

# **EXHIBIT E**

WAKPAMNI LAKE COMMUNITY CORPORATION

as Issuer

TO

U.S. BANK NATIONAL ASSOCIATION

as Trustee

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TRUST INDENTURE

Dated as of August 25, 2014

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Securing

\$24,844,089 Special Limited Revenue Bonds (Taxable)

Series of 2014

(Economic Development Program)

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## Table of Contents

	Page
RECITAL .....	1
FURTHER RECITALS, GRANTING CLAUSES AND HABENDUM .....	2
ARTICLE I. DEFINITIONS	
SECTION 1.1 Terms Defined in Recitals. ....	3
SECTION 1.2 Additional Definitions. ....	4
SECTION 1.3 Scope of Indenture - Separate Financings. ....	11
SECTION 1.4 Preliminary Matters. ....	11
ARTICLE II. CONCERNING THE BONDS.	
SECTION 2.1 Authorization of Bonds and Additional Bonds. ....	12
SECTION 2.2 Place, Manner and Source of Payment of Bonds. ....	12
SECTION 2.3 Execution of Bonds. ....	13
SECTION 2.4 Authentication of Bonds. ....	13
SECTION 2.5 Transfer and Exchange of Bonds; Bond Register. ....	13
SECTION 2.6 Cost of Bond Registration, Transfer or Exchange; Miscellaneous Transfer and Exchange Provisions. ....	14
SECTION 2.7 Ownership of Bonds. ....	15
SECTION 2.8 Temporary Bonds. ....	15
SECTION 2.9 Mutilated, Destroyed Lost or Stolen Bonds. ....	15
SECTION 2.10 Terms of the 2014 Bonds. ....	16
SECTION 2.11 Authentication and Delivery of the 2014 Bonds. ....	16
SECTION 2.12 Application of Proceeds of the Bonds; Establishment of Settlement Account. .....	17
SECTION 2.13 Identification Numbers. ....	17
ARTICLE III. ISSUANCE OF ADDITIONAL BONDS.	
SECTION 3.1 Authority for Issuance. ....	18
SECTION 3.2 Additional Bonds for Refunding. ....	18
SECTION 3.3 Security for Bonds - Bonds on Parity - Exceptions. ....	19
SECTION 3.4 Subordinated Indebtedness. ....	19
ARTICLE IV. RESERVED	
ARTICLE V. RATES AND CHARGES; REVENUES AND FUNDS.	
SECTION 5.1 Corporation Account. ....	19
SECTION 5.2 Rate Covenant; Revenue Fund. ....	20
SECTION 5.3 Payment of Operating Expenses of the Corporation. ....	21
SECTION 5.4 Withdrawals from Revenue Fund; Deposits to Debt Service and Sinking Fund. ....	21
SECTION 5.5 Debt Service and Sinking Fund-Payment of Debt Service. ....	22
SECTION 5.6 Bond Redemption and Improvement Fund. ....	22

SECTION 5.7	Project Fund.....	23
SECTION 5.8	Investment of Funds and Securing of Funds. ....	24
SECTION 5.9	Discontinuance of Funds-Redemption of Bonds.....	25
SECTION 5.10	Cancellation of Bonds. ....	26
ARTICLE VI.		
REDEMPTION OF BONDS.		
SECTION 6.1	Bonds Subject to Redemption. ....	26
SECTION 6.2	Notice of Redemption.....	26
SECTION 6.3	Payment of Redemption Price. ....	27
ARTICLE VII.		
INSURANCE.		
SECTION 7.1	Permanent Insurance.....	27
SECTION 7.2	Insurance During Construction.....	28
SECTION 7.3	Damage to or Destruction of the Project Facilities; Application of Insurance Proceeds. ....	28
SECTION 7.4	Other Insurance.....	29
SECTION 7.5	Miscellaneous. ....	29
ARTICLE VIII.		
PARTICULAR COVENANTS OF THE CORPORATION.		
SECTION 8.1	Payment of Bonds.....	30
SECTION 8.2	Maintenance of Existence - Operation of Project Facilities. ....	30
SECTION 8.3	No Impairment of Registered Owners Rights. ....	30
SECTION 8.4	Further Action. ....	30
SECTION 8.5	Sale and Encumbrance of Facilities.....	30
SECTION 8.6	Advances by Trustee. ....	31
SECTION 8.7	No Extension of Time for Payment of Interest.....	31
SECTION 8.8	Employment of Accountant-Annual Audit. ....	31
SECTION 8.9	Annual Budgets. ....	31
SECTION 8.10	Financing Statements.....	32
ARTICLE IX.		
DEFAULTS AND REMEDIES.		
SECTION 9.1	Events of Default; Acceleration. ....	32
SECTION 9.2	Legal Proceedings by Trustee.....	33
SECTION 9.3	Discontinuance of Proceedings. ....	34
SECTION 9.4	Registered Owners May Direct Proceedings.....	34
SECTION 9.5	Limitations on Actions by Registered Owners.....	34
SECTION 9.6	Trustee May Enforce Rights Without Possession of Bonds.....	34
SECTION 9.7	Remedies Not Exclusive.....	35
SECTION 9.8	Delays and Omissions Not to Impair Rights. ....	35
SECTION 9.9	Application of Money on Event of Default. ....	35
ARTICLE X. CONCERNING THE TRUSTEE.		
SECTION 10.1	Acceptance of Trust.....	36
SECTION 10.2	No Responsibility for Recitals.....	36
SECTION 10.3	Power to Act Through Agents; Liability Limited. ....	36
SECTION 10.4	Compensation. ....	36
SECTION 10.5	No Duty to Effect or Renew Insurance. ....	37

SECTION 10.6	Notice of Default; Right to Information.....	37
SECTION 10.7	Obligation to Act on Defaults.....	37
SECTION 10.8	Advances to Cure Defaults.....	38
SECTION 10.9	Reliance on Requisitions and Certificates; Indemnification.....	38
SECTION 10.10	Right to Deal in Bonds.....	40
SECTION 10.11	Construction of Indenture.....	40
SECTION 10.12	Resignation of Trustee.....	40
SECTION 10.13	Removal of Trustee.....	40
SECTION 10.14	Appointment of Successor Trustee.....	41
SECTION 10.15	Qualification of Successor Trustee.....	41
SECTION 10.16	Instruments of Succession.....	41
SECTION 10.17	Merger of Trustee.....	42

#### ARTICLE XI.

##### AMENDMENTS AND MODIFICATIONS.

SECTION 11.1	Amendments without Registered Owners Consent.....	42
SECTION 11.2	Amendments with Registered Owners Consent.....	42
SECTION 11.3	General Provisions.....	42

#### ARTICLE XII

##### DEFEASANCE. MISCELLANEOUS

SECTION 12.1	Defeasance.....	43
SECTION 12.2	No Personal Recourse.....	44
SECTION 12.3	Deposit of Funds for Payment of Bonds.....	44
SECTION 12.4	No Rights Conferred on Others.....	44
SECTION 12.5	Illegal Provisions Disregarded.....	44
SECTION 12.6	Substitute Notice.....	45
SECTION 12.7	Notices to Trustee and Corporation.....	45
SECTION 12.8	Successors and Assigns.....	45
SECTION 12.9	Headings for Convenience Only.....	45
SECTION 12.10	Counterparts.....	45
SECTION 12.11	Governing Law.....	45
SECTION 12.12	Limited Waiver of Sovereign Immunity.....	45
SECTION 12.13	Electronic Communications.....	47

