
LEASE AGREEMENT

Dated as of September 1, 2020

by and between the

FAIRFAX FINANCING AUTHORITY, as Lessor

and the

TOWN OF FAIRFAX, as Lessee

Relating to
\$ _____
Fairfax Financing Authority
(Marin County, California)
Taxable Lease Revenue Bonds, Series 2020

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EXHIBIT B: DESCRIPTION OF THE FACILITY
EXHIBIT C: DESCRIPTION OF THE STREETS
EXHIBIT D: SCHEDULE OF LEASE PAYMENTS

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease Agreement"), dated for convenience as of September 1, 2020, by and between the FAIRFAX FINANCING AUTHORITY, a joint exercise of powers entity organized and existing under and by virtue of the laws of the State of California, as lessor (the "Authority"), and the TOWN OF FAIRFAX, a municipal corporation and general law city organized and existing under and by virtue of the laws of the State of California, as lessee (the "Town");

WITNESSETH:

WHEREAS, pursuant to that certain Site and Facility Lease and Right of Entry Agreement, dated as of September 1, 2020 (the "Site and Facility Lease and Right of Entry Agreement"), the Town has leased certain property and granted to the Authority a right of entry upon all properties in the Town of Fairfax to which it holds a legal right of entry or otherwise in the State of California those certain parcels of real property situated in Marin County, State of California, more particularly described in Exhibit A attached hereto and made a part hereof (the "Site"), those certain improvements thereon, more particularly described in Exhibit B hereto (the "Facility") and those certain streets and roads described in Exhibit C attached hereto and made a part hereof (the "Streets" and, with the Site and the Facility, the "Property"), all for the purpose of financing and refinancing certain pension obligations to the California Public Employees' Retirement System, including refinancing the Town's Lease Agreement, dated as of January 1, 2017, by and between the Fairfax Financing Authority (the "Authority") and the Town, assigned to Capital One Public Funding, LLC;

WHEREAS, the Authority proposes to lease the Property back to the Town pursuant to this Lease Agreement and to assign its right to receive lease payments under this Lease Agreement (the "Lease Payments"), its right to enforce payment of the Lease Payments and otherwise to enforce its interest and rights under this Lease Agreement in the event of a default hereunder by the Town, to U.S. Bank National Association, as trustee (the "Trustee"), pursuant to that certain Indenture of Trust, dated as of September 1, 2020, by and between the Authority and the Trustee (the "Indenture"), and pursuant to which the Authority will issue and the Trustee will authenticate and deliver the \$_____ aggregate principal amount of Fairfax Financing Authority (Marin County, California) Taxable Lease Revenue Bonds, Series 2020 (the "Bonds");

WHEREAS, the Authority and the Town have duly authorized the execution and delivery of this Lease Agreement;

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

ARTICLE I

DEFINITIONS AND EXHIBITS

Section 1.1. Definitions. Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms in this Lease Agreement shall have the respective meanings specified in Section 1.01 of the Indenture.

Section 1.2. Exhibits. The following exhibits are attached to, and by this reference made a part of, this Lease Agreement:

- EXHIBIT A: DESCRIPTION OF THE SITE
- EXHIBIT B: DESCRIPTION OF THE FACILITY
- EXHIBIT C: DESCRIPTION OF THE STREETS
- EXHIBIT D: SCHEDULE OF LEASE PAYMENTS

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1. Representations, Covenants and Warranties of Authority. The Authority makes the following covenants, representations and warranties as the basis for its undertakings herein contained:

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

(b) *Due Execution*. The representatives of the Authority executing this Lease Agreement, the Site and Facility Lease and Right of Entry Agreement and the Indenture, are fully authorized to execute the same pursuant to official action taken by the governing body of the Authority.

(c) *Valid, Binding and Enforceable Obligations*. This Lease Agreement, the Site and Facility Lease and Right of Entry Agreement and the Indenture have been duly authorized, executed and delivered by the Authority and constitute the legal, valid and binding agreements of the Authority, enforceable against the Authority in accordance with their respective terms.

(d) *No Conflicts*. The execution and delivery of this Lease Agreement, the Site and Facility Lease and Right of Entry Agreement and the Indenture, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the Authority is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Authority, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease Agreement, the Site and Facility Lease and Right of Entry Agreement and the Indenture, or the financial condition, assets, properties or operations of the Authority.

(e) *Consents and Approvals*. No consent or approval of any trustee or holder of any indebtedness of the Authority, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Lease Agreement, the Site and Facility Lease and Right of Entry Agreement and the Indenture, or the consummation of any transaction herein or therein contemplated, except as have been obtained or made and as are in full force and effect.

(f) *No Litigation.* There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the Authority after reasonable investigation, threatened against or affecting the Authority or the assets, properties or operations of the Authority which, if determined adversely to the Authority or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Lease Agreement, the Site and Facility Lease and Right of Entry Agreement or the Indenture, or upon the financial condition, assets, properties or operations of the Authority, and the Authority is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease Agreement, the Site and Facility Lease and Right of Entry Agreement or the Indenture or the financial conditions, assets, properties or operations of the Authority.

(g) *Sufficient Funds.* The Town reasonably believes that sufficient funds can be obtained to make all Lease Payments and all other amounts required to be paid pursuant to this Lease Agreement.

(h) *No Defaults.* The Town has never non-appropriated or defaulted under any of its payment or performance obligations or covenants, either under any financing lease of the same general nature as this Lease Agreement, or under any of its bonds, notes, or other debt obligations.

(i) *Fee Title.* The Town is the owner in fee of title or, in the case of the Streets, has a right of entry, to the Property. No lien or encumbrance on the Property materially impairs the Town's use of the Property for the purposes for which it is, or may reasonably be expected to be, held.

(j) *Use of the Property.* During the term of this Lease Agreement, the Property will be used by the Town only for the purpose of performing one or more governmental or proprietary functions of the Town consistent with the permissible scope of the Town's authority.

(k) *Change in Financial Condition.* The Town has experienced no material change in its financial condition since June 30, 2019.

(l) *Hazardous Substances.* The Property is free of all Hazardous Substances, and the Town is in full compliance with all Applicable Environmental Laws.

(m) *Value of Property.* The value of the Property (real property replacement cost) is not less than \$10,500,000.

