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TRUST INDENTURE AND SECURITY AGREEMENT

By and between

BOARD OF GOVERNORS OF WEST LIBERTY UNIVERSITY

and

\_\_\_\_\_,  
As Trustee

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Dated as of September 1, 2018

\$6,000,000  
Board of Governors of West Liberty University  
University Capital Improvement Revenue Bonds, Series 2018

## BOND TRUST INDENTURE AND SECURITY AGREEMENT

THIS BOND TRUST INDENTURE AND SECURITY AGREEMENT (the "Indenture") dated as of September 1, 2018, by and between the BOARD OF GOVERNORS OF WEST LIBERTY UNIVERSITY (the "Issuer"), a body corporate created under the laws of the State of West Virginia, acting for and on behalf of West Liberty University (the "University"), and -----, a West Virginia state banking corporation with trust powers and with its principal office in the City of -----, ----- County, West Virginia, as trustee (the "Trustee").

WHEREAS, the Issuer previously issued its University Revenue Bonds, Series 2012 (the "Series 2012 Bonds") for the purpose of financing certain capital improvements on the University's campus and to pay Costs of Issuance of the Series 2012 Bonds and related costs;

WHEREAS, the Issuer previously issued its University Refunding Revenue Bonds, Series 2013 (the "Series 2013 Bonds") for the purpose of refunding outstanding bonds and to pay Costs of Issuance of the Series 2013 Bonds and related costs (the Series 2012 Bonds and the Series 2013 Bonds are referred to herein collectively as the "Prior Bonds");

WHEREAS, the Series 2012 Bonds are payable from and secured by a first lien on and pledge of certain funds as described more fully in that certain Trust Indenture Dated May 31, 2012 between the Board of Governors of West Liberty University and WesBanco Bank, Inc., as Trustee, subject to the terms, conditions, limitations and restrictions therein contained;

WHEREAS, the Series 2013 Bonds were payable from and secured by a first lien on and pledge of certain funds as described more fully in that certain Trust Indenture Dated March 6, 2013 between the Board of Governors of West Liberty University and WesBanco Bank, Inc., as Trustee, subject to the terms, conditions, limitations and restrictions therein contained;

WHEREAS, pursuant to Chapter 18B, Article 2A of the West Virginia Code of 1931, as amended (the "Issuer Enabling Act"), the Legislature of the State of West Virginia created the Issuer to serve as the governing board for the University commencing July 1, 2001 and to assume control, supervision and management of the financial, business and education policies and affairs of the state institutions of higher education under its jurisdiction;

WHEREAS, pursuant to Chapter 18B, Articles 10 and 19 of the West Virginia Code of 1931, as amended (collectively, the "Enabling Act"), the Issuer is authorized to issue revenue bonds of the State for financing (1) the acquisition of land or any rights or interest in land; (2) the construction or acquisition of new buildings; (3) the renovation or construction of additions to existing buildings; (4) the acquisition of furnishings and equipment for the buildings; (5) the construction or acquisition of any other capital improvements or capital education facilities at the University, including any roads, utilities or other properties, real or personal, or for other purposes necessary, appurtenant or incidental to the construction,

acquisition, financing and placing in operation of the buildings, capital improvements or capital education facilities, including student unions, dormitories, housing facilities, food service facilities, motor vehicle parking facilities and athletic facilities; and (6) auxiliary facilities.

WHEREAS, the Issuer has determined that it is necessary and desirable to issue a series of revenue bonds (the "Series 2018 Bonds") for the purpose of financing the Series 2018 Projects as defined herein, to fund a reserve fund for the Series 2018 Bonds and to pay Costs of Issuance and related costs; and has further determined that the Series 2018 Bonds be payable from and secured by a first lien on and pledge of the funds described herein (which lien and pledge shall be junior and subordinate to the liens and pledges securing the Prior Bonds and any Additional Bonds related thereto), subject to the terms, conditions, limitations and restrictions herein contained;

WHEREAS, pursuant to the Issuer Enabling Act, the Issuer is authorized to issue bonded indebtedness for the purpose of paying the costs of the 2018 Projects for the University and pledge the Pledged Revenues (defined below) as security for the payment of principal of and interest and premium, if any, on such bonded indebtedness;

WHEREAS, it is in the best interests of the University for the Issuer to issue its \$6,000,000 in principal amount of West Liberty University Board of Governors Improvement Revenue Bonds, Series 2018 (the "Series 2018 Bonds") for the purposes of making certain capital improvements to the University's facilities (the "2018 Projects"), and (ii) paying the costs of issuance of the Series 2018 Bonds and related costs;

WHEREAS, the Issuer has received the approval and direction of the Governor of the State of West Virginia (the "State") for the issuance of the Series 2018 Bonds in the form of a Direction and Approval of the Governor, dated August \_\_, 2018 (the "Direction and Approval of the Governor");

WHEREAS, pursuant to Chapter 18B, Article 10, Section 8 of the West Virginia Code, the approval and confirmation of the West Virginia Higher Education Policy Commission (the "Commission") is required prior to the issuance of any revenue bonds by the Issuer;

WHEREAS, the execution and delivery of this Indenture and the issuance of the Series 2018 Bonds have been in all respects duly and validly authorized by a resolution duly adopted by the Issuer on August 22, 2018 and by a Certificate of Determinations executed by an authorized representative of the Issuer on August \_\_, 2018 (collectively, the "Issuer Resolution");

WHEREAS, the Commission has approved and confirmed the issuance of the Series 2018 Bonds pursuant to a resolution of the Commission, duly adopted on August 24, 2018 (the "HEPC Resolution");

WHEREAS, the Issuer may in the future issue additional revenue bonds (the "Additional Bonds", and together with the Series 2018 Bonds, the "Bonds"), pursuant to the terms hereof for the purpose, among other things, of financing the costs of new Facilities, or improvements to existing Facilities, or to finance any other capital improvements or acquisition of equipment which the Issuer is permitted by law to finance or refunding Bonds issued pursuant to this Indenture;

WHEREAS, all things necessary to make the Series 2018 Bonds, when authenticated by the Trustee and issued as in this Indenture provided, the valid, binding and legal obligations of the Issuer according to the import thereof, and to constitute this Indenture a valid assignment and pledge of the amounts pledged to the payment of principal of and interest on the Series 2018 Bonds, and a valid grant of a security interest in the funds and accounts described herein and in the proceeds thereof, and the creation, execution and delivery of this Indenture, which shall also be deemed to be a security agreement, and the creation, execution and issuance of the Series 2018 Bonds, subject to the terms hereof, have in all respects been duly authorized;

**NOW, THEREFORE, THIS INDENTURE WITNESSETH:**

The Issuer in connection with the Series 2018 Bonds, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Bonds by the owners thereof, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in order to secure the payment of the principal of and interest on the Bonds according to their tenor and effect and to secure the performance and observance by the Issuer of all the covenants expressed or implied herein and in the Bonds, does hereby irrevocably grant, bargain, sell, convey, transfer, assign and pledge unto the Trustee, and its successors in trust and assigns forever, and does hereby grant to it and them a security interest in:

I.

All right, title and interest of the Issuer in and to the Pledged Revenues, as defined herein, and the present and continuing right to make claim for, collect, receive and receipt for such Pledged Revenues.

II.

All moneys and securities held by the Trustee in any fund or account under this Indenture and earnings thereon, excepting only the Rebate Fund;

**TO HAVE AND TO HOLD** all and singular the foregoing (the "Trust Estate"), whether now owned or hereafter acquired, unto the Trustee and its respective successors in trust and assigns forever, in trust nevertheless, upon the terms and trusts herein set forth for the equal and proportionate benefit and security of all present and future owners of the Bonds, except as

otherwise provided herein, without preference of any Bond over any other, and for enforcement of the payment of the Bonds in accordance with their terms, and all other sums payable hereunder or on the Bonds and for the performance of and compliance with the obligations, covenants and conditions of this Indenture, as if all the Bonds at any time Outstanding (as defined herein) had been authenticated, executed and delivered simultaneously with the execution and delivery of this Indenture, all as herein set forth; provided, however, that any Reserve Fund held under this Indenture shall only secure the payment of the principal of and interest on the Series of Bonds to which such Reserve Fund relates;

**PROVIDED, HOWEVER,** that if the Issuer shall well and truly pay, or cause to be paid, the principal of and interest on, the Bonds, together with any redemption premium due or to become due thereon, at the times and in the manner mentioned in the Bonds according to the true intent and meaning thereof, and shall cause the payments to be made as required herein, and shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of this Indenture to be kept, performed and observed by it, and shall pay or cause to be paid to the Trustee all sums of money due or to become due in accordance with the terms and provisions hereof, then this Indenture and the rights hereby granted shall cease, determine and be void; otherwise this Indenture to be and remain in full force and effect;

**AND IT IS HEREBY COVENANTED, DECLARED AND AGREED** by and between the parties hereto that all Bonds are to be issued, authenticated and delivered, and that all the Trust Estate is to be held and applied, subject to the further covenants, conditions, releases, uses and trusts hereinafter set forth, and the Issuer, for itself and its successors, does hereby covenant and agree to and with the Trustee and its respective successors in said trust, for the benefit of those who shall hold the Bonds, or any of them, as follows:

## ARTICLE I

### DEFINITIONS

Section 1.01. Definitions. In addition to the words and phrases defined elsewhere herein, the following words and phrases shall have the following meanings:

"Act" means the Bond Act.

"Additional Bonds" means all Bonds issued on a parity as to lien and source of payment with the Series 2018 Bonds pursuant to the provisions of Section 2.10 hereof.

"Administrative Expenses" means those expenses of the Issuer, approved in writing by an Authorized Representative, which are properly chargeable as administrative expenses under generally accepted accounting principles and shall include, without limiting the

generality of the foregoing, the following: (a) fees and expenses of the Trustee, including legal and accounting fees and annual fees, including audit fees; and (b) fees and expenses of the Issuer's professional advisors, reasonably necessary, including, without limiting the generality of the foregoing, fees and expenses of the Issuer's consultants, counsel (including Bond Counsel), financial advisors, accountants and auditors.

“Authorized Denominations” means, with respect to the Series 2018 Bonds, \$5,000 and any integral multiple thereof, and, with respect to any Additional Bonds, the denominations set forth in the Supplemental Indenture relating thereto.

"Authorized Representative" means the individual or individuals designated by the Issuer, from time to time, as the person or persons to act on behalf of the Issuer. The specimen signature of the Authorized Representative shall be filed with the Trustee. Unless otherwise expressly provided herein whenever notice or direction by the Issuer to the Trustee is required or provided for herein, said notice or direction shall only be effective if given by the Authorized Representative.

“Auxiliary Fees” means the auxiliary fees imposed and collected by the Issuer on West Liberty’s students pursuant to the Bond Act for the purpose of operating and financing the Auxiliary Facilities. Pursuant to the Bond Act (W. Va. Code § 18B-19-2(d)), Auxiliary Fees may include (i) parking fees received from any source; (ii) bookstore revenues; (iii) student union vendor and user fees; (iv) donations or grants from any external source; (v) facility rental fees; and (vi) fees assessed to students to support Auxiliary Enterprises, provided, that, for purposes of this Indenture, Auxiliary Fees shall not include fees imposed and collected on students for operating or financing intercollegiate athletic facilities or revenues received from athletic events.

“Auxiliary Capital Fees” means the auxiliary capital fees imposed and collected by the Issuer on West Liberty’s students pursuant to the Bond Act (W. Va. Code § 18B-10-1) for the purpose of supporting debt service, capital projects and campus maintenance and renewal for the Auxiliary Facilities.

"Auxiliary Facilities" means, collectively, all buildings or structures of West Liberty used for an auxiliary enterprise, including but not limited to all dormitories, student, faculty and/or staff housing facilities, food service facilities, student union facilities, bookstores, transportation facilities and motor vehicle parking facilities, but specifically excluding any intercollegiate athletic facilities of West Liberty.

“Beneficial Owner” means, whenever used with respect to a Bond, the person in whose name such Bond is recorded as the beneficial owner of such Bond by a DTC Participant on the records of such DTC Participant or such Person’s subrogee.

“Bond Act” means Chapter 18B, Articles 10 and 19 of the Code of West Virginia, 1931, as amended.

“Bond Resolution” has the meaning given it in the Preambles hereto.

"Bonds" means the Series 2013 Bonds and any Additional Bonds hereafter issued within the terms, restrictions and conditions contained in this Indenture.

"Bond Counsel" means Steptoe & Johnson PLLC or any other counsel listed in The Bond Buyer's Municipal Marketplace (the “Red Book”) or similar compilation and experienced in matters relating to the excludability from gross income for federal income tax purposes of interest on bonds of states and their political subdivisions.

"Bond Fund" means the trust fund of that name established by Section 5.01 hereof.

"Bondholder," "Holder of Bonds," "Owner of Bonds" or any similar term means the registered owner of any Bond.

“Bond Register” means the bond registration books maintained by the Trustee or the Trustee’s Agent for registration of the ownership of the Bonds.

"Bond Year" means the period of twelve consecutive months ending on June 30, or the next Business Day if the 30th is not a Business Day, in any year in which Series 2018 Bonds are or will be outstanding, provided that the first Bond Year shall commence on the date of delivery of the Series 2018 Bonds upon original issuance to the purchasers thereof and shall end on the next June 30th.

"Business Day" means a day on which the principal office of the Trustee is not required or authorized to remain closed and on which the New York Stock Exchange is not closed.

“Campus” means the primary campus of West Liberty, which is located in West Liberty, West Virginia, and any other campus operated by West Liberty and specifically included in this definition pursuant to a Supplemental Indenture.

"Certificate of Authentication and Registration" means the Certificate of Authentication and Registration on the Series 2018 Bonds, substantially in the form set forth in Exhibit A hereto.

"Certified Public Accountant" means an Independent certified public accounting firm which is appointed by the Issuer for the purpose of examining and reporting on or passing on questions relating to the financial statements of the Issuer, has all certifications necessary for the performance of such services and has a favorable reputation for skill and experience in performing similar services in respect of businesses of a comparable size and nature.

"Certified" means, as the context requires, certified by the Secretary of the Issuer to have been duly adopted and to be in full force and effect as of the date of certification.

"Closing Date" means September \_\_\_\_\_, 2018.

"Code" means the Internal Revenue Code of 1986, as amended, and any applicable regulations, rulings or revenue procedures promulgated thereunder or under any predecessor thereto.

"Commission" means the West Virginia Higher Education Policy Commission.

"Completion Date" means the date the 2018 Projects have been completed, as evidenced by a certificate of completion executed by the general contractor and architect for the Project, and payments for the same have been made as provided in Section 5.10 hereof.

"Costs of Issuance" means those costs of issuing the Series 2018 Bonds, including, but not limited to, legal, accounting, trustee, verification agent fees and expenses, any premiums for municipal bond insurance, rating agency charges and expenses, other fees and expenses and all other costs incidental to the issuance of the Bonds.

"Costs of Issuance Fund" means the trust fund of that name created pursuant to Section 5.01 hereof.

"Costs of the 2018 Project" means those costs and expenses in connection with the 2018 Projects permitted by the Act to be paid or reimbursed from the proceeds of the Series 2018 Bonds, including but not limited to, the following:

- (a) The cost of the preparation of plans and specifications (including any preliminary study or planning thereof or any aspect thereof); (ii) the cost of the various improvements described on Exhibit C hereto and all interests in real property or personal property deemed necessary in connection therewith (including development, architectural, engineering and supervisory services with respect to any of the foregoing); and (iii) any other costs and expenses related to the planning, design, remodeling, improvement and placing in service thereof;
- (b) The purchase of equipment in connection therewith, including all costs incident thereto, payment for labor, services, materials and supplies used or furnished in site improvement and in construction thereof, including all costs incident thereto, payment for the cost of construction, acquisition and installation of utility services or other facilities in connection therewith, payment for all interests in real property and personal property deemed necessary in connection therewith, payment of consulting and development fees in connection therewith, and payment for the miscellaneous expenses



incidental to any of the foregoing items including the premium for any surety bond;

- (c) The fees and out-of-pocket expenses, if any, of those providing services with respect thereto, including, but not limited to, architectural, engineering, development, management, consulting and supervisory services;
- (d) Any other costs and expenses relating to the 2018 Projects for which Series 2018 Bond proceeds may be expended under the Act, other than Costs of Issuance for the Series 2018 Bonds; and
- (e) Reimbursement to the University for any costs described above paid by it; provided, however, that reimbursement for any expenditures made prior to the Closing Date from the Project Fund shall only be permitted for expenditures meeting the requirements of the Regulations, including, but not limited to, Section 1.150-2 of the Regulations.

"Dated Date" means, with respect to the Series 2018 Bonds, the date of delivery to the Original Purchaser.