THIS TRUST INDENTURE dated as of August 25, 2014 (the “**Indenture**”) between WAKPAMNI LAKE COMMUNITY CORPORATION (the “**Corporation**”), a tribally-chartered corporation, wholly-owned by the Wakpamni Lake Community (“**Community**”), a subdivision of the Wakpamni Lake District, each a subordinate governmental unit of the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota (“**Tribe**”) and U.S. BANK NATIONAL ASSOCIATION, a national banking association existing under and by virtue of the laws of the United States of America, having a corporate trust office in Phoenix, Arizona and its successors (the “**Trustee**”);

WITNESSETH:

WHEREAS, the Corporation is a tribally-chartered corporation, wholly-owned by the Community, which was established on April 1, 2012, pursuant to the laws of the Community and the Tribe; and

WHEREAS, among its authorized activities, the Corporation is authorized to identify, evaluate and propose meritorious commercial projects which are likely to assist in achieving the Corporation’s goals;

WHEREAS, the Tribe is a federally recognized Indian tribe organized and operating in accordance with Section 16 of the Indian Reorganization Act of 1934 and under a federally-approved Constitution and By-laws first adopted on December 14, 1935, as subsequently amended from time to time;

WHEREAS, the Corporation is empowered to engage in general economic and financial businesses that promote the general economic development and welfare of the people of the Community, pursuant to Article 5.1 of the Corporation’s April 1, 2012 Articles of Incorporation, and vested specifically with the power to “incur debts and raise, borrow and secure the payment of any money in any lawful manner, including the issue and sale or other disposal of stocks, bonds, indentures, obligations, negotiable and transferable instruments and evidence of indebtedness of all kinds,” pursuant to Article 7.2;

WHEREAS, the Corporation “is vested with the sovereign immunity of the Tribe” pursuant to Article 3.2 of the Corporation’s April 1, 2012 Articles of Incorporation and further empowered to “provide a limited waiver of sovereign immunity” in order to create enforceable contractual obligations applicable to the Corporation’s business ventures; and

WHEREAS, the Corporation, in carrying out its designated purposes, intends to undertake the developing, constructing, equipping and operating of various economic development projects, including the development of a certain Junction 18 Development Project (described below) (the “**Economic Development Projects**”); and

WHEREAS, the Corporation intends to issue Bond(s) in the form of its \$24,844,089 Special Limited Revenue Bonds (Taxable), Series of 2014 (Economic Development Program) (the “**2014 Bonds**”), the proceeds of which will be used to (a) finance the purchase of a

certain Annuity Investment (as described more fully herein); (b) finance economic development projects for the benefit of the Wakpamni Lake Community, without limitation projects near the junction of Routes 18 and 391, including, inter alia, a certain warehouse/distribution center and other revenue producing enterprises (the “**Junction 18 Development Project**”) and (c) pay the costs of issuance of the 2014 Bonds (together, the “**Project**”); and

WHEREAS, the 2014 Bonds will be issued under this Indenture; and

WHEREAS, the Corporation has received a proposal dated August 8, 2014, for the placement of the 2014 Bonds with certain purchasers (collectively, the “**Purchaser**”) from Burnham Securities, Inc. (“**Placement Agent**”); and accepted such proposal on August 8, 2014 (the “**Proposal**”); and

WHEREAS, the Corporation has determined that the 2014 Bonds issued hereunder, and the Trustee’s Certificate of Authentication endorsed thereon, shall be substantially in the form set forth in Appendix A hereto, which is incorporated herein, with appropriate insertions, omissions and variations; and

WHEREAS, the execution and delivery of the 2014 Bonds and of this Indenture have in all respects been duly authorized and all things necessary to make the 2014 Bonds, when executed by the Corporation and authenticated by the Trustee, the valid and binding legal obligations of the Corporation and to make this Indenture a valid and binding agreement, have been done; and

NOW, THEREFORE, THIS INDENTURE WITNESSETH that in order to secure the principal of and interest on the 2014 Bonds and on all Additional Bonds (as hereinafter defined) issued and Outstanding (as hereinafter defined) under this Indenture according to their tenor, purport and effect, and to secure the performance and observance of all the covenants and conditions therein and herein contained, and to declare the terms and conditions upon and subject to which the Bonds (as hereinafter defined) are secured, and for and in consideration of the mutual covenants herein contained and of the purchase and acceptance of the Bonds by the Registered Owners (as hereinafter defined) thereof, and of the acceptance by the Trustee of the trusts hereby created and of the sum of One Dollar (\$1.00) lawful money of the United States of America duly paid by the Trustee to the Corporation at or before the delivery hereof, the receipt whereof is hereby acknowledged, the Corporation has executed and delivered this Indenture, and by these presents does hereby sell, assign, transfer, set over, pledge and grant a security interest, unto U.S. Bank National Association, as Trustee, its successors in the trust and its assigns forever, (i) the Pledged Revenues (as defined in Section 1.2 hereof) of the Corporation, and (ii) all moneys and investments held in any Fund or Account hereunder, in the manner and to the extent as hereinafter provided;

TO HAVE AND TO HOLD the same unto the Trustee, and its successor or successors and assigns in the Trust, forever,

IN TRUST, NEVERTHELESS, upon the terms and trusts herein set forth, for the benefit and security of all present and future Owners (as hereinafter defined) of the Bonds, without preference, priority or distinction as to lien or otherwise of any one Bond over any other

Bond by reason of priority in the issue, sale or authentication thereof or otherwise, except as otherwise herein provided;

AND IT IS HEREBY COVENANTED AND AGREED by and between the parties hereto, that the terms and conditions upon which the Bonds are to be executed, authenticated, delivered, issued and received by all persons who shall from time to time be or become the Owners thereof, and the trusts and conditions under which all of the right, title and interest of the Corporation in and to the Pledged Revenues have been pledged to the Trustee are as follows:

**ARTICLE I.  
DEFINITIONS**

**SECTION 1.1      Terms Defined in Recitals.**

The following terms defined in the recitals of this Indenture, wherever used in this Indenture and in all Supplemental Indentures hereafter entered into in accordance with the provisions hereof, shall have the respective meanings specified in such recitals unless the context clearly otherwise requires:



2014 Bonds	Proposal
Corporation	Project
Economic Development Projects	Purchaser
Indenture	Trustee
Junction 18 Development Project	

## **SECTION 1.2      Additional Definitions.**

The terms defined in this Section 1.2, wherever used in this Indenture and in all Supplemental Indentures hereafter entered in accordance with the provisions hereof, shall have the meanings herein specified, unless the context clearly otherwise requires:

Accountant means such independent certified public accountant or accounting firm as shall at the time be appointed by the Corporation for the purpose of performing the functions and duties of the independent certified public accountant under this Indenture or any Supplemental Indenture or the Act. If such person be an individual, he or she shall not be and, if such person be a partnership or corporation, it shall not have a partner, director, officer or substantial stockholder who is a member of the Board of the Corporation, an officer or employee of the Corporation, a member of the governing Board of the Tribe, but such person may be regularly retained by the Corporation and/or the Tribe.