(n) *Essential to Town Operations.* The Property is essential to the Town's efficient and economic operations and the lease thereof for use by the Town is in the best interest of the Town.

(o) *Financial Statements.* The statement of financial position of the Town as of June 30, 2019, and the related statement of activities and statement of cash flows and changes in financial position for the year then ended and the auditors' reports with respect thereto, copies of which have heretofore been furnished to the Assignee, are complete and correct and fairly present the financial condition, changes in financial position and results of operations of the

Town at such date and for such period, and were prepared in accordance with generally accepted accounting principles. Since the period of such statements, there has been no (i) change which would have a Material Adverse Effect and (ii) no material increase in the indebtedness of the Town.

(p) *No Material Adverse Change.* Since the most current date of the information, financial or otherwise, supplied by the Town to the Assignee:

(i) There has been no change in the assets, liabilities, financial position or results of operations of the Town which might reasonably be anticipated to cause a Material Adverse Effect.

(ii) The Town has not incurred any obligations or liabilities which might reasonably be anticipated to cause a Material Adverse Effect.

(iii) The Town has not (A) incurred any material indebtedness, other than the Lease Payments, and trade accounts payable arising in the ordinary course of the Town's business and not past due, or (B) guaranteed the indebtedness of any other person.

(q) *Accuracy of Information.* All information, reports and other papers and data furnished by the Town to the Assignee were, at the time the same were so furnished, complete and accurate in all material respects and insofar as necessary to give the Assignee a true and accurate knowledge of the subject matter and were provided in expectation of the Assignee's reliance thereon in entering into the transactions contemplated by this Lease Agreement. No fact is known to the Town which has had or, so far as the Town can now reasonably foresee, may in the future have a Material Adverse Effect, which has not been set forth in the financial statements previously furnished to the Assignee or in other such information, reports, papers and data or otherwise disclosed in writing to the Assignee prior to the Closing Date. Any financial, budget and other projections furnished to the Assignee by the Town or its or their agents were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair and reasonable in light of the conditions existing at the time of delivery of such financial, budget or other projections, and represented, and as of the date of this representation, represent the Town's best estimate of its future financial performance. No document furnished nor any representation, warranty or other written statement made to the Assignee in connection with the negotiation, preparation or execution of this Lease Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state (as of the date made or furnished) any material fact necessary in order to make the statements contained herein or therein, in light of the circumstances under which they were or will be made, not misleading.

(r) *Facility.* The Facility complies with all applicable restrictive covenants, zoning ordinances, building laws and other Applicable Laws.

(s) *Encumbrances.* No lien or encumbrance on the Property materially impairs the Town's use of the Property for the purposes for which it is, or may reasonably be expected to be, held. The Site and Facility Lease and this Lease Agreement are the only leases that encumber the Property.

(t) *Useful Life.* The Facility has a remaining useful life that extends to at least August 1, 2046.

Section 2.2. Representations, Covenants and Warranties of the Town. The Town makes the following covenants, representations and warranties to the Authority as of the date of the execution and delivery of this Lease Agreement:

(a) *Due Organization and Existence*. The Town is a municipal corporation and general law city organized and existing under and by virtue of the laws of the State, has full legal right, power and authority under the laws of the State to enter into the Site and Facility Lease and Right of Entry Agreement, this Lease Agreement and the Escrow Agreement and to carry out and consummate all transactions contemplated hereby and thereby, and by proper action the Town has duly authorized the execution and delivery of the Site and Facility Lease and Right of Entry Agreement, this Lease Agreement and the Escrow Agreement.

(b) *Due Execution*. The representatives of the Town executing the Site and Facility Lease and Right of Entry Agreement, this Lease Agreement and the Escrow Agreement have been fully authorized to execute the same pursuant to a resolution duly adopted by the Town Council of the Town.

(c) *Valid, Binding and Enforceable Obligations*. The Site and Facility Lease and Right of Entry Agreement, this Lease Agreement and the Escrow Agreement have been duly authorized, executed and delivered by the Town and constitute the legal, valid and binding obligations of the Town enforceable against the Town in accordance with their respective terms.

(d) *No Conflicts*. The execution and delivery of the Site and Facility Lease and Right of Entry Agreement, this Lease Agreement and the Escrow Agreement, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the Town is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Town, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Site and Facility Lease and Right of Entry Agreement, this Lease Agreement and the Escrow Agreement, or the financial condition, assets, properties or operations of the Town.

(e) *Consents and Approvals*. No consent or approval of any trustee or holder of any indebtedness of the Town or of the voters of the Town, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of the Site and Facility Lease and Right of Entry Agreement, this Lease Agreement and the Escrow Agreement, or the consummation of any transaction herein or therein contemplated, except as have been obtained or made and as are in full force and effect.

(f) *No Litigation*. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the Town after reasonable investigation, threatened against or affecting the Town or the assets, properties or operations of the Town which, if determined adversely to the Town or its interests, would have a material and adverse effect upon the consummation

of the transactions contemplated by or the validity of the Site and Facility Lease and Right of Entry Agreement, this Lease Agreement and the Escrow Agreement, or upon the financial condition, assets, properties or operations of the Town, and the Town is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Site and Facility Lease and Right of Entry Agreement, this Lease Agreement and the Escrow Agreement, or the financial conditions, assets, properties or operations of the Town.

ARTICLE III

ISSUANCE OF THE BONDS

Section 3.1. The Bonds. The Authority has authorized the issuance of the Bonds pursuant to the Indenture in the aggregate principal amount of _____ dollars (\$_____). The Authority agrees that the proceeds of sale of the Bonds shall be paid to the Trustee on the Closing Date for deposit and application pursuant to the terms and conditions of the Indenture. The Town hereby approves the Indenture, the assignment to the Trustee of the rights (but none of the obligations) of the Authority assigned or purported to be assigned thereunder, and the issuance of the Bonds by the Authority thereunder.

ARTICLE IV

LEASE OF PROPERTY; TERM OF THE LEASE AGREEMENT; LEASE PAYMENTS

Section 4.1. Lease of Property. The Authority hereby leases the Property to the Town, and the Town hereby leases the Property from the Authority, upon the terms and conditions set forth in this Lease Agreement.

