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**LEASE AGREEMENT**

**Dated as of December 1, 2016**

**by and between the**

**FAIRFAX FINANCING AUTHORITY, as Lessor**

**and the**

**TOWN OF FAIRFAX, as Lessee**

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(2016 Refinancing Project—Taxable)

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## LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease Agreement"), dated for convenience as of December 1, 2016, by and between the FAIRFAX FINANCING AUTHORITY, a joint exercise of powers entity organized and existing under the laws of the State of California, as lessor (the "Authority"), and the TOWN OF FAIRFAX, a municipal corporation and general law city, duly organized and existing under and by virtue of the laws of the State of California, as lessee (the "Town");

### WITNESSETH:

WHEREAS, pursuant to that certain Site and Facility Lease, dated as of December 1, 2016 (the "Site and Facility Lease"), the Town has leased those certain parcels of real property situated in Marin County, State of California, more particularly described in Exhibit A attached hereto and made a part hereof (the "Site"), and those certain improvements thereon, more particularly described in Exhibit B hereto (the "Facility" and, with the Site, the "Property"), to the Authority;

WHEREAS, the Authority proposes to lease the Property back to the Town pursuant to this Lease Agreement and to assign its right to receive lease payments under this Lease Agreement (the "Lease Payments"), its right to enforce payment of the Lease Payments and otherwise to enforce its interest and rights under this Lease Agreement in the event of a default hereunder by the Town, to U.S. Bank National Association, as trustee (the "Trustee"), pursuant to that certain Assignment Agreement, dated as of December 1, 2016, by and between the Authority and the Trustee;

WHEREAS, pursuant to that certain Trust Agreement, dated as of December 1, 2016, by and among the Town, the Authority and the Trustee, the Trustee will execute and deliver certificates of participation (the "Certificates") in the Lease Payments; and

WHEREAS, the proceeds of the Certificates, together with other available moneys, will be applied by the Town to (a) refinance a portion of the unfunded actuarial accrued liability with respect to the obligation of the Town to make certain payments to the California Public Employees' Retirement System for both active and retired Safety employees and Miscellaneous employees of the Town, and thereby realize interest savings, (b) purchase a reserve fund surety bond in lieu of cash funding a reserve fund for the Certificates, and (c) pay delivery costs incurred in connection with the execution, delivery and sale of the Certificates;

NOW, THEREFORE, for and in consideration of the premises and the material covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows:

## ARTICLE I

### DEFINITIONS AND EXHIBITS

Section 1.1. Definitions. Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms in this Lease Agreement shall have the respective meanings specified in Section 1.01 of the Trust Agreement, dated as of December 1, 2016, by and among the Town, the Authority and the Trustee.

Section 1.2. 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 Lease Agreement; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Lease Agreement as a whole and not to any particular Article, Section or subdivision hereof.

Section 1.3. Exhibits. The following exhibits are attached to, and by this reference made a part of, this Lease Agreement:

Exhibit A: The description of the Site.

Exhibit B: The description of the Facility.

Exhibit C: The schedule of Lease Payments to be paid by the Town hereunder with respect to the Property, showing the Lease Payment Date and amount of each such Lease Payment.

## ARTICLE II

### REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1. Representations, Covenants and Warranties of the Town. The Town represents, covenants and warrants to the Authority and the Municipal Bond Insurer as follows:

(a) *Due Organization and Existence.* The Town is a municipal corporation and general law city, duly organized and existing under and by virtue of the laws of the State.

(b) *Authorization.* The laws of the State authorize the Town to enter into the Site and Facility Lease, this Lease Agreement and the Trust Agreement and to enter into the transactions contemplated by and to carry out the Town's obligations under all of the aforesaid agreements. The Town has duly authorized and executed all of the aforesaid agreements and such agreements constitute the legal, valid and binding agreements of the Town, enforceable against the Town in accordance with their respective terms.

(c) *No Violations.* Neither the execution and delivery of the Site and Facility Lease, this Lease Agreement or the Trust Agreement, the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction, agreement or instrument to which the Town is now a party or by which the Town is bound, constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrances whatsoever upon any of the property or assets of the Town, or upon the Property, except Permitted Encumbrances.

(d) *Execution and Delivery.* The Town has duly authorized and executed this Lease Agreement in accordance with all applicable laws.

Section 2.2. Representations, Covenants and Warranties of Authority. The Authority represents, covenants and warrants to the Town and the Municipal Bond Insurer as follows:

(a) *Due Organization and Existence.* The Authority is a joint exercise of powers entity, organized and existing under and by virtue of the laws of the State; has power to enter into the Site and Facility Lease, this Lease Agreement, the Assignment Agreement and the Trust Agreement; is possessed of full power to own and hold, improve and equip real and personal property and to lease and sell the same; has duly authorized the execution and delivery of all of the aforesaid agreements and such agreements constitute the legal, valid and binding agreements of the Authority, enforceable against the Authority in accordance with their respective terms.

(b) *No Encumbrances.* The Authority will not pledge the Lease Payments or other amounts derived from the Property and from its other rights under this Lease Agreement and will not mortgage or encumber the Property, except as provided under the terms of this Lease Agreement and the Trust Agreement.

(c) *No Violations.* Neither the execution and delivery of the Site and Facility Lease, this Lease Agreement, the Assignment Agreement or the Trust Agreement, the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Authority is now a party or by which the Authority is bound, constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance

whatsoever upon any of the property or assets of the Authority, or upon the Property, except Permitted Encumbrances.

(d) *No Assignments.* Except as provided herein, the Authority will not assign this Lease Agreement, its right to receive Lease Payments from the Town or its duties and obligations hereunder to any other person, firm or corporation so as to impair or violate the representations, covenants and warranties contained in this Section 2.2.

(e) *Execution and Delivery.* The Authority has duly authorized and executed this Lease Agreement in accordance with all applicable laws.

## ARTICLE III

### DEPOSIT OF MONEYS

Section 3.1. Deposit of Moneys. On the Closing Date, the Authority shall cause to be deposited with the Trustee the net proceeds of sale of the Certificates. Amounts estimated to be required to pay Delivery Costs shall be deposited in the Delivery Costs Fund and amount required to refinance a portion of the unfunded actuarial accrued liability with respect to the obligation of the Town to make certain payments to PERS for both active and retired Safety employees and Miscellaneous employees of the Town shall be remitted to PERS.

Section 3.2. Payment of Delivery Costs. Payment of Delivery Costs shall be made from the moneys deposited in the Delivery Costs Fund, which moneys shall be disbursed for such purpose in accordance and upon compliance with Section 3.02 of the Trust Agreement.

## ARTICLE IV

### AGREEMENT TO LEASE; TERM OF THIS LEASE AGREEMENT; LEASE PAYMENTS

#### Section 4.1. Lease.

(a) the Authority hereby leases the Property to the Town, and the Town hereby leases the Property from the Authority, upon the terms and conditions set forth in this Lease Agreement.

(b) The leasing of the Property by the Town to the Authority pursuant to the Site and Facility Lease shall not affect or result in a merger of the Town's leasehold estate pursuant to this Lease Agreement and its fee estate as lessor under the Site and Facility Lease.

Section 4.2. Term of Agreement. The Term of the Lease Agreement shall commence on the Closing Date, and shall end on June 15, 2037, unless such term is extended as hereinafter provided. If, on June 15, 2037, the Trust Agreement shall not be discharged by its terms or if the Lease Payments or Additional Payments, if any, payable hereunder shall have been abated at any time and for any reason, then the Term of the Lease Agreement shall be extended without the need to execute any amendment to this Section 4.2 until there has been deposited with the Trustee an amount sufficient to pay all obligations due under the Lease Agreement, but in no event shall the Term of the Lease Agreement extend beyond June 15, 2047. If, prior to June 15, 2037, the Trust Agreement shall be discharged by its terms, the Term of the Lease Agreement shall thereupon end.