Additional Bonds means additional parity Bonds authorized and issued pursuant to Article III hereof, and when issuing Additional Bonds pursuant to Section 3.2, means the particular Bonds at the time being issued.

Annuity Investment means the contract, in the notional purchase amount of \$22,094,089, entered into on the date hereof between the Corporation and the Annuity Provider, whereby the Annuity Provider shall pay income to the Corporation at stated intervals and amounts, as provided therein.

Annuity Investment Earnings means earnings and gains on the Annuity Investment.

Annuity Provider means a company that provides Annuity Investments as part of its regular trade or business.

Bond or Bonds means all bonds or notes Outstanding from time to time under this Indenture, including Additional Bonds as well as the 2014 Bonds issued pursuant to Section 2.9.

Bond Counsel means a nationally-recognized bond counsel firm.

Bond Redemption and Improvement Fund means the separate fund created by Section 5.6.

Business Day means any day (excluding Saturday and Sunday) on which banking institutions located in the city in which the Trustee's corporate trust office responsible for administration of the Indenture (initially, Phoenix, Arizona) and its corporate trust payments office (initially Phoenix, Arizona) are located, are not authorized or obligated by law or administrative order to close and on which The New York Stock Exchange is not closed.

Certified Resolution means a copy of one or more resolutions certified by the Secretary or an Assistant Secretary of the Corporation, as applicable, under its seal, to have been duly adopted by the Board of Directors of the Corporation and to be in effect on the date of such certification.

Closing Statement means the document executed at closing on the Bonds documenting the receipt of the Bond by the Purchaser and Bond proceeds by the Trustee and directing, inter alia, the uses of Bond proceeds.

Corporation Account means one or more accounts established pursuant to Section 5.1 hereof.

Cost or Costs in connection with the Project, means all expenses (including reimbursements) which are properly chargeable thereto under sound accounting practice or which are incidental to the Project, including development, professional and other fees. In the case of refunding or redeeming any Bonds, Cost includes, without limiting the generality of the foregoing, the items listed above as applicable, other expenses related to the redemption of the Bonds to be redeemed, the redemption price of such Bonds and the accrued interest payable on redemption to the extent not otherwise provided for. Whenever Costs are to be paid hereunder, payment may be made to reimburse the Corporation or other person or entity which has paid or advanced the same.

Counsel means a person (including an individual, partnership, professional association or professional corporation) who is an attorney at law, who may be counsel to the Corporation, not unsatisfactory to the Trustee.

Debt Service and Sinking Fund means the fund established by Section 5.4 hereof.

Debt Service Requirements means with respect to any period, the amounts required in said period to pay, or to be set aside for the payment of, the principal of (if any) or interest on Bonds.

Defeasance Obligations means only (1) cash, (2) non-callable direct obligations of the United States of America ("Treasuries"), (3) evidences of ownership of proportionate interests in future interest and principal payments on Treasuries held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying Treasuries are

not available to any person claiming through the custodian or to whom the custodian may be obligated, or (4) pre-refunded municipal obligations rated "AAA" and "Aaa" by S&P and Moody's, respectively.

Developer means a firm appointed by the Corporation in writing to undertake the development of Economic Development Projects, including the Junction 18 Development Project.

Event of Default shall have the meaning set forth in Section 9.1 hereof.

Excluded Assets shall have the meaning as set forth in Section 12.12(g) hereof.

Fiscal Year means a period of 12 months ending the last day of September each year or such other annual accounting period as the Corporation may select from time to time.

Fitch means Fitch's Public Rating Service and any successors thereto.

Government Obligations means (i) direct obligations of (including obligations issued or held in book entry form on the books of) the United States of America; and (ii) obligations the principal and interest of which are unconditionally guaranteed by the United States of America.

Indenture means this instrument, and all modifications hereof and amendments and supplements hereto.

Insurance Consultant means a person or persons, if any, who are qualified to pass upon insurance risk questions relating to commercial enterprises, and have a favorable reputation for skill and experience in the practice of insurance risk advising, and appointed by the Board of the Corporation. If such a person be an individual, he or she shall not be and, if such a person be a partnership or corporation, it shall not have a partner, director, officer or substantial stockholder who is a member of the Board, an officer or employee of the Corporation, a member of the governing Board of the Tribe, or an officer or employee of the Tribe, but such person may be regularly retained by the Corporation and/or the Tribe.

Interest Payment Date means any date on which interest on the Bonds is due and payable in accordance with the terms of such Bonds.

Investment Securities means and includes any of the following if and to the extent the same are at the time legal for investment of Corporation funds:

(a) Government Obligations;

(b) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any following federal agencies provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself);

(c) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities are only permitted if they have been stripped by the agency itself):

- a. Federal Home Loan Bank System Senior debt obligations
- b. Federal Home Loan Mortgage Corporation (FHLMC or “Freddie Mac”) Participation Certificates Senior debt obligations
- c. Federal National Mortgage Association (FNMA or “Fannie Mae”) Mortgage-backed securities and senior debt obligations
- d. Resolution Funding Cor. (REFCORP) obligations
- e. Farm Credit System Consolidated systemwide bonds and Note

(d) Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating at the time of purchase by Standard & Poor’s Ratings Services of AAAm-G; AAA-m; or AA-m and if rated by Moody’s Investors Services rated Aaa, Aa1 or Aa2, including, without limitation, any mutual fund for which the Trustee or an affiliate of the Trustee serves as investment manager, administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that (i) the Trustee or an affiliate of the Trustee receives fees from such funds for services rendered, (ii) the Trustee charges and collects fees for services rendered pursuant to this Indenture, which fees are separate from the fees received from such funds, and (iii) services performed for such funds and pursuant to this Indenture may at times duplicate those provided to such funds by the Trustee or its affiliates.

(e) Certificates of deposit secured at all times by collateral described in (a) and/or (b) above. Such certificates must be issued by commercial banks, savings and loan associations or mutual savings banks, including the Trustee and any of its affiliates. The collateral must be held by the Trustee or a third party and the Trustee must have a perfected first security interest in the collateral.

(f) Certificates of deposit, including those placed by a third party pursuant to an agreement between the Trustee and the Corporation, savings accounts, deposit accounts or money market deposits which are fully insured by FDIC.

(g) Commercial paper rated, at the time of purchase, “Prime - 1” by Moody’s Investors Services and Standard & Poor’s Corporation in one of the two highest rating categories assigned by such agencies.

(h) Bonds or notes issued by any state or municipality which are rated at the time of purchase by Moody's Investors Services and Standard & Poor's Ratings Services in one of the two highest rating categories assigned by such agencies.

