.

SECTION 10.04. Payment of Bonds After Discharge of Indenture. Notwithstanding any provisions of this Indenture, any moneys held by the Trustee in trust for the payment of the principal or Redemption Price of or interest on of any Bonds and remaining unclaimed for three years (or, if shorter, one day before such moneys would escheat to the Commonwealth under then applicable law) after such principal, Redemption Price or interest, as the case may be, has become due and payable (whether at maturity or upon call for redemption), shall be repaid to the Institution free from the trusts created by this Indenture upon receipt of an indemnification agreement acceptable to the Institution and the Trustee indemnifying the Trustee with respect to claims of Holders of Bonds which have not yet been paid, and all liability of the Trustee and the Institution with respect to such moneys shall thereupon cease; provided, however, that before the repayment of such moneys to the Institution as aforesaid, the Trustee may (at the cost of the Institution) first mail to the Holders of Bonds which have not yet been paid, at the addresses shown on the registration books maintained by the Trustee, a notice, in such form as may be deemed appropriate by the Trustee with respect to the Bonds so payable and not presented and

with respect to the provisions relating to the repayment to the Institution of the moneys held for the payment thereof.

## ARTICLE XI

### MISCELLANEOUS

SECTION 11.01. Successor is Deemed Included in All References to Predecessor. Whenever in this Indenture either the Institution or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the Institution or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

SECTION 11.02. Limitation of Rights to Parties and Bondholders. Nothing in this Indenture or in the Bonds expressed or implied is intended or shall be construed to give to any Person other than the Institution, the Trustee and the Holders of the Bonds, any legal or equitable right, remedy or claim under or in respect of this Indenture or any covenant, condition or provision therein or herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the Institution, the Trustee and the Holders of the Bonds.

SECTION 11.03. Waiver of Notice. Whenever in this Indenture the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the Person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 11.04. Destruction of Bonds. Whenever in this Indenture provision is made for the cancellation by the Trustee and the delivery to, or upon the order of, the Institution of any Bonds, the Trustee may, in lieu of such cancellation and delivery, destroy such Bonds.

SECTION 11.05. Severability of Invalid Provisions. If any one or more of the provisions contained in this Indenture or in the Bonds shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Indenture and such invalidity, illegality or unenforceability shall not affect any other provision of this Indenture, and this Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein.

SECTION 11.06. Notices. Any notice, direction, instruction or demand given or made pursuant to this Indenture shall be given or made in writing and shall be served by: (i) United States first-class mail, postage prepaid, addressed to the requisite party as set forth in this paragraph; (ii) hand delivery, addressed to the requisite party as set forth in this paragraph; or (iii) confirmed facsimile, addressed to the requisite party as set forth in this paragraph. Any notice, direction or instruction to or demand upon the Trustee shall be addressed to the Trustee at One Federal Street, 10<sup>th</sup> Floor, Boston, Massachusetts 02110, Attention: Corporate Trust

Services, Tel: (617) 603-6568, Fax: (617) 603-6667. Any notice to or demand upon the Institution shall be addressed to the Institution at 950 Main Street, Worcester, Massachusetts 01610, Attention: President and Treasurer, (or such other address as may have been filed in writing by the Institution with the Trustee).

SECTION 11.07. Evidence of Rights of Bondholders.

(A) Any request, consent or other instrument required or permitted by this Indenture to be signed and executed by Bondholders may be in any number of concurrent instruments of substantially similar tenor and shall be signed or executed by such Bondholders in Person or by an agent or agents duly appointed in writing.

(B) The fact and date of the execution by any Person of any such request, consent or other instrument or writing may be proved by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the Person signing such request, consent or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution duly sworn to before such notary public or other officer.

(C) The ownership of Bonds shall be proved by the registration books for the Bonds held by the Trustee.

(D) Any request, consent, or other instrument or writing of the Holder of any Bond shall bind every future Holder of the same Bond and the Holder of every Bond issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the Institution in accordance therewith or reliance thereon.