Notwithstanding the foregoing, the Term of the Lease Agreement shall not end so long as any amounts are owed to the Municipal Bond Insurer with respect to the Reserve Policy or the Insurance Agreement.

Section 4.3. Possession. The Town hereby agrees to accept and take possession of the Property on or prior to the date of recordation of this Lease Agreement.

#### Section 4.4. Lease Payments.

(a) *Obligation to Pay.* Subject to the provisions of Articles VI and X hereof, the Town agrees to pay to the Authority, its successors and assigns, as rental for the use and occupancy of the Property during each Rental Period, the Lease Payments (denominated into components of principal and interest) in the respective amounts specified in Exhibit C hereto, to be due and payable on the respective Lease Payment Dates specified in Exhibit C hereto. Any amount held in the Lease Payment Fund on any Lease Payment Date (other than amounts resulting from the prepayment of the Lease Payments in part but not in whole pursuant to Article X hereof and other than amounts required for payment of Certificates not yet surrendered) shall be credited towards the Lease Payment then due and payable; and no Lease Payment need be made on any Lease Payment Date if the amounts then held in the Lease Payment Fund are at least equal to the Lease Payment then required to be paid. The Lease Payments for the Property payable in any Rental Period shall be for the use of the Property for such Rental Period.

(b) *Effect of Prepayment.* In the event that the Town prepays all remaining Lease Payments and all Additional Payments due under Section 4.7 hereof in full pursuant to Article X hereof, subject to Section 4.2 hereof, the Town's obligations under this Lease Agreement shall thereupon cease and terminate including, but not limited to, the Town's obligation to pay Lease Payments under this Section 4.4; subject however, to the provisions of Section 10.1

hereof in the case of prepayment by application of a security deposit. In the event that the Town optionally prepays the Lease Payments in part but not in whole pursuant to Section 10.2 hereof or pursuant to Section 10.3 hereof as a result of any insurance or condemnation award with respect to any portion of the Property, such prepayment shall be credited entirely towards the prepayment of the Lease Payments as follows: (i) the principal components of each remaining Lease Payment shall be reduced in such order as shall be selected by the Town in integral multiples of \$5,000; and (ii) the interest component of each remaining Lease Payment shall be reduced by the aggregate corresponding amount of interest which would otherwise be payable with respect to the Certificates thereby redeemed pursuant to Sections 4.01(a) or (b), as the case may be, of the Trust Agreement. The Town will provide a revised Exhibit C to the Trustee.

(c) *Rate on Overdue Payments.* In the event the Town should fail to make any of the payments required in this Section 4.4, the payment in default shall continue as an obligation of the Town until the amount in default shall have been fully paid and the Town agrees to pay the same with interest thereon, to the extent permitted by law, from the date of default to the date of payment at the rate per annum payable with respect to the Certificates. Such interest, if received, shall be deposited in the Lease Payment Fund or in the Reserve Fund to replenish the Reserve Fund if withdrawals were made therefrom as a result of the default.

(d) *Fair Rental Value.* The Lease Payments for each Rental Period shall constitute the total rental for each such Rental Period and shall be paid by the Town in each Rental Period for and in consideration of the right of the use and occupancy and the continued quiet use and enjoyment of the Property during each Rental Period. The parties hereto have agreed and determined that the total Lease Payments for the Property represent the fair rental value of the Property. In making such determination, consideration has been given to the obligations of the parties under this Lease Agreement, the uses and purposes which may be served by the Property and the benefits therefrom which will accrue to the Town and the general public.

(e) *Source of Payments; Budget and Appropriation.* Lease Payments shall be payable from any source of available funds of the Town, subject to the provisions of Articles VI and X hereof.

The Town covenants to take such action as may be necessary to include all Lease Payments due hereunder in each of its budgets during the Term of the Lease Agreement and to make the necessary annual appropriations for all such Lease Payments and for Additional Payments due under Section 4.7 hereof. To that end, the Council shall direct budgetary staff to include in each annual budget proposal to the Council an appropriation sufficient to pay Lease Payments and Additional Payments. The Town hereby expresses its present intent to appropriate Lease Payments and Additional Payments due under Section 4.7 hereof during the Term of the Lease Agreement. The covenants on the part of the Town herein contained shall be deemed to be and shall be construed to be duties imposed by law and it shall be the duty of each and every public official of the Town to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the Town to carry out and perform the covenants and agreements in this Lease Agreement agreed to be carried out and performed by the Town.

The Finance Director of the Town and all other officers charged with the duty of preparing and submitting the annual budget of the Town to the Council are hereby irrevocably directed, following any draw on the Reserve Policy because the value of the Property has been reduced below the total unpaid principal component of Lease Payments and the Town is permitted to pay less than the total scheduled Lease Payment, all in accordance with Section 6.3 (an "Abatement Period"), to include in the proposed budget and to request that the Council include in the final approved budget, and thereby appropriate, any amounts necessary

to reinstate the Reserve Policy, including interest due and any other amounts payable to the Municipal Bond Insurer (collectively, the "Reinstatement Amount"). Such officers shall use their best efforts to obtain such appropriations.

The request for inclusion in the final approved budget and appropriation shall be made in each Fiscal Year following any Abatement Period so long as reimbursement amounts are owed to the Municipal Bond Insurer. Failure by the chief business official and other officers to request such inclusion and appropriation shall constitute an Event of Default under this Lease Agreement and the Municipal Bond Insurer may exercise remedies accordingly.

The decision of the Council as to whether or not to approve and appropriate any Reinstatement Amount in any given Fiscal Year during any Abatement Period is in the sound discretion of the Council; the failure of the Council to approve and appropriate the Reinstatement Amount in any given Fiscal Year during any Abatement Period shall not constitute an Event of Default under this Lease Agreement or under the Trust Agreement.

(f) *Assignment.* The Town understands and agrees that all Lease Payments have been assigned by the Authority to the Trustee in trust, pursuant to the Assignment Agreement, for the benefit of the Owners of the Certificates, and the Town hereby assents to such assignment. The Authority hereby directs the Town, and the Town hereby agrees to pay to the Trustee at the Principal Corporate Trust Office, all payments payable by the Town pursuant to this Section 4.4 and all amounts payable by the Town pursuant to Article X hereof.

Section 4.5. Quiet Enjoyment. During the Term of the Lease Agreement, the Authority shall provide the Town with quiet use and enjoyment of the Property and the Town shall, during such Term, peaceably and quietly have and hold and enjoy the Property without suit, trouble or hindrance from the Authority, except as expressly set forth in this Lease Agreement. The Authority will, at the request of the Town and at the Town's cost, join in any legal action in which the Town asserts its right to such possession and enjoyment to the extent the Authority may lawfully do so. Notwithstanding the foregoing, the Authority shall have the right to inspect the Property as provided in Section 7.2. hereof.

Section 4.6. Title. During the Term of the Lease Agreement, the Authority shall hold leasehold title to the Property and the Town shall hold fee title to those portions of the Property which are newly acquired or constructed and any and all additions which comprise fixtures, repairs, replacements or modifications to the Property, except for those fixtures, repairs, replacements or modifications which are added to the Property by the Town at its own expense and which may be removed without damaging the Property and except for any items added to the Property by the Town pursuant to Section 5.9 hereof.

If the Town prepays the Lease Payments in full pursuant to Article X hereof or makes the security deposit permitted by Section 10.1 hereof, or pays all Lease Payments during the Term of the Lease Agreement as the same become due and payable, subject to Section 4.2 hereof, and pays Additional Payments, if any, all right, title and interest of the Authority in and to the Property shall be terminated. The Authority agrees to take any and all steps and execute and record any and all documents reasonably required by the Town to consummate any such transfer of title.

Section 4.7. Additional Payments. In addition to the Lease Payments, the Town shall pay when due the following Additional Payments:

(a) Any fees and expenses incurred by the Town in connection with or by reason of its leasehold estate in the Property as and when the same become due and payable.