Section 4.2. Term of Lease. This Lease Agreement shall take effect on the date hereof, and shall end on the earlier of August 1, 2036, or such earlier date on which the Bonds shall no longer be Outstanding under the Indenture. If, on August 1, 2036, the Indenture shall not be discharged by its terms or if the Lease Payments payable hereunder shall have been abated at any time and for any reason, then the Term of the Lease Agreement shall be extended until there has been deposited with the Trustee an amount sufficient to pay all obligations due under the Lease Agreement, but in no event shall the Term of the Lease Agreement extend beyond August 1, 2046.

Section 4.3. Lease Payments.

(a) *Obligation to Pay.* In consideration of the lease of the Property from the Authority hereunder and subject to the provisions of Section 6.2, the Town agrees to pay to the Authority, its successors and assigns, as rental for the use and occupancy of the Property during each Fiscal Year, the Lease Payments (denominated into components of principal and interest) for the Property in the respective amounts specified in Exhibit D hereto, to be due and payable on the respective Lease Payment Dates specified in Exhibit D hereto. Any amount held in the Revenue Fund, the Interest Account, the Principal Account on any Lease Payment Date, derived from any source of funds of the Town or the Authority, shall be credited towards the Lease Payment then due and payable. The Lease Payments coming due and payable in any Fiscal Year shall be for the use of the Property for such Fiscal Year.

The Town's obligation to pay Lease Payments hereunder shall be absolute and unconditional subject only to abatement, in the event and to the extent that there is substantial interference with the use and occupancy of the property or any portion thereof.

(b) *Rate on Overdue Payments.* In the event the Town should fail to make any of the payments required in this Section 4.3, the payment in default shall continue as an obligation of the Town until the amount in default shall have been fully paid, and the Town agrees to pay the same with interest thereon, from the date of default to the date of payment at the Default Rate. Such interest, if received, shall be deposited in the Revenue Fund.

(c) *Fair Rental Value.* The Lease Payments and Additional Payments coming due and payable in each Fiscal Year shall constitute the total rental for the Property for each Fiscal Year and shall be paid by the Town in each Fiscal Year for and in consideration of the right of the use and occupancy of, and the continued quiet use and enjoyment of, the Property during each Fiscal Year. The Authority and the Town hereby agree and determine that the total Lease Payments do not exceed the fair rental value of the Property. In making such determination, consideration has been given to the obligations of the parties under this Lease Agreement, the value of the Property, the uses and purposes which may be served by the Property and the benefits therefrom which will accrue to the Town and the general public.

(d) *Source of Payments; Budget and Appropriation.* The Lease Payments and Additional Payments shall be payable from any source of available funds of the Town, subject to the provisions of Section 6.2. The Town covenants to take such action as may be necessary to include all Lease Payments and Additional Payments due hereunder in each of its budgets during the Term of the Lease Agreement and to make the necessary annual appropriations for all such Lease Payments and Additional Payments. The covenants on the part of the Town herein contained shall be deemed to be and shall be construed to be ministerial duties imposed by law and it shall be the duty of each and every public official of the Town to take such action and do such things as are required by law in the performance of the official duty of such official to enable the Town to carry out and perform the covenants and agreements in this Lease Agreement agreed to be carried out and performed by the Town. During the Term of the Lease Agreement, the Town shall furnish to the Authority and the Trustee, no later than ten days following the adoption of a budget for the current Fiscal Year, a certificate stating that the Lease Payments and Additional Payments due in that Fiscal Year have been included in the budget approved by the Town Council for such Fiscal Year.

(e) *Assignment.* The Town understands and agrees that all Lease Payments have previously been assigned by the Authority to the Trustee in trust, pursuant to Section 5.01 of the Indenture, for the benefit of the Owners of the Bonds, and the Town hereby assents to such assignment. The Authority hereby directs the Town, and the Town hereby agrees, to pay all of the Lease Payments to the Trustee at its Office.

(f) *Security Deposit.* Notwithstanding any other provision of this Lease Agreement, the Town may on any date secure the payment of the Lease Payments for the Property in whole or in part by depositing with the Trustee an amount of cash which, together with other available amounts, including but not limited to amounts on deposit in the Revenue Fund, is either (i) sufficient to pay such Lease Payments, including the principal and interest components thereof, and premium, if any, in accordance with the Lease Payment schedule set forth in Exhibit D, or (ii) invested in whole or in part in Defeasance Obligations in such amount as will, in the opinion of an Independent Accountant, together with interest to accrue thereon and together with any cash which is so deposited, be fully sufficient to pay such Lease Payments when due hereunder, as the Town shall instruct at the time of said deposit. Said security deposit shall be deemed to be and shall constitute a special fund for the payment of Lease Payments in accordance with the provisions of this Lease Agreement.

Section 4.4. Quiet Enjoyment. During the Term of the Lease Agreement, the Authority shall provide the Town with quiet use and enjoyment of the Property, and the Town shall, during such Term, peaceably and quietly have and hold and enjoy the Property without suit, trouble or hindrance from the Authority, except as expressly set forth in this Lease Agreement. The Authority will, at the request of the Town and at the Town's cost, join in any legal action in which the Town asserts its right to such possession and enjoyment to the extent the Authority may lawfully do so. Notwithstanding the foregoing, the Authority shall have the right to inspect the Property as provided in Section 7.2.

Section 4.5. Title. If the Town pays all of the Lease Payments and Additional Payments during the Term of the Lease Agreement as the same become due and payable, or if the Town posts a security deposit for payment of the Lease Payments pursuant to Section 4.3(f), and if the Town has paid in full all of the Additional Payments coming due and payable as of such date, and provided in any event that no Event of Default shall have occurred and be continuing, all right, title and interest of the Authority in and to the Property shall be transferred to and vested in the Town. The Authority agrees to take any and all steps and

execute and record any and all documents reasonably required by the Town to consummate any such transfer of title.