SECTION 11.08. Disqualified Bonds. In determining whether the Holders of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds which are known to the Trustee to be owned or held by or for the account of the Institution, or by any other obligor on the Bonds, or by any Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Institution or any other obligor on the Bonds, shall be disregarded and deemed not to be Outstanding for the purpose of any such determination. Bonds so owned which have been pledged in good faith may be regarded as Outstanding for the purposes of this Section 11.08 if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Bonds and that the pledgee is not a Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Institution or any other obligor on the Bonds. In case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel selected by it with due care shall be full protection to the Trustee.

SECTION 11.09. Money Held for Particular Bonds. The money held by the Trustee for the payment of the interest, principal or Redemption Price due on any date with respect to particular Bonds (or portions of Bonds in the case of Bonds redeemed in part only) shall, on and after such date and pending such payment, be set aside on its books and held uninvested in trust by it for the Holders of the Bonds entitled thereto, subject, however, to the provisions of Section 10.04.

SECTION 11.10. Funds and Accounts. Any fund required by this Indenture to be established and maintained by the Trustee may be established and maintained in the accounting records of the Trustee either as a fund or an account, and may, for the purposes of such records, any audits thereof and any reports or statements with respect thereto, be treated either as a fund or as an account; but all such records with respect to all such funds shall at all times be maintained in accordance with customary standards of the corporate trust industry, to the extent practicable, and with due regard for the requirements of Section 6.05 and for the protection of the security of the Bonds and the rights of every Holder thereof. The Trustee may establish such additional funds and accounts as it deems necessary or appropriate to perform its obligations hereunder.

SECTION 11.11. Waiver of Personal Liability. No member, officer, agent or employee of the Institution shall be individually or personally liable for the payment of the principal or Redemption Price of or interest on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof or the performance of any duty hereunder; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law or by this Indenture.

SECTION 11.12. Business Days. If any date specified herein shall not be a Business Day, any action required on such date may be made on the next succeeding Business Day with the same effect as if made on such date.

SECTION 11.13. Governing Law; Venue. This Indenture shall be construed in accordance with and governed by the Constitution and the laws of the Commonwealth applicable to contracts made and performed in the Commonwealth. This Indenture shall be enforceable in the Commonwealth, and any action arising hereunder shall (unless waived by the Institution) be filed and maintained in the Commonwealth.

SECTION 11.14. Execution in Several Counterparts. This Indenture may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts shall together constitute one instrument.

SECTION 11.15. CUSIP Numbers. Neither the Trustee nor the Institution shall be liable for any defect or inaccuracy in the CUSIP number that appears on any Bond or in any redemption notice. The Trustee may, in its discretion, 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 solely for the convenience of the Holders and that neither the Trustee nor the Institution shall be liable for any inaccuracies in such numbers.

SECTION 11.16. Agreement Not for the Benefit of Other Parties. This Indenture is not intended for the benefit of and shall not be construed to create rights in parties other than the Institution, the Trustee, the Beneficial Owners, and the Bondholders.

SECTION 11.17. Entire Agreement. This Indenture constitutes the entire agreement of the parties hereto and is not subject to modification, amendment, qualification or limitation except as expressly provided herein.

SECTION 11.18. Electronic Communications. The Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, note, bond, debenture or other paper or document (including any statement by or on behalf of any Holder relating to the amount of principal outstanding or interest due on any Obligation) reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties. The Trustee shall have the right to accept and act upon any notice, instruction, or other communication, including any funds transfer instruction, (each, a "Notice to Trustee") received pursuant to this Agreement by electronic transmission (including by e-mail, facsimile transmission, web portal or other electronic methods) and shall not have any duty to confirm that the Person sending such Notice to Trustee is, in fact, a Person authorized to do so. Electronic signatures believed by the Trustee to comply with the ESIGN Act of 2000 or other applicable law (including electronic images of handwritten signatures and digital signatures provided by DocuSign, Orbit, Adobe Sign or any other digital signature provider identified by any other party hereto and acceptable to the Trustee) shall be deemed original signatures for all purposes. Each other party to this Agreement assumes all risks arising out of the use of electronic signatures and electronic methods to send a Notice to Trustee, including without limitation the risk of the Trustee acting on an unauthorized Notice to Trustee and the risk of interception or misuse by third parties. Notwithstanding the foregoing, the Trustee may in any instance and in its sole discretion require that a Notice to Trustee in the form of an original document bearing a manual signature be delivered to the Trustee in lieu of, or in addition to, any such electronic Notice to Trustee.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Institution has caused this Indenture to be signed in its name by an Authorized Representative, in token of its acceptance of the trusts created hereunder, has caused this Indenture to be signed in its corporate name by its duly authorized officer all as of the day and year first above written.