"Debt Service Charges" means the Principal Installment or Redemption Price and interest on the Bonds for any period or payable at any time, whether due on an Interest Payment Date, at maturity or upon acceleration or redemption.

"Default" and "Event of Default" means any occurrence or event specified in Section 8.01 hereof.

"Defaulted Interest" means any interest on any Bond which is due and payable on any Interest Payment Date, but which is not punctually paid or provided for on such Interest Payment Date.

"Defeasance Obligations" means cash, direct non-callable obligations of the United States of America and securities fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America, to which direct obligation or guarantee the full faith and credit of the United States of America has been pledged, Refcorp interest strips, CATS, TIGRS, STRPS, or defeased municipal bonds rated AAA by S&P or Aaa by Moody's (or any combination of the foregoing).

"Enabling Act" means Chapter 18B, Articles 10 and 19 of the West Virginia Code of 1931, as amended.

"Facilities" means collectively, (1) the acquisition of land or any rights or interest in land; (2) the construction or acquisition of new buildings; (3) the renovation or construction of additions to existing buildings; (4) the acquisition of furnishings and equipment for the

buildings; (5) the renovation, construction or acquisition of new Auxiliary Facilities; and (6) the renovation, construction or acquisition of any other capital improvements or capital education facilities at the University, including any roads, utilities or other properties, real or personal, or for other purposes necessary, appurtenant or incidental to the construction, acquisition, financing and placing in operation of the buildings, capital improvements or capital education facilities.

“Fees” means the Institutional Capital Fees, Auxiliary Fees and Auxiliary Capital Fees;

“Fiscal Year” means the period commencing July 1 and ending on June 30 of each year.

“Fitch” means Fitch Ratings, a corporation organized and existing under the laws of the State of New York, 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 Issuer by notice to the Trustee.

“Funds” means the Project Fund, the Costs of Issuance Fund, the Bond Fund, the Reserve Fund(s) and the Rebate Fund, and (a) any account within each such Fund, and (b) any other Fund designated as such with respect to a Series.

“GAAP” means generally accepted accounting principles consistently applied.

“Gross Operating Revenues” means all rents, fees, charges and other revenues and income received by or accrued to the University from the operation and use of the Auxiliary Facilities, including specifically charges for room and board, charges for food service, revenues derived from the operation of the University bookstore and dining facilities, fees for providing space for meetings, conferences and conventions, revenues from the operation of vending machines, snack bars and catering services, fees, charges and penalties for parking and parking permits and any and all other revenues derived from the Auxiliary Facilities as calculated in accordance with GAAP, but excluding the Fees and as otherwise required by statute.

“Governor” means the governor of the State of West Virginia.

“HEPC Resolution” means with respect to the Series 2018 Bonds, the resolution of the West Virginia Higher Education Policy Commission adopted August ---, 2018, authorizing the issuance of the Series 2018 Bonds.

“Indenture” means this Bond Trust Indenture and Security Agreement, as amended or supplemented from time to time.

“Independent” means a Person who is not a member or employee of the Issuer, or partner, officer or employee of the University.

"Institutional Capital Fees" means the required educational and general capital fees authorized by and as defined in the Bond Act (W. Va. Code §§ 18B-10-1 and -19-2(h)); exclusive of the component part of the required educational and general capital fees of the Issuer that constituted registration and tuition fees in effect as of March 21, 2004.

"Interest Account" means the account of that name established within the Bond Fund, pursuant to Section 5.01 hereof.

"Interest Payment Date" means \_\_\_\_\_ 1 and \_\_\_\_\_ 1 of each year, commencing \_\_\_\_\_ 1, 201\_\_ and any other date on which Debt Service Charges are otherwise due on the Series 2018 Bonds.

"Issuer" means the Board of Governors of West Liberty University and its successors.

"Issuer Certificate" means a certificate or report, in form and substance satisfactory to the Trustee, executed by the Authorized Representative.

"Issuer Enabling Act" means Chapter 18B, Article 2A of the West Virginia Code of 1931, as amended.

"Issuer Resolution" means with respect to the Series 2018 Bonds, the resolution of the Issuer adopted August 22, 2018, authorizing the issuance of the Series 2018 Bonds.

"Mandatory Redemption Date" means the date established for the mandatory redemption of Series 2018 Bonds pursuant to Section 3.02 hereof.

"Mandatory Redemption Requirements" means the respective amounts designated as such with respect to a Series of Bonds pursuant to Section 3.02 hereof or pursuant to a Supplemental Indenture with respect to any Series of Additional Bonds.

"Moody's" means Moody's Investor Services, Inc., a corporation organized and existing under the laws of the State of Delaware, and its successors and assigns, if such successors and assigns shall continue to perform the functions of a securities rating agency.

"Net Pledged Revenues" means the Pledged Revenues less Operating Expenses.

"Operating Expenses," unless qualified, means the current expenses, paid or accrued, of maintaining, repairing, operating and insuring the Auxiliary Facilities (excluding depreciation or other non-cash charges) and includes, without limiting the generality of the foregoing, insurance premiums, supplies, labor, wages, utilities, employee benefits, the cost of food, materials and supplies used for current operations, and such other reasonable operating costs and expenses as should normally and regularly be included under GAAP, excluding, however, administrative overhead expenses of the University chargeable or allocated to the

Auxiliary Facilities, capital improvement charges properly allocated to a capital account in accordance with GAAP, and labor or employee expenses or benefits identified by the University as paid from funds other than the Pledged Revenues.

"Original Purchaser" means, with respect to the Series 2018 Bonds, \_\_\_\_\_ and, with respect to Additional Bonds, those investment banking firms or other entities so designated as such in a resolution of the Issuer with respect to a series of Additional Bonds.

"Outstanding" means, with respect to the Bonds, all Bonds issued, authenticated and delivered hereunder, other than:

(a) All Bonds theretofore canceled or required to be canceled pursuant to Section 2.09 hereof;

(b) Bonds for which provision for payment or redemption has been made in accordance with Article VII; provided that, if such Bonds are being redeemed, the required notice of redemption shall have been given or provision satisfactory to the Trustee shall have been made therefor; and

(c) Bonds in substitution for which other Bonds have been authenticated and delivered pursuant to Article II.

Notwithstanding the foregoing, in determining whether the Owners of the requisite principal amount of Outstanding Bonds have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Bonds owned by the Issuer, the University or any foundation on behalf of the University, shall be disregarded and deemed not to be Outstanding, except that in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Trustee knows to be so owned shall be disregarded. Bonds so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Bonds and that the pledgee is not the Issuer.

"Paying Agent" means initially the Trustee or such other bank or trust company organized under the laws of any state of the United States of America or any national banking association designated as paying agent for the Bonds and any successor appointed in the manner provided in this Indenture.

"Permitted Investments" means the following, to the extent permitted by the laws of the State:

- (1) Cash (insured at all times by the Federal Deposit Insurance Corporation);

(2) Obligations of, or obligations guaranteed as to principal and interest by, the United States of America or any agency or instrumentality thereof, when such obligations are backed by the full faith and credit of the United States;

(3) Obligations of Government – Sponsored Agencies that are not backed by the full faith and credit of the U.S. Government and which are rated in the highest rating category by at least two Rating Agencies;

(4) Certificates of deposit or time deposits of any bank (including the Trustee), trust company, savings bank or savings and loan association which certificates of deposit or time deposits are fully insured by a federally sponsored deposit insurance program;

(5) U.S. dollar denominated deposit accounts, federal funds and bankers' acceptances with domestic commercial banks which have the highest short term rating on their short term certificates of deposit on the date of purchase as rated by at least one of the Rating Agencies and maturing not more than 360 calendar days after the date of purchase (ratings on holding companies are not considered as the rating of the bank);

(6) Commercial paper which is rated at the time of purchase in the single highest classification by at least two of the Rating Agencies and which matures not more than 270 calendar days after the date of purchase;

(7) Investments in a money market fund rated in the highest rating category by at least one Rating Agency;

(8) Pre-refunded Municipal Obligations defined as follows: any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and

(A) which are rated, based on an irrevocable escrow account or fund (the "escrow"), in the highest rating category by at least one Rating Agency; or

(B) (i) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or obligations described in paragraph (2) above, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and

(ii) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption

premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates specified in the irrevocable instructions referred to above, as appropriate.

(9) Municipal obligations rated in the highest rating category by at least two Rating Agencies or general obligations of States or local governments with a rating in one of the top three rating categories by at least two Rating Agencies; and

(10) Collateralized Investment Agreements or Repurchase Agreements satisfying the safe harbor to the automatic stay provisions of the United States Bankruptcy Code and Forward Delivery Agreements provided by an institution with a rating in one of the top three rating categories at the time of entering into the agreement, without regard to qualifier, numerical or otherwise, as rated by at least two of the Rating Agencies.

"Person" means an individual, a corporation or any division thereof, a partnership, a limited liability company, an association, a joint stock company, a joint venture, a trust, an unincorporated organization or a government or any agency or political subdivision.

"Pledged Revenues" means the Fees and Gross Operating Revenues received by or on behalf of the Issuer, calculated in accordance with GAAP, any interest earnings thereon and on the funds and accounts held by the Trustee.

"Principal Account" means the account by that name established within the Bond Fund, pursuant to Section 5.01 hereof.

"Principal Installment" means, as of any date of calculation, so long as any Bonds are Outstanding, (i) the principal amount of Bonds due on a certain future date for which no Mandatory Redemption Requirements have been established or (ii) the unsatisfied balance of any such Mandatory Redemption Requirements due on a certain future date for Bonds, in a principal amount equal to said unsatisfied balance of such Mandatory Redemption Requirements.

"Principal Payment Date" means \_\_\_\_\_ 1 of each year, commencing \_\_\_\_\_  
\_\_\_\_\_, 2019.

"Project" means the 2018 Projects and any future capital project relating to Auxiliary Facilities undertaken by the University, which may be financed with Bonds issued pursuant to this Indenture.

"Project Fund" means the account by that name established pursuant to Section 5.01 hereof.

"Rating Agency" means any of Fitch, Moody's or S&P.

"Rebate Analyst" means a certified public accountant, financial analyst or attorney, or any firm of the foregoing, or a financial institution (which may include the Trustee)

experienced in making the arbitrage and rebate calculations required pursuant to Section 148 of the Code and retained by the Issuer to make the computations and give the directions required pursuant to the Tax Regulatory Agreement or to provide refunding verification services.

“Record Date” means each \_\_\_\_\_ 15 and \_\_\_\_\_ 15.

“Rebate Fund” means the Rebate Fund established pursuant to Section 5.01 hereof.

“Redemption Price” means the price at which Bonds are redeemed prior to the stated maturity thereof and shall include the principal thereof.

“Registrar” means the Trustee or any successor thereto acting in such capacity under this Indenture.

“Regular Record Date” means, with respect to an Interest Payment Date, the close of business on the 15th day of the month next preceding such Interest Payment Date, whether or not such 15th day of the month is a Business Day.

“Required Reserve” means, as of any date, the aggregate of the Series Required Reserve for all Series of Bonds for which any Bonds of such Series are at the time Outstanding.

“Reserve Fund” means the trust funds so designated which are described in Section 5.01.

“Requisition” means a document signed by an Authorized Representative, in the form attached as Exhibit B hereto, directing the Trustee to make payments described from the Costs of Issuance Fund or Project Fund, as the case may be.

“Revenues” means all revenues received from the Institutional Capital Fees and the Auxiliary Capital Fees.

“Series” when used with respect to the Series 2018 Bonds, means all the Series 2018 Bonds designated as being of the same series authenticated and delivered in a simultaneous transaction, any Series 2018 Bonds thereafter authenticated and delivered upon a transfer or exchange or in lieu of or in substitution for such Series 2018 Bonds as herein provided and any Additional Bonds so designated pursuant to Section 2.10.

“Series Required Reserve” means, (a) for the Series 2018 Bonds, an amount equal to \$\_\_\_\_\_, (b) for any Series of Additional Bonds, an amount, if any, determined at the time of issuance of such Additional Bonds, not to exceed the least of (1) 10% of the original principal amount of such Additional Bonds, (2) 125% of the average annual debt service payment on such Additional Bonds, or (3) 100% of the maximum annual debt service payable on such Additional Bonds.

“Series 2018 Reserve Fund” means the Reserve Fund for the Series 2018 Bonds created pursuant to Section 5.01(c) hereof.

"S&P" means Standard & Poor's Ratings Group, a division of The McGraw-Hill Companies, Inc., and its successors and assigns, if such successors and assigns shall continue to perform the functions of a securities rating agency.

"Special Record Date" for the payment of Defaulted Interest means the date fixed by the Trustee pursuant to Section 2.08.

"State" means the State of West Virginia.

"Supplemental Indenture" means any indenture entered into between the Issuer and the Trustee pursuant to Article X hereof which is supplemental hereto or amendatory hereof.

“Tax Regulatory Agreement” means the Tax Regulatory Agreement, dated as of the date of this Indenture, between the Issuer and the Trustee, as amended or supplemented from time to time and any Tax Regulatory Agreements relating to Additional Bonds.

"Trust Estate" means the property, rights, moneys, securities and other amounts pledged and assigned to the Trustee pursuant to the Granting Clauses hereof.

"Trustee" means -----, until any successor trustee shall have become such pursuant to the applicable provisions of this Indenture and thereafter "Trustee" shall mean such successor Trustee hereunder.

"University" means West Liberty University, a West Virginia institution of higher education, located in West Liberty, Ohio County, West Virginia.

"Value," which shall be determined as of the end of each month, means that the value of any investments shall be calculated as follows:

(a) as to investments the bid and asked prices of which are published on a regular basis in *The Wall Street Journal* (or, if not there, then in *The New York Times*): the average of the bid and asked prices for such investments so published on or most recently prior to such time of determination;

(b) as to investments the bid and asked prices of which are not published on a regular basis in *The Wall Street Journal* or *The New York Times*: the average bid price at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the University in its absolute discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing service;



(c) as to certificates of deposit and bankers acceptances: the face amount thereof, plus accrued interest; and

(d) as to any investment not specified above: the value thereof established by prior agreement between the Issuer and the Trustee.

“2018 Projects” means capital projects undertaken by the University to make improvements to West Family Stadium, including installation of artificial turf and lighting; improvements to Campbell Hall of Sciences; and certain deferred maintenance costs.

Section 1.02. Interpretation. Any reference herein to the Issuer or to any member, officer, employee or official thereof includes entities, officers, employees or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or who are lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State or the Act, or to a section, provision or chapter of the West Virginia Code of 1931, as amended, or to any statute of the United States of America, includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this paragraph, if it constitutes in any way an impairment of rights or obligations of the Issuer, the Holders, the Trustee, the Registrar or any Paying Agent under this Indenture, the Issuer Resolution, the Bonds or any other instrument or document entered into in connection with any of the foregoing, including without limitation, any alteration of the obligation to pay Debt Service Charges in the amount and manner, at the times, and from the sources provided in the Issuer Resolution and this Indenture, except as provided herein.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa. The terms "hereof," "hereby," "herein," "hereto," "hereunder," "hereinafter" and similar terms refer to this Indenture as a whole and not to any particular Article, Section or subdivision of this Indenture; and the term "hereafter" means after, and the term "heretofore" means before, the date of this Indenture. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

All accounting terms not otherwise defined herein will have the meanings assigned to them in accordance with GAAP, and all computations provided for herein will be made in accordance with GAAP.

Section 1.03. Captions and Headings. The captions and headings in this Indenture are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

ARTICLE II

AUTHORIZATION, TERMS, EXECUTION,  
FORM AND REGISTRATION OF BONDS

Section 2.01. Issuance of Series 2018 Bonds. There shall be issued and secured by this Indenture a Series of bonds to be known and designated as "Board of Governors of West Liberty University, University Revenue Bonds, Series 2018." The aggregate principal amount of Series 2018 Bonds which may be authenticated and delivered under this Indenture is limited to \$6,000,000, except for Series 2018 Bonds authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of other Series 2018 Bonds of the same Series, as provided herein. The Series 2018 Bonds shall be issued as fully registered Bonds without coupons, in Authorized Denominations numbered from R-1 upward.

The Series 2018 Bonds shall mature on [Month] 1 of 201-, 202-, 202- and 202- in the principal amounts set forth below and shall bear interest on each Interest Payment Date at the rates per annum, all as set forth below:

<u>Year of Maturity</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
201-	\$-----	----%
202-	-----	----%
202-	-----	----%
202-	-----	----%

In the event of the occurrence of an Event of Default the interest rates on the Series 2018 Bonds shall be increased by ----% during such period that an Event of Default is continuing.