(b) Any amounts due to the Trustee pursuant to the Trust Agreement for all services rendered under the Trust Agreement and for all reasonable expenses, charges, costs, liabilities, legal fees and other disbursements incurred in and about the performance of its powers and duties under the Trust Agreement.

(c) Any reasonable fees and expenses of such accountants, consultants, attorneys and other experts as may be engaged by the Town, the Authority or the Trustee to prepare audits, financial statements, reports, opinions or provide such other services required under this Lease Agreement or the Trust Agreement.

(d) Any reasonable out-of-pocket expenses of the Town in connection with the execution and delivery of this Lease Agreement or the Trust Agreement, or in connection with the execution and delivery of the Certificates, including any and all expenses incurred in connection with the authorization, execution, sale and delivery of the Certificates, or incurred by the Authority in connection with any litigation which may at any time be instituted involving this Lease Agreement, the Trust Agreement, the Certificates or any of the other documents contemplated hereby or thereby, or incurred by the Authority in connection with the Continuing Disclosure Certificate, or otherwise incurred in connection with the administration thereof.

(e) The Town agrees to pay any amounts owed to the Municipal Bond Insurer pursuant to Section 6.04 of the Trust Agreement. The Town's obligation to pay such amounts shall expressly survive payment in full of the Certificates.

## ARTICLE V

### MAINTENANCE; TAXES; INSURANCE; USE LIMITATIONS; AND OTHER MATTERS

Section 5.1. Maintenance, Utilities, Taxes and Assessments. Throughout the Term of the Lease Agreement, as part of the consideration for the rental of the Property, all improvement, repair and maintenance of the Property shall be the responsibility of the Town and the Town shall pay, or otherwise arrange, for the payment of all utility services supplied to the Property which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, water and all other utility services, and shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Property resulting from ordinary wear and tear or want of care on the part of the Town or any assignee or sublessee thereof. In exchange for the Lease Payments herein provided, the Authority agrees to provide only the Property, as hereinbefore more specifically set forth. The Town waives the benefits of subsections 1 and 2 of section 1932 of the California Civil Code, but such waiver shall not limit any of the rights of the Town under the terms of this Lease Agreement.

The Town shall also pay or cause to be paid all taxes and assessments of any type or nature, if any, charged to the Authority or the Town affecting the Property or the respective interests or estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Town shall be obligated to pay only such installments as are required to be paid during the Term of the Lease Agreement as and when the same become due.

The Town may, at the Town's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Authority or the Municipal Bond Insurer shall notify the Town that, in the opinion of Independent Counsel, by nonpayment of any such items, the interest of the Authority in the Property will be materially endangered or the Property or any part thereof will be subject to loss or forfeiture, in which event the Town shall promptly pay such taxes, assessments or charges or provide the Authority and the Municipal Bond Insurer with full security against any loss which may result from nonpayment, in form satisfactory to the Authority. The Town shall provide the Authority with written notice of any such contest and shall provide such updates on the contest as the Authority may reasonably request.

Section 5.2. Modification of Property. The Town shall, at its own expense, have the right to remodel the Property or to make additions, modifications and improvements to the Property. All additions, modifications and improvements to the Property shall thereafter comprise part of the Property and be subject to the provisions of this Lease Agreement. Such additions, modifications and improvements shall not in any way damage the Property, substantially alter its nature, cause the interest component of Lease Payments to be subject to federal income taxes or cause the Property to be used for purposes other than those authorized under the provisions of State and federal law; and the Property, upon completion of any additions, modifications and improvements made thereto pursuant to this Section 5.2, shall be of a value which is not substantially less than the value of the Property immediately prior to the making of such additions, modifications and improvements. The Town will not permit any mechanic's or other lien to be established or remain against the Property for labor or materials furnished in connection with any remodeling, additions, modifications, improvements, repairs, renewals or replacements made by the Town pursuant to this Section 5.2; provided that if any such lien is established and the Town shall first notify the Authority of the Town's intention to do so, the Town may in good faith contest any lien filed or established against the Property,

and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom and shall provide the Authority with full security against any loss or forfeiture which might arise from the nonpayment of any such item, in form satisfactory to the Authority. The Authority will cooperate fully in any such contest, upon the request and at the expense of the Town.

Section 5.3. Public Liability and Property Damage Insurance. The Town shall maintain or cause to be maintained, throughout the Term of the Lease Agreement, insurance policies, including a standard comprehensive general insurance policy or policies in protection of the Authority, the Town and the Trustee and the Municipal Bond Insurer and their respective members, officers, agents and employees. Such liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried by the Town, and may be maintained through a joint exercise of powers entity created for such purpose or, with the prior written consent of the Municipal Bond Insurer, in the form of self-insurance by the Town. Said policy or policies shall provide for indemnification of said parties against direct or consequential loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the Property. Said policy or policies shall provide coverage in the minimum liability limits of \$1,000,000 for personal injury or death of each person and \$3,000,000 for personal injury or deaths of two or more persons in each accident or event, and in a minimum amount of \$100,000 (subject to a deductible clause of not to exceed \$5,000) for damage to property resulting from each accident or event. Such public liability and property damage insurance may, however, be in the form of a single limit policy in the amount of \$3,000,000 covering all such risks. Such liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried by the Town and may be maintained in the form of insurance maintained through a joint exercise of powers entity created for such purpose or, with the prior written consent of the Municipal Bond Insurer, in the form of self-insurance by the Town. The Net Proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the insurance proceeds shall have been paid.

Section 5.4. Fire and Extended Coverage Insurance; No Earthquake Insurance. The Town shall maintain, or cause to be maintained throughout the Term of the Lease Agreement, insurance against loss or damage to any part of the Property constituting structures, if any, by fire and lightning, with extended coverage and vandalism and malicious mischief insurance; provided, however, that the Town shall not be required to maintain earthquake insurance with respect to the Property. Said extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance. Such insurance shall be in an amount equal to one hundred percent (100%) of the replacement cost of such portion of the Property, if any. Such insurance may be subject to deductible clauses of not to exceed \$100,000 for any one loss. Such insurance may be maintained as part of or in conjunction with any other fire and extended coverage insurance carried by the Town and, with the prior written consent of the Municipal Bond Insurer, may be maintained in whole or in part in the form of insurance maintained through a joint exercise of powers entity created for such purpose. The Net Proceeds of such insurance shall be applied as provided in Section 6.2(a) hereof. The Town may not satisfy the requirements of this Section 5.4 for fire and extended coverage insurance with self-insurance except with the prior written consent of the Municipal Bond Insurer.

Section 5.5. Rental Interruption Insurance. The Town shall maintain, or cause to be maintained, throughout the Term of the Lease Agreement rental interruption or use and occupancy insurance to cover loss, total or partial, of the use of any part of the Property during the Term of the Lease Agreement as a result of any of the hazards covered in the insurance required by Section 5.4 hereof, if any, in an amount at least equal to two times maximum annual Lease Payments. The Net Proceeds of such insurance shall be paid to the

Trustee and deposited in the Lease Payment Fund and shall be credited towards the payment of the Lease Payments in the order in which such Lease Payments come due and payable. Such insurance may be maintained as part of or in conjunction with any other insurance carried by the Town and, with the prior written consent of the Municipal Bond Insurer, may be maintained in whole or in part in the form of insurance maintained through a joint exercise of powers entity created for such purpose.

Section 5.6. Title Insurance.

(a) The Town shall provide, from moneys in the Delivery Costs Fund or at its own expense, on the Closing Date, an CLTA title insurance policy in the amount of not less than the principal amount of the Certificates, insuring the Town's leasehold estate in the Property, subject only to Permitted Encumbrances. A copy of such policy shall be delivered to the Municipal Bond Insurer.

(b) The Net Proceeds of such title insurance shall be applied as provided in Section 6.2(c) hereof.