Section 4.6. Additional Payments. In addition to the Lease Payments, the Town shall pay when due the following Additional Payments:

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

(b) Any amounts due to the Trustee pursuant to Section 8.03 of the Indenture for all services rendered under the Indenture and for all reasonable expenses, charges, costs, liabilities, legal fees and other disbursements incurred in and about the performance of its powers and duties under the Indenture;

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

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

ARTICLE V
MAINTENANCE, TAXES, INSURANCE AND OTHER
MATTERS

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

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

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

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

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

Section 5.3. Public Liability and Property Damage Insurance. The Town shall maintain or cause to be maintained throughout the Term of the Lease Agreement, a standard comprehensive general insurance policy or policies in protection of the Authority, the Town, and their respective members, officers, agents, employees and assigns. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the Property. Said policy or policies shall provide coverage in the minimum liability limits of \$1,000,000 for personal injury or death of each person and \$3,000,000 for personal injury or deaths of two or more persons in each accident or event, and in a minimum amount of \$100,000 (subject to a deductible clause of not to exceed \$5,000) for damage to property resulting from each accident or event. Such public liability and property damage insurance may, however, be in the form of a single limit policy in the amount of \$3,000,000 covering all such risks. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the Town, and such liability insurance may be maintained in whole or in part in the form of self-insurance by the Town, subject to the provisions of Section 5.7, or in the form of the participation by the Town in a joint powers agency or other program providing pooled insurance. The proceeds of such liability insurance shall be applied by the Town toward extinguishment or satisfaction of the liability with respect to which paid.

Section 5.4. Casualty Insurance. The Town shall maintain, or cause to be maintained throughout the Term of the Lease Agreement, insurance against loss or damage to any part of the Facility by fire and lightning, with extended coverage and vandalism and malicious mischief insurance. Said extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance. Such insurance shall be in an amount equal to one hundred percent (100%) of the replacement cost of such portion of the Facility or damaged portion thereof. Such insurance may be subject to deductible clauses of not to exceed \$100,000 for any one loss. Such insurance may be maintained as part of or in conjunction with any other fire and extended coverage insurance carried by the Town and may be maintained in whole or in part in the form of insurance maintained through a joint exercise of powers entity created for such purpose. The Net Proceeds of such insurance shall be applied as provided in Section 6.2(a).

Section 5.5. Rental Interruption Insurance. The Town shall procure and maintain, or cause to be procured and maintained, throughout the Term of the Lease Agreement, rental interruption or use and occupancy insurance to cover loss, total or partial, of the use of the Facility as a result of any of the hazards covered in the insurance required by Section 5.4, in an amount at least equal to the maximum Lease Payments coming due and payable during any future twenty-four (24) month period. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the Town and may be maintained in whole or in part in the form of the participation by the Town in a joint powers agency or other program providing pooled insurance; provided that such insurance may not be maintained in the form of self-insurance. The proceeds of such insurance, if any, shall be paid to

the Trustee and deposited in the Revenue Fund, and shall be credited towards the payment of the Lease Payments as the same become due and payable.

Section 5.6. Net Proceeds of Insurance; Form of Policies. Each policy of insurance maintained pursuant to Sections 5.4 and 5.5 shall name the Trustee as loss payee and additional insured so as to provide that all proceeds thereunder shall be payable to the Trustee. All required insurance policies shall be provided by a commercial insurer in one of the two highest rating categories by a Nationally Recognized Statistical Rating Organization (without regard to designations of plus (+) or minus (-)). The Town shall pay or cause to be paid when due the premiums for all insurance policies required by this Lease Agreement. All such policies shall provide that the Trustee shall be given thirty (30) days' notice of each expiration, any intended cancellation thereof or reduction of the coverage provided thereby. The Trustee shall not be responsible for the sufficiency or amount of any insurance or self-insurance herein required and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss. The Town shall cause to be delivered to the Trustee annually, no later than August 15 in each year, a certificate stating that all of the insurance policies required by this Lease Agreement are in full force and effect and identifying whether any such insurance is then maintained in the form of self-insurance.

In the event that any insurance maintained pursuant to Section 5.3 shall be provided in the form of self-insurance, the Town shall file with the Trustee annually, within ninety (90) days following the close of each Fiscal Year, a statement of the Town risk manager, insurance consultant or actuary identifying the extent of such self-insurance and stating the determination that the Town maintains sufficient reserves with respect thereto. In the event that any such insurance shall be provided in the form of self-insurance by the Town, the Town shall not be obligated to make any payment with respect to any insured event except from such reserves. The results of such review shall be filed with the Trustee.

Section 5.7. Installation of Personal Property. The Town may, at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed items of equipment or other personal property in or upon any portion of the Property. All such items shall remain the sole property of the Town, in which neither the Authority nor the Trustee shall have any interest, and may be modified or removed by the Town at any time provided that the Town shall repair and restore any and all damage to the Property resulting from the installation, modification or removal of any such items. Nothing in this Lease Agreement shall prevent the Town from purchasing or leasing items to be installed pursuant to this Section 5.8 under a lease or conditional sale agreement, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Property.

Section 5.8. Liens. Neither the Town nor the Authority shall, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to any portion of the Property, other than the respective rights of the Trustee, the Authority and the Town as provided herein and Permitted Encumbrances. Except as expressly provided in this Article V, the Town and the Authority shall promptly, at their own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim, for which it is responsible, if the same shall arise at any time. The Town shall reimburse the Authority for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

Section 5.9. Environmental Covenants.

(a) *Compliance with Laws; No Hazardous Substances.* The Town will comply with all Applicable Environmental Laws with respect to the Property and will not use, store, generate, treat, transport, or dispose of any Hazardous Substance thereon or in a manner that would cause any Hazardous Substance to later flow, migrate, leak, leach, or otherwise come to rest on or in the Property.

(b) *Notification of Assignee.* The Town will transmit copies of all notices, orders, or statements received from any governmental entity concerning violations or asserted violations of Applicable Environmental Laws with respect to the Property and any operations conducted thereon or any conditions existing thereon to the Assignee, and the Town will notify the Assignee in writing immediately of any release, discharge, spill, or deposit of any Hazardous Substance that has occurred or is occurring that in any way affects or threatens to affect the Property, or the people, structures, or other property thereon, provided that no such notification shall create any liability or obligation on the part of the Assignee.

(c) *Access for Inspection.* The Town will permit the Assignee, its agents, or any experts designated by the Assignee to have full access to the Property during reasonable business hours for purposes of such independent investigation of compliance with all Applicable Environmental Laws, provided that the Assignee has no obligation to do so, or any liability for any failure to do so, or any liability should it do so.

Section 5.10. Notices. During the Term of this Lease Agreement, the Town shall provide to the Owners:

(a) immediate notice by telephone, promptly confirmed in writing, of any event, action or failure to take any action which constitutes an Event of Default under this Lease Agreement, together with a detailed statement by an Authorized Representative of the Town of the steps being taken by the Town to cure the effect of such Event of Default.