Each Series 2018 Bond shall be dated as of [Month/Day], 201-, and, except as otherwise provided in this Section, each Bond shall bear interest (calculated on the basis of a 360 day year of twelve 30-day months) from such date or from the most recent Interest Payment Date to which interest has been paid or duly provided for, as the case may be. However, when there is no existing default in the payment of interest on the Bonds, each Bond authenticated after the Regular Record Date for any Interest Payment Date but prior to such Interest Payment Date shall bear interest from such Interest Payment Date; provided, however, that if and to the extent that the Issuer shall default in the payment of the interest due on any Interest Payment Date, then all such Bonds of the Series as to which default occurred shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for, unless no interest has been paid on such Series of Bonds, in which case from their dated date.

The person in whose name any Bond is registered at the Regular Record Date with respect to an Interest Payment Date shall be entitled to receive the interest payable on such

Bond on such Interest Payment Date notwithstanding the cancellation of such Bond upon any registration of transfer or exchange thereof subsequent to such Regular Record Date and prior to such Interest Payment Date; provided, however, that if and to the extent the Issuer shall default in the payment of the interest due on any Interest Payment Date, such Defaulted Interest shall be paid as provided in Section 2.08.

The principal of and interest on the Bonds shall be payable in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts at the corporate trust office of the Trustee in -----, West Virginia; provided, however, that interest on the Bonds shall be paid by check mailed to the person entitled thereto at his address appearing on the Bond Register, and in the case of an owner of \$1,000,000 or more of the Bonds, by wire transfer to a domestic bank account specified in writing to the Trustee at least five Business Days preceding such Interest Payment Date by such owner.

Section 2.02. Execution; Special Obligations. The Bonds shall be executed by the Governor on behalf of the State and the Chairman of the Issuer with their manual or facsimile signatures, and attested by the manual or facsimile signature of the Secretary of State and shall have impressed or imprinted thereon, by facsimile or otherwise, the Great Seal of the State. The Bonds are payable out of the Pledged Revenues and funds held under this Indenture, together with earnings thereon. The Bonds are special obligations of the Issuer and are not and shall not be deemed to be general obligations or debts of the State within the meaning of the Constitution of the State and the credit or taxing power of the State shall not be pledged therefor, but the Bonds shall only be payable from the Trust Estate. No Owner of any of the Bonds shall ever have the right to compel the exercise of the taxing power of the State to pay the Bonds or the interest thereon. In case any officer whose signature, or whose facsimile signature, shall appear on the Bonds shall cease to be such officer before the delivery of such Bonds, such signature, or the facsimile signature thereof, shall nevertheless be valid and sufficient for all purposes, the same as if he or she had remained in office until delivery.

Section 2.03. Authentication. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Indenture unless and until a certificate of authentication on such Bond substantially in the form set forth in Exhibit A or in any Supplemental Indenture relating to any Series of Bonds shall have been duly executed by the Trustee, and such executed certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been executed, authenticated and delivered under this Indenture. The Certificate of Authentication and Registration on any Bond shall be deemed to have been executed by the Trustee if manually signed by an authorized officer of the Trustee, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 2.04. Form of Bonds. The Bonds issued under this Indenture shall be substantially in the form set forth on Exhibit A or in any Supplemental Indenture relating to any Series of Bonds with such variations, omissions and insertions as are permitted or required by

this Indenture and which variations, omissions or insertions do not adversely affect the rights of any Bondholder as set forth herein.

Section 2.05. Delivery of Series 2018 Bonds. Upon the execution and delivery of this Indenture, the Issuer shall execute and deliver to the Trustee and the Trustee shall authenticate the Series 2018 Bonds to be originally issued, and deliver them to the Original Purchaser thereof as directed by the Issuer.

Prior to the delivery of any of the Series 2018 Bonds, there shall be filed with the Trustee:

- (1) A Certified copy of the Issuer Resolution;
- (2) A Certified copy of the HEPC Resolution;
- (3) An original executed counterpart of this Indenture;
- (4) A request and authorization to the Trustee signed by an officer of the Issuer or an Authorized Representative to authenticate the Series 2018 Bonds to be originally issued, and to deliver them to the Original Purchaser therein identified upon payment of the sums specified for deposit in the funds and accounts as set forth in Section 5.01 hereof; and
- (5) An opinion of Bond Counsel substantially to the effect that the Series 2018 Bonds constitute legal, valid and binding obligations of the Issuer, enforceable in accordance with their terms and that the interest on the Series 2018 Bonds is excludable from the gross income of the holders thereof for purposes of Federal income taxation; and
- (6) An executed Direction and Approval of the Governor.

Section 2.06. Mutilated, Lost, Stolen or Destroyed Bonds. In the event any Bond is mutilated, lost, stolen or destroyed, the Issuer shall execute and the Trustee shall authenticate a new Bond of like date, maturity and denomination as that mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee for cancellation and, in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the Issuer and the Trustee evidence of such loss, theft or destruction satisfactory to them, together with any indemnity satisfactory to them. In the case of a past-due or a matured, lost, stolen or destroyed Bond, the face amount of such past-due or matured Bond may be paid upon delivery to the Issuer and the Trustee of evidence of such loss, theft or destruction satisfactory to them, together with any indemnity satisfactory to them. The Issuer and the Trustee may charge the Owner of such Bond their reasonable fees and expenses in this connection.

Any such duplicate Bonds issued pursuant to this Section shall constitute original, additional contractual obligations on the part of the State, whether or not the lost, stolen or

destroyed Bonds be at any time found by any one, and such duplicate Bonds shall be entitled to equal and proportionate benefits and rights as to lien and source of security for payment from the revenues pledged herein with all other Bonds issued hereunder.

Section 2.07. Exchange of Bonds; Persons Treated as Owners; Transfer and Registration. The Issuer shall cause books for the registration and for the registration of transfer of the Bonds as provided in this Indenture to be kept by the Trustee at its designated corporate trust operations office. At reasonable times and under reasonable regulations established by the Trustee, said list may be inspected and copied by the Issuer or by a representative of the owners of not less than 50% of the aggregate principal amount of Bonds then outstanding.

Upon surrender for registration of transfer of any Bond at such office, the Trustee shall authenticate and deliver in the name of the transferee or transferees one or more new fully registered Bonds, if any, of authorized denomination of the same maturity and like aggregate principal amount. At the option of the Bondholder, Bonds may be exchanged for other Bonds of authorized denominations of the same Series and maturity and like aggregate principal amount upon surrender at any such office. Whenever any Bonds are so surrendered for exchange, the Trustee shall authenticate and deliver in exchange therefor the Bonds which the Bondholder making the exchange shall be entitled to receive.

All Bonds presented for registration of transfer or exchange shall (if so required by the Issuer or the Trustee), be accompanied by a written instrument or instruments of transfer in form and with a guaranty of signature satisfactory to the Trustee, duly executed by the registered owner or by such owner's duly authorized attorney.

The Trustee may require payment by the person requesting an exchange or registration of transfer of Bonds of a sum sufficient to cover any transfer fee, tax or other governmental charge that may be imposed in relation thereto and the cost of preparing such new Bonds.

The Issuer and the Trustee shall not be required to issue, register the transfer of or exchange any Bonds during a period beginning at the Regular Record Date preceding an Interest Payment Date and ending at the close of business on the Interest Payment Date.

All Bonds delivered upon any registration of transfer or exchange of Bonds shall be valid obligations of the Issuer, evidencing the same debt and entitled to the same benefits under this Indenture as the Bonds surrendered.

Prior to due presentment for registration of transfer of any Bond, the Issuer and the Trustee, and any agent of the Issuer or the Trustee may treat the person in whose name any Bond is registered as the absolute owner thereof for all purposes (subject to Section 2.08), whether or not such Bond shall be overdue, and shall not be bound by any notice to the contrary.

Section 2.08. Payment of Interest; Interest Rights Preserved. Interest on any Bond which is payable, and is punctually paid or duly provided for, on any Interest Payment

Date shall be paid to the person in whose name that Bond (or one or more predecessor Bonds) is registered on the Regular Record Date for such Interest Payment Date.

Any Defaulted Interest shall forthwith cease to be payable to the registered holder on the relevant Regular Record Date by virtue of having been such holder; and such Defaulted Interest shall be paid by the Trustee to the persons in whose names the Bonds (or their respective predecessor Bonds) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Issuer shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Bond and the date of the proposed payment, and at the same time the Issuer shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the persons entitled to such Defaulted Interest. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Issuer of such Special Record Date and shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first class, postage prepaid, to each Bondholder at his address as it appears in the Bond Register not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the persons in whose names the Bonds (or their respective predecessor Bonds) are registered on such Special Record Date.

Subject to the foregoing provisions of this Section, each Bond delivered under this Indenture upon transfer of or in exchange for or in lieu of any other Bond shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Bond.

Section 2.09. Cancellation and Destruction of Bonds. Whenever any outstanding Bond shall be delivered to the Trustee for payment of the principal amount represented thereby or for replacement pursuant to Section 2.06 or registration of transfer or exchange pursuant to Section 2.07, such Bond shall, upon receipt of a written request of the Issuer, be canceled and destroyed by the Trustee and counterparts of a certificate of destruction evidencing such destruction shall be furnished to the Issuer.

Section 2.10. Additional Bonds. Additional Bonds may be issued pursuant to this Indenture under the conditions and in the manner provided in this Section 2.10.

Additional Bonds may be issued from time to time for any one or more of the following purposes: (a) financing the costs of the acquisition or construction of new Facilities or improvements to the Facilities, or (b) refunding of all or a portion of one or more Series of Bonds issued pursuant hereto. In the event Additional Bonds are issued, the Issuer and Trustee

shall enter into a Supplemental Indenture, the purpose of which shall be to impose the lien of this Indenture upon the Trust Estate as security therefor.

No Additional Bonds shall be authenticated and delivered by the Trustee unless there has been filed with the Trustee:

(a) The resolutions, documents and opinions required for delivery of the Bonds pursuant to Section 2.05 hereof, appropriately modified;

(b) The Supplemental Indenture specifically authorized the Additional bonds;

(c) An Issuer's Certificate to the effect that the Issuer is not in default hereunder; and

(d) (i) A certificate of an Authorized Representative to the effect that the Net Pledged Revenues plus any amounts earmarked for capitalized interest for each of the preceding two Fiscal Years have equaled or exceeded \_\_\_% of Maximum Annual Debt Service on all Outstanding Bonds and the Additional Bonds to be issued, taking into effect the additional Debt Service Charges to be incurred following issuance thereof and, in the event of the refunding of existing Bonds, taking into account the defeasance of such existing Bonds being refunded and the elimination of Debt Service Charges associated therewith;

(ii) A certificate from an Independent Certified Public Accountant to the effect that the Net Pledged Revenues plus any amounts earmarked for capitalized interest (A) have equaled or exceeded \_\_\_ times Debt Service Charges for each of the preceding two Fiscal Years and (B) are projected to equal or exceed \_\_\_ times Debt Service Charges for the Fiscal Year immediately following the date of issuance of such Additional Bonds, taking into effect the additional Debt Service Charges to be incurred following issuance thereof and, in the event of the refunding of existing Bonds, taking into effect the defeasance of any existing Bonds and the elimination of Debt Service Charges associated therewith, the estimated average increased annual Net Pledged Revenues to be derived from the operation of the new facilities and/or improvements to existing facilities to be financed by such Additional Bonds, any new or increased Fees imposed or to be imposed by the Issuer prior to the issuance of the Additional Bonds and any expansion of the definitions of Gross Operating Revenues and Auxiliary Facilities relating to the proposed financing.

(e) An Issuer's Certificate to the effect that any Reserve Fund for any Series of Bonds then Outstanding and any Reserve Fund, if any, for any Series of Additional Bonds shall be fully funded on the date of delivery of the Series of Additional Bonds.

Additional Bonds issued under the provisions and within the limitations of this Section shall be payable from the Trust Estate on a parity with the Series 2018 Bonds (except with respect to a Reserve Fund for a particular Series of Bonds). All the covenants and other provisions of this Indenture (except as to details of such Additional Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Owners of the Series 2018 Bonds and the Owners of any Additional Bonds subsequently issued from time to time within the limitations of and in compliance with this Section. Except as described in this paragraph, all Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Trust Estate, and their source of and security for payment from said Trust Estate, without preference of any Bond over any other.

No Additional Bonds shall be issued at any time, however, unless all the payments into the respective funds and accounts provided for in this Indenture on account of the Bonds then Outstanding, and any other payments provided for in this Indenture, shall have been made in full as required to the date of delivery of the Additional Bonds.

For all purposes, including calculating the Maximum Annual Debt Service and the Additional Bonds test, variable rate indebtedness shall be assumed to bear interest at the highest of: (i) the actual rate on the date of calculation, or if the indebtedness is not yet outstanding, the initial rate (if established and binding), (ii) if the indebtedness has been outstanding for at least twelve months, the average rate over the 12 months immediately preceding the date of calculation, or if no debt is outstanding for the 12 prior months under the authorizing document, the average rate borne by reference to an index comparable to that to be utilized in determining the interest rate for the debt to be issued and (iii) (A) if interest on the indebtedness is excludable from gross income under the applicable provisions of the Code, the most recently published Bond Buyer "Revenue Bond Index" (or comparable index if no longer published), or (B) if interest is not so excludable, the interest rate on direct U.S. Treasury Obligations with comparable maturities; provided, however, that for purposes of any rate covenant measuring actual debt service coverage during a test period, variable rate indebtedness shall be deemed to bear interest at the actual rate per annum applicable during the test period.

(e) An Issuer's Certificate to the effect that any Reserve Fund for any Series of Bonds then Outstanding and any Reserve Fund, if any, for any Series of Additional Bonds shall be fully funded on the date of delivery of the Series of Additional Bonds.



Additional Bonds issued under the provisions and within the limitations of this Section shall be payable from the Pledged Revenues on a parity with the Series 2018 Bonds (except with respect to a debt service reserve fund for a particular Series of Bonds). All the covenants and other provisions of this Indenture (except as to details of such Additional Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Owners of the Bonds previously issued and outstanding and the Owners of any Additional Bonds subsequently issued from time to time within the limitations of and in compliance with this Section. Except as described in this paragraph, all Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the Pledged Revenues, and their source of and security for payment from said Pledged Revenues, without preference of any Bond over any other.

Upon issuance of such Additional Bonds, there shall be deposited with the Trustee in a separately established reserve fund for such Additional Bonds, the amount, if any, required by the Original Purchasers of the Additional Bonds to establish a reserve fund therefor.

No Additional Bonds shall be issued at any time, however, unless all the payments into the respective funds and accounts provided for in this Indenture on account of the Bonds then Outstanding, and any other payments provided for in this Indenture, shall have been made in full as required to the date of delivery of the Additional Bonds.

For all purposes, including calculating the Maximum Annual Debt Service and the Additional Bonds test, variable rate indebtedness shall be assumed to bear interest at the highest of: (i) the actual rate on the date of calculation, or if the indebtedness is not yet outstanding, the initial rate (if established and binding), (ii) if the indebtedness has been outstanding for at least twelve months, the average rate over the 12 months immediately preceding the date of calculation, or if no debt is outstanding for the 12 prior months under the authorizing document, the average rate borne by reference to an index comparable to that to be utilized in determining the interest rate for the debt to be issued and (iii) (A) if interest on the indebtedness is excludable from gross income under the applicable provisions of the Code, the most recently published Bond Buyer "Revenue Bond Index" (or comparable index if no longer published), or (B) if interest is not so excludable, the interest rate on direct U.S. Treasury Obligations with comparable maturities; provided, however, that for purposes of any rate covenant measuring actual debt service coverage during a test period, variable rate indebtedness shall be deemed to bear interest at the actual rate per annum applicable during the test period.

Section 2.11. Special Obligations. The Bonds are payable solely out of the Pledged Revenues and other amounts held under this Indenture. The Bonds are special, self-liquidating obligations of the Issuer and shall not be deemed to be general obligations or debts of any manner or nature of the Issuer or the State within the meaning of or as contemplated by the Constitution of the State, and the credit or taxing power, if any, of the Issuer or the State shall not be pledged therefor. No Owner of any of the Bonds shall ever have the right to compel the exercise of the taxing power, if any, of the Issuer or the State to pay the Bonds or the interest thereon.

### ARTICLE III

#### REDEMPTION OF BONDS

Section 3.01. Limitation on Redemption. The Series 2018 Bonds shall be subject to redemption as set forth in Sections 3.02 and 3.03. Additional Bonds shall be subject to redemption prior to maturity at such times, to the extent and in the manner provided in the Supplemental Indenture authorizing such Additional Bonds.

Section 3.02. Mandatory Sinking Fund Redemption of the Series 2018 Bonds.