Section 5.7. Insurance Net Proceeds; Form of Policies. Each policy or other evidence of insurance required by Sections 5.3, 5.4, 5.5 and 5.6 hereof shall provide that all proceeds thereunder shall be payable to the Trustee as and to the extent required hereunder, shall name the Trustee and the Municipal Bond Insurer as an additional insured and shall be applied as provided in Section 6.2 hereof. Insurance must be provided by an insurer rated "A" or better by S&P or A.M. Best Company, unless waived by the Municipal Bond Insurer (and notified the Trustee in writing). The Town shall pay or cause to be paid when due the premiums for all insurance policies required by this Lease Agreement. All policies evidencing required insurance shall provide thirty (30) days' prior written notice to the Authority, the Town, the Trustee and the Municipal Bond Insurer of any cancellation, reduction in amount or material change in coverage. The Trustee shall not be responsible for the sufficiency of any insurance herein required, including any forms of self-insurance and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss. The Town shall cause to be delivered annually on or before each July 1 to the Trustee and the Municipal Bond Insurer a certification, signed by a Town Representative, stating compliance with the provisions of Section 5.3 through 5.7 of this Lease Agreement. The Trustee shall be entitled to rely on such certification without independent investigation. The Town shall have the adequacy of any insurance reserves maintained by the Town or by a joint exercise of powers entity, if applicable, for purposes of the insurance required by Section 5.3, 5.4 and 5.5 hereof reviewed at least annually, on or before each July 1, by an independent insurance consultant and shall maintain reserves in accordance with the recommendations of such consultant to the extent moneys are available for such purpose and not otherwise appropriated.

Section 5.8. Advances. If the Town shall fail to perform any of its obligations under this Article V, the Authority or the Trustee may, but shall not be obligated to, take such action as may be necessary to cure such failure, including the advancement of money, and the Town shall be obligated to repay all such advances as soon as possible, with interest at a rate equal to the rate then payable with respect to the Certificates from the date of the advance to the date of repayment.

Section 5.9. Installation of Town's Equipment. The Town may, at any time and from time to time in its sole discretion and at its own expense, install or permit to be installed items of equipment or other personal property in or upon any portion of the Property. All such items shall remain the sole property of the Town in which neither the Authority nor the Trustee shall have any interest and may be modified or removed by the Town at any time provided that the

Town shall repair and restore any and all damage to the Property resulting from the installation, modification or removal of any such items. Nothing in this Lease Agreement shall prevent the Town from purchasing or leasing items to be installed pursuant to this Section 5.9 under a lease or conditional sale agreement, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Property.

Section 5.10. Liens. The Town shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Property, other than the respective rights of the Authority and the Town as provided herein and Permitted Encumbrances. Except as expressly provided in this Article V, the Town shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim, for which it is responsible, if the same shall arise at any time. The Town shall reimburse the Authority for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

Section 5.11. No Condemnation. The Town hereby covenants and agrees, to the extent it may lawfully do so, that so long as any of the Certificates remain outstanding and unpaid, the Town will not exercise the power of condemnation with respect to the Property. The Town further covenants and agrees, to the extent it may lawfully do so, that if for any reason the foregoing covenant is determined to be unenforceable or if the Town should fail or refuse to abide by such covenant and condemns the Property, the appraised value of the Property shall not be less than the greater of (i) if the Certificates are then subject to redemption, the principal and interest components of the Certificates Outstanding through the date of their redemption, or (ii) if the Certificates are not then subject to redemption, the amount necessary to defease the Certificates to the first available redemption date in accordance with the Trust Agreement.

## ARTICLE VI

### DAMAGE, DESTRUCTION AND EMINENT DOMAIN; USE OF NET PROCEEDS

#### Section 6.1. Eminent Domain.

(a) If all of the Property shall be taken permanently under the power of eminent domain or sold to a government threatening to exercise the power of eminent domain, the Term of this Lease Agreement shall cease as of the day possession shall be so taken. If less than all of the Property shall be taken permanently, or if all of the Property or any part thereof shall be taken temporarily under the power of eminent domain, (1) this Lease Agreement shall continue in full force and effect and shall not be terminated by virtue of such taking and the parties waive the benefit of any law to the contrary, and (2) there shall be a partial abatement of Lease Payments as a result of the application of the Net Proceeds of any eminent domain award to the prepayment of the Lease Payments hereunder, in an amount to be agreed upon by the Town and the Authority, and so certified to by the parties to the Trustee, such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining usable portion of the Property, except to the extent of special funds, such as amounts in the Reserve Fund available for the payment of Lease Payments.

(b) The Town hereby covenants and agrees, to the extent it may lawfully do so, that so long as any of the Certificates remain outstanding and unpaid, the Town will not exercise the power of condemnation with respect to the leased property. The Town further covenants and agrees, to the extent it may lawfully do so, that if for any reason the foregoing covenant is determined to be unenforceable or if the Town should fail or refuse to abide by such covenant and condemns the leased property, the appraised value of the leased property shall not be less than the greater of (i) if such Certificates are then subject to redemption, the principal and interest components of the Certificates outstanding through the date of their redemption, or (ii) if such Certificates are not then subject to redemption, the amount necessary to defease such Certificates to the first available redemption date in accordance with the Trust Agreement.

#### Section 6.2. Application of Net Proceeds.

(a) *From Insurance Award.* The Net Proceeds of any insurance award resulting from any damage to or destruction of any portion of the Property constituting structures, if any, by fire or other casualty shall be paid by the Town to the Trustee, as assignee of the Authority under the Assignment Agreement, deposited in the Insurance and Condemnation Fund held by the Trustee and applied as set forth in Section 7.01 of the Trust Agreement.

(b) *From Eminent Domain Award.* The Net Proceeds of any eminent domain award resulting from any event described in Section 6.1 hereof shall be paid by the Town to the Trustee, as assignee of the Authority under the Assignment Agreement, deposited in the Insurance and Condemnation Fund and applied as set forth in Section 7.02 of the Trust Agreement.

(c) *From Title Insurance.* The Net Proceeds of any title insurance award shall be paid to the Trustee, as assignee of the Authority under the Assignment Agreement, deposited in the Insurance and Condemnation Fund and applied as set forth in Section 7.03 of the Trust Agreement.

Section 6.3. Abatement of Lease Payments in the Event of Damage or Destruction. Lease Payments shall be abated during any period in which, by reason of damage or destruction, there is substantial interference with the use and occupancy by the Town of the

Property or any portion thereof (other than any portions of the Property described in Section 5.2 hereof) to the extent to be agreed upon by the Town and the Authority and communicated by a Town Representative to the Trustee. The parties agree that the amounts of the Lease Payments under such circumstances shall not be less than the amounts of the unpaid Lease Payments as are then set forth in Exhibit C, unless such unpaid amounts are determined, upon consultation with the Municipal Bond Insurer, to be greater than the fair rental value of the portions of the Property not damaged or destroyed (giving due consideration to the factors identified in the last sentence of Section 4.4(d)), based upon any appropriate method of valuation approved by the Municipal Bond Insurer, in which event the Lease Payments shall be abated such that they represent said fair rental value. Such abatement shall continue for the period commencing with such damage or destruction and ending with the substantial completion of the work of repair or reconstruction as communicated by a Town Representative to the Trustee. In the event of any such damage or destruction, this Lease Agreement shall continue in full force and effect and the Town waives any right to terminate this Lease Agreement by virtue of any such damage and destruction. Notwithstanding the foregoing, there shall be no abatement of Lease Payments under this Section 6.3 to the extent that (a) the proceeds of rental interruption insurance or (b) amounts in the Reserve Fund, if cash funded, and/or the Insurance and Condemnation Fund and/or the Lease Payment Fund are available to pay Lease Payments which would otherwise be abated under this Section 6.3, it being hereby declared that such proceeds and amounts constitute special funds for the payment of the Lease Payments. If an abatement event has occurred but remedied, the Town shall be required to extend the Term of this Lease Agreement, as described in Section 4.2, so that amounts abated are recouped.