(b) prompt written notice of any Material Litigation, or any investigation, inquiry or similar proceeding by any Governmental Authority.

(c) with reasonable promptness, such other information respecting the Town, and the operations, affairs and financial condition of the Town as the Assignee may from time to time reasonably request.

(d) Notices of filings with the Municipal Securities Regulatory Board's EMMA system, other than regular annual filings.

(e) Notice of an event that could cause a Material Adverse Effect.

ARTICLE VI

DAMAGE, DESTRUCTION AND EMINENT DOMAIN; ABATEMENT OF LEASE PAYMENTS

Section 6.1. Eminent Domain. If a portion of the Property shall be taken permanently, or if any part thereof shall be taken temporarily under the power of eminent domain, (a) this Lease Agreement shall continue in full force and effect and shall not be terminated by virtue of such taking and the parties waive the benefit of any law to the contrary, and (b) there shall be a partial abatement of Lease Payments as a result of the application of the Net Proceeds of any eminent domain award to the prepayment of the Lease Payments hereunder, in an amount to be agreed upon by the Town and the Authority and communicated to the Trustee such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining usable portion of the Property.

Section 6.2. Application of Net Proceeds.

(a) *From Insurance Award*. The Net Proceeds of any insurance award resulting from any damage to or destruction of the Property constituting structures, if any, by fire or other casualty shall be paid by the Town to the Trustee and shall be deposited in the Insurance and Condemnation Fund by the Trustee and applied as set forth in Section 5.07 of the Indenture.

(b) *From Eminent Domain Award*. The Net Proceeds of any eminent domain award resulting from any event described in Section 6.1 hereof shall be paid by the Town to the Trustee and shall be deposited in the Insurance and Condemnation Fund by the Trustee and applied as set forth in Section 5.07 of the Indenture.

Section 6.3. Abatement of Lease Payments. Lease Payments shall be abated during any period in which, by reason of damage or destruction, there is substantial interference with the use and occupancy by the Town of the Property or any portion thereof (other than any portions of the Property described in Section 5.2 hereof) to the extent to be agreed upon by the Town and the Authority and communicated by a Certificate of an Authorized Representative of the Town to the Trustee. The parties agree that the amounts of the Lease Payments under such circumstances shall not be less than the amounts of the unpaid Lease Payments as are then set forth in Exhibit D, unless such unpaid amounts are determined to be greater than the fair rental value of the portions of the Property not damaged or destroyed, based upon any appropriate method of valuation, in which event the Lease Payments shall be abated such that they represent said fair rental value. Such abatement shall continue for the period commencing with such damage or destruction and ending with the substantial completion of the work of repair or reconstruction as evidenced by a Certificate of an Authorized Representative of the Town to the Trustee. In the event of any such damage or destruction, this Lease Agreement shall continue in full force and effect and the Town waives any right to terminate this Lease Agreement by virtue of any such damage and destruction. Notwithstanding the foregoing, there shall be no abatement of Lease Payments under this Section 6.3 to the extent that the proceeds of amounts in the Revenue Fund and/or the Insurance and Condemnation Fund and are available to pay Lease Payments which would otherwise be abated under this Section 6.3, it being hereby declared that such proceeds and amounts constitute special funds for the payment of the Lease Payments.

ARTICLE VII

DISCLAIMER OF WARRANTIES; ACCESS

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

Section 7.2. Rights of Access. The Town agrees that the Authority and any Authorized Representative of the Authority, and the Authority's successors or assigns, shall have the right at all reasonable times to enter upon and to examine and inspect the Property. The Town further agrees that the Authority, any Authorized Representative of the Authority, and the Authority's successors or assigns, shall have such rights of access to the Property as may be reasonably necessary to cause the proper maintenance of the Property in the event of failure by the Town to perform its obligations hereunder; provided, however, that the Authority's assigns shall not be required to cause such proper maintenance.

Section 7.3. Release and Indemnification Covenants. The Town shall and hereby agrees to indemnify and save the Authority and the Trustee, and their respective officers, agents, directors, employees, successors and assigns, harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of (a) the use, maintenance, condition or management of, or from any work or thing done on the Property by the Town, (b) any breach or default on the part of the Town in the performance of any of its obligations under this Lease Agreement, (c) any act or negligence of the Town or of any of its agents, contractors, servants, employees or licensees with respect to the Property, (d) any act or negligence of any lessee of the Town with respect to the Property, or (e) the performance by the Trustee of its duties under the Site and Facility Lease and Right of Entry Agreement, hereunder, under the Indenture or under any other agreements or documents executed in connection herewith or therewith. No indemnification is made under this Section 7.3 or elsewhere in this Lease Agreement for willful misconduct or negligence under this Lease Agreement by the Authority, the Trustee or any of their respective officers or employees. The indemnification hereunder shall survive removal or resignation of the Trustee, termination of this Lease Agreement or discharge of the Bonds.

ARTICLE VIII

ASSIGNMENT, LEASING AND AMENDMENT

Section 8.1. Assignment by the Authority. Certain rights of the Authority under this Lease Agreement, including the right to receive and enforce payment of the Lease Payments to be made by the Town under this Lease Agreement, have been pledged and assigned to the Trustee for the benefit of the Owners of the Bonds pursuant to the Indenture, to which pledge and assignment the Town hereby consents. The assignment of this Agreement to the Trustee is solely in its capacity as Trustee under the Indenture and the duties, powers and liabilities of the Trustee in acting hereunder shall be subject to the provisions of the Indenture, including, without limitation, the provisions of Article VIII thereof.

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

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

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

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

Section 8.3. Amendment of Lease.

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

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

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

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

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

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

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

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

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

Notwithstanding the foregoing, in no event shall the Town be permitted to substitute streets of the Facility or any portion thereof.