(i) Repurchase Agreements for 30 days or less must follow the following criteria. Repurchase Agreements which exceed 30 days and are subject to the following requirements:

Repurchase Agreements provide for the transfer of securities from a dealer bank or securities firm (seller/borrower) to the Trustee (buyer/lender), and the transfer of cash from the Trustee to the dealer bank or securities firm with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the municipal entity in exchange for the securities at a specified date.

1. Repurchase Agreements must be between the Trustee and a dealer bank or securities firm
  - a. Primary dealers on the Federal Reserve reporting dealer list which are rated A or better by Standard & Poor's Ratings Services and Moody's Investors Services, or
  - b. Banks rated "A" or above by Standard & Poor's Ratings Services and Moody's Investors Services.
2. The written repo contract must include the following:
  - a. Securities which are acceptable for transfer are:
    - (1) Direct U.S. governments, or
    - (2) Federal agencies backed by the full faith and credit of the U.S. government (and FNMA & FHLMC)
  - b. The term of the repo may be up to 30 days
  - c. The collateral must be delivered to the Trustee (if Trustee is not supplying the collateral) or third party acting as agent for the Trustee (if the Trustee is supplying the collateral) before/simultaneous with payment (perfection by possession of certificated securities).
  - d. Valuation of Collateral
    - (1) The securities must be valued weekly, market-to-market at current market price plus accrued interest
- (i) The value of collateral must be equal to 104% of the amount of cash transferred by the Trustee to the dealer bank or security firm under the repo plus accrued interest. If the value of securities held as collateral slips below 104% of the value of the cash transferred

by the Trustee, then additional cash and/or acceptable securities must be transferred. If, however, the securities used as collateral are FNMA or FHLMC, then the value of collateral must equal 105%.

3. Legal opinion which must be delivered to the Trustee and the Corporation:

- a. Repo meets guidelines under state law for legal investment of public funds; and

(j) the Annuity Investment.

The value of the above investments, which shall be determined as of the end of each month, shall be calculated as follows: (i) 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), either the average of the bid and asked prices for such investments so published on or most recently prior to such time of determination or the bid price published by a nationally recognized pricing service; (ii) 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 or by a nationally recognized pricing service, either the average bid price at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the Company in its absolute discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing service; (iii) as to certificates of deposit and bankers acceptances, the face amount thereof, plus accrued interest; and (iv) as to any investment not specified above, the value thereof established by agreement between the Corporation and the Trustee.

Moody's means Moody's Investors Services.

Officers' Certificate means a certificate, under its official seal, executed by two officers of the Corporation, one of whom shall be the President or Vice-President and the second of whom shall be one of the other officers of the Corporation.

Operating Expenses means the operating expenses reasonably incurred or to be incurred by the Corporation in connection with either (i) the Annuity Investment or (ii) the ownership and operation of any Project Facility including, without limiting the generality of the foregoing, all reasonable costs of operating, maintaining, insuring and repairing the Project Facilities; all taxes imposed upon the Corporation or its assets or properties; auditing fees, legal fees, Trustee fees and expenses, engineering fees, office expenses, general administrative expenses, management fees, and other costs and expenses including fines or penalties imposed in connection with the Corporation's operation of the Project Facility, constitute costs of ownership, operation or administration of the Project Facilities, but shall not include interest on the Bonds, amortization of financing costs, depreciation or other non-cash items of expense.

Outstanding, Outstanding under this Indenture or Outstanding hereunder means, with reference to Bonds as of any particular time, all Bonds executed, authenticated, issued and delivered under this Indenture, except:



- A. Bonds cancelled at or prior to such time;
- B. Bonds for the payment of which funds shall have been deposited with the Trustee or shall have been set aside by the Trustee as provided herein for that purpose and which shall have matured by their express terms but which shall not have been surrendered for payment;
- C. Bonds in substitution for which other Bonds shall have been authenticated and delivered pursuant hereto;
- D. Bonds for the redemption of which funds then shall be held in trust by the Trustee; provided, however, that such redemption shall be required by the provisions hereof without further action of the Corporation, or that notice of such redemption shall have been sent or provision satisfactory to the Trustee shall have been made for such notice or written waivers of such notice shall have been received as provided herein; and
- E. Bonds which shall have been purchased and paid for by the Corporation or by the Trustee on behalf of the Corporation, but which shall not have been delivered for cancellation.

The foregoing, however, is subject to the condition that, for purpose of reference to Owners of a particular percentage of Bonds, there shall be excluded Bonds held by the Corporation, and is further subject to Section 12.1 hereof.

Pledged Revenues means (a) all gross revenues and amounts paid or payable to the Corporation in connection with the Annuity Investment Earnings and all Economic Development Projects (including the Junction 18 Development Project), including any part thereof, or otherwise derived by the Corporation from its ownership or operation of the Project Facilities, as designated by the Corporation in the requisition for such amounts to the Trustee; and (b) all funds held under this Indenture, all income, interest and profits received from the investment of money, including Investment Securities and earnings thereon, held in any fund established under this Indenture.

Prime Rate means the rate of interest publicly announced by the Trustee, its primary banking affiliate, or their successors from time to time as its “prime rate”.

Project Facility includes, in addition to the definition in the preambles, as of any particular time, all property (real or otherwise), equipment, and franchises appurtenant thereto, used or useful in connection with any Economic Development Project financed, directly or indirectly, in whole or in part, with proceeds of the Bonds and/or Annuity Investment Earnings of the Corporation and all renewals, replacements and repairs thereof, as designated by the Corporation in the requisition for such amounts to the Trustee. “Project Facility” shall not, however, include an enterprise erected on land purchased or otherwise acquired with proceeds of the Bonds that is otherwise wholly-financed with funds other than proceeds of the Bonds and/or Annuity Investment Earnings.

Project Fund means the fund established by Section 5.7 hereof.

Rate Covenant means the covenant of the Corporation set forth in Section 5.2 hereof.

Record Date means in the case of the 2014 Bonds, the fifteenth (15<sup>th</sup>) day (whether or not a Business Day) immediately preceding the relevant Interest Payment Date, and in the case of Additional Bonds, such day as is specified in such Bonds or the related Supplemental Indenture.

Registered Owner or Owner or Bondholder or Bondowner, in connection with a Bond, means the person in whose name the Bond is registered on the registration books maintained by the Trustee.

Related Document shall have the meaning set forth in Section 11.3 hereof.

Revenue Fund means the fund established under Section 5.2 hereof.

S&P means Standard and Poor's Ratings Services.

Settlement Account means the account described in Section 2.12 established hereunder.

State means the State of South Dakota.

Supplemental Indenture means an indenture supplemental to this Indenture executed in connection with the issuance of Additional Bonds pursuant to Article III, or executed for the purpose of amendments or modifications pursuant to Article XI.

Trust Estate means at any particular time all moneys which at such time are deposited, or required to be deposited with the Trustee or to be held in trust under any of the provisions of this Indenture, and all property which at such time is covered or intended to be covered by the lien of this Indenture.

Trustee Indemnified Parties or Trustee Indemnified Party means the Trustee, its past, present and future directors, officers, employees, agents, counsel, contractors, subcontractors, licensees and invitees, individually and collectively.