## ARTICLE VII

### DISCLAIMER OF WARRANTIES; ACCESS; INDEMNIFICATION

Section 7.1. Disclaimer of Warranties. THE AUTHORITY MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE TOWN OF THE PROPERTY OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE PROPERTY. IN NO EVENT SHALL THE AUTHORITY OR ITS ASSIGNS BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THE SITE AND FACILITY LEASE, THIS LEASE AGREEMENT OR THE TRUST AGREEMENT FOR THE EXISTENCE, FURNISHING, FUNCTIONING OR THE TOWN'S USE OF THE PROPERTY.

Section 7.2. Access to the Property. The Town agrees that the Authority and any Town Representative, and the Authority's successors or assigns, and the Municipal Bond Insurer shall have the right at all reasonable times to enter upon and to examine and inspect the Property. The Town further agrees that the Authority, any Town Representative, and the Authority's successors or assigns, and the Municipal Bond Insurer shall have such rights of access to the Property as may be reasonably necessary to cause the proper maintenance of the Property in the event of failure by the Town to perform its obligations hereunder.

Section 7.3. Release and Indemnification Covenants. The Town shall and hereby agrees to indemnify and save the Authority and the Trustee and their officers, agents, directors, employees, successors and assigns harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of (i) the use, maintenance, condition or management of, or from any work or thing done on the Property by the Town, (ii) any breach or default on the part of the Town in the performance of any of its obligations under this Lease Agreement or the Trust Agreement, (iii) any act or omission of the Town or of any of its agents, contractors, servants, employees or licensees with respect to the Property, (iv) any act or omission of any sublessee of the Town with respect to the Property, or (v) the authorization of payment of the Delivery Costs. Such indemnification shall include the costs and expenses of defending any claim or liability arising under this Lease Agreement or the Trust Agreement and the transactions contemplated thereby. No indemnification is made under this Section 7.3 or elsewhere in this Lease Agreement for willful misconduct, negligence or breach of duty under this Lease Agreement by the Authority, its officers, agents, directors, employees, successors or assigns.

## ARTICLE VIII

### ASSIGNMENT, SUBLEASING AND AMENDMENT

Section 8.1. Assignment by the Authority. The Authority's rights under this Lease Agreement, including the right to receive and enforce payment of the Lease Payments to be made by the Town under this Lease Agreement (but except for its rights to give consents and approvals hereunder), have been assigned to the Trustee pursuant to the Assignment Agreement.

Section 8.2. Assignment and Subleasing by the Town. This Lease Agreement may not be assigned by the Town. The Town may sublease the Property or any portion thereof, but only with the written consent of the Authority and the Municipal Bond Insurer and subject to, and delivery to the Authority and the Trustee of a certificate as to, all of the following conditions:

(a) This Lease Agreement and the obligation of the Town to make Lease Payments hereunder shall remain obligations of the Town;

(b) The Town shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to the Authority, the Trustee and the Municipal Bond Insurer a true and complete copy of such sublease;

(c) No such sublease by the Town shall cause the Property to be used for a purpose other than as may be authorized under the provisions of the Constitution and laws of the State; and

(d) The Town shall furnish the Authority, the Trustee and the Municipal Bond Insurer with a written opinion of Bond Counsel, which shall be an Independent Counsel, stating that such sublease does not cause the interest components of the Lease Payments to become subject to federal income taxes or State personal income taxes.

Notwithstanding the foregoing, the Town may sublease the Property to the Authority in connection with a future certificates of participation or lease revenue bond financing without the necessity to comply with any of the foregoing conditions, so long as the total of the unpaid principal component of the Lease Payments and the principal component of the lease payments to be paid with respect to such future certificates of participation or lease revenue bond financing does not exceed the value of the Property.

### Section 8.3. Amendment of Lease Agreement.

(a) *Substitution of Site or Facility.* The Town shall have, and is hereby granted, the option at any time and from time to time during the Term of the Lease Agreement to substitute other land (a "Substitute Site") and/or a substitute facility (a "Substitute Facility") for the Site (the "Former Site"), or a portion thereof, and/or the Facility (the "Former Facility"), or a portion thereof, provided that the Town shall satisfy all of the following requirements (to the extent applicable) which are hereby declared to be conditions precedent to such substitution:

(i) If a substitution of the Site, the Town shall file with the Authority, the Trustee and the Municipal Bond Insurer an amended Exhibit A to the Site and Facility Lease which adds thereto a description of such Substitute Site and deletes therefrom the description of the Former Site;

(ii) If a substitution of the Site, the Town shall file with the Authority, the Trustee and the Municipal Bond Insurer an amended Exhibit A to this Lease

Agreement which adds thereto a description of such Substitute Site and deletes therefrom the description of the Former Site;

(iii) If a substitution of the Facility, the Town shall file with the Authority, the Trustee and the Municipal Bond Insurer an amended Exhibit B to the Site and Facility Lease which adds thereto a description of such Substitute Facility and deletes therefrom the description of the Former Facility;

(iv) If a substitution of the Facility, the Town shall file with the Authority, the Trustee and the Municipal Bond Insurer an amended Exhibit B to this Lease Agreement which adds thereto a description of such Substitute Facility and deletes therefrom the description of the Former Facility;

(v) The Town shall certify in writing to the Authority, the Trustee and the Municipal Bond Insurer that such Substitute Site and/or Substitute Facility serve the purposes of the Town, constitutes property that is unencumbered, subject to Permitted Encumbrances, and constitutes property which the Town is permitted to lease under the laws of the State;

(vi) The Town delivers to the Authority, the Trustee and the Municipal Bond Insurer an Officer's Certificate of the Town based on insurance values or any other reasonable basis of valuation received by the Town (which need not require an appraisal) that the value of the Property following such substitution is equal to or greater than the Outstanding principal amount of the Certificates and confirms in writing to the Trustee that the indemnification provided pursuant to Section 11.03 of the Trust Agreement applies with respect to the Substitute Site and/or Substitute Facility;

(vii) The Substitute Site and/or Substitute Facility shall not cause the Town to violate any of its covenants, representations and warranties made herein and in the Trust Agreement, as evidenced by an officer's certificate delivered to the Trustee;

(viii) The Town shall obtain an amendment to the title insurance policy required pursuant to Section 5.6 hereof which adds thereto a description of the Substitute Site and deletes therefrom the description of the Former Site;

(ix) The Town shall provide notice of the substitution to any rating agency then rating the Certificates which rating was provided at the request of the Town or the Authority;

(x) The Town shall furnish the Authority, the Trustee and the Municipal Bond Insurer with a written opinion of Bond Counsel, which shall be an Independent Counsel, stating that such substitution does not cause the interest components of the Lease Payments to become subject to federal income taxes or State personal income taxes; and

(xi) The Municipal Bond Insurer shall provide prior written consent to such substitution.

(b) *Release of Site.* The Town shall have, and is hereby granted, the option at any time and from time to time during the Term of the Lease Agreement to release any portion of the Site, provided that the Town shall satisfy all of the following requirements which are hereby declared to be conditions precedent to such release:

(i) The Town shall file with the Authority, the Trustee and the Municipal Bond Insurer an amended Exhibit A to the Site and Facility Lease which describes the Site, as revised by such release;

(ii) The Town shall file with the Authority, the Trustee and the Municipal Bond Insurer an amended Exhibit A to this Lease Agreement which describes the Site, as revised by such release;

(iii) The Town delivers to the Authority, the Trustee and the Municipal Bond Insurer an Officer's Certificate of the Town based on insurance values or any other reasonable basis of valuation received by the Town (which need not require an appraisal) that the value of the Property, as revised by such release, is equal to or greater than the Outstanding principal amount of the Certificates and confirms in writing to the Trustee and the Authority that the indemnification provided pursuant to Section 11.03 of the Trust Agreement applies with respect to the Site, as revised by such release;

(iv) Such release shall not cause the Town to violate any of its covenants, representations and warranties made herein and in the Trust Agreement, as evidenced by an officer's certificate delivered to the Trustee;

(v) The Town shall obtain an amendment to the title insurance policy required pursuant to Section 5.6 hereof which describes the Site, as revised by such release;

(vi) The Town shall provide notice of the release to any rating agency then rating the Certificates which rating was provided at the request of the Town or the Authority; and

(vii) The Municipal Bond Insurer shall provide prior written consent to such release.