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

(i) The Town shall file with the Authority and the Trustee an amended Exhibit C to the Site and Facility Lease and Right of Entry Agreement which adds thereto a description of such Substitute Streets and deletes therefrom the description of the Former Streets;

(ii) The Town shall file with the Authority and the Trustee an amended Exhibit C to this Lease Agreement which adds thereto a description of such Substitute Streets and deletes therefrom the description of the Former Streets;

(iii) The Town shall certify in writing to the Authority and the Trustee that such Substitute Streets serve the purposes of the Town, constitutes property that is unencumbered, subject to Permitted Encumbrances, and constitutes property which the Town is permitted to lease under the laws of the State;

(iv) The Town delivers to the Authority and the Trustee an Officer's Certificate of the Town based on insurance values or any other reasonable basis of valuation received by the Town (which need not require an appraisal) that the value of the Streets following such substitution is equal to or greater than the value of the substituted Streets and confirms in writing to the Trustee that the indemnification provided pursuant to Section 11.03 of the Indenture applies with respect to the Substitute Streets;

(v) The Substitute Streets shall not cause the Town to violate any of its covenants, representations and warranties made herein and in the Indenture, as evidenced by an officer's certificate delivered to the Trustee;

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

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

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

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

(iii) The Town delivers to the Authority and the Trustee an Officer's Certificate of the Town based on insurance values or any other reasonable basis of valuation received by the Town (which need not require an appraisal) that the value of the Property, as revised by such release, is at least equal to 150% of the Outstanding principal amount of the Bonds and confirms in writing to the Trustee and the Authority that the indemnification provided pursuant to Section 11.03 of the Indenture applies with respect to the Site, as revised by such release; and

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

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

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

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

(iii) The Town delivers to the Authority and the Trustee an Officer's Certificate of the Town based on insurance values or any other reasonable basis of valuation received by the Town (which need not require an appraisal) that the value of the Property, as revised by such release, is at least equal to 150% of the Outstanding principal amount of the Bonds and confirms in writing to the Trustee and the Authority that the indemnification provided pursuant to Section 11.03 of the Indenture applies with respect to the Facility, as revised by such release; and

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

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

(i) The Town shall file with the Authority and the Trustee an amended Exhibit C to the Site and Facility Lease and Right of Entry Agreement which describes the Streets, as revised by such release;

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

(iii) The Town delivers to the Authority and the Trustee an Officer's Certificate of the Town based on insurance values or any other reasonable basis of valuation received by the Town (which need not require an appraisal) that the value of the Property, as revised by such release, is at least equal to 150% of the Outstanding principal amount of the Bonds and confirms in writing to the Trustee and the Authority that the indemnification provided pursuant to Section 11.03 of the Indenture applies with respect to the Facility, as revised by such release; and

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

(d) *Generally.* The Authority and the Town may at any time amend or modify any of the provisions of this Lease Agreement, subject to Section 9.01 of the Indenture, but only (i) with the prior written consent of the Owners, or (ii) without the consent of any of the Owners, but only if such amendment or modification is for any one or more of the following purposes:

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

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

Section 8.4. Actions in the Event of Uninsured Casualty.In the event of damage to or destruction of all or a portion of the Property owing to earthquake or other uninsured casualty for which the proceeds of rental interruption insurance are not available, if the value of the undamaged Property is less than 150% of the Outstanding principal amount of the Bonds, at the request of the Owners, the Town shall promptly after the occurrence of such event substitute and add as additional Property hereunder other real or personal property of the Town that is unimpaired and unencumbered, such that the value of the undamaged Property and the additional Property is at least equal to 150% of the Outstanding principal amount of the Bonds.

ARTICLE IX

EVENTS OF DEFAULT; REMEDIES

Section 9.1. Events of Default Defined. The following shall be "Events of Default" under this Lease Agreement:

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

(b) Failure by the Town to make any Additional Payment required hereunder and the continuation of such failure for a period of thirty (30) days.

(c) Failure by the Town to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in the preceding clauses (a) or (b), for a period of sixty (60) days after written notice specifying such failure and requesting that it be remedied has been given to the Town by the Authority or the Trustee; provided, however, that if in the reasonable opinion of the Town the failure stated in the notice can be corrected, but not within such sixty (60) day period, such failure shall not constitute an Event of Default if the Town shall commence to cure such failure within such sixty (60) day period and thereafter diligently and in good faith shall cure such failure in a reasonable period of time which shall last no longer than 120 days after the original written notice.

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

Section 9.2. Remedies on Default. Whenever any Event of Default referred to in Section 9.1 shall have happened and be continuing, it shall be lawful for the Authority to exercise any and all remedies available pursuant to law or granted pursuant to this Lease Agreement; *provided, however*, that notwithstanding anything to the contrary herein or in the Indenture, there shall be no right under any circumstances to accelerate the Lease Payments or otherwise declare any Lease Payments not then in default to be immediately due and payable or to terminate this Lease Agreement or to cause the fee interest or the leasehold interest of the Town in the Property to be sold, assigned or otherwise alienated. Each and every covenant hereof to be kept and performed by the Town is expressly made a condition and, upon the breach thereof, the Authority may exercise any and all rights of entry and re-entry upon the Property. The Town hereby irrevocably consents to the Authority's repossession of the Property (excluding the Streets) if such an Event of Default shall occur and consents to the Authority's re-letting of the Property (excluding the Streets) for the account of the Town. In the event of such default and notwithstanding any re-entry by the Authority, the Town shall, as herein expressly provided, continue to remain liable for the payment of the Lease Payments and/or damages for breach of this Lease Agreement and the performance of all conditions herein contained and, in any event, such rent and/or damages shall be payable to the Authority at the time and in the manner as herein provided, to wit:

(a) The Town agrees to and shall remain liable for the payment of all Lease Payments and the performance of all conditions herein contained and shall reimburse the Authority for any deficiency arising out of the re-leasing of the Property (excluding the Streets), or, in the event the Authority is unable to re-lease the Property (excluding the Streets), then for the full amount of all Lease Payments to the end of the Term of the Lease Agreement, but said Lease Payments and/or deficiency shall be payable only at the same time and in the same manner as hereinabove provided for the payment of Lease Payments hereunder, notwithstanding such entry or re-entry by the Authority or any suit in unlawful detainer, or otherwise, brought by the Authority for the purpose of effecting such re-entry or obtaining possession of the Property (excluding the Streets) or the exercise of any other remedy by the Authority.