### **SECTION 1.3 Scope of Indenture - Separate Financings.**

Nothing in this Indenture shall limit the power of the Corporation to issue other Bonds under other indentures or resolutions for the purpose of financing a project not included within the Project Facility or from pledging the revenues of such other project for the payment of the Bonds issued to finance the same.

### **SECTION 1.4 Preliminary Matters.**

(a) In this Indenture (except as otherwise expressly provided or unless the context clearly otherwise requires) the singular includes the plural, and the masculine includes the feminine.



(b) All references in this Indenture to designated “Articles”, “Sections” and other subdivisions of this Indenture are to the designated Articles, Sections or other subdivisions of this instrument as originally executed. The words “herein” and “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision unless otherwise specified.

(c) Wherever in this Indenture action is required of the Corporation, it shall be taken by resolution of its Board and evidenced by a Certified Resolution. Wherever action is to be taken upon order, certificate, request, requisition, notice or other statement of the Corporation, such action shall be evidenced by an Officers Certificate.

(d) The definitions of all documents referred to herein shall include all permitted amendments and supplements thereto and the definitions of any person or entity shall include his, her or its successors and assigns.

## **ARTICLE II. CONCERNING THE BONDS.**

### **SECTION 2.1      Authorization of Bonds and Additional Bonds.**

There shall be initially issued hereunder the “Special Limited Revenue Bonds (Taxable), Series of 2014 (Economic Development Program)” of the Corporation referred to herein as the 2014 Bonds, as described in Section 2.10, to provide funds to finance the Project.

Additional Bonds may also be issued under this Indenture pursuant to and subject to the terms and conditions of Article III hereof. The Additional Bonds shall be issued in such aggregate principal amounts, for such purposes, shall be in such form and denomination, shall bear such dates, shall be numbered, and shall mature and bear interest as shall be provided in the Supplemental Indenture executed in connection with the issuance thereof. Bonds may also be issued under this Indenture pursuant to Section 2.9 hereof in lieu of Bonds theretofore issued which have been mutilated, lost, destroyed or stolen.

### **SECTION 2.2      Place, Manner and Source of Payment of Bonds.**

The principal of and interest on the Bonds issued and to be issued hereunder, shall be payable as may be designated in the particular Bond issued or to be issued hereunder, in lawful moneys of the United States of America. The interest payable on the Bonds shall be payable by check of the Trustee mailed on the applicable Interest Payment Date to the Registered Owners of the Bonds as they appear on the registration books at the close of business on the regular Record Date for such Interest Payment Date; provided, however that interest on any Bond shall be payable by wire or bank transfer within the continental United States in immediately available funds to a Registered Owner if so requested in writing to the Trustee at least five (5) Business Days prior to the applicable Record Date, which request will remain in effect until revoked. The principal amount of a Bond and any redemption premium shall be paid to the Registered Owner thereof upon the surrender of a Bond at the designated corporate trust agency office of the Trustee. The principal of and interest on the Bonds and the redemption premium, if any, payable thereon in case of redemption shall be payable only out of the Pledged

Revenues of the Corporation and out of other money of the Corporation pledged for the payment thereof pursuant to this Indenture.

Any interest on any Bond which is payable, but is not punctually paid or provided for, on any Interest Payment Date (herein called “**Defaulted Interest**”) shall forthwith cease to be payable to the Registered Owner on the relevant regular Record Date, and such Defaulted Interest shall be paid, pursuant to Section 9.9 hereof, to the Registered Owner in whose name the Bond is registered at the close of business on a special record date to be fixed by the Trustee, such date to be not more than fifteen (15) nor less than ten (10) days (whether or not a Business Day) prior to the date of proposed payment. The Trustee shall, at the expense of the Corporation, 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 such Registered Owner, at his address as it appears in the bond register kept for such purposes by the Trustee on behalf of the Corporation, not less than fifteen (15) days prior to such special record date.

### **SECTION 2.3      Execution of Bonds.**

All Bonds issued hereunder shall be executed in the name of the Corporation by the manual or facsimile signature of its President or Vice-President, and a facsimile of the corporate seal shall be thereunto affixed and attested by the manual or facsimile signature of its Secretary or Assistant Secretary. Any such Bonds may be authenticated, issued and delivered notwithstanding that one or more of the officers signing such Bonds or whose facsimile signature shall be upon such Bonds or any thereof, shall have ceased to be such officer or officers at the time when such Bonds shall actually be delivered, and although at the nominal date of the Bonds any such person shall not have been such officer of the Corporation.

### **SECTION 2.4      Authentication of Bonds.**

No Bonds shall become valid or obligatory for any purpose until such Bonds shall have been authenticated by the Trustee, and such authentication by the Trustee upon any Bond shall be conclusive evidence and the only evidence that the Bond so authenticated has been duly authenticated and delivered hereunder and that the Registered Owner thereof is entitled to the benefit of the trust and lien hereby created.

### **SECTION 2.5      Transfer and Exchange of Bonds; Bond Register.**

The Corporation shall keep or cause to be kept at the corporate trust offices of the Trustee, books for the registration and transfer of Bonds in the manner provided herein so long as any of the Bonds shall remain Outstanding. The Corporation will register or transfer or cause to be registered or transferred therein, as hereinafter provided and under such reasonable regulations as it may prescribe, any Bonds entitled to be so registered or transferred upon presentation for such purpose. The Trustee is hereby appointed the registrar of the Corporation for the purpose of registering, exchanging and transferring the Bonds. The books kept pursuant to this Section 2.5 are herein referred to as the Bond Register.

Any Bond may be transferred at the designated corporate trust agency offices of the Trustee by the Registered Owner in person or by his attorney duly authorized in writing, and thereupon, the Corporation shall execute in the name of the transferee or transferees, and the

Trustee shall authenticate and deliver, a new Bond or Bonds, of the same series, of the same maturity, and for the same aggregate principal amount and interest rate, registered in such name or names as shall be requested.

All Bonds of any series issued in accordance herewith shall be exchangeable for like Bonds of different authorized denominations, in the same aggregate principal amount of the same series, maturing on the same dates and bearing the same rate of interest as the Bonds to be exchanged, all in the manner hereinafter provided. The Registered Owner of any Bond or Bonds, desiring to exchange such Bond or Bonds, shall submit such Bond or Bonds, accompanied by an appropriate instrument of transfer, at the designated corporate trust agency office of the Trustee, together with a written request for exchange, in form approved by the Corporation, setting forth the denomination or denominations thereof and the person or persons in whose name such Bond or Bonds are to be registered. Thereupon, the Trustee shall authenticate and deliver to the Registered Owner thereunto entitled a new Bond or new Bonds in authorized denominations aggregating the principal amount of the Bond or Bonds surrendered, maturing as to principal on the same date or dates, bearing the same rate of interest and bearing the same designation as to series. All Bonds issued in exchange for Bonds shall be dated on the date of authentication thereof and shall bear interest from (a) their dated date for any Bond authenticated prior to the Record Date with respect to the initial Interest Payment Date, or (b) otherwise from the Interest Payment Date that immediately precedes the date of authentication of the Bond, unless the date of authentication is an Interest Payment Date, in which case from the date of such authentication or unless the date of authentication is after any Record Date and before the following Interest Payment Date, in which case the Bond shall bear interest from the following Interest Payment Date.