A. The Series 2018 Bonds maturing on -----, 201-, -----, 202-, -----, 202- and -----, 202-, shall initially be issued as term bonds, and are subject to mandatory redemption prior to maturity in part from moneys on deposit in the Bond Fund at a Redemption Price equal to 100% of the principal amount thereof, plus accrued interest to the Mandatory Redemption Date, in the years and in the annual principal amounts as follows:

Series 2018 Bond maturing -----, 201-:

Year ([Month] 1)	<u>Amount</u>
201- (Maturity 201-)	\$ ----- -----

Series 2018 Bond maturing -----, 202-:

Year ([Month] 1)	<u>Amount</u>
201- 201-	\$ ----- -----

201-	-----
201-	-----
201-	-----
(Maturity 202-)	-----

Series 201- Bond maturing -----, 202-:

Year ([Month] 1)	<u>Amount</u>
202-	\$ -----
202-	-----
202-	-----
202-	-----
202-	-----
(Maturity 202-)	-----

Series 2018 Bond maturing -----, 202-:

Year ([Month] 1)	<u>Amount</u>
202-	\$ -----
202-	-----
202-	-----
(Maturity 202-)	-----

The principal amount of the Series 2018 Bonds delivered to or purchased by the Trustee shall reduce by such amount the principal amount of such Series of Bonds to be redeemed on the Mandatory Redemption Date with respect to such maturity next following such delivery or purchase.

Section 3.03. Optional Redemption of Series 2018 Bonds. The Series 2018 Bonds are subject to optional redemption, in whole or in part, at par prior to maturity at any time upon not less than thirty (30) days prior written notice by the Issuer to the Trustee. The purchase price in the event of such optional redemption shall be equal to 100% of the principal amount thereof, plus accrued interest to the optional redemption date. In the event of a partial optional redemption the amount of such partial redemption will be applied equally among the maturities of the Series 2018 Bonds then outstanding.

Section 3.04. Extraordinary Optional Redemption.

(a) The Bonds shall be subject to extraordinary optional redemption prior to maturity by the Issuer, as a whole or in part by series and in order of maturity selected by the Issuer, provided that the aggregate principal amount of Bonds being redeemed in part shall be not less than \$500,000, on any Business Day, at a Redemption Price equal to 100% of the principal amount thereof, plus accrued interest to the date fixed for redemption, in the event of damage to or destruction of the Auxiliary Facilities or any portion thereof, if the Issuer requests such redemption within six months following the event and otherwise as set forth in this Indenture.

(b) The Series 2018 Bonds shall be subject to extraordinary optional redemption in whole or in part on the earliest possible date at 100% of the principal amount redeemed plus accrued interest from any funds remaining on deposit in the Project Fund on September \_\_, 2021, unless the Trustee has been presented with a Certificate of the Issuer with respect to the expenditure and investment of such funds, accompanied by an opinion of Bond Counsel to the effect that the proposed expenditure and investment of such funds will not adversely affect the exclusion from gross income for purposes of federal income taxation of interest on any Bonds.

Section 3.05. Redemption Requests Relating to the Series 2018 Bonds. Redemptions of Series 2018 Bonds permitted or required by this Article III shall be made as follows, and the Trustee shall give the notice of redemption referred to in Section 3.06 hereof in respect of each such redemption. Redemption shall be made pursuant to Section 3.02 hereof as and when required by such Section, without any further request, instruction or notice to the Trustee. Redemption shall be made pursuant to Section 3.03 hereof upon notice by the Issuer to the Trustee in accordance with Sections 3.06, 3.07, 3.08 and 3.09 hereof.

Section 3.06. Selection of Series 2018 Bonds To Be Redeemed. In the event of redemption of less than all of the Outstanding Bonds of like maturity, the Trustee shall select the Series 2018 Bonds to be redeemed by lot, using such method of selection as it shall deem proper in its discretion. In making such selection the Trustee shall treat Series 2018 Bonds as representing that number of Series 2018 Bonds of the lowest authorized denomination as is obtained by dividing the principal amount of such Bonds by such denomination. In the event of a partial optional redemption the amount of such partial redemption will be applied equally among the maturities of the Series 2018 Bonds then outstanding.

Section 3.07. Notice of Redemption. When the Trustee shall receive notice from the Issuer of its election or direction to redeem Bonds pursuant to Section 3.03, when redemption of Bonds is required by this Indenture pursuant to Section 3.02 or when redemption of any Additional Bonds is required pursuant to any Supplemental Indenture, the Trustee shall give

notice, in the name of the Issuer, of the redemption of such Bonds. Notice of any such redemption shall be given by the Trustee by mailing a copy of the redemption notice by registered or certified mail (postage prepaid) not less than 30 nor more than 60 days prior to the date fixed for redemption to the registered owner of each Bond to be redeemed in whole or in part at the address shown on the Bond Register. Failure to give such notice by mailing to any Owner, or any defect therein, shall not affect the validity of any proceedings for the redemption of Bonds with respect to Bonds or portions thereof for which no failure has occurred.

All notices of redemption shall be dated and shall state (i) the redemption date; (ii) the redemption price; (iii) the identifying number and CUSIP number, if any, (and in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed; (iv) the date of issuance of the Bonds; (v) the interest rate or rates and maturity date or dates of the Bonds to be redeemed; (vi) that on the redemption date the Redemption Price will become due and payable on each such Bond and interest thereon will cease to accrue thereon from and after said date; (vii) the agent name, contact person and address where such Bonds are to be surrendered for payment; and (viii) any other descriptive information that, in the opinion of the Trustee, is needed to identify accurately the Bonds being redeemed. A second notice shall be sent if after 60 days from the redemption date such Bonds have not been surrendered for payment.

Notice of any redemption of Bonds shall either (i) explicitly state that the proposed redemption is conditioned on there being on deposit in the applicable fund or account on the redemption date sufficient money to pay the full redemption price of the Bonds to be redeemed, or (ii) be sent only if sufficient money to pay the full redemption price of the Bonds to be redeemed is on deposit in the applicable fund or account. If the conditional notice described in clause (i) is given, failure to provide sufficient money on the redemption date shall not constitute an Event of Default.

Any notice mailed as provided in this Section shall be conclusively presumed to have been duly given, whether or not the Owner of such Bonds receives the notice.

In addition to the foregoing notice, further notice shall be given by the Trustee as set out below, but no defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as above prescribed.

(a) Each further notice of redemption given hereunder shall contain the information required above for an official notice of redemption.

(b) Upon the payment of the Redemption Price of Bonds being redeemed, each check or other transfer of funds issued for such purpose shall bear the CUSIP number

identifying, by issue and maturity, the Bonds being redeemed with the proceeds of such check or other transfer.

Section 3.08. Partial Redemption of Bonds. Upon surrender of any Bond for redemption in part only, the Issuer shall execute, and the Trustee shall register, authenticate and deliver to the Owner thereof, a new Bond or Bonds of authorized denominations in an aggregate principal amount equal to the unredeemed portion of the Bond surrendered.

Section 3.09. Effect of Call for Redemption. On the date designated for redemption by notice given as herein provided, the Bonds so called for redemption shall become and be due and payable at the Redemption Price provided for on such date. If on the date fixed for redemption moneys for payment of the Redemption Price and accrued interest are held by the Trustee or Paying Agent as provided herein, interest on such Bonds so called for redemption shall cease to accrue, such Bonds shall cease to be entitled to any benefit or security hereunder except the right to receive payment from the moneys held by the Trustee or the Paying Agent and the amount of such Bonds so called for redemption shall be deemed paid and no longer Outstanding.

## ARTICLE IV

### GENERAL COVENANTS

Section 4.01. Payment of Principal and Interest. The Issuer covenants to promptly pay the principal or Redemption Price of and interest on every Bond issued under this Indenture at the place, on the dates and in the manner provided herein and in said Bonds according to the true intent and meaning thereof, provided that the such principal or Redemption Price and interest shall be payable solely from the Trust Estate, which is hereby pledged to the payment thereof.

Section 4.02. Performance of Covenants by Issuer. The Issuer covenants to faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all proceedings pertaining hereto. The Issuer covenants that it is duly authorized under the Constitution and laws of the State, including particularly the Act, to issue the Bonds authorized hereby and to execute this Indenture, and to pledge the amounts hereby pledged in the manner and to the extent herein set forth; that all action on its part for the issuance of the Bonds and for the execution and delivery of this Indenture has been duly and effectively taken, and that the Bonds in the hands of the owners thereof are and will be valid and enforceable obligations of the Issuer according to the terms thereof and hereof.

Section 4.03. Instruments of Further Assurance. The Issuer agrees that the Trustee may defend the Issuer's rights to the fees and other amounts due with respect to the use of the Facilities for the benefit of the holders of the Bonds, against the claims and demands of all persons whomsoever. The Issuer covenants to do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such indentures supplemental hereto and such further acts, instruments and transfers as the Trustee may reasonably require for the better assuring, transferring, pledging, assigning and confirming unto the Trustee all and singular the rights assigned hereby and the amounts pledged hereby to the payment of the principal of and

interest on the Bonds. The Issuer covenants and agrees that, it will not sell, convey, assign, pledge, encumber or otherwise dispose of any part of the Pledged Revenues except as herein provided.

Section 4.04. Tax Covenants. The Issuer and the Trustee shall at all times do and perform all acts and things permitted by law and this Indenture which are necessary or desirable in order to assure that the interest paid on the Bonds (or any of them) shall not be includable in the gross income of the holders thereof for federal income tax purposes will not permit at any time or times any of the proceeds of the Bonds or other funds of the Issuer to be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause any of the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code.

The Issuer and the Trustee jointly and severally covenant with the Owners of the Bonds from time to time Outstanding, that so long as any of the Bonds remain Outstanding, moneys held under this Indenture, whether or not such moneys were derived from the proceeds of the sale of the Bonds or from any other sources, will not be used in any manner which to their knowledge will cause the interest on the Bonds to become subject to federal income taxation. The Issuer and the Trustee reserve the right, however, to make any investment of such moneys permitted by the terms of this Indenture if, when and to the extent that the Code shall be repealed or interpreted to permit such investment or shall be held void by final judgment of a court of competent jurisdiction, but only if such investment made by virtue of such repeal, interpretation or decision would not, in the opinion of Bond Counsel, result in making the interest on the Bonds subject to inclusion in the gross income of the holders thereof for federal income tax purposes.

Section 4.05. Fees. The University shall require all students of the University to pay the Fees, subject to pro rata reduction for part-time students and for waivers required by the West Virginia Code.

Section 4.06. Rate Covenant and Fees. The Issuer represents that it has fixed and covenanted that it will fix, maintain and collect just, equitable and sufficient Fees and will operate the Auxiliary Facilities so as to produce Gross Operating Revenues, which combined Fees and Gross Operating Revenues shall at all times produce Pledged Revenues sufficient, when combined with other moneys legally available to be used for such purposes, to make the prescribed payments into the funds and accounts created under this Indenture. The Issuer will, from time to time, take all action within its power to revise the then existing schedules of Fees and to operate the Auxiliary Facilities so as to provide for all reasonable Operating Expenses and leave Net Pledged Revenues, amounts earmarked for capitalized interest and other moneys legally available to be used for such purposes, each Fiscal Year equal to at least \_\_\_% of Maximum Annual Debt Service. If Debt Service Charges are not paid in accordance with Section 5.04 hereof, no Pledged Revenues may be used for Operating Expenses or any other purposes other than the payment of Debt Service Charges, but shall be paid directly to the Trustee.

Section 4.07. Operation and Maintenance. The Issuer will maintain the Auxiliary Facilities in good condition, making such expenditures for equipment and for renewal, repair and replacement as may be necessary therefor.

Section 4.08. Use of Auxiliary Facilities. The Issuer shall require freshmen and sophomore students who live outside a \_\_\_-mile radius of the Campus to live in the University's residence halls, apartment complex and other available housing facilities; provided, that the Issuer may except any student on whom this requirement places undue hardship or if the University's residence halls, apartment complex and other available housing facilities are filled to capacity.

Section 4.09. Competing Auxiliary Facilities. The Issuer shall not own or operate any Auxiliary Facilities at or near the Campus, the income from the operation of which does not constitute a part of the Pledged Revenues, if the effect of such ownership or operation would cause the Issuer to be in violation of its covenant set forth in Section 4.06 hereof.

Section 4.10. Books and Records; Audited Statements. The Issuer covenants that all books and documents in its possession relating to all receipts and disbursements with respect to the Bonds, the Auxiliary Facilities, the Fees and the Gross Operating Revenues shall at all times be open to inspection by such accountants or other agencies as the Trustee may designate.

The Issuer will cause the financial statements with respect to the Fees, the Gross Operating Revenues and the Bond funds and accounts created by this Indenture or by any Supplemental Indenture to be audited by a Certified Public Accountant, whose audited report shall be submitted to the Trustee and the Original Purchaser within 180 days after the end of each Fiscal Year during which Bonds are Outstanding, accompanied by an Issuer's Certificate to the effect that as of the end of such period, no Event of Default had occurred under the terms hereof and specifically demonstrating compliance with the requirements of Section 4.06 hereof.

Section 4.11. Insurance. The Issuer will carry such insurance and in such amounts as is customarily carried with respect to properties similar to the Auxiliary Facilities, with a reputable insurance carrier or carriers, against loss or damage by fire, explosion, hurricane, earthquake, cyclone, occupancy or other hazards and risks. The Net Proceeds of all such insurance policies shall be disposed of as provided in this Indenture and otherwise shall be placed in a construction fund and used only for the repair and restoration of the damaged or destroyed properties. The Issuer will also carry liability insurance for damage or injury to persons or property in amounts adequate for such purposes and customarily carried with respect to works and properties similar to the Auxiliary Facilities. The Trustee shall be named as a loss payee, additional insured, mortgagee or other appropriate status under all such policies.

Notwithstanding any of the foregoing, the Issuer may provide for the insurance required by this Section 4.11 through the State Board of Risk and Insurance Management or by any program of self-insurance that the State provides for itself and its agencies.

Section 4.12. Damage or Destruction of Auxiliary Facilities. In the event of the damage or destruction of all or a part of the Auxiliary Facilities and the receipt of Net Proceeds equaling or exceeding \$500,000, the Issuer shall either (a) repair and restore the Auxiliary Facilities or portion thereof to substantially its condition or condition of at least equivalent value, immediately prior to such event, in which instance the Net Proceeds shall be paid to the Issuer for the purpose of such repair and restoration, or (b) direct that a redemption of a portion of the Bonds shall occur in accordance with the provisions of Section 3.04(a) hereof, in which instance the Net Proceeds shall be paid into the Bond Fund. If the Net Proceeds are less than \$500,000,



the Net Proceeds shall be used as provided in clause (a) of the preceding sentence, provided, however, that repair and restoration shall not be required in the event that after such casualty the Issuer remains in compliance with the requirements of Section 4.06 hereof.

Section 4.13. Trustee May Act For Issuer. In the event the Issuer fails (i) to make any payment required or fails to comply with, perform or carry out any of the provisions hereof, or (ii) to perform any of the terms, covenants or agreements by the Issuer to be performed under this Indenture, including, but not limited to failure to pay any advances made by the Trustee to protect the lien and security hereof as provided herein and interest on any future advances and all other items of the Bonds when due, then, and in any such event, the Trustee shall have the right, without notice to or demand upon the Issuer or any other Person, to make any such payment, take any such action or do any such thing as, in the exercise of the Trustee's discretion, may be determined to be reasonably necessary to protect the lien and security hereof as fully and completely as if the Issuer made each and every such payment when due, and kept, complied with, performed and carried out the provisions of this Indenture in every respect. Without limiting the generality of the foregoing, the Trustee may, in any such event, pay all or any part of any sum or sums of money that may be due or payable under the provisions hereof; and the Issuer hereby promises to pay to the Trustee, upon demand, any and all sums of money paid out or expended by the Trustee, for any of the purposes set out in this Section, all without waiver of any right arising from the breach of or default in the performance of any warranty, covenant, condition, provision or agreement herein contained; but nothing herein contained shall be construed as imposing any duty or obligation upon the Trustee to pay any such sum or sums of money herein authorized to be paid, or to take any other action authorized hereunder.

Section 4.14. Issuance of Other Obligations Payable out of Pledged Revenues and General Covenant Against Encumbrances. The Issuer shall not issue any other obligations whatsoever, except Additional Bonds provided for in Section 2.10 hereof, payable from the Pledged Revenues which rank prior to, or equally, as to lien on and source of and security for payment from such Pledged Revenues with the Bonds; and all obligations hereafter issued by the Issuer payable from the Pledged Revenues, except such Additional Bonds, shall contain an express statement that such obligations are junior and subordinate as to lien on and source of and security for payment from such Pledged Revenues and in all other respects to the Bonds.

The Issuer shall not create, or cause or permit to be created any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or, except with respect to said Additional Bonds, being on a parity with the lien of the Bonds, and the interest thereon, upon any of the Pledged Revenues pledged for payment of the Bonds and the interest thereon in this Indenture or upon the Auxiliary Facilities or any part thereof.