TRUSTEES OF CLARK UNIVERSITY

By: *Danielle Manning*  
Name: Danielle Manning  
Title: Chief Financial Officer

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

By: \_\_\_\_\_  
Authorized Signatory



IN WITNESS WHEREOF, the Institution has caused this Indenture to be signed in its name by an Authorized Representative, in token of its acceptance of the trusts created hereunder, has caused this Indenture to be signed in its corporate name by its duly authorized officer all as of the day and year first above written.

TRUSTEES OF CLARK UNIVERSITY

By: \_\_\_\_\_  
Name: Danielle Manning  
Title: Chief Financial Officer

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

By: *Karen Beach*  
Authorized Signatory

EXHIBIT A

[FORM OF INITIAL BONDS]

REGISTERED

REGISTERED

No. R-

\$

UNITED STATES OF AMERICA

CLARK UNIVERSITY  
TAXABLE BONDS,  
SERIES 2021

INTEREST RATE      MATURITY DATE      ISSUE DATE      CUSIP

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: \_\_\_\_\_ DOLLARS

TRUSTEES OF CLARK UNIVERSITY, an nonprofit corporation organized and existing under the laws of The Commonwealth of Massachusetts (the "Institution"), for value received, hereby promises to pay, in lawful money of the United States of America, to the Registered Owner specified above, or registered assigns, on the maturity date specified above (subject to any right of prior redemption hereinafter mentioned), the principal amount specified above, and to pay interest on such principal amount on July 1, 2022 and semiannually thereafter on each January 1 and July 1 (each, an "Interest Payment Date") until payment of such principal amount shall be discharged as provided in the Indenture (as defined below). This bond shall bear interest at the rate set forth above from the later of (i) the date of issuance and (ii) the most recent Interest Payment Date to which interest has been paid or duly provided for. The principal or Redemption Price hereof (as defined below) is payable to the Holder hereof upon presentation and surrender hereof at the Designated Office of 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 (together with any successor trustee as provided in the Indenture, herein called the "Trustee"), having a corporate trust office in Boston, Massachusetts (or, in the case of a successor Trustee, at the designated office of such successor Trustee). The Bonds are issuable as fully registered Bonds in "Authorized Denominations" of \$1,000 or any integral multiple thereof

Payment of the interest on each Interest Payment Date shall be made to the Holder hereof as of the close of business on the Record Date for each Interest Payment Date, such interest to be paid by check mailed by first class mail to such Holder at its address as it appears on such registration books, or, upon the written request of any Holder of at least \$1,000,000 in aggregate principal amount of Bonds, submitted to the Trustee at least one (1) Business Day prior to the Record Date, by wire transfer in immediately available funds to an account within the United States designated by such Holder. Except with respect to defaulted interest (for which a special

record date will be established), as used herein, “Record Date” means the fifteenth (15<sup>th</sup>) day (whether or not a Business Day) of the month immediately preceding each Interest Payment Date. As long as the Securities Depository is the Holder of all or part of the Bonds in book-entry form, said principal or Redemption Price and interest payments shall be made to the Securities Depository by wire transfer in immediately available funds. Interest on the Bonds shall be calculated on the basis of a three hundred sixty (360)-day year consisting of twelve (12) thirty (30)-day months.