**SECTION 2.6 Cost of Bond Registration, Transfer or Exchange; Miscellaneous Transfer and Exchange Provisions.**

Registration, transfer and exchanges of Bonds authorized under this Article shall be without expense to the Registered Owners of such Bonds, except that any taxes or other governmental charges shall be paid by the Registered Owner requesting any such transaction, as a condition precedent to the exercise of such privilege.

The Trustee shall not be required to issue or transfer any Bonds during a period beginning at the opening of business on the fifth (5th) day (whether or not a Business Day) next preceding any date of selection of Bonds to be redeemed and ending at the close of business on the day on which the applicable notice of redemption is given or to transfer any Bonds which have been selected or called for redemption in whole or in part.

All Bonds executed, authenticated and delivered in exchange for Bonds surrendered or upon the transfer of registered Bonds shall be valid obligations of the Corporation, evidencing the same debt as the Bonds surrendered, and shall be secured by the lien of this Indenture to the same extent as such surrendered Bonds.

The Trustee shall not be responsible for ensuring that any transfer restrictions or other securities law requirements have been complied with in connection with a transfer of the Bonds. The person seeking to transfer the Bonds shall supply any and all documentation

requested or required by the Corporation to evidence compliance with any transfer restrictions, including but not limited to, a certificate as to status, an investor letter or an opinion of counsel. Receipt by the Trustee of such documents, as requested by the Corporation, shall constitute conclusive evidence of the satisfaction of any transfer restrictions hereunder.

#### **SECTION 2.7            Ownership of Bonds.**

The Corporation and the Trustee may treat the Registered Owner of any Bond as the absolute owner of such Bond for all purposes whether or not such Bond shall be overdue, and neither the Corporation nor the Trustee shall be affected by any notice to the contrary. Any consent, waiver or other action taken by the Registered Owner of any Bond shall be conclusive and binding upon such Registered Owner, his heirs, successors or assigns, and upon all transferees of such Bond whether or not notation of such consent, waiver or other action shall have been made on such Bond or on any Bond issued in exchange therefor or upon registration or transfer thereof.

#### **SECTION 2.8            Temporary Bonds.**

Until Bonds in definitive form are ready for delivery, the Corporation may execute, and upon its request in writing the Trustee shall authenticate and deliver in lieu of any Bond thereof, and subject to the same provisions, limitations and conditions, one or more typewritten Bonds in temporary form, substantially of the tenor of the Bonds hereinbefore described and with appropriate omissions, variations and insertions. Such Bond or Bonds in temporary form may be for the amount of any authorized denomination or any multiple thereof, as the Corporation may determine. Until exchanged for Bonds in definitive form such Bonds in temporary form shall be entitled to the lien and benefit of this Indenture. Unless otherwise agreed with the Registered Owner of such temporary Bond, the Corporation shall, without unreasonable delay, prepare, execute and deliver to the Trustee, and thereupon, upon the presentation and surrender of any Bond or Bonds in temporary form, the Trustee shall authenticate and deliver, in exchange therefor, a Bond or Bonds in definitive form of the same series and the same maturity for the same aggregate principal amount as the Bond or Bonds in temporary form surrendered. Such exchange shall be made by the Corporation at its own expense and without making any charge therefor. Until such Bonds in definitive form are ready for delivery, the Registered Owner of one or more Bonds in temporary form may, with the consent of the Corporation, exchange the same, upon surrender thereof to the Trustee for cancellation, for Bonds in temporary form of like aggregate principal amount, of the same series and maturity and in authorized denominations.

#### **SECTION 2.9            Mutilated, Destroyed Lost or Stolen Bonds.**

Upon receipt by the Corporation and the Trustee of evidence satisfactory to both of them that any Outstanding Bond has been mutilated, destroyed, lost or stolen, and of indemnity satisfactory to both of them, then, the Corporation, in its discretion, may execute and thereupon the Trustee shall authenticate and deliver, a new Bond of the same series and same maturity and of like tenor in exchange and substitution for, and upon surrender and cancellation of, the mutilated Bond or in lieu of and in substitution for the Bond so destroyed, lost or stolen.

The Corporation may, for each new Bond authenticated and delivered under the provisions of this Section, require the payment of the expenses, including counsel fees, which may be incurred by the Corporation and the Trustee in connection therewith. In case any such mutilated, destroyed, lost or stolen Bond has become or is about to become due and payable, the Corporation, in its discretion, may, instead of issuing a new Bond, direct the payment thereof and the Trustee shall thereupon pay the same.

Any Bond issued under the provisions of this Section 2.9 in lieu of any Bond alleged to be destroyed, lost or stolen, shall constitute an original additional contractual obligation on the part of the Corporation whether or not the Bond so alleged to be destroyed, lost or stolen be at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Indenture with all other Bonds issued under this Indenture.

#### **SECTION 2.10      Terms of the 2014 Bonds.**

The 2014 Bonds shall be issued, in one or more series or subseries, in the aggregate principal amount of Twenty-Four Million Eight Hundred Forty-Four Thousand and Eighty-Nine Dollars (\$24,844,089).

The 2014 Bonds shall be issued substantially in the form attached hereto as Appendix A with appropriate additions, deletions and variations, shall be dated the date of closing, and shall be subject to redemption prior to maturity in the manner and subject to the conditions therein and herein stated. The 2014 Bonds shall bear interest from August 25, 2014 or from the most recent Interest Payment Date to which interest has been paid or provided for on such 2014 Bonds, payable on the first day of each September commencing September 1, 2015 until payment of the principal amount thereof shall have been made or provided for upon redemption or at or after maturity, at the following annual rates of interest and shall mature as follows:

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Rate of Interest</u>
September 1, 2024	\$24,844,089	5.62%

The 2014 Bonds shall bear interest at the interest rate set forth above on the until maturity.

#### **SECTION 2.11      Authentication and Delivery of the 2014 Bonds.**

Upon the execution and delivery of this Indenture, the Corporation shall execute and deliver to the Trustee for authentication the 2014 Bonds and deliver it to or upon the order of the Corporation, signed by its President or Vice-President, but only upon receipt of the proceeds of the sale of the 2014 Bonds and of the following:

(a) A certified Corporation resolution authorizing the execution of this Indenture and the issuance of the 2014 Bonds;



- (b) Executed counterparts of this Indenture;
- (c) An opinion of Bond Counsel to the Placement Agent, addressed to the Trustee, as to the validity of the 2014 Bonds;
- (d) An opinion of Bond Counsel to the Tribe, addressed to the Trustee, to the effect that the 2014 Bonds when issued will be valid obligations of the Corporation enforceable in accordance with their terms;
- (e) A letter of appointment appointing Private Equity Management, Limited, as the investment manager with respect to the Annuity Investment; and
- (f) A Closing Statement signed by the President or Vice-President of the Corporation setting forth (i) the amount of the proceeds to be received by the Corporation from the sale of the 2014 Bonds for funding the purchase of the Annuity Investment and the development, acquisition, construction, and equipping of the Junction 18 Economic Development Project; (ii) the amounts to be paid or reserved for the costs and expenses of the financing; and (iii) the amounts to be deposited in the funds established under this Indenture.