## ARTICLE V

### DEPOSIT OF BOND PROCEEDS; FUNDS AND ACCOUNTS; REVENUES

Section 5.01. Creation of Funds and Accounts. There are hereby created by the Issuer and ordered established, the following trust funds and trust accounts to be held by the Trustee:

- (a) The Project Fund;
- (b) The Costs of Issuance Fund;
- (c) The Series 2018 Reserve Fund;
- (d) The Bond Fund, which shall contain the following accounts:
  - (i) the Interest Account; and
  - (ii) the Principal Account; and
- (e) The Rebate Fund.

For the purposes of internal accounting, the funds and accounts created or maintained pursuant to this Section may contain one or more accounts and sub-accounts, as the Issuer shall direct. Notwithstanding any provisions of this Article V or anything elsewhere in this Indenture to the contrary, the Trustee shall not be required to actually open a fund, account or subaccount until the need for such fund, account or subaccount arises.

Section 5.02. Deposit of Bond Proceeds; Drawing of Bond Proceeds. The proceeds of the sale of the Series 2018 Bonds shall be deposited immediately upon payment and delivery of the Series 2018 Bonds as follows:

- (a) A sum in the amount of \$-----, shall be deposited into the Project Fund and applied to Costs of the 2018 Projects as provided in Sections 5.09 through 5.11 hereof.
- (b) A sum in the amount of \$\_\_\_\_\_ shall be deposited in the Series 2018 Reserve Fund.
- (c) A sum in the amount of \$-----, representing costs of issuance, shall be deposited in the Costs of Issuance Fund and applied to payment of costs relating to the issuance of the Bonds.

Proceeds of any Series of Additional Bonds will be applied as provided in the Supplemental Indenture for such Series of Bonds.

Section 5.03. Costs of Issuance Fund.

- (a) The proceeds of the Bonds deposited in the Costs of Issuance Fund shall be used and withdrawn by the Trustee only as provided in this Section 5.03. No amount in any other fund or account created by this Indenture shall be expended for Costs of Issuance.
- (b) The Trustee is authorized and directed to make disbursements from the Costs of Issuance Fund upon the written direction of an Authorized Representative for the payment of Costs of Issuance, in the amounts stated to be due and payable in such written direction, which shall be filed with the Trustee from time to time, together with such other documentation as may be required hereunder, certifying that such amounts may be properly paid.

The Trustee shall make such disbursements not later than five (5) days after receipt of all the documentation required by this Section 5.03(b).

(c) Notwithstanding any provision to the contrary, any amounts remaining in the Costs of Issuance Fund 90 days after the Closing Date shall be transferred to the Project Fund.

Section 5.04. Source of Payment of Bonds. The Bonds and all payments by the Issuer hereunder are not general obligations of the State but are special, limited obligations payable solely from the Trust Estate. The pledge of the Trust Estate, including the Pledged Revenues, and the funds and accounts as security for the performance of all obligations of the Issuer hereunder, shall be valid and binding from the time such pledge is made. The Pledged Revenues immediately shall be subject to the lien of this Indenture without any physical delivery thereof or further act. Upon receipt of any Pledged Revenues or other payments hereunder, the Trustee shall deposit the same in the appropriate fund or funds or account or accounts established hereunder. Except as otherwise provided herein, the Pledged Revenues shall be collected, held and applied for the equal and ratable benefit and security of all Owners.

Section 5.05. Application of Pledged Revenues. If no Event of Default has occurred and is continuing (in which case all Pledged Revenues must be deposited with the Trustee upon receipt), the Issuer shall make the following payments from the Pledged Revenues, in the order of priority set forth below:

(a) On the 15<sup>th</sup> day of each month beginning on \_\_\_\_\_ 15, 2018 and continuing through \_\_\_\_\_ 15, 201\_ the Issuer shall deposit in the Interest Account of the Bond Fund an amount equal to one-half (1/2<sup>th</sup>) of the Debt Service Charges for interest coming due on \_\_\_\_\_ 1, 201\_. On the 15<sup>th</sup> day of each month thereafter beginning on \_\_\_\_\_ 15, 201\_, the Issuer shall deposit in the Interest Account in the Bond Fund an amount equal to one-sixth (1/6<sup>th</sup>) of the Debt Service Charges for interest coming due on the next succeeding Interest Payment Date (less any amount then on deposit in the Interest Account and available for such payment);

(b) On the 15<sup>th</sup> day of each month beginning on beginning \_\_\_\_\_ 15, 2019, the Issuer shall deposit in the Principal Account in the Bond Fund an amount equal to one-twelfth (1/12<sup>th</sup>) the Debt Service Charges for principal coming due on the next succeeding Principal Payment Date;

(c) On the 15<sup>th</sup> day of each month the Issuer shall deposit in the Reserve Fund for any Series of any amount required to be deposited therein pursuant to Section 5.12 hereof;

(d) The Issuer shall also, from the Pledged Revenues, remit to the proper Person on such dates or at such other times, amounts as shall be required to pay the Administrative Expenses; and

(e) When the 15<sup>th</sup> day of a month is not a Business Day, then such payments shall be made on the next succeeding Business Day, and all such payments shall be remitted to

the Trustee with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Indenture.

Should no Event of Default have occurred and be continuing, then, so long as the foregoing deposits are being made, the Issuer may use any excess Pledged Revenues for their normal purposes.

Section 5.06. The Bond Fund. There shall be deposited to the credit of the appropriate account of the Bond Fund moneys required to be deposited in the Bond Fund pursuant to Section 5.05(a) and (b) hereof and any other moneys required hereunder to be transferred thereto or for which no other designation as to a fund or account has been made. Subject to such priorities of application as are established herein, moneys on deposit in the Bond Fund shall be used to pay Debt Service Charges when due at maturity, upon prior redemption, prepayment or acceleration, or otherwise.

Section 5.07. Bonds Not Presented for Payment. In the event any Bonds shall not be presented for payment when the principal thereof becomes due, either at maturity or at the date fixed for redemption or prepayment thereof or the acceleration of maturity, if moneys sufficient to pay such Bonds are held by the Trustee, the Trustee shall segregate and hold such moneys in trust, without liability for interest thereon, for the benefit of the Holders of such Bonds who shall, except as provided in the following paragraph, thereafter be restricted exclusively to such fund or funds for the satisfaction of any claim of whatever nature on their part under this Indenture or relating to said Bonds.

Any moneys which the Trustee shall segregate and hold in trust for the payment of the Debt Service Charges on any Bond and which remain unclaimed for two years after such Debt Service Charges have become due and payable shall be paid to the Issuer upon receipt by the Trustee of a written request from an Authorized Representative. After the payment of such unclaimed moneys to the Issuer, the Holder of any such Bond shall thereafter look only to the Issuer for the payment thereof, and all liability of the Issuer and the Trustee with respect to such moneys shall thereupon cease.

Section 5.08. Rebate Fund.

(a) The Rebate Fund shall be separate from any other fund established and maintained hereunder or under any laws governing the creation and use of funds by the Issuer. There shall be deposited in the Rebate Fund such amounts as are required to be deposited therein pursuant to the Tax Regulatory Agreement. Subject to the transfer provisions provided in paragraph (e) below, all money at any time deposited in the Rebate Fund shall be held by the Trustee in trust, to the extent required to satisfy the Rebate Amount (as defined in the Tax Regulatory Agreement), for payment to the federal government of the United States of America, and neither the Issuer nor the Holder of any Bonds shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section, and by the Tax Regulatory Agreement (which is incorporated herein by reference).

(b) Notwithstanding any other provisions herein, the Trustee shall deposit amounts to the Rebate Fund from deposits by the Issuer or from amounts available for such purpose held in the Bond Fund, if and to the extent required, when stipulated pursuant to the Tax

Regulatory Agreement. Computations of the Rebate Amount shall be furnished to the Trustee in accordance with the Tax Regulatory Agreement.

(c) The Trustee shall have no obligations to rebate any amounts required to be rebated pursuant to this Section, other than from moneys held in the funds and accounts created under this Indenture or from other moneys provided to it by the Issuer.

(d) The Trustee shall invest all amounts, if any, held in the Rebate Fund in Permitted Investments in writing as directed by the Issuer and subject to the restrictions set forth in the Tax Regulatory Agreement.

(e) The Trustee shall remit part or all of the balances in the Rebate Fund to the United States. At the direction of the Issuer, any funds remaining in the Rebate Fund after redemption and payment of all of the Bonds and payment and satisfaction of any Rebate Amount, or provision made therefor satisfactory to the Trustee shall be withdrawn and remitted to the Borrower.

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

#### Section 5.09. Project Fund

(a) The Project Fund shall be used solely for the purposes set forth in this Article V. There shall be deposited into the Project Fund from the sale of the Series 2018 Bonds the amount specified in Section 5.02 hereof. The Trustee shall deposit into the Project Fund as and when received by the Trustee any money paid to the Trustee under this Indenture, or any other money paid to the Trustee from the University, for credit or transfer to the Project Fund. Except for authorized disbursements on the Closing Date, money in the Project Fund shall be disbursed for Costs of the 2018 Projects as described in Sections 5.10 and 5.11 hereof. The Trustee shall establish a separate project fund or funds with respect to each Series of Additional Bonds issued hereunder.

(b) All proceeds of the Series 2018 Bonds and investment earnings thereon remaining in the Project Fund on the Completion Date, less amounts retained or set aside to meet costs not then due and payable or that are being contested, may be used for other capital expenditures included in the West Liberty University Master Plan, including the campus development plan required by Chapter 18B, Articles 2A and 19, respectively, of the Code of West Virginia, 1931, as amended, as the same may be supplemented and amended from time to time and as approved by the HEPC; provided, however, that a favorable opinion of Bond Counsel with respect to such expenditure shall have been obtained. Any funds remaining in the Project Fund on September \_\_, 2021 shall be transferred and applied to optional redemption of the Series 2018 Bonds pursuant to Subsection 3.03; provided, that such remaining funds may be transferred to the Principal Account of the Bond Fund and used for the payment of principal of the Series 2018 Bonds next coming due upon the Issuer's delivery to the Trustee of a favorable opinion of Bond Counsel; and provided, further, that neither such transfer shall be required if the Trustee has been presented with a Certificate of the Issuer with respect to the expenditure and

investment of such funds, accompanied by an opinion of Bond Counsel to the effect that the proposed expenditure and investment of such funds will not adversely affect the exclusion from gross income for purposes of federal income taxation of interest on any Bonds.

#### Section 5.10. Project Fund; Disbursements

(a) Disbursements shall be made from the Project Fund upon receipt by the Trustee of the Requisition described in Section 5.11 hereof from the Authorized Representative of the Issuer. The Trustee shall keep and maintain adequate records pertaining to the Project Fund and all disbursements therefrom, and, after the Completion Date, the Trustee shall file an accounting thereof with the Issuer.

(b) When the 2018 Projects have been completed, money remaining on deposit in the Project Fund shall be disbursed as described in Subsection 5.09(b) hereof. The Trustee shall also make such transfer if it determines or is notified in writing by the Issuer or the University that the 2018 Projects have been abandoned. Upon such transfer or depletion of the Project Fund for the Costs of the 2018 Projects, the Project Fund shall be closed.

#### Section 5.11. Payment for Costs of the 2018 Projects

(a) The Trustee shall disburse funds at least once each month from the Project Fund to pay for the Costs of the 2018 Projects upon order of the Authorized Representative. The Authorized Representative shall submit to the Trustee the original of a Requisition stating: (i) the item number of such payment; (ii) the name of the Person to whom each such payment is due, which may be the University in the case of reimbursement for Costs of the 2018 Projects theretofore paid by the University; (iii) the respective amounts to be paid; (iv) the purpose by general classification for which each obligation to be paid was incurred; (v) that obligations in the stated amounts have been incurred by the Issuer and are presently due and payable and that each item thereof is a proper charge against the Project Fund and has not been previously paid from the Project Fund; and (vi) that there has not been filed with or served upon the Issuer any notice of claim of lien, or attachment upon, or claim affecting the right to receive payment of, any of the amounts payable to any of the persons named in such Requisition, that has not been released or will not be released simultaneously with the payment of such obligation. A Form of Requisition is attached hereto as Exhibit B. The Trustee is entitled to reasonably rely on any such requisition in such form as proper approval and direction to disburse funds from the Project Fund. The Trustee shall have no duty to review or investigate the accuracy of the Requisition.

(b) Within three (3) Business Days of receipt of a Requisition, the Trustee shall pay the amount set forth in such Requisition as directed by the terms thereof out of the Project Fund. The Trustee shall rely fully on any such Requisition delivered pursuant to this Section 5.11 and shall not be required to make any investigation in connection therewith. The Trustee shall not make any such payment if it has received any written notice of claim of lien, attachment upon, or claim affecting the right to receive payment of, any of the moneys to be so paid, that has not been released or will not be released simultaneously with such payment.

Section 5.12. Reserve Fund.

(a) The Trustee initially shall deposit in the Reserve Fund for the Series 2018 Bonds an amount equal to the Series Required Reserve on the Series 2018 Bonds from the proceeds of the Series 2018 Bonds. Except as provided in subsection (d) of this Section, in connection with the issuance of any Additional Bonds, the Required Reserve, if any, for such Series of Additional Bonds shall be funded at issuance for the Additional Bonds. The amount of any withdrawal from a Reserve Fund for a Series of Bonds for the purpose of subsection (b)(1) of this Section 5.12 shall be restored by the Issuer in no more than twelve (12) substantially equal, consecutive, monthly installments, each payable on the last Business Day of the month, commencing with the month in which the withdrawal is made; provided that, if any withdrawal is made and if, prior to the restoration of the amount withdrawn, an additional withdrawal is made, such additional withdrawal shall be restored in equal monthly installments over the remainder of the restoration period for the initial withdrawal. In addition, if the fair market value of the investments in a Reserve Fund for a Series of Bonds is less than the Required Reserve for such Series of Bonds on any valuation date, the difference between such Required Reserve and the value of the Reserve Fund shall be restored by the Issuer in no more than three (3), consecutive, monthly installments, each payable on the last Business Day of the month, commencing with the month in which the valuation revealing the deficiency is made. Upon the making of any monthly deposit to restore a withdrawal or deficiency, the Issuer, at its cost, may direct the Trustee to recompute the value of the assets in the Reserve Fund, in which event the remaining amount to be restored, if any, after taking the new valuation into account shall be deposited in equal monthly installments over the balance of the restoration period.

(b) Moneys on deposit in the Reserve Fund shall be applied as follows:

(1) On the date of each required payment from the Bond Fund, moneys in the Reserve Fund for a Series of Bonds shall be applied to cure any deficiency in the Bond Fund with respect to payments of principal of and interest on such Series of Bonds when due and payable;

(2) Upon delivery of an Officer's Certificate of the Issuer delivered to the Trustee, any amount in the Reserve Fund for a Series of Bonds in excess of the Required Reserve for such Series of Bonds on any valuation date shall be (A) transferred to the Bond Fund and credited against the payments next becoming due (in direct order) in respect of the principal of and redemption premium, if any, or interest on the Series 2018 Bonds or any Additional Bonds, or (B) applied as may be specified in an Officer's Certificate of the Issuer if such Certificate is accompanied by an opinion of Bond Counsel to the effect that such application will not cause interest on any Series of Bonds to be includable in gross income for federal income tax purposes; and

(3) In each month during the 12-month period preceding the final maturity date of any Series of Bonds, moneys held in the Reserve Fund for such Series of Bonds shall be credited against the payments otherwise due under the Indenture in respect of principal of, redemption premium, if any, and interest on such Series of Bonds and shall be transferred to the Bond Fund for the payment of such principal, redemption premium and interest; provided, however, that no such credit shall be given and no such transfer shall be made if and to the extent that, immediately prior to such crediting and transfer, the amount on deposit in the Reserve Fund for

such Series of Bonds is not at least equal to the Required Reserve for such Series of Bonds, less the amounts previously transferred to the Fund during such 12-month period pursuant to this subparagraph (3).

(c) Any deposit made in connection with the issuance of a Series of Additional Bonds hereunder shall be deposited into a separate Reserve Fund for such Series of Bonds and shall be held for the equal and proportionate benefit of all Bondholders of such Series of Bonds. Any supplemental indenture providing for the establishment of such separate accounts may contain such further provisions as may be necessary or appropriate for the proper administration of such accounts, including provisions establishing priorities for the application of amounts on deposit in the various accounts (including investment income) for the purposes set forth in this Section.