(b) The Town hereby irrevocably appoints the Authority as the agent and attorney-in-fact of the Town to enter upon and re-lease the Property (excluding the Streets) in the event of default by the Town in the performance of any covenants herein contained to be performed by the Town and to remove all personal property whatsoever situated upon the Property to place such property in storage or other suitable place in Marin County, for the account of and at the expense of the Town, and the Town hereby exempts and agrees to save harmless the Authority from any costs, loss or damage whatsoever arising or occasioned by any such entry upon and re-leasing of the Property (excluding the Streets) and the removal and storage of such property by the Authority or its duly authorized agents in accordance with the provisions herein contained.

(c) The Town hereby waives any and all claims for damages caused or which may be caused by the Authority in re-entering and taking possession of the Property (excluding the Streets) as herein provided and all claims for damages that may result from the destruction of or injury to the Property and all claims for damages to or loss of any property belonging to the Town that may be in or upon the Property.

(d) The Town agrees that the terms of this Lease Agreement constitute full and sufficient notice of the right of the Authority to re-lease the Property (excluding the Streets) in the event of such re-entry without effecting a surrender of this Lease Agreement, and further agrees that no acts of the Authority in effecting such re-leasing shall constitute a surrender or termination of this Lease Agreement irrespective of the term for which such re-leasing is made or the terms and conditions of such re-leasing, or otherwise.

Section 9.3. Limitation on Remedies. Notwithstanding the foregoing provisions of Section 9.2, neither the Authority nor the Trustee shall exercise any remedies against the Property to the extent such remedies would generate funds which are not available to satisfy the obligations of this Lease Agreement or the Indenture.

Section 9.4. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority is intended to be exclusive and every such remedy shall be cumulative and shall, except as herein expressly provided to the contrary, be in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Article IX it shall not be necessary to give any notice, other than such notice as may be required in this Article IX or by law.

Section 9.5. Agreement to Pay Attorneys' Fees and Expenses. In the event either party to this Lease Agreement should default under any of the provisions hereof and the non-defaulting party should employ attorneys or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the non-defaulting party the reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party.

Section 9.6. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Lease Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 9.7. Trustee and Bond Owners to Exercise Rights. Such rights and remedies as are given to the Authority under this Article IX have been assigned by the Authority to the Trustee under the Indenture, to which assignment the Town hereby consents. Such rights and remedies shall be exercised by the Trustee and the Owners of the Bonds as provided in the Indenture. The Trustee shall be considered a third party beneficiary for enforcing its rights under this Lease Agreement.

ARTICLE X

PREPAYMENT OF LEASE PAYMENTS

Section 10.1. Security Deposit. Notwithstanding any other provision of this Lease Agreement, the Town may, on any date, secure the payment of all or a portion of the Lease Payments remaining due by an irrevocable deposit with the Trustee or an escrow holder under an escrow deposit and trust agreement as referenced in Section 10.03 of the Indenture, of: (a) in the case of a security deposit relating to all Lease Payments, either (i) cash in an amount which, together with amounts on deposit in the Revenue Fund and the Insurance and Condemnation Fund is sufficient to pay all unpaid Lease Payments, including the principal and interest components thereof, in accordance with the Lease Payment schedule set forth in Exhibit D, or (ii) Defeasance Obligations in such amount as will, in the written opinion of an independent certified public accountant, together with interest to accrue thereon and, if required, all or a portion of moneys or Federal Securities or cash then on deposit and interest earnings thereon in the Revenue Fund and the Insurance and Condemnation Fund be fully sufficient to pay all unpaid Lease Payments on their respective Lease Payment Dates; or (b) in the case of a security deposit relating to a portion of the Lease Payments, a certificate executed by an Authorized Representative of the Town designating the portion of the Lease Payments to which the deposit pertains, and either (i) cash in an amount which is sufficient to pay the portion of the Lease Payments designated in such Authorized Representative of the Town's certificate, including the principal and interest components thereof, or (ii) Defeasance Obligations in such amount as will, together with interest to be received thereon, if any, in the written opinion of an independent certified public accountant, be fully sufficient to pay the portion of the Lease Payments designated in the aforesaid Authorized Representative of the Town's Representative's certificate.

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

Section 10.2. Prepayment Option. The Town may not prepay the principal component of the Lease Payments prior to January 15, 2030. The Authority hereby grants an option to the Town to prepay the principal component of the Lease Payments in full, by paying the aggregate unpaid principal components of the Lease Payments as set forth in Exhibit D hereto, or in part, on and after January 15, 2030, in a prepayment amount equal to the principal amount of Lease Payments to be prepaid, and accrued interest to the date fixed for prepayment, plus the prepayment premium set forth in the following table:

Prepayment Period	Prepayment Premium
January 15, 2030 through January 14, 2031	2%
January 15, 2031 and thereafter	0

Said option shall be exercised by the Town by giving written notice to the Authority and the Trustee of the exercise of such option at least forty-five (45) days prior to said Lease Payment Date. Such option shall be exercised in the event of prepayment in full, by depositing with said notice cash in an amount, which, together with amounts then on deposit in the Revenue Fund and the Insurance and Condemnation Fund, will be sufficient to pay the aggregate unpaid component of the Lease Payments on said Lease Payment Date as set forth in Exhibit D hereto, together with any Lease Payments then due but unpaid, or, in the event of prepayment in part, by depositing with said notice cash in an amount divisible by \$5,000 equal to the amount desired to be prepaid together with any Lease Payments then due but unpaid. In the event of prepayment in part, the partial prepayment shall be applied against Lease Payments in such order of payment date as shall be selected by the Town. Lease Payments due after any such partial prepayment shall be in the amounts set forth in a revised Lease Payment schedule which shall be provided by, or caused to be provided by, the Town to the Trustee and which shall represent an adjustment to the schedule set forth in Exhibit D attached hereto taking into account said partial prepayment.

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

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

ARTICLE XI
MISCELLANEOUS

Section 11.1. Notices. All written notices to be given under this Lease Agreement shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other party in writing from time to time. Notice shall be effective either (a) upon transmission by facsimile transmission or other form of telecommunication, confirmed by phone, (b) upon receipt after deposit in the United States mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt.

If to the Authority:	Fairfax Financing Authority c/o Town of Fairfax 142 Bolinas Road Fairfax, CA 94930 Attention: Town Manager Phone: (415) 458-2345
If to the Town:	Town of Fairfax 142 Bolinas Road Fairfax, CA 94930 Attention: Town Manager Phone: (415) 458-2345
If to the Trustee:	U.S. Bank National Association One California Street, Suite 1000 San Francisco, CA 94111 Attention: Global Corporate Trust Phone: (415) 677-3600

The Authority, the Town or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

Section 11.2. Binding Effect. This Lease Agreement shall inure to the benefit of and shall be binding upon the Authority and the Town and their respective successors and assigns.