**SECTION 2.12      Application of Proceeds of the Bonds; Establishment of Settlement Account.**

The proceeds of the 2014 Bonds shall be paid over to the Trustee and deposited by the Trustee in the "Settlement Account", which is hereby established. From the Settlement Account the Trustee shall make the payments, disbursements and deposits as set forth in the Closing Statement required by Section 2.11, including, inter alia, the amount of \$22,094,089 for the purchase of the Annuity Investment. Any reserves which shall be established in the Settlement Account shall be disbursed from time to time by the Trustee pursuant to further written directions of the President or Vice-President of the Corporation and any balance ultimately remaining in any such reserve shall, automatically, without any further action by the Corporation, be deposited in the Debt Service and Sinking Fund thirty (30) days after the date of closing on the Bonds. The Trustee is hereby authorized and directed to make such deposit at such time.

Proceeds of the Bonds in the amount as set forth in the Closing Statement required by Section 2.11, shall be transferred from the Settlement Account to the Project Fund created in Section 5.7 to be expended on Costs relating to the Junction 18 Development Project, all as more fully set forth in Section 5.7.

**SECTION 2.13      Identification Numbers.**

Any Bond of a series may bear such numbers, letters, or other marks of identification or designation, including "CUSIP" numbers, and may be endorsed with or have incorporated in the text thereof such legends or recitals with respect to transferability and may contain such provisions, specifications and descriptive words, not inconsistent in any case with the provisions of this Indenture, as may be determined by the Board of the Corporation and approved by the Trustee. Neither the Corporation nor the Trustee makes any representation as to

the accuracy or correctness of the “CUSIP” numbers printed on the Bonds or if used with any redemption.

### **ARTICLE III. ISSUANCE OF ADDITIONAL BONDS.**

#### **SECTION 3.1      Authority for Issuance.**

The Corporation may issue from time to time, and the Trustee shall authenticate, Additional Bonds for the purpose of providing all or part of the funds necessary to refund Bonds, including accrued and unpaid interest and redemption premium, if any, and all costs and expenses incidental to redemption.

#### **SECTION 3.2      Additional Bonds for Refunding.**

Prior to the issuance of Additional Bonds for refunding purposes, the Corporation shall deliver to the Trustee:

(a) A Supplemental Indenture executed by the Corporation providing for the issuance of a series of Additional Bonds and containing other necessary or proper terms and provisions which shall not be inconsistent with this Indenture or any previous Supplemental Indenture unless all Bonds are to be paid or redeemed;

(b) A Certified Resolution or Resolutions authorizing the payment or redemption of the Bonds to be refunded, the execution of the Supplemental Indenture and the issuance of and disposition of the proceeds of the Additional Bonds;

(c) Evidence satisfactory to the Trustee that notice of redemption has been properly given, or that provisions satisfactory to the Trustee have been made therefor, or that sufficient waivers have been duly filed in accordance with Section 6.2;

(d) An opinion of Counsel satisfactory to the Trustee approving the forms of said Supplemental Indenture, resolutions and other documentation, or such of them as may be required; stating that the same are in compliance with this Section 3.2; and expressing an opinion that the Additional Bonds when issued will be valid obligations of the Corporation enforceable in accordance with their terms issued in accordance with this Indenture, and that it is proper for the Trustee to authenticate the Additional Bonds; and

Such opinion of Counsel may be accepted by the Trustee as conclusive evidence that the requirements of this Section 3.2 have been complied with, and the Trustee shall thereupon be authorized to execute said Supplemental Indenture, to authenticate the Additional Bonds and to deliver the same to or upon the order of the President or Vice-President of the Corporation.

The proceeds of Additional Bonds issued for refunding purposes shall, after paying all costs and expenses incidental to the redemption and to the financing, be applied by the Trustee to the payment or redemption of the Bonds to be refunded.

**SECTION 3.3      Security for Bonds - Bonds on Parity - Exceptions.**

This Indenture creates and shall be and constitute a continuing, irrevocable and exclusive first lien upon, and pledge of, the Pledged Revenues to secure the full and final payment of the principal of and interest on all Bonds which may, from time to time, be executed, authenticated and delivered hereunder. All Additional Bonds issued from time to time under this Article III shall be on a parity with the 2014 Bonds and with all other Additional Bonds theretofore issued hereunder.

**SECTION 3.4      Subordinated Indebtedness.**

The Corporation may issue from time to time one or more series of subordinated indebtedness pursuant to the terms of a Supplemental Indenture or separate indenture or resolution for any lawful purpose of the Corporation (including the provision of working capital), such subordinated indebtedness to be in substantially such form as may be approved by the Corporation and specified in the instrument authorizing the same. The priority of payments of principal or redemption price and interest on such subordinated indebtedness shall explicitly be subordinate to such payments for the Bonds.

**ARTICLE IV.  
RESERVED**

**ARTICLE V.  
RATES AND CHARGES; REVENUES AND FUNDS.**

**SECTION 5.1      Corporation Account.**

The Corporation agrees to open and maintain one or more separate accounts or sub-accounts, in one or more banks or trust companies provided that, to the extent the bank or trust company is not the Trustee, the Corporation shall deliver to the Trustee a deposit account control agreement for such account or sub-accounts providing the Trustee control of such account in a form acceptable to the Trustee, each to be designated as its "Corporation Account". The Corporation will deposit Pledged Revenues of any Project Facility in the Corporation Account and pay Operating Expenses or other appropriate expenses of the Project Facility from such account. The Corporation shall transfer all Pledged Revenues held in the Corporation Account to the Trustee for deposit into Revenue Fund hereunder no less frequently than quarterly (by each March 31st, June 30th, September 30th and December 31st). The Corporation shall also transfer Pledged Revenues from the Corporation Account to the Trustee for deposit into Revenue Fund from time to time as necessary to allow the Trustee to make required transfers from the Revenue Fund to the Debt Service and Sinking Fund or the Bond Redemption and Improvement Fund. To the extent such funds are not necessary to make payments due on the 2014 Bonds or hereunder, such funds shall be released from the Trust Estate to the Corporation promptly following the Interest Payment Date. The moneys and investments held in the Corporation Account shall be deemed to be trust funds hereunder until expended by the Corporation, and shall form part of the Trust Estate. The Corporation shall not grant any liens on the moneys or investments in the Corporation Account to any other persons (other than the



Trustee). The Corporation shall invest the moneys in the Corporation Account only in Investment Securities.

## **SECTION 5.2            Rate Covenant; Revenue Fund.**

The Corporation covenants and agrees that it will at all times collect Pledged Revenues that will be sufficient, together with any interest, income and profits received from the investments of moneys in any Fund created under this Indenture and any uncommitted balances in the Bond Redemption and Improvement Fund, to provide an amount in each Fiscal Year equal to at least 100% of the annual Debt Service Requirement due in such Fiscal Year on all Bonds then Outstanding.