(d) The Issuer shall be permitted to substitute a letter of credit, surety bond or other credit enhancement (each, a “credit facility”) for funds on deposit in a Reserve Fund for a Series of Bonds, provided that:

(1) the credit facility (including any replacement credit facility) is issued by a bank, trust company, national banking association or insurance company whose unsecured long term debt obligations (in the case of a bank, trust company or national banking association) or whose claims paying abilities (in the case of an insurance company) are rated by a Rating Agency, at the time the credit facility is issued and at the time of each extension or renewal thereof, in a rating category at least equal to the rating category assigned by such Rating Agency to the Bonds [at the Closing Date/at the time of substitution], determined without regard to credit enhancement, if applicable, but in no event lower than an “investment grade” rating category, or the Rating Agency otherwise provides evidence to the Trustee that the credit facility shall not result in a decrease or withdrawal of the rating on the Bonds;

(2) the issuer of the credit facility does not receive as security for any reimbursement obligation in respect of the credit facility any lien, security interest or other similar right or interest in any property within the Trust Estate which is superior to the rights of the Trustee in respect of such property;

(3) the credit facility (including any replacement credit facility, if provided by a different issuer) has an initial term of not less than three (3) years and any extension, renewal or replacement (if provided by the same issuer) thereof has a term of not less than one year;

(4) the Trustee is authorized and has the duty and right to draw on the credit facility to satisfy the purposes for which the Reserve Fund was established; and

(5) The Trustee shall receive an opinion of Counsel to the effect that all of the requirements set forth above have been satisfied and an opinion of Bond Counsel to the effect that the substitution of the credit facility will not, in and of itself, adversely affect the tax exempt status of the Bonds.

Upon such substitution, funds on deposit in the Reserve Fund which, when added to the face amount of the credit facility, exceed the Series Required Reserve on all Outstanding Bonds of such Series of Bonds shall be applied as provided in subsection (b)(2) above. Thereafter, the



credit facility shall be considered a part of the Reserve Fund for such Series of Bonds and the amount available thereunder shall be included in any calculation of the amount required to be retained in the Reserve Fund for such Series of Bonds; provided that, (A) if the sum of the amount available under the credit facility and the amount of moneys on deposit in the Reserve Fund for such Series of Bonds exceeds the amount required to be on deposit pursuant to subsection (a) of this Section, the Issuer shall be permitted to (i) cause the amount available under the credit facility to be reduced by an amount equal to such excess, or (ii) direct that the excess moneys be applied as permitted under subsection (b)(2) of this Section, and (B) if the credit facility is not extended, renewed or replaced at least six (6) months prior to its scheduled expiration or termination date, the Trustee shall, not later than thirty (30) days prior to such date, draw on the credit facility for the full amount thereof.

(e) If there are cash and Permitted Investments on deposit in the Reserve Fund for a Series of Bonds in addition to a credit facility, such cash and Permitted Investments will be drawn on prior to any draws on such credit facility.

Section 5.13. Moneys Held in Trust. Except where moneys have been deposited with or paid to the Trustee pursuant to an instrument restricting their application to particular Bonds, all moneys required or permitted to be deposited with or paid to the Trustee or any Paying Agent under any provision of this Indenture and to be used to pay Debt Service Charges and any investments thereof, shall be held by the Trustee or that Paying Agent in trust. Except (i) for moneys deposited with or paid to the Trustee or any Paying Agent for the redemption of Bonds, notice of the redemption of which shall have been duly given and (ii) for moneys held by the Trustee pursuant to Section 5.07 hereof, and (iii) for moneys held in the Rebate Fund, all moneys described in the preceding sentence held by the Trustee or any Paying Agent shall be subject to the lien hereof while so held.

Section 5.14. Payment to the Issuer After the right, title and interest of the Trustee in and to the Trust Estate and all covenants, agreements and other obligations of the Issuer to the Holders shall have ceased, terminated and become void and shall have been satisfied and discharged in accordance with Article VIII hereof, and amounts due and owing to the United States of America pursuant to Section 5.08 hereof and all fees, expenses and other amounts payable to the Issuer, the Trustee, the Registrar, any Authenticating Agent, any Paying Agent and the Rebate Analyst, pursuant to any provision hereof shall have been paid in full, any moneys remaining in any fund or account held under this Indenture (other than moneys held for the payment of Debt Service Charges) shall be paid to the Issuer, except as otherwise provided in Section 5.13 hereof.

## ARTICLE VI

### INVESTMENT OF MONEYS

Section 6.01. Investment of Moneys. Except as otherwise provided in this Indenture, any moneys held as a part of the funds and accounts created pursuant to this Indenture shall be invested or reinvested by the Trustee at the written direction of the Issuer, confirmed by an Issuer's Certificate, in any Permitted Investments; provided, however, that, in the absence of

any direction from the Issuer, the Trustee shall keep such funds invested in Defeasance Obligations.

Except as otherwise specifically provided herein, any such investment shall be held by or under the control of the Trustee and shall be deemed at all times a part of the fund in which such moneys were originally held. Any loss resulting from such investments shall be charged to such fund. Any interest or other gain from any fund from any investment or reinvestment shall, except as otherwise provided herein, remain in such fund.

The Trustee shall value the investments held for any fund at the lower of cost or then current market, or at the redemption price thereof if then redeemable at the option of the owner, including the value of accrued interest and giving effect to the amortization of discount. The Trustee shall sell at the best price reasonably obtainable and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund is insufficient to make the payments required from such fund regardless of the loss on such liquidation. The Trustee may make any and all investments permitted by this Section 6.01 through its own bond department.

In making investments of the moneys held hereunder the Trustee may rely on the written direction of the Issuer as sufficient evidence that such investment is made in accordance with this Indenture and applicable law, and shall not be liable for any investments made in violation of the covenant as to arbitrage contained herein or otherwise, if made pursuant to such direction.

All investments shall be valued as of the end of each Bond Year and on such other dates as required by the term of this Indenture. Although the Issuer recognizes that it may obtain a broker's confirmation or written statement containing comparable information at no additional cost, the Issuer agrees the confirmation of Permitted Investments are not required to be issued by the Trustee for each month in which a monthly statement is rendered; provided that no such statement need be rendered for any account if no activity occurred in such accounting during such month.

## ARTICLE VII

### DISCHARGE OF INDENTURE

Section 7.01. Discharge of Indenture. If the Issuer shall pay or cause to be paid, or there shall be otherwise paid, to or for the holders of the Bonds, the Debt Service Charges due or to become due thereon at the times and in the manner stipulated therein from the funds and accounts established hereunder as a part of the Trust Estate, and shall pay or cause to be paid to the Trustee all sums of money due or to become due according to the provisions hereof, then these presents and the estate and rights hereby granted shall cease, determine and void, whereupon the Trustee shall cancel and discharge the lien of this Indenture and execute and deliver to the Issuer such instruments in writing as shall be requisite to cancel and discharge the lien hereof, and release, assign and deliver unto the Issuer, any and all of the estate, right, title and interest in and to any and all rights assigned or pledged to the Trustee or otherwise subject to the lien of this Indenture, except moneys or securities held by the Trustee for the payment of the principal of and interest on the Bonds. In connection with this paragraph the following provisions shall apply:

(a) All Bonds shall have become due and payable in accordance with their terms at their stated maturity or otherwise as provided in this Indenture or have been duly called for redemption, or irrevocable instructions to call the Bonds for redemption or to pay the Bonds at their stated dates of maturity have been given to the Trustee and either (i) the whole amount of the principal and interest so due and payable upon all of the Bonds (other than Bonds theretofore canceled or delivered to the Trustee for cancellation) shall have been paid or (ii) there shall have been deposited with the Trustee Defeasance Obligations which are non-callable prior to the stated maturity thereof and having stated maturities arranged so that the principal or redemption price of and interest becoming due and payable on such Defeasance Obligations will under any and all circumstances (and without further investment or reinvestment of either the principal amount thereof or the interest earned thereon) be sufficient (as confirmed by a Certified Public Accountant or Rebate Analyst) to pay and discharge the entire indebtedness of each Bond, not theretofore delivered to the Trustee for cancellation, or Debt Service Charges to the stated maturity or redemption date or dates, as the case may be, thereof.

(b) If all Bonds have not become due and payable, the Issuer has delivered to the Trustee a ruling of the Internal Revenue Service or an opinion of Bond Counsel to the effect that the operation of this Section 7.01 would not cause interest on the Bonds to become includable in the gross income of the Owners thereof for federal income tax purposes or cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code.

(c) If the date of satisfaction and discharge of this Indenture is more than six months prior to the stated maturity date of the Bonds, and redemption of the Bonds is then required by the Issuer, arrangements, satisfactory to the Trustee, shall have been made for the giving of notice of redemption of the Bonds on the date selected for redemption.

(d) The Issuer has delivered to the Trustee an Issuer's Certificate and an opinion of Bond Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

(e) In the event of an advance refunding, the Issuer on behalf of the Issuer shall cause to be delivered a verification report of an Independent nationally recognized Certified Public Accountant.

(f) To the extent permitted by law, the obligation of the Issuer to pay the fees and expenses of the Trustee, and to indemnify the Trustee (but only from Pledged Revenues), shall survive defeasance of the Series 2018 Bonds.

## ARTICLE VIII

### DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND BONDHOLDERS

Section 8.01. Defaults; Events of Default. If any of the following events occur, it is hereby defined as and declared to be and constitute an "Event of Default":

(a) Default by the Issuer in the due and punctual payment of any interest on any Bond;

(b) Default by the Issuer in the due and punctual payment of any Principal Installment;

(c) Upon the expiration of the period for filing a responsive pleading, in the event any proceeding is instituted in a court of competent jurisdiction which may adversely affect the lien of the Owners upon the Revenues unless (i) a responsive pleading has been filed on behalf of the Issuer contesting the bona fides of such proceeding or (ii) the Issuer causes an opinion of counsel (which counsel must be reasonably satisfactory to the Trustee) to be delivered to the Trustee to the effect such proceeding is without merit; or

(d) Default in the performance of observance of any other of the covenants, agreements or conditions on the part of the Issuer contained in this Indenture or in the Bonds and failure to remedy the same after notice thereto pursuant to Section 8.10.

Section 8.02. Rights and Remedies of Trustee. Upon the occurrence of an Event of Default, the Trustee may pursue any available remedy at law or in equity to enforce the payment of the principal of and interest on the Bonds then Outstanding, including, but not limited to, a proceeding in mandamus to enforce any rights on behalf of the Owners or the appointment of a receiver for the protection of the Owners.

If an Event of Default shall have occurred, and if requested to do so by the Owners of no less than 25% of the Bonds Outstanding and indemnified as provided in Section 9.01(l) hereof, the Trustee shall be obligated to exercise one or more of the rights and powers conferred by this Article, as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Owners.

The Trustee shall have the right to compel an immediate accounting with respect to the Revenues in the event the Revenues are not transferred to the Trustee in accordance with the terms hereof.

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

No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or acquiescence therein; and every such right and power may be exercised from time to time as often as may be deemed expedient.

No waiver of any default or Event of Default hereunder, whether by the Trustee or by the Owners, shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereon.

Section 8.03. Right of Owners to Direct Proceedings. Anything in this Indenture to the contrary notwithstanding, the Owners of a majority of the Bonds Outstanding shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken by the Trustee in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture.

In the event the Trustee receives conflicting instructions from the Owners of the Bonds, the Trustee shall follow the instructions of the holders of the greatest principal amount of Bonds if the greatest principal amount is at least 25% of the Bonds Outstanding.

Section 8.04. Appointment of Receiver. Upon the occurrence of an Event of Default, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Owners under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Trust Estate (and to the extent then permitted by law, of the Facilities), and of the Revenues, pending such proceedings, with such powers as the court making such appointment shall confer.

The receiver so appointed shall forthwith, directly or by his or her or its agents and attorneys, enter into and upon and take possession of all the Facilities and shall hold, operate and maintain, manage and control such Facilities, and each and every part thereof, and in the name of the Issuer exercise all the rights and powers of the Issuer with respect to said Facilities as the Issuer itself might do.

Whenever all Debt Service Charges then due shall have been paid and made good, and all defaults under the provisions of this Indenture shall have been cured and made good, possession of the Facilities shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent default, the Trustee shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers hereinabove conferred upon him or her or it, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby, and a successor receiver may be appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the Auxiliary Facilities or the Trust Estate, but the authority of such receiver shall be limited to the collection of the Fees and the Gross Operating Revenues, for the sole purpose of the protection of both the Issuer and Owners, and the curing and making good of any default under the provisions of this Indenture, and the title to and ownership of said Trust Estate shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, mortgage, or otherwise dispose of any assets of the Trust Estate.

Section 8.05. Application of Moneys. All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the expenses, fees, liabilities and advances, including counsel fees, incurred or made by the Trustee, be deposited in the Bond Fund and all moneys in the Bond Fund shall be applied as follows:

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

FIRST -- to the payment to the persons entitled thereto of all interest then due on the Bonds, in the order of the due dates of such interest and, if the amount available shall not be sufficient to pay in full said amount, then to the payment ratably, according to the amounts due to the persons entitled thereto, without any discrimination or privilege;

SECOND -- to the payment to the persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due (other than the Bonds matured for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates, with interest on such Bonds from the respective dates upon which they became due at the rates borne by the Bonds and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto without any discrimination or privilege; and

THIRD -- to be held for the payment to the persons entitled thereto as the same shall become due of the principal of and interest on the Bonds which may thereafter become due at maturity and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with interest then due and owing thereon, payment shall be made ratably according to the amount of principal due on such date to the persons entitled thereto without any discrimination or privilege.

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

Section 8.06. Remedies Vested in the Trustee. All rights of action (including the right to file proof of claims) under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceeding related thereto and any such suit or proceeding instituted by the Trustee shall be brought in its name as the Trustee without the necessity of joining as plaintiffs or defendants any holder of the Bonds, and any recovery of judgment shall be for the equal and ratable benefit of the holders of the outstanding Bonds.

Section 8.07. Rights and Remedies of Bondholders. No Owner of any Bond shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement

of this Indenture or for the execution of any trust hereof or for the appointment of a receiver of any other remedy hereunder, unless (i) a default has occurred of which the Trustee has been notified as provided in Section 9.01(h) hereof, or of which by said subsection it is deemed to have received notice, (ii) such default shall have become an Event of Default and the Owners of not less than 25% of the Bonds Outstanding shall have made written notice to the Trustee and shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in their own name or names, (iii) they have offered to the Trustee indemnity as provided in Section 9.01(l) hereof, and (iv) the Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name; and such notification, request and offer of indemnity are hereby declared in every case at the option of the Trustee to be conditions precedent to the execution of the powers and for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more Owners of the Bonds shall, solely by virtue of being such Owner, have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by its, his or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal and ratable benefit to the Owners of all Bonds then outstanding. However, nothing contained in this Indenture shall affect or impair the right of any Owners to enforce the payment of the principal of and interest on any Bond at and after the maturity thereof, or the obligation of the Issuer to pay the principal of and interest on each of the Bonds issued hereunder to the respective Owners thereof at the time, place, from the sources and in the manner in the Bonds expressed.

Section 8.08. Termination of Proceedings. In the case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer, the Trustee and the Owners shall be restored to their former positions and rights hereunder, respectively, with regard to the property herein subject to this Indenture, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 8.09. Waivers of Events of Default. The Trustee may at its discretion waive any Event of Default hereunder and its consequences, and shall do so upon the written request of the Owners of (i) more than two-thirds of the Bonds Outstanding in respect of which default in the payment of principal or interest, or both, exists, or (ii) more than 50% of the Bonds Outstanding in the case of any other default; provided, however, that there shall not be waived (a) any Event of Default in the payment of the principal of any outstanding Bonds at the date of maturity specified therein, or (b) any default in the payment when due of the interest on any such Bonds unless, prior to such waiver or rescission, all arrears of interest or all arrears of payments of principal when due, as the case may be, with interest on overdue principal at the rate borne by the Bonds, and all expenses of the Trustee in connection with such default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceedings taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Trustee and the Owners shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon.

Section 8.10. Notice of Defaults Under Section 8.01(d); Opportunity of Issuer to Cure Such Defaults. Anything herein to the contrary notwithstanding, no default under Section 8.01(d) shall constitute an Event of Default until actual notice of such default by first class mail (postage prepaid) shall be given to the Issuer by the Trustee or by the Owners of not less than 25% of the Bonds Outstanding and the Issuer shall have had 60 days after receipt of such notice to correct said default or cause said default to be corrected, and shall not have corrected said default or cause said default to be corrected, and shall not have corrected said default or caused said default to be corrected within the applicable period; provided, however, if said default be such that it cannot be corrected within the applicable period, it shall not constitute an Event of Default if corrective action is instituted by the Issuer within the applicable period and diligently pursued until the default is corrected.

Section 8.11. Acceleration and Annulment Thereof.