Section 11.3. Severability. In the event any provision of this Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.4. Net-net-net Lease. This Lease Agreement shall be deemed and construed to be a "net-net-net lease" and the Town hereby agrees that the Lease Payments shall be an absolute net return to the Authority, free and clear of any expenses, charges or set-offs whatsoever.

Section 11.5. Further Assurances and Corrective Instruments. The Authority and the Town agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect descrip-

tion of the Property hereby leased or intended so to be or for carrying out the expressed intention of this Lease Agreement.

Section 11.6. Execution in Counterparts. This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.7. Applicable Law. This Lease Agreement shall be governed by and construed in accordance with the laws of the State.

Section 11.8. Authorized Representatives. Whenever under the provisions of this Lease Agreement the approval of the Authority or the Town is required, or the Authority or the Town is required to take some action at the request of the other, such approval or such request shall be given for the Authority by an Authorized Representative of the Authority and for the Town by an Authorized Representative of the Town, and any party hereto shall be authorized to rely upon any such approval or request.

Section 11.9. Waiver of Personal Liability. All liabilities under this Lease Agreement on the part of the Town are solely liabilities of the Town and the Authority hereby releases each and every member, director, officer, employee and agent of the Town of and from any personal or individual liability under this Lease Agreement. No member, director, officer, employee or agent of the Town shall at any time or under any circumstances be individually or personally liable under this Lease Agreement for anything done or omitted to be done by the Town hereunder.

Section 11.10. Limitation of Rights to Parties and Bond Owners. Nothing in this Lease Agreement expressed or implied is intended or shall be construed to give to any person other than the Authority, the Trustee, the Town, the Authority and the Owners of the Bonds, any legal or equitable right, remedy or claim under or in respect of this Lease Agreement or any covenant, condition or provision therein or herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the Authority, the Trustee, the Town, the Authority and the Owners of the Bonds.

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

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

FAIRFAX FINANCING AUTHORITY

By _____
Executive Director

Attest:

Secretary

TOWN OF FAIRFAX

By _____
Town Manager

Attest:

Town Clerk

[NOTARY ACKNOWLEDGMENTS TO BE ATTACHED]

EXHIBIT A

SITE DESCRIPTION

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

Lots 28 and 38 through 56, inclusive, as shown upon that certain Map entitled "Frustuck & Wreden Sub-division of Fairfax Park, 1913", filed for record January 8, 1914 in Volume 4 of Maps, at Page 64, Marin County Records.

APN: 002-102-01, 02, 03, 06, 11 & 12; 002-103-01, 02 & 03 & 002-114-01

EXHIBIT B

FACILITY DESCRIPTION

The Facility consists of the following:

Town Hall, located at 142 Bolinas Road, Fairfax, CA. Town Hall was built in the 1920's with the Police Annex added in the 1960's. Combined, the facilities have approximately 3,600 square feet of useable space. Both facilities have been renovated over the years with the last major renovation occurring in 2006. Town Hall is occupied by the Town's administrative staff including the Town Manager and Town Clerk and the Planning and Building Services Department. The Town Hall also has the primary conference room used by staff and Town committees for meetings. The Police Annex houses the entire operation of the Police Department, including the dispatch center which also provides services for the Town of Ross and College of Marin. The Police Annex is two stories with a second story walkway connecting the Town Hall to the Fire Station which houses the Town's Emergency Operations Center. The 2016 insured value of the Town Hall/Police Department is \$831,981, excluding land value.

Corporation Yard, located at 142 Bolinas Road, Fairfax, CA. The Corporation Yard is located behind Town Hall. The Corporation Yard contains a two-story metal building built in the 1960's which houses the Public Works Department in approximately 4,000 square feet. Public Works maintenance crews also operate out of this facility. The Corporation Yard is where all Public Works materials/equipment/supplies, heavy equipment (e.g., backhoe), and vehicles (e.g., street sweeper, pick-up trucks, dump trucks) are stored. In addition, the Police Department also stores equipment/materials in the Corporation Yard. The Corporation Yard shares a parking lot with Town Hall and Police for employee parking as well as parking for all the Town-owned vehicles, including police and administration. The 2016 insured value of the Corporation Yard is \$271,840, excluding land value.

Pavilion, located at 142 Bolinas Road, Fairfax, CA. The Fairfax Pavilion was built in the 1920's and is approximately 9,600 square feet. It is the largest Town-owned facility and represents the largest indoor, private or public recreational/community facility in Town. The facility has an indoor gym, a separate kitchen area and houses the Town's recreation staff office as well as the studio for the Town's Artist-in-Residence. The Town rents the facility for private events (e.g., children's birthday parties, banquets) and youth activities (e.g., CYO basketball), holds community events in the facility (e.g., holiday craft fair, Fairfax Civic Theater), and conducts most of its recreational programming in the facility (e.g., gymnastics, futsal). In addition, it is the only Town-owned facility located above the floodplain and large enough to serve as a safe haven or shelter in event of a disaster. The Pavilion is also designated as the Town's volunteer center in the event of an emergency. The 2016 insured value of the Pavilion is \$1,805,604, excluding land value.

Fire Station, located at 10 Park Road, Fairfax, CA. The Fire Station was built in the 1960's and has approximately 6,000 sq. ft. of useable space. The building is two stories with living quarters located upstairs and office/storage located downstairs. The building has three bays for the fire vehicles. The second story also has a large conference room which doubles as the Emergency Operation Center for the Town. The 2016 insured value of the Fire Station is \$1,684,088, excluding land value.

EXHIBIT D

SCHEDULE OF LEASE PAYMENTS

<u>Lease Payment Date</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Total Lease Payment</u>
1/15/21			
7/15/21			
1/15/22			
7/15/22			
1/15/23			
7/15/23			
1/15/24			
7/15/24			
1/15/25			
7/15/25			
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7/15/33			
1/15/34			
7/15/34			
1/15/35			
7/15/35			
1/15/36			
7/15/36			

Total	<u> </u>	<u> </u>	<u> </u>
	<u> </u>	<u> </u>	<u> </u>