This Bond is one of a duly authorized issue of bonds of the Institution designated as “Clark University Taxable Bonds, Series 2021” (herein called the “Bonds”), limited in aggregate principal amount to One Hundred Fifty-Five Million Two Hundred Thousand Dollars (\$155,200,000) and issued pursuant to an Indenture of Trust, dated as of November 1, 2021 (herein called the “Indenture”), by and between the Institution and the Trustee. Capitalized terms used herein but not defined herein have the meanings assigned to them in the Indenture.

The Bonds and the interest thereon are payable from amounts paid to the Trustee by the Institution pursuant to the Indenture for deposit in the Indenture Fund (as that term is defined in the Indenture) and are secured by a pledge and assignment of said Indenture Fund and all amounts held therein by the Trustee for the benefit of the Bondholders, subject only to the provisions of the Indenture permitting or requiring the application thereof for the purposes and on the terms and conditions set forth in the Indenture.

Interest payable on any Bond shall cease to accrue (i) on the maturity date of such Bond, provided that there has been irrevocably deposited with the Trustee an amount sufficient to pay the principal amount thereof, plus interest thereon to such date; or (ii) on the date fixed for redemption thereof; provided that there has been irrevocably deposited with the Trustee an amount sufficient to pay the Redemption Price thereof. The owner of such Bond shall not be entitled to any other payment for such Bond, and such Bond shall no longer be outstanding and entitled to the benefits of the Indenture, except for such payment from moneys held by the Trustee for such purpose.

This bond has been executed by the Trustee pursuant to the terms of the Indenture. Copies of the Indenture are on file at the Designated Office of the Trustee in Boston, Massachusetts (or, in the case of a successor Trustee, at the Designated Office of such successor Trustee), and reference is made to the Indenture and any and all amendments thereof for a description of the pledges and covenants securing the Bonds, the nature, extent and manner of enforcement of such pledges and covenants, the rights and remedies of the registered Holders of the Bonds with respect thereto and the other terms and conditions upon which the Bonds are delivered thereunder.

The Bonds are subject to optional redemption prior to maturity by written direction of the Institution, in whole or in part on any date in such order of maturity as directed by the Institution, at the Redemption Price, plus interest to the date of redemption. “Redemption Price” means: (i) with respect to Bonds redeemed prior to (A) April 1, 2031 in the case of the Bonds maturing July 1, 2031, (B) April 1, 2036 in the case of the Bonds maturing July 1, 2036, (C) January 1, 2042 in the case of the Bonds maturing July 1, 2042, and (D) January 1, 2052 in the case of the Bonds maturing July 1, 2052, in each case at the Make-Whole Redemption Price and (ii) with respect to Bonds redeemed on or after (A) April 1, 2031 in the case of the Bonds maturing July 1, 2031, (B) April 1, 2036 in the case of the Bonds maturing July 1, 2036, (C) January 1, 2042 in the case of

the Bonds maturing July 1, 2042, and (D) January 1, 2052 in the case of the Bonds maturing July 1, 2052, in each case, at 100% of the principal amount of the Bonds to be redeemed.]

“Make-Whole Redemption Price” means the greater of (i) 100% of the principal amount of the Bonds to be redeemed; and (ii) the sum of the present value of the remaining scheduled payments of principal and interest on any Bonds being redeemed (exclusive of interest accrued to the date of redemption) discounted to the redemption date on a semiannual basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate, plus (A) 15 basis points in the case of the Bonds maturing July 1, 2031, (B) 25 basis points in the case of the Bonds maturing July 1, 2036, (C) 20 basis points in the case of the Bonds maturing July 1, 2042, and (iv) 20 basis points in the case of the Bonds maturing July 1, 2052, plus, in each case, accrued and unpaid interest on the Bonds to be redeemed to but excluding the redemption date.