(a) Upon the occurrence of an Event of Default specified in Section 8.01 hereof, and at any time thereafter while such Event of Default shall continue in each and every case, unless the principal of all the Bonds shall already have become due and payable, the Trustee may and, upon written request of the Owners of 25% of aggregate principal amount of the Bonds then Outstanding shall 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 the same shall become and be immediately due and payable, anything in this Indenture or in any of the Bonds contained and to the contrary notwithstanding.

(b) The provisions of the preceding paragraph however, are subject, to the condition that if, after the principal of the Bonds has been so declared to be due and payable, all arrears of interest upon the Bonds (and interest on overdue installments of interest at the maximum rate permitted by law or 2% over the interest rate on the respective Bonds, whichever is less) are paid by or on behalf of the Issuer, and no Event of Default or event which, with the passage of time or the giving of notice, or both, would constitute an Event of Default, is continuing hereunder, and the Issuer also performs all other things in respect to which the Issuer may have been in default hereunder and pays the reasonable charges of the Trustee and the Owners, including reasonable attorneys fees, then, and in every such case, the Trustee may annul such declaration and its consequences and such annulment shall be binding upon the Trustee and upon all Owners of Bonds issued hereunder; but no such annulment shall extend to or affect any subsequent default or impair any right or remedy consequent thereon.

## ARTICLE IX

### THE TRUSTEE

Section 9.01. Acceptance of the Trusts. The Trustee hereby accepts the trusts imposed upon it by this Indenture and agrees to perform said trusts, but only upon and subject to the following express terms and conditions to all of which the Issuer agrees and the respective Bondholders agree by their acceptance of any of the Bonds:

(a) The Trustee, prior to the occurrence of an Event of Default and after the curing of all events of default which may have occurred, undertakes to perform such duties and



only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (which has not been cured or waived), the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(b) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers or employees but shall be answerable for the conduct of the same in accordance with the standard specified above, and shall be entitled to advice of counsel concerning all matters of trusts hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorneys (who may be the attorney or attorneys for the Issuer), approved by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action or nonaction in good faith in reliance upon such opinion or advice.

(c) The Trustee shall not be responsible for any recital herein, or in the Bonds, or for the validity of the execution by the Issuer of this Indenture or of any supplements hereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby.

(d) The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder. The Trustee may become the owner of Bonds secured hereby with the same rights which it would have if not the Trustee.

(e) Except with respect to the matters covered in Section 11.01 hereof, the Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram, or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons. The Trustee shall not withhold unreasonably its consent, approval or action to any reasonable request to the Issuer. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the owner of any Bond, shall be conclusive and binding upon all future owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(f) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate signed by the Authorized Representative of the Issuer as sufficient evidence of the facts therein contained and prior to the occurrence of a default of which the Trustee has been notified as provided in subsection (h) of this Section, or of which by said subsection it is deemed to have notice, shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may, at its discretion, secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall be construed as a duty and it shall not be answerable for other than its gross negligence or willful misconduct.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any default hereunder except failure by the Issuer to cause to be made any of the payments to the Trustee required to be made by Article V or the failure of the Issuer to file with the Trustee any document required by this Indenture to be so filed subsequent to the issuance of the Bonds, unless the Trustee shall be specifically notified in writing of such default by the Issuer or by the owners of at least 25% of the Bonds Outstanding and all notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered at the principal office of the Trustee, and, in the absence of such notice so delivered, the Trustee may conclusively assume there is no default except as aforesaid.

(i) At any and all reasonable times, the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right fully to inspect any and all of the property herein conveyed, including all books, papers, and records of the Issuer pertaining to the revenues and receipts of the Facilities and the Bonds, and to take such memoranda from and in regard thereto as may be desired.

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

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

(l) Before taking the action referred to in Section 8.02, 8.04 or 8.07 hereof, the Trustee may require that a satisfactory indemnity bond or other form of indemnity acceptable to the Trustee, in its sole discretion, be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its gross negligence or willful default by reason of any action so taken.

(m) All moneys received by the Trustee or any Paying Agent shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required by law. Neither the Trustee nor any Paying Agent shall be under any liability for interest on any moneys received hereunder except such as may be agreed upon.

Section 9.02. Fees, Charges and Expenses of Trustee. The Trustee shall be entitled to payment and reimbursement for reasonable fees for its services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Trustee in connection with such services solely from moneys available therefor. Upon an Event of Default, but only upon an Event of Default, the Trustee shall have a first lien with right of payment prior to payment on account of principal of and interest on any Bond upon the Trust Estate for the foregoing fees, charges and expenses incurred by it.

Section 9.03. Notice to Owners in the Event of Default or Certain Other Occurrences. If a default occurs of which the Trustee is by Section 9.01(h) required to take notice or if notice of default be given as in Section 9.01(h) provided, then the Trustee shall promptly give written notice thereof by registered or certified mail to the Owners of all Bonds then Outstanding shown on the registration books of the Issuer kept at the office of the Trustee.

Section 9.04. Intervention by Trustee. In any judicial proceeding concerning the issuance of the payment of the Bonds to which the Issuer is a party and which in the opinion of the Trustee has a substantial bearing on the interests of Owners of the Bonds, the Trustee may intervene on behalf of Owners and shall do so if requested in writing by the owners of at least 25% of the Bonds Outstanding and being provided a bond as described in Section 9.01(l) hereof.

Section 9.05. Successor Trustee. Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, ipso facto shall be and become successor Trustee hereunder and vested with all of the title to the Trust Estate and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 9.06. Resignation by Trustee. The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving 90 days' written notice by registered or certified mail to the Issuer and by first class mail (postage prepaid) Owners of each Bond, and such resignation shall take effect upon the appointment of a successor Trustee by the Owners or by the Issuer. The Issuer hereby agrees to make a reasonable effort to appoint such a successor Trustee within a reasonable period of time. If the Issuer fails to appoint a successor Trustee within a reasonable period of time, the Trustee may apply to a court of competent jurisdiction to appoint a successor Trustee.

Section 9.07. Removal of Trustee. The Trustee may be removed at any time by an instrument or concurrent instruments in writing delivered to the Trustee setting the date for renewal at least ninety (90) days from the date of delivery of such notice and to the Issuer signed by the Owners of a majority in aggregate principal amount of the Bonds Outstanding.

Section 9.08. Appointment of Successor Trustee by the Bondholders; Temporary Trustee. In case the Trustee hereunder shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by the Owners of a majority in aggregate principal amount of the Bonds Outstanding, by an instrument or concurrent instruments in writing signed by such Owners, or by their attorneys in fact, duly authorized and a copy of which shall be delivered personally or sent by registered mail to the Issuer. Nevertheless, in case of such vacancy, the Issuer may appoint a temporary Trustee to fill such vacancy until a successor trustee shall be appointed by the Owners in the manner above provided; and any such temporary Trustee so appointed by the Issuer shall immediately and without further act be superseded by the

Trustee so appointed by the Owners. Notice of the appointment of a successor trustee shall be given in the same manner as provided in Section 9.06 with respect to the resignation of a Trustee. Every such Trustee appointed pursuant to the provisions of this Section shall be a trust company or bank in good standing, which has combined capital, surplus and undivided profits of not less than \$50,000,000. No resignation or removal of the Trustee, Paying Agent or Bond Registrar shall become effective until a successor has been appointed and has accepted the duties of Trustee, Paying Agent or Bond Registrar and the appointment of any successor thereto. If no successor Trustee shall have been appointed and have accepted appointment within 45 days of giving notice of removal or notice of resignation as aforesaid, the resigning Trustee or any Owner (on behalf of himself or herself and all other Owners) 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.

Section 9.09. Concerning Any Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its or his predecessor and also to the Issuer, an instrument in writing accepting such appointment hereunder and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessors; but such predecessors shall, nevertheless, on the written request of the Issuer, execute and deliver an instrument transferring to such successor Trustee all the estates, properties, rights, powers and trusts of such predecessor hereunder and every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its or his successor, less the reasonable fees owed and legally due to the Trustee. Should any instrument in writing from the Issuer be required by a successor Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be filed or recorded by the successor Trustee in each recording office where this Indenture shall have been filed or recorded, if any.

Section 9.10. Designation and Succession of Paying Agent. The Issuer at all times shall employ one or more Paying Agents for the Bonds. Initially, the Issuer hereby appoints the Trustee as Paying Agent. Any bank or trust company with or into which any Paying Agent may be merged or consolidated, or to which the assets or business of such Paying Agent may be sold, shall be deemed the successor of such Paying Agent for the purposes of this Indenture. If the position of Paying Agent shall become vacant for any reason, the Issuer shall, within 30 days thereafter, appoint a bank or trust company as such Paying Agent to fill such vacancy; provided, however, that if the Issuer shall fail to appoint such Paying Agent within said period, the Trustee shall make such appointment. Other Paying Agents may be appointed pursuant to Article IX hereof by the Issuer if in its discretion additional Paying Agents are deemed advisable.

The Paying Agent shall enjoy the same protective provisions in the performance of their duties hereunder as are specified in Section 9.01 hereof with respect to the Trustee insofar as such provisions may be applicable.

Notice of the appointment of additional Paying Agents shall be given in the same manner as provided in Section 9.08 hereof with respect to the appointment of a successor Trustee.

Section 9.11. Appointment of Co-Trustee. It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the laws of the State) denying or restricting the right of banking corporations or associations to transact business as Trustee in such jurisdiction. It is recognized that, in case of litigation under this Indenture and, in particular, in case of the enforcement hereof on default, or in case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties, in trust, as herein granted, or taken any other action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an additional individual or institution as a separate Co-Trustee. The following provisions of this Section are adopted to these ends.

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

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

## ARTICLE X

### SUPPLEMENTAL TRUST INDENTURES

Section 10.01. Supplemental Trust Indentures Not Requiring Consent of Bondholders. The Issuer and the Trustee may, without the consent of, or notice to, any of the Bondholders enter into an indenture or indentures supplemental to this Indenture as shall not be inconsistent with the terms and provisions hereof for any one or more of the following purposes:

(a) To cure any ambiguity or defective provision or omission to this Indenture;

(b) To grant to or confer upon the Trustee for the benefit of the Bondholders any additional benefits, rights, remedies, powers or authorities that may lawfully be granted to or

conferred upon the Bondholders or the Trustee, or to make any change which, in the judgment of the Trustee (which may rely upon an opinion of Bond Counsel), is not to the prejudice of the Bondholders;

(c) To subject to this Indenture additional revenue, properties or collateral as may be reasonably required, including, but not limited to, any rents, fees or charges from new dormitories or other facilities being constructed or acquired with the proceeds of Additional Bonds, additional amounts constituting “required educational and general capital fees”, “auxiliary fees” or “auxiliary capital fees” as defined in West Virginia Code Section 18B-10-1c or any other amounts which the Issuer may legally pledge to support debt obligations;

(d) To comply with the provisions of the Code, as now or hereafter amended, and any applicable court decisions, if such amendment, in the opinion of Bond Counsel, will insure that the tax-exempt status of interest on the Bonds is not impaired;

(e) To modify, amend or supplement this Indenture or any indenture supplemental hereto in such manner as to permit the qualification hereof and thereof under the Trust Indenture Act of 1939 or any similar federal statute hereafter in effect or to permit the qualification of the Bonds for sale under the securities laws of any of the states of the United States of America, and, if they so determine, to add to this Indenture or any indenture supplemental hereto such other terms, conditions and provisions as may be permitted by said Trust Indenture Act of 1939 or similar federal statute;

(f) To evidence the appointment of a separate or Co-Trustee or the succession of a new Trustee or Paying Agent hereunder; or

(g) To provide for the issuance of a Series of Additional Bonds and in connection therewith to amend the provisions of this Indenture in such manner as is necessary to broaden the definition of Facilities or Auxiliary Facilities to include any structures or improvements which the Issuer has the legal authority to construct or acquire, to pledge any additional sources of revenue which the Issuer may lawfully pledge and to provide for a debt service reserve fund with respect to any Series of Additional Bonds.

(h) To comply with the requirements of any nationally recognized rating agency as long as such requirements do not impair the security for the Bonds or adversely affect other ratings on the Bonds.

Section 10.02. Supplemental Trust Indentures Requiring Consent of Bondholders. Subject to the terms and provisions contained in Section 10.01, subject to the terms and provisions contained in this Section, and not otherwise, the holder of not less than two-thirds of any Series of Outstanding Bonds shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and approve the execution by the Issuer and the Trustee of such other indenture or indentures supplemental hereto as shall be deemed necessary and desirable by the Trustee for the purpose of modifying, altering, amending adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture relating to the Bonds; provided, however, that nothing contained in this Section shall permit, or be construed as permitting, without the consent of the holders of all Outstanding Bonds of any Series, (a) an extension of the maturity date of the

principal of or the interest on any Bond, or (b) a reduction in the principal amount of any Bond or the rate of interest thereon, or (c) a privilege or priority of any Bond or over any other Bonds, or (d) a reduction in the principal amount of such series of Outstanding Bonds required for consent to such supplemental indenture, or (e) the creation of any lien other than a lien ratably securing all of the Outstanding Bonds at any time, or (f) any modification of the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of the Trustee without the written consent of the Trustee.

If at any time the Issuer shall request the Trustee to enter into any such supplemental indenture for any of the purposes of this Section, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such supplemental indenture to be mailed by registered or certified mail to each owner of a Bond effected thereby. Such notices shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the principal office of the Trustee for inspection by all Bondholders of Series effected thereby. If, within 60 days or such longer period as shall be prescribed by the Issuer following the mailing of such notice, the holders of not less than two-thirds of the Bonds Outstanding of a Series effected thereby at the time of the execution of any such supplemental indenture shall have consented to and approved the execution thereof as herein provided, no holder of any Bond of such Series shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such supplemental indenture as permitted and provided for in this Section and the delivery to the Trustee of an opinion of Bond Counsel that such supplemental indenture is in compliance with the provisions hereof, this Indenture shall be and be deemed to be modified and amended in accordance herewith.

## ARTICLE XI

### MISCELLANEOUS

Section 11.01. Consents, Etc. of Bondholders. Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Bondholders may be in any number of counterparts and may be signed or executed by such Bondholders in person or by an agent appointed in writing. Proof of the execution of any such consent, request, direction, approval, objection or other instrument or of the writing appointing any such agent and or the ownership of, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee and any Paying Agent with regard to any action taken by it under such request or other instrument, namely:

(a) The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him the execution thereof, or by an affidavit of any witness to such execution; or

(b) The fact of ownership of Bonds and the amount or amounts, numbers and other identification of Bonds, and the date of holding the same shall be proved by the registration books of the Issuer maintained by the Trustee pursuant to Section 2.07 hereof.

Section 11.02. Severability. If any provision of this Indenture shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatever.

Section 11.03. Notices. Any notice, request, complaint, demand, communication or other paper shall be sufficiently given and shall be deemed given when delivered or mailed by registered or certified mail, postage prepaid, or sent by telegram, addressed to the appropriate address. The Issuer and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communication shall be sent.

if to the Issuer: Board of Governors of West Liberty University  
West Liberty University  
208 University Drive  
West Liberty, West Virginia 26074  
Attention: Vice President Finance and Administration

if to the Trustee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, West Virginia \_\_\_\_\_  
Attention: Corporate Trust Department

Section 11.04. Payments due on Non-Business Days. In any case where the date of maturity of interest on or principal of any Bonds shall be a non-Business Day, then payment of interest or principal may be made on the succeeding Business Day with the same force and effect as if made on the date of maturity.

Section 11.05. Counterparts. This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.06. Applicable Provisions of Law. This Indenture shall be governed by and construed in accordance with the laws of the State.

Section 11.07. Captions. The captions or headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Indenture.

Section 11.08. Parties Interested Herein. Nothing in this Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the Issuer, the insurer, if any, of any Bonds issued hereunder, the Trustee, the Paying Agent, and the Bondholder, any right, remedy or claim under or by reason of this Indenture or



any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Indenture contained by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the insurer, if any, of any Bonds issued hereunder, the Trustee, the Paying Agent, and the registered owners of the Bonds.

IN WITNESS WHEREOF, the Issuer has executed this Indenture, and the Trustee, to evidence its acceptance of the trusts created hereunder, has caused this Indenture to be executed in its name by its duly authorized officers and duly attested, all as of the day and year first above written.

BOARD OF GOVERNORS OF WEST LIBERTY  
UNIVERSITY

By: \_\_\_\_\_  
Its: Chairman

Attest:

By: \_\_\_\_\_  
Its: Secretary

\_\_\_\_\_, as Trustee

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

Attest:

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

THIS DOCUMENT WAS PREPARED BY:  
Fred Williams, Esquire  
Steptoe & Johnson PLLC  
P. O. Box 1588  
Charleston, West Virginia 25326-1588.