(c) *Release of Facility.* The Town shall have, and is hereby granted, the option at any time and from time to time during the Term of the Lease Agreement to release any portion of the Facility, provided that the Town shall satisfy all of the following requirements which are hereby declared to be conditions precedent to such release:

(i) The Town shall file with the Authority, the Trustee and the Municipal Bond Insurer an amended Exhibit B to the Site and Facility Lease which describes the Facility, as revised by such release;

(ii) The Town shall file with the Authority, the Trustee and the Municipal Bond Insurer an amended Exhibit B to this Lease Agreement which describes the Facility, as revised by such release;

(iii) The Town delivers to the Authority, the Trustee and the Municipal Bond Insurer an Officer's Certificate of the Town based on insurance values or any other reasonable basis of valuation received by the Town (which need not require an appraisal) that the value of the Property, as revised by such release, is equal to or greater than the Outstanding principal amount of the Certificates and confirms in writing to the Trustee and the Authority that the indemnification provided pursuant to Section 11.03 of the Trust Agreement applies with respect to the Facility, as revised by such release;

(iv) Such release shall not cause the Town to violate any of its covenants, representations and warranties made herein and in the Trust Agreement, as evidenced by an officer's certificate delivered to the Trustee;

(v) The Town shall provide notice of the release to any rating agency then rating the Certificates which rating was provided at the request of the Town or the Authority; and

(vi) The Municipal Bond Insurer shall provide prior written consent to such release.

(d) *Generally.* The Authority and the Town may at any time amend or modify any of the provisions of this Lease Agreement, but only (i) with the prior written consent of the Municipal Bond Insurer, or if the Municipal Bond Insurer is in breach of its obligation under the Reserve Policy, the Owners of a majority in aggregate principal amount of the Outstanding Certificates, or (ii) without the consent of any of the Owners, but with the prior written consent of the Municipal Bond Insurer, but only if such amendment or modification is for any one or more of the following purposes:

(i) to add to the covenants and agreements of the Town contained in this Lease Agreement, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or power herein reserved to or conferred upon the Town; or

(ii) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained herein, or in any other respect whatsoever as the Authority and the Town may deem necessary or desirable, provided that, in the opinion of Bond Counsel, such modifications or amendments will not materially adversely affect the interests of the Owners.

## ARTICLE IX

### EVENTS OF DEFAULT AND REMEDIES

Section 9.1. Events of Default Defined. The following shall be “events of default” under this Lease Agreement and the terms “Events of Default” and “Default” shall mean, whenever they are used in this Lease Agreement, any one or more of the following events:

(a) Failure by the Town to pay any Lease Payment or other payment required to be paid hereunder at the time specified herein.

(b) Failure by the Town to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Lease Agreement (including failure to request appropriation pursuant to Section 4.4(e) hereof) or under the Trust Agreement, other than as referred to in clause (a) of this Section 9.1, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the Town by the Authority, the Trustee, the Municipal Bond Insurer or the Owners of not less than five percent (5%) in aggregate principal amount of Certificates then outstanding; provided, however, if the failure stated in the notice can be corrected, but not within the applicable period, the Authority, the Trustee (as directed by such Owners of not less than 5% in aggregate principal amount of Certificates then Outstanding) and such Owners shall not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Town within the applicable period and diligently pursued until the default is corrected; *provided further, however*, that no grace period for a covenant default shall exceed 30 days, nor be extended for more than 60 days, without the prior written consent of the Municipal Bond Insurer.

(c) The filing by the Town of a voluntary petition in bankruptcy, or failure by the Town promptly to lift any execution, garnishment or attachment, or adjudication of the Town as a bankrupt, or assignment by the Town for the benefit of creditors, or the entry by the Town into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Town in any proceedings instituted under the provisions of the Federal Bankruptcy Act, as amended, or under any similar acts which may hereafter be enacted.

Section 9.2. Remedies on Default. The Trustee, acting at the direction of the Municipal Bond Insurer, shall have the right to re-enter and re-let the Property and to terminate this Lease Agreement. The Municipal Bond Insurer shall have the right to control all remedies for default under both this Lease Agreement and the Trust Agreement.

Whenever any Event of Default referred to in Section 9.1 hereof shall have happened and be continuing, it shall be lawful for the Authority to exercise any and all remedies available pursuant to law or granted pursuant to this Lease Agreement; *provided, however*, that notwithstanding anything herein or in the Trust Agreement to the contrary, there shall be no right under any circumstances to accelerate the Lease Payments or otherwise declare any Lease Payments not then in default to be immediately due and payable. Each and every covenant hereof to be kept and performed by the Town is expressly made a condition and upon the breach thereof, the Authority may exercise any and all rights of entry and re-entry upon the Property, and also, at its option, with or without such entry, may terminate this Lease Agreement; provided, that no such termination shall be effected either by operation of law or acts of the parties hereto, except only in the manner herein expressly provided. In the event of such default and notwithstanding any re-entry by the Authority, the Town shall, as herein expressly provided, continue to remain liable for the payment of the Lease Payments and/or damages for breach of this Lease Agreement and the performance of all conditions herein

contained and, in any event such rent and/or damages shall be payable to the Authority at the time and in the manner as herein provided, to wit:

(a) In the event the Authority does not elect to terminate this Lease Agreement in the manner hereinafter provided for in subparagraph (b) hereof, the Town agrees to and shall remain liable for the payment of all Lease Payments and the performance of all conditions herein contained and shall reimburse the Authority for any deficiency arising out of the re-leasing of the Property, or, in the event the Authority is unable to re-lease the Property, then for the full amount of all Lease Payments to the end of the Term of the Lease Agreement, but said Lease Payments and/or deficiency shall be payable only at the same time and in the same manner as hereinabove provided for the payment of Lease Payments hereunder, notwithstanding such entry or re-entry by the Authority or any suit in unlawful detainer, or otherwise, brought by the Authority for the purpose of effecting such re-entry or obtaining possession of the Property or the exercise of any other remedy by the Authority. The Town hereby irrevocably appoints the Authority as the agent and attorney-in-fact of the Town to enter upon and re-lease the Property in the event of default by the Town in the performance of any covenants herein contained to be performed by the Town and to remove all personal property whatsoever situated upon the Property, to place such property in storage or other suitable place within Marin County, for the account of and at the expense of the Town, and the Town hereby exempts and agrees to save harmless the Authority from any costs, loss or damage whatsoever arising or occasioned by any such entry upon and re-leasing of the Property and the removal and storage of such property by the Authority or its duly authorized agents in accordance with the provisions herein contained. The Town hereby waives any and all claims for damages caused or which may be caused by the Authority in re-entering and taking possession of the Property as herein provided and all claims for damages that may result from the destruction of or injury to the Property and all claims for damages to or loss of any property belonging to the Town that may be in or upon the Property. The Town agrees that the terms of this Lease Agreement constitute full and sufficient notice of the right of the Authority to re-lease the Property in the event of such re-entry without effecting a surrender of this Lease Agreement, and further agrees that no acts of the Authority in effecting such re-leasing shall constitute a surrender or termination of this Lease Agreement irrespective of the term for which such re-leasing is made or the terms and conditions of such re-leasing, or otherwise, but that, on the contrary, in the event of such default by the Town the right to terminate this Lease Agreement shall vest in the Authority to be effected in the sole and exclusive manner hereinafter provided for in paragraph (b) hereof.