The Bonds maturing July 1, 2031, July 1, 2036, July, 2042, and July 1, 2052 are subject to redemption from sinking fund installments at their principal amounts, without premium, plus accrued interest to the redemption date on July 1 of each of the years and in the principal amounts as follows:

\$5,640,000 Term Bond Due July 1, 2031

<u>Year</u>	<u>Principal Amount</u>	<u>Year</u>	<u>Principal Amount</u>
2029	\$1,000,000	2031*	\$3,105,000
2030	1,535,000		

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\*Maturity Year

\$24,525,000 Term Bond Due July 1, 2036

<u>Year</u>	<u>Principal Amount</u>	<u>Year</u>	<u>Principal Amount</u>
2032	\$3,710,000	2035	\$5,655,000
2033	4,340,000	2036*	5,835,000
2034	4,985,000		

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\*Maturity Year

\$39,460,000 Term Bond Due July 1, 2042

<u>Year</u>	<u>Principal Amount</u>	<u>Year</u>	<u>Principal Amount</u>
2037	\$6,070,000	2040	\$6,670,000
2038	6,265,000	2041	6,885,000
2039	6,465,000	2042*	7,105,000

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\*Maturity Year

\$85,575,000 Term Bond Due July 1, 2052

<u>Year</u>	<u>Principal Amount</u>	<u>Year</u>	<u>Principal Amount</u>
2043	\$7,330,000	2048	\$8,660,000

2044	7,580,000	2049	8,960,000
2045	7,835,000	2050	9,260,000
2046	8,100,000	2051	9,575,000
2047	8,375,000	2052*	9,900,000

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\*Maturity Year

If less than all of the Bonds or any given portion thereof are called for redemption, the Bonds to be redeemed shall be selected in accordance with the Indenture.

As provided in the Indenture, notice of redemption shall be mailed by first-class mail by the Trustee, not less than thirty (30) or more than sixty (60) days prior to the date fixed for redemption, to the Holder of each Bond designated for redemption at their address appearing on the registration books of the Trustee. If this bond is called for redemption and payment is duly provided as specified in the Indenture, interest shall cease to accrue with respect hereto from and after the date fixed for redemption.

This bond is transferable by the registered Holder hereof, in person or by the registered Holder's attorney duly authorized in writing, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture and upon surrender and cancellation of this Bond. Upon such transfer, a new Bond or Bonds, for the same aggregate principal amount, having the same maturity date and in Authorized Denominations, will be issued to the transferee in exchange therefor. Subject to the limitations and conditions and upon payment of the charges, if any, provided in the Indenture, Bonds may be exchanged for the same aggregate principal amount of fully registered Bonds of other Authorized Denominations.

The Trustee shall not be required to transfer or exchange (i) any bond during the fifteen (15) days next preceding the selection of Bonds for redemption or (ii) any Bond called for redemption.

The Institution and the Trustee may treat the registered owner hereof as the absolute owner hereof for all purposes, and the Institution and the Trustee shall not be affected by any notice to the contrary.

The Indenture and the rights and obligations of the Institution and of the registered owners of the Bonds and of the Trustee may be modified or amended from time to time and at any time in the manner, to the extent, and upon the terms provided in the Indenture.

This bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been manually signed by the Trustee.

IN WITNESS WHEREOF, TRUSTEES OF CLARK UNIVERSITY has caused this bond to be executed in its name and on its behalf by the manual or facsimile signature of an Authorized Representative, all as of the date set forth above.

TRUSTEES OF CLARK UNIVERSITY

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

[FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION]

This is one of the Bonds described in the within-mentioned Indenture, and this Bond has been registered on the date set forth below.

U.S. BANK NATIONAL ASSOCIATION, as  
Trustee

Dated:

By \_\_\_\_\_  
Authorized Signatory

[FORM OF ASSIGNMENT]

For value received, the undersigned do(es) hereby sell, assign and transfer unto \_\_\_\_\_ the within-mentioned bond and hereby irrevocably constitute(s) and appoint(s) \_\_\_\_\_, attorney, to transfer the same on the books of the within-named Trustee, with full power of substitution in the premises.

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

By \_\_\_\_\_

Signature Guaranteed By:

\_\_\_\_\_  
NOTICE: Signature must be guaranteed by a Participant in a Recognized Signature Guaranty Medallion Program.