**EXHIBIT A**  
**FORM OF SERIES 2018 BOND**

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
BOARD OF GOVERNORS OF WEST LIBERTY UNIVERSITY  
UNIVERSITY CAPITAL IMPROVEMENT REVENUE BONDS, SERIES 2018

No. \_\_\_\_\_ \$ \_\_\_\_\_

INTEREST  
RATE

MATURITY  
DATE

BOND  
DATE

\_\_\_\_\_%

\_\_\_\_\_

\_\_\_\_\_

REGISTERED OWNER: -----

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

KNOW ALL MEN BY THESE PRESENTS: That the Board of Governors of West Liberty University (the "Board"), a body corporate and politic, constituting a public corporation and a governmental instrumentality of the State of West Virginia (the "State"), on behalf of the State, for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the Registered Owner set forth above, on the Maturity Date set forth above, the Principal Amount set forth above and solely from such special funds also to pay interest on said sum from the Bond Date, set forth above, at the Interest Rate set forth above semiannually, on [Month] 1 and [Month] 1 of each year, beginning [Month] 1, 201-, both principal of and interest on this Bond being payable in any coin or currency which, on the respective dates of payment of principal and interest, is legal tender for the payment of public and private debts under the laws of the United States of America. In the event of the occurrence of an Event of Default the interest rate on the Bonds shall be increased by 2.00% during such the period that an Event of Default is continuing.

Interest accruing on this Bond on and prior to the Maturity Date hereof shall be payable by check or draft mailed by [Trustee], -----, West Virginia, as paying agent (in such capacity, the "Paying Agent"), to the Registered Owner hereof as of the applicable Record Date (each \_\_\_\_\_ 15 and \_\_\_\_\_ 15) at the address of such Registered Owner as it appears on the registration books of the Board maintained by [Trustee], -----, West Virginia, as registrar (in such capacity, the "Registrar"), or, at the option of any Registered Owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to the bank account number on file with the Paying Agent on or prior to the applicable Record Date.

Principal shall be paid when due upon presentation and surrender of this Bond for payment at the designated corporate trust operations office of the Paying Agent, in -----, West Virginia.

This bond is one of a Series of bonds (the "Series 2018 Bonds"), in the aggregate principal amount of \$6,000,000, of like date and of like tenor and effect, except as to number, date of maturity and interest rate, issued to finance the refunding of the outstanding portion of certain previously issued revenue bonds and to provide for the payment of the costs relating to the issuance of the Series 2018 Bonds, all under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 18B, Articles 2, 10 and 19 of the West Virginia Code of 1931, as amended (the "Act"), a resolution duly adopted by the Board on August 22, 2018 and a resolution duly adopted by the West Virginia Higher Education Policy Commission on August 24, 2018 (collectively, the "Resolution"), and a Trust Indenture, dated as of September 1, 2018 (the "Indenture") between the Board and [Trustee], -----, West Virginia (in such capacity, the "Trustee"), and is subject to all the terms and conditions of said Resolution and Indenture.

The Series 2018 Bonds are subject to mandatory redemption prior to maturity in part from moneys on deposit in the Bond Fund at a Redemption Price equal to 100% of the principal amount thereof, plus accrued interest to the Mandatory Redemption Date, in the years and in the annual principal amounts as follows:

Series 2018 Bond maturing -----, 201-:

Year ([Month] 1)	<u>Amount</u>
201- (Maturity 201-)	\$ ----- -----

Series 2018 Bond maturing -----, 202-:

Year ([Month] 1)	<u>Amount</u>
201-	\$ -----
201-	-----
201-	-----
201-	-----
201- (Maturity 202-)	----- -----

Series 201- Bond maturing -----, 202-:

Year ([Month] 1)	<u>Amount</u>
202-	\$ -----
202-	-----

202-	-----
202-	-----
202-	-----
(Maturity 202-)	-----

Series 2018 Bond maturing -----, 202-:

<u>Year</u> <u>([Month] 1)</u>	<u>Amount</u>
202-	\$ -----
202-	-----
202-	-----
(Maturity 202-)	-----

The principal amount of the Series 2018 Bonds of a certain maturity delivered to or purchased by the Trustee shall reduce pro tanto the principal amount of such Term Bonds to be redeemed on the Mandatory Redemption Date with respect to such maturity next following such delivery or purchase.

The Series 2018 Bonds are also subject to optional redemption prior to maturity, at any time at the option of the Issuer, in whole or in part, on any Business Day, in order of maturity selected by the Issuer and by lot within a maturity in multiples of \$5,000, at a Redemption Price equal to 100% of the principal amount thereof, plus accrued interest to the date fixed for redemption. In the event of a partial optional redemption the amount of such partial redemption will be applied equally among the maturities of the Series 2018 Bonds then outstanding.

The Series 2018 Bonds are secured by and payable from the Pledged Revenues, as defined in the Indenture and certain funds held under the Indenture. Such lien and pledge shall be junior and subordinate to the liens and pledges securing the Board's University Revenue Bonds, Series 2012 and the Board's University Refunding Revenue Bonds, Series 2013. Said Pledged Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and shall be set aside as a special fund hereby pledged for such purpose. This bond does not constitute an indebtedness of the Board within any constitutional or statutory provision or limitation, nor shall the Board be obligated to pay the same or the interest hereon except from said special fund provided from the Pledged Revenues.

THIS BOND IS A SPECIAL OBLIGATION OF THE BOARD, PAYABLE, TOGETHER WITH ANY ADDITIONAL BONDS WHICH MAY HEREAFTER BE ISSUED, SOLELY FROM THE SOURCES PLEDGED UNDER THE INDENTURE. THE BONDS OF THE SERIES OF WHICH THIS BOND IS ONE, AS TO BOTH PRINCIPAL AND INTEREST, SHALL NOT CONSTITUTE A DEBT OR A PLEDGE OF THE FAITH AND CREDIT OR TAXING POWER OF THE STATE OF WEST VIRGINIA, AND THE OWNERS THEREOF SHALL HAVE NO RIGHT TO HAVE TAXES LEVIED BY THE LEGISLATURE FOR THE PAYMENT OF THE PRINCIPAL THEREOF OR INTEREST THEREON, BUT THE BONDS, TOGETHER WITH ANY ADDITIONAL BONDS WHICH MAY SUBSEQUENTLY BE ISSUED ON A PARITY THEREWITH, SHALL BE PAYABLE

EQUALLY AND RATABLY SOLELY FROM THE SOURCES PLEDGED UNDER THE INDENTURE.

This Bond is transferable, as provided in the Indenture, only upon the books of the Registrar, which shall be kept for that purpose at the office of the Registrar, by the Registered Owner or by its attorney or legal representative duly authorized in writing, upon surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Registered Owner or its duly authorized attorney or legal representative duly authorized in writing.

The holder of this Bond shall have no right to enforce the provisions of the Indenture or to institute an action to enforce the covenants thereof, or to take any action with respect to a default hereof, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture.

Additional Bonds may be issued under the Indenture and reference is made to the Indenture with respect to the requirements for the issuance of Additional Bonds which shall be equally and ratably secured under the Indenture with the Bonds.

Modifications or amendments of the Indenture may be made to the extent and in the circumstances permitted by the Indenture to which reference is hereby made.

This Bond must be registered in accordance with the provisions hereof, and may, singly or with other Bonds, be surrendered to the Registrar and exchanged for other fully registered bonds, upon the terms set forth in the Indenture. Neither the Board nor the Registrar shall be required to register or transfer this bond or exchange other Bonds for this Bond during the period beginning on a Record Date and ending on an Interest Payment Date.

Subject to registration requirements, this Bond under the provision of the Act is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of said Board, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia, and that the Pledged Revenues identified in this Indenture have been pledged to and will be set aside into said special fund by said Board for the prompt payment of the principal of and interest on the Bonds.

All provisions of the Resolution, the Indenture and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, the State has caused this Bond to be signed by its Governor and the Board by the Chairman thereof, under the Great Seal of the State attested by the Secretary of State, all as of the Bond Date.

STATE OF WEST VIRGINIA

[SEAL]

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

BOARD OF GOVERNORS OF WEST LIBERTY  
UNIVERSITY

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

ATTEST:

By: \_\_\_\_\_  
Secretary of State

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Board of Governors of West Liberty University, University Capital Improvement Revenue Bonds, Series 2018, described in the within-mentioned Resolution and Indenture and has been duly registered in the name of the Registered Owner set forth above on the date set forth below.

Date: \_\_\_\_\_

\_\_\_\_\_  
By:  
Its Authorized Officer





**EXHIBIT B  
FORM OF REQUISITION**

CERTIFICATE AND REQUISITION FOR PAYMENT

Date: \_\_\_\_\_, 20

Draw Request #

The West Liberty University Board of Governors (the "Board") hereby requests, pursuant to the Bond Trust Indenture and Security Agreement dated as of September 1, 2018 (the "Indenture"), between the Board and -----, as Trustee (the "Trustee"), that the following amounts be disbursed to the following parties for the account of the Board from the [Cost of Issuance Fund/Project Fund] created under the Indenture:

Name of Payee	Nature of Disbursement	Amount

The Board does hereby certify to the Trustee that, as of the date hereof, (1) the obligations in the stated amounts have been incurred by the Board and are presently due and payable and each item hereof is a proper charge against the [Cost of Issuance Fund/Project Fund] and has not been previously paid from the [Cost of Issuance Fund/Project Fund] and (2) there has not been filed with or served upon the Board any notice of claim of lien, or attachment upon, or claim affecting the right to receive payment of, any of the amounts payable to any of the persons named above, that has not been released or will not be released simultaneously with the payment of such obligation.

WEST LIBERTY UNIVERSITY BOARD OF  
GOVERNORS

By: \_\_\_\_\_  
Its: \_\_\_\_\_, as Authorized  
Representative

Copies of Invoices or Statements  
(Attached)

**EXHIBIT C**  
**DESCRIPTION OF 2018 PROJECTS**

The 2018 Projects shall consist of the following items:

- (a) The cost, design, acquisition, construction and equipping of a new multi-sport soccer and track stadium known as the West Family Athletic Complex;
- (b) The cost, design, buildout and equipping of the fourth floor of the Campbell Hall of Sciences; and
- (c) Certain deferred maintenance and other general improvements to the University's facilities, including \_\_\_\_\_.

TRUST INDENTURE

TABLE OF CONTENTS

(This Table of Contents is for convenience of reference only and is not part of the Indenture.)

	<u>Page</u>
Parties .....	2
Recitals .....	2
Granting Clause .....	4

ARTICLE I

DEFINITIONS .....	5
Section 1.01. Definitions .....	5
Section 1.02. Interpretation .....	17
Section 1.03. Captions and Headings .....	17

ARTICLE II

AUTHORIZATION, TERMS, EXECUTION, FORM AND REGISTRATION OF BONDS .....	18
Section 2.01. Issuance of Bonds .....	18
Section 2.02. Execution; Special Obligations .....	19
Section 2.03. Authentication .....	19
Section 2.04. Form of Bonds .....	19
Section 2.05. Delivery of Bonds .....	20
Section 2.06. Mutilated, Lost, Stolen or Destroyed Bonds .....	20
Section 2.07. Exchange of Bonds; Persons Treated as Owners; Transfer and Registration .....	21
Section 2.08. Payment of Interest; Interest Rights Preserved .....	21
Section 2.09. Cancellation and Destruction of Bonds .....	22
Section 2.10. Additional Bonds .....	22
Section 2.11. Special Obligations .....	26

ARTICLE III

REDEMPTION OF BONDS .....	26
Section 3.01. Limitation on Redemption .....	26
Section 3.02. Mandatory Sinking Fund Redemption of the Series 2018 Bonds .....	26
Section 3.03. Optional Redemption of the Series 2018 Bonds .....	27
Section 3.04. Extraordinary Optional Redemption .....	28
Section 3.05. Redemption Requests Relating to the Series 2018 Bonds .....	28
Section 3.06. Selection of Series 2018 Bonds To Be Redeemed .....	28

Section 3.07. Notice of Redemption .....	28
Section 3.08. Partial Redemption of Bonds .....	30
Section 3.09. Effect of Call for Redemption .....	30

#### ARTICLE IV

GENERAL COVENANTS .....	30
Section 4.01. Payment of Principal and Interest .....	30
Section 4.02. Performance of Covenants by Issuer.....	30
Section 4.03. Instruments of Further Assurance .....	30
Section 4.04. Tax Covenants.....	31
Section 4.05. Fees.....	31
Section 4.06. Rate Covenant and Fees .....	31
Section 4.07. Operation and Maintenance.....	31
Section 4.08. Use of Auxiliary Facilities .....	32
Section 4.09. Competing Auxiliary Facilities .....	32
Section 4.10. Books and Records; Audited Statements .....	32
Section 4.11. Insurance .....	32
Section 4.12. Damage or Destruction of Auxiliary Facilities .....	32
Section 4.13. Trustee May Act for Issuer.....	33
Section 4.14. Issuance of Other Obligations Payable out of Pledged Revenues And General Covenant Against Encumbrances .....	33

#### ARTICLE V

DEPOSIT OF BOND PROCEEDS; FUNDS AND ACCOUNTS; REVENUES .....	33
Section 5.01. Creation of Funds and Accounts .....	33
Section 5.02. Deposit of Bond Proceeds; Drawing of Bond Proceeds.....	34
Section 5.03. Costs of Issuance Fund.....	34
Section 5.04. Source of Payment of Bonds .....	35
Section 5.05. Application of Pledged Revenues .....	35
Section 5.06. The Bond Fund.....	36
Section 5.07. Bonds Not Presented for Payment.....	36
Section 5.08. Rebate Fund.....	36
Section 5.09. Project Fund .....	37
Section 5.10. Project Fund: Disbursements.....	38
Section 5.11. Payment for Costs of the 2018 Projects .....	38
Section 5.12. Reserve Fund.....	39
Section 5.13. Moneys Held in Trust.....	41
Section 5.14. Payment to the Issuer .....	41

#### ARTICLE VI

INVESTMENT OF MONEYS .....	41
Section 6.01. Investment of Moneys .....	41

ARTICLE VII

DISCHARGE OF INDENTURE .....42  
Section 7.01. Discharge of Indenture .....42

ARTICLE VIII

DEFAULT PROVISIONS AND REMEDIES  
OF TRUSTEE AND BONDHOLDERS .....43  
Section 8.01. Defaults; Events of Default .....43  
Section 8.02. Rights and Remedies of Trustee .....44  
Section 8.03. Right of Owners to Direct Proceedings .....45  
Section 8.04. Appointment of Receiver .....45  
Section 8.05. Application of Moneys .....46  
Section 8.06. Remedies Vested in the Trustee .....46  
Section 8.07. Rights and Remedies of Bondholders .....46  
Section 8.08. Termination of Proceedings .....47  
Section 8.09. Waivers of Events of Default .....47  
Section 8.10. Notice of Defaults Under Section 8.01(d);  
Opportunity of Issuer to Cure Such Defaults .....48  
Section 8.11. Acceleration and Annulment Thereof .....48

ARTICLE IX

THE TRUSTEE .....48  
Section 9.01. Acceptance of the Trusts .....48  
Section 9.02. Fees, Charges and Expenses of Trustee .....50  
Section 9.03. Notice to Owners in the Event of Default  
or Certain Other Occurrences .....51  
Section 9.04. Intervention by Trustee .....51  
Section 9.05. Successor Trustee .....51  
Section 9.06. Resignation by Trustee .....51  
Section 9.07. Removal of Trustee .....51  
Section 9.08. Appointment of Successor Trustee by the Bondholders  
Temporary Trustee .....51  
Section 9.09. Concerning Any Successor Trustee .....52  
Section 9.10. Designation and Succession of Paying Agent .....52  
Section 9.11. Appointment of Co-Trustee .....53

ARTICLE X

SUPPLEMENTAL TRUST INDENTURES .....53  
Section 10.01. Supplemental Trust Indentures Not Requiring  
Consent of Bondholders .....53  
Section 10.02. Supplemental Trust Indentures Requiring  
Consent of Bondholders .....54

ARTICLE XI

MISCELLANEOUS.....55  
Section 11.01. Consents, Etc. of Bondholders .....55  
Section 12.02. Severability.....56  
Section 11.03. Notices.....56  
Section 11.04. Payments due on Non-Business Days .....56  
Section 11.05. Counterparts .....56  
Section 11.06. Applicable Provisions of Law .....56  
Section 11.07. Captions.....56  
Section 11.08. Parties Interested Herein .....56  
  
SIGNATURES.....58  
EXHIBIT A – Form Series 2018 Bond .....EX-A-1  
EXHIBIT B – Form of Requisition.....EX-B-1  
EXHIBIT C – Description of 2018 Projects .....EX-C-1