(b) In an Event of Default hereunder, the Authority at its option may terminate this Lease Agreement and re-lease all or any portion of the Property. In the event of the termination of this Lease Agreement by the Authority at its option and in the manner hereinafter provided on account of default by the Town (and notwithstanding any re-entry upon the Property by the Authority in any manner whatsoever or the re-leasing of the Property), the Town nevertheless agrees to pay to the Authority all costs, loss or damages howsoever arising or occurring payable at the same time and in the same manner as is herein provided in the case of payment of Lease Payments. Any surplus received by the Authority from such re-leasing shall be credited towards the Lease Payments next coming due and payable. Neither notice to pay rent or to deliver up possession of the premises given pursuant to law nor any proceeding in unlawful detainer taken by the Authority shall of itself operate to terminate this Lease Agreement, and no termination of this Lease Agreement on account of default by the Town shall be or become effective by operation of law, or otherwise, unless and until the Authority shall have given written notice to the Town of the election on the part of the Authority to terminate this Lease Agreement. The Town covenants and agrees that no surrender of the Property and/or of the remainder of the Term of the Lease Agreement or any termination of this Lease Agreement shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Authority by such written notice.

Section 9.3. No Remedy Exclusive. No remedy herein is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease Agreement now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Article IX it shall not be necessary to give any notice, other than such notice as may be required in this Article IX or by law.

Section 9.4. Agreement to Pay Attorneys' Fees and Expenses. In the event either party to this Lease Agreement should default under any of the provisions hereof and the nondefaulting party should employ attorneys or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand, pay to the nondefaulting party the reasonable fees and expenses of such attorneys and such other expenses so incurred by the nondefaulting party; *provided, however*, that the Trustee shall not be required to expend its own funds for any payment described in this Section 9.4.

Section 9.5. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Lease Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 9.6. Application of Proceeds. All net proceeds received from the re-lease or other disposition of the Property under this Article IX, and all other amounts derived by the Authority or the Trustee as a result of an Event of Default hereunder, shall be transferred to the Trustee promptly upon receipt thereof and after payment of all fees and expenses of the Trustee, including indemnifications and attorneys' fees, shall be deposited by the Trustee in the Lease Payment Fund to be applied to the Lease Payments in order of payment date.

Section 9.7. Trustee and Certificate Owners to Exercise Rights. Such rights and remedies as are given to the Authority under this Article IX have been assigned by the Authority to the Trustee under the Assignment Agreement, to which assignment the Town hereby consents. Such rights and remedies shall be exercised by the Trustee, the Municipal Bond Insurer and the Owners of the Certificates as provided in the Trust Agreement and herein.

Section 9.8. No Right to Terminate for Authority Default. The Town shall not have the right to terminate this Lease Agreement as a remedy for a default by the Authority in the performance of its obligations hereunder.

## ARTICLE X

### PREPAYMENT OF LEASE PAYMENTS

Section 10.1. Security Deposit. Notwithstanding any other provision of this Lease Agreement, the Town may, on any date, secure the payment of all or a portion of the Lease Payments remaining due by an irrevocable deposit with the Trustee or an escrow holder under an escrow deposit and trust agreement as referenced in Section 14.01(b) of the Trust Agreement, of: (a) in the case of a security deposit relating to all Lease Payments, either (i) cash in an amount which, together with amounts on deposit in the Lease Payment Fund, the Insurance and Condemnation Fund and the Reserve Fund, is sufficient to pay all unpaid Lease Payments, including the principal and interest components thereof, in accordance with the Lease Payment schedule set forth in Exhibit C, or (ii) Defeasance Obligations in such amount as will, in the written opinion of an independent certified public accountant or other firm of recognized experts in such matters (addressed to the Municipal Bond Insurer), together with interest to accrue thereon and, if required, all or a portion of moneys or Defeasance Obligations or cash then on deposit and interest earnings thereon in the Lease Payment Fund, the Insurance and Condemnation Fund and the Reserve Fund, be fully sufficient to pay all unpaid Lease Payments on their respective Lease Payment Dates; or (b) in the case of a security deposit relating to a portion of the Lease Payments, a certificate executed by a Town Representative designating the portion of the Lease Payments to which the deposit pertains, and either (i) cash in an amount which is sufficient to pay the portion of the Lease Payments designated in such Town Representative's certificate, including the principal and interest components thereof, or (ii) Defeasance Obligations in such amount as will, together with interest to be received thereon, if any, in the written opinion of an independent certified public accountant or other firm of recognized experts in such matters (addressed to the Municipal Bond Insurer), be fully sufficient to pay the portion of the Lease Payments designated in the aforesaid Town Representative's certificate.

In the event of a deposit pursuant to this Section 10.1 as to all Lease Payments and the payment of all fees, expenses and indemnifications owed to the Trustee and the payment of all amounts due to the Municipal Bond Insurer, all obligations of the Town under this Lease Agreement shall cease and terminate, excepting only the obligation of the Town to make, or cause to be made, all payments from the deposit made by the Town pursuant to this Section 10.1 and the obligations of the Town pursuant to Section 5.13 hereof and title to the Property shall vest in the Town on the date of said deposit automatically and without further action by the Town or the Authority. Said deposit and interest earnings thereon shall be deemed to be and shall constitute a special fund for the payments provided for by this Section 10.1 and said obligation shall thereafter be deemed to be and shall constitute the installment purchase obligation of the Town for the Property. Upon said deposit, the Authority will execute or cause to be executed any and all documents as may be necessary to confirm title to the Property in accordance with the provisions hereof. In addition, the Authority hereby appoints the Town as its agent to prepare, execute and file or record, in appropriate offices, such documents as may be necessary to place record title to the Property in the Town.

Section 10.2. Prepayment Option. The Authority hereby grants an option to the Town to prepay the principal component of the Lease Payments in full, by paying the aggregate unpaid principal components of the Lease Payments as set forth in Exhibit C hereto, or in part, in a prepayment amount equal to the principal amount of Lease Payments to be prepaid, together with accrued interest to the date fixed for prepayment, without premium.

Said option may be exercised with respect to Lease Payments due on and after June 1, \_\_\_\_\_, in whole or in part on any date, commencing June 1, \_\_\_\_\_. In the event of prepayment in

part, the partial prepayment shall be applied against Lease Payments in such order of payment date as shall be selected by the Town.

Lease Payments due after any such partial prepayment shall be in the amounts set forth in a revised Lease Payment schedule which shall be provided by, or caused to be provided by, the Town to the Trustee and which shall represent an adjustment to the schedule set forth in Exhibit C attached hereto taking into account said partial prepayment.

Notwithstanding the foregoing, the Town shall not be permitted to prepay any Lease Payments if any amounts are owed to the Municipal Bond Insurer with respect to the Reserve Policy.

Section 10.3. Mandatory Prepayment From Net Proceeds of Insurance, Title Insurance or Eminent Domain. The Town shall be obligated to prepay the Lease Payments, in whole on any date or in part on any Lease Payment Date, from and to the extent of any Net Proceeds of an insurance, title insurance or condemnation award with respect to the Property theretofore deposited in the Lease Payment Fund for such purpose pursuant to Article VI hereof and Article VII of the Trust Agreement. The Town and the Authority hereby agree that such Net Proceeds shall be applied first to the payment of any delinquent Lease Payments, and thereafter shall be credited towards the Town's obligations under this Section 10.3. Lease Payments due after any such partial prepayment shall be in the amounts set forth in a revised Lease Payment schedule which shall be provided by, or caused to be provided by, the Town to the Trustee and which shall represent an adjustment to the schedule set forth in Exhibit C attached hereto taking into account said partial prepayment.

Notwithstanding the foregoing, the Town shall not be permitted to prepay any Lease Payments if any amounts are owed to the Municipal Bond Insurer with respect to the Reserve Policy.

Section 10.4. Credit for Amounts on Deposit. In the event of prepayment of the principal components of the Lease Payments in full under this Article X, such that the Trust Agreement shall be discharged by its terms as a result of such prepayment, remaining amounts on deposit in the Lease Payment Fund or the Reserve Fund shall be credited towards the amounts then required to be so prepaid.

ARTICLE XI

MISCELLANEOUS

Section 11.1. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received 48 hours after deposit in the United States mail in first-class form with postage fully prepaid:

- If to the Authority:                      Fairfax Financing Authority  
2945 Townsgate Road, Suite 200  
Westlake Village, CA 91361  
Attention: Executive Director  
Phone: (805) 267-7140
  
- If to the Town:                              Town of Fairfax  
142 Bolinas Road  
Fairfax, CA 94930  
Attention: Finance Director  
Phone: (415) 458-2350
  
- If to the Trustee:                          U.S. Bank National Association  
One California Street, Suite 1000  
San Francisco, CA 94111  
Attention: Global Corporate Trust Services  
Telephone: (415) 677-3600
  
- To the Municipal Bond Insurer:        \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Re: Reserve Policy No. \_\_\_\_\_

The Authority, the Town and the Trustee and the Municipal Bond Insurer, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

Section 11.2. Information to be Given to the Municipal Bond Insurer.

- (a) The Town shall provide the Municipal Bond Insurer with the following information:
  - (i) the fiscal year budget of the Town within thirty (30) days after adoption of such budget;
  - (ii) not later than one hundred fifty (150) days after the end of the fiscal year, audited financial statements of the Town prepared by an independent certified public accountant, together with a certificate of the Town stating that no event of default has occurred or is continuing under this Lease Agreement or the Trust Agreement;
  - (iii) prior to the incurrence of additional general fund-secured obligations, any disclosure document or financing agreement pertaining to such additional obligations, which disclosure document or financing agreement shall include, without limitation, the applicable maturity schedule, interest rate or rates, redemption and security provisions pertaining to any such additional obligations;

(iv) within thirty (30) days following any litigation or investigation that may have a material adverse effect on the financial position of the Town of such litigation;

(v) immediate notice of any draw on the debt service reserve fund;

(vi) notice of any Event of Default known to the within five Business Days after knowledge thereof;

(vii) any event of abatement under this Lease Agreement;

(viii) prior notice of the advance refunding or redemption of any of the Certificates, including the principal amount, maturities and CUSIP numbers thereof;

(ix) notice of the resignation or removal of the Trustee and the appointment of, and acceptance of duties by, any successor thereto;

(x) notice of the commencement of any proceeding by or against the Town or the Authority commenced under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an "Insolvency Proceeding");

(xi) notice of the making of any claim in connection with any Insolvency Proceeding seeking the avoidance as a preferential transfer of any payment of principal or interest with respect to the Certificates;

(xii) a full original transcript of all proceedings relating to the execution of any amendment, supplement, or waiver to the Trust Agreement, the Site and Facility Lease and/or this Lease Agreement; and

(xiii) all reports, notices and correspondence to be delivered to Owners under the terms of the Trust Agreement and/or this Lease Agreement.

(b) The Town will permit the Municipal Bond Insurer to discuss the affairs, finances and accounts of the Town or any information the Municipal Bond Insurer may reasonably request regarding the security for the Lease Payments with appropriate officers of the Town. The Town will permit the Municipal Bond Insurer to have access to the Property and have access to and to make copies of all books and records relating to the Certificates at any reasonable time upon reasonable notice on any Business Day.

The Municipal Bond Insurer shall have the right to direct an accounting at the Town's expense, and the Town's failure to comply with such direction within thirty (30) days after receipt of written notice of the direction from the Municipal Bond Insurer shall be deemed an Event of Default hereunder; *provided, however*, that if compliance cannot occur within such period, then such period will be extended so long as compliance is begun within such period and diligently pursued, but only if such extension would not materially adversely affect the interests of any Owner.

Section 11.3. The Municipal Bond Insurer as Third Party Beneficiary. To the extent that this Lease Agreement confers upon or gives or grants to the Municipal Bond Insurer any right, remedy or claim under or by reason of this Lease Agreement, the Municipal Bond Insurer is explicitly recognized as being a third party beneficiary hereunder and may enforce any such right, remedy or claim conferred, given or granted hereunder.

Section 11.4. Binding Effect. This Lease Agreement shall inure to the benefit of and shall be binding upon the Authority and the Town and their respective successors and assigns.

Section 11.5. Severability. In the event any provision of this Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.6. Net-net-net Lease. This Lease Agreement shall be deemed and construed to be a "net-net-net lease" and the Town hereby agrees that the Lease Payments shall be an absolute net return to the Authority, free and clear of any expenses, charges or set-offs whatsoever.

Section 11.7. Further Assurances and Corrective Instruments. The Authority and the Town agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Property hereby leased or intended so to be or for carrying out the expressed intentions of this Lease Agreement.

Section 11.8. Execution in Counterparts. This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.9. Applicable Law. This Lease Agreement shall be governed by and construed in accordance with the laws of the State.

Section 11.10. Authority and Town Representatives. Whenever under the provisions of this Lease Agreement the approval of the Authority or the Town is required, or the Authority or the Town is required to take some action at the request of the other, such approval or such request shall be given for the Authority by an Authority Representative and for the Town by a Town Representative, and each party hereto shall be authorized to rely upon any such approval or request.

Section 11.11. Captions. The captions or headings in this Lease Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Section of this Lease Agreement.

IN WITNESS WHEREOF, the Authority has caused this Lease Agreement to be executed in its name by its duly authorized officers; and the Town has caused this Lease Agreement to be executed in its name by its duly authorized officers, as of the date first above written.

FAIRFAX FINANCING AUTHORITY

By \_\_\_\_\_  
Garrett Toy  
Executive Director

Attest:

\_\_\_\_\_  
Michele Gardner  
Secretary

TOWN OF FAIRFAX

By \_\_\_\_\_  
Garrett Toy  
Town Manager

Attest:

\_\_\_\_\_  
Michele Gardner  
Town Clerk

**EXHIBIT A**

**DESCRIPTION OF THE SITE**

All that certain real property situated in Marin County, State of California, described as follows:

## EXHIBIT B

### DESCRIPTION OF THE FACILITY

The Facility consists of the following:

**Town Hall/Police Department**, located at 142 Bolinas Road, Fairfax, CA. The Town Hall/Police Department {SHORT NARRATIVE DESCRIPTION TO COME}. The 2016 insured value of the Town Hall/Police Department is \$831,981, excluding land value.

**Maintenance Shop**, located at 142 Bolinas Road, Fairfax, CA. The Maintenance Shop {SHORT NARRATIVE DESCRIPTION TO COME}. The 2016 insured value of the Maintenance Shop is \$271,840, excluding land value.

**Pavilion/Gymnasium**, located at 142 Bolinas Road, Fairfax, CA. The Pavilion/Gymnasium {SHORT NARRATIVE DESCRIPTION TO COME}. The 2016 insured value of the Pavilion/Gymnasium is \$1,805,604, excluding land value.

**Fire Station**, located at 10 Park Road, Fairfax, CA. The Fire Station {SHORT NARRATIVE DESCRIPTION TO COME}. The 2016 insured value of the Fire Station is \$1,684,088, excluding land value.

## EXHIBIT C

### SCHEDULE OF LEASE PAYMENTS

<u>Lease Payment Date</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Total Lease Payment</u>
06/01/17			
12/01/17			
06/01/18			
12/01/18			
06/01/19			
12/01/19			
06/01/20			
12/01/20			
06/01/21			
12/01/21			
06/01/22			
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06/01/36			
12/01/36			
06/01/37			