To the extent that any interest, income and profits received from the investment of moneys in any Fund under the Indenture and any uncommitted balances in the Bond Redemption and Improvement Fund are taken into account with respect to a particular Fiscal Year and are not already on deposit in the Revenue Fund, the Corporation shall direct the Trustee to transfer the amounts so taken into account to the Revenue Fund on or before the first day of such Fiscal Year.

The Corporation has named the Trustee as the Payee under the Annuity Investment and such direction is irrevocable until such time as the 2014 Bonds are no longer Outstanding. Payments received from the Annuity Investment shall be deposited into a fund held by the Trustee, designated as the "Revenue Fund", which is hereby created. Upon receipt of the Pledged Revenues from or in connection with any Project Facility, the Corporation shall deposit them into the Corporation Account as provided in Section 5.1 hereof and, upon payment of Operating Expenses as set forth therein, shall transfer such Pledged Revenues to the Revenue Fund. On August 30, 2024, the Corporation shall make a payment of \$2,250,000, representing the total amount deposited into the Project Fund at Closing to fund the Junction 18 Development Project, such payment, along with Annuity Investment Earnings, shall be used to pay the principal of and interest on the Bond on such date. To the extent such payment is not made as of August 30, 2024, in whole or in part, such deficiency shall be netted from the payments otherwise to be received by the Corporation or the Trustee (after payment of the principal of and interest on the Bonds) from the Annuity Provider, as set forth in the instrument relating to the Annuity Investment.

The moneys in the Revenue Fund shall be held by the Trustee in trust and applied as provided and in the order of priority as set forth in this Indenture. Pending such application, all moneys in the Revenue Fund shall be subject to a lien and charge in favor of the Registered Owners of the Bonds issued and Outstanding under the Indenture, and for the further security of such Registered Owners, until paid out as herein provided.

The moneys deposited from time to time in the Revenue Fund shall be held in trust and applied by the Trustee, without further authorization from the Corporation except as hereinafter set forth, in order of priority as follows:

(a) For the purpose of making deposits required to be made in the Debt Service and Sinking Fund pursuant to Section 5.4; and

(b) For the purpose of making deposits in the Bond Redemption and Improvement Fund pursuant to Section 5.6.

**SECTION 5.3 Payment of Operating Expenses of the Corporation.**

The Corporation shall pay its Operating Expenses from amounts held in the Corporation Account and then from moneys transferred by the Trustee, upon requisitions of the Corporation, from the Revenue Fund as provided in Section 5.2. Each such requisition shall contain an itemized statement of the Operating Expenses of the Corporation in reasonable detail by category used in the annual budget and shall certify that the aggregate of the amounts then requisitioned and those previously requisitioned during the then current Fiscal Year do not exceed the amount of the then current annual budget. The Corporation covenants and agrees that all moneys so transferred by the Trustee to the Corporation shall be used exclusively for the purposes requisitioned. The Trustee shall have no duty to verify or investigate such uses.

**SECTION 5.4 Withdrawals from Revenue Fund; Deposits to Debt Service and Sinking Fund.**

There is hereby created a special fund known as the “Debt Service and Sinking Fund”, which shall be held in trust by the Trustee until applied as hereinafter provided. Within the Debt Service and Sinking Fund there is hereby created a Bonds Account. The Trustee shall make the following withdrawals from the Revenue Fund from the money available therein and deposit such amounts into the Debt Service and Sinking Fund Bonds Account:

(a) On August 27, 2015 and on the 27th day of each August thereafter, so long as any of the 2014 Bonds shall remain Outstanding, an amount which, together with amounts on deposit and available for payment of interest on 2014 Bonds at the time in the Debt Service and Sinking Fund Bonds Account, is sufficient to pay the annual installment of interest due on the 2014 Bonds on the next succeeding Interest Payment Date; and

(b) On August 27, 2016 and on the 27th day of each August thereafter until and including August 27, 2023, so long as any of the 2014 Bonds shall remain Outstanding, an amount of \$250,000 from Pledged Revenues produced by the Economic Development Projects (to the extent such funds are available), and on August 27, 2024, so long as any of the 2014 Bonds shall remain Outstanding, an amount which, together with amounts on deposit and available for payment of principal on the 2014 Bonds in the Debt Service and Sinking Fund Bonds Account, is sufficient to pay the principal due on the 2014 Bonds on the Principal Payment Date. To the extent payment of principal on the 2014 Bonds has not been paid in full on the Maturity Date, the Trustee shall make withdrawals from the Revenue Fund on August 27, 2025 and on the 27<sup>th</sup> day of each August thereafter until the 2014 Bonds shall no longer be Outstanding.

In the case of the issuance of Additional Bonds under Article III, the Trustee shall make additional deposits to the Debt Service and Sinking Fund on such date or dates of each year as may be provided in the Supplemental Indenture executed in connection with the issuance of such Additional Bonds, in amounts sufficient to provide for the payment of interest on and the

principal of such Additional Bonds as and when such interest and principal shall become due and payable in accordance with the applicable Supplemental Indenture.

In the event amounts held in the Revenue Fund are insufficient to fully fund the Debt Service and Sinking Fund Bonds Account with respect to the 2014 Bonds, the Trustee shall without further instruction from the Corporation transfer the requisite amounts from the Bond Improvement and Redemption Fund to satisfy any deficiency with respect to the 2014 Bonds.

The money and investments from time to time held in the Debt Service and Sinking Fund shall be held in trust by the Trustee for the benefit of the Registered Owners from time to time of the Bonds entitled to be paid therefrom, and shall be and hereby are irrevocably pledged for the payment of the principal of and interest on said Bonds. The Trustee, without further direction from the Corporation, shall be authorized to pay from the Debt Service and Sinking Fund the principal of and interest on the Bonds in accordance with the terms and conditions of Section 5.5.

**SECTION 5.5      Debt Service and Sinking Fund-Payment of Debt Service.**

The money held from time to time in the Debt Service and Sinking Fund shall be applied by the Trustee without further direction from the Corporation to the payment of the principal of and interest on the Bonds as follows:

(a) The Trustee shall pay all interest on and principal of the Bonds as and when the same shall become due and payable.

(b) As and when the moneys are deposited in the Debt Service and Sinking Fund pursuant to Section 5.4(b) the Trustee shall set aside such moneys to pay the principal due on the 2014 Bonds on September 1, 2024 and the interest due on the 2014 Bonds on the first business day of each September commencing on September 1, 2015 in accordance with the schedule attached to the 2014 Bonds as Schedule I.

In the event of issuance of Additional Bonds under Article III, the Supplemental Indenture under which said Additional Bonds are issued may provide for the purchase and redemption of such Additional Bonds out of additional moneys to be deposited in the Debt Service and Sinking Fund.

The Trustee shall on the last Business Day of each Fiscal Year, without any further direction, transfer to the Bond Redemption and Improvement Fund any excess amounts remaining in the Debt Service and Sinking Fund not required to pay or provide for prior installments of the principal of or interest on Outstanding Bonds, unless the Corporation shall direct the Trustee in writing to transfer such excess amounts to the Revenue Fund or to retain the same in the Debt Service and Sinking Fund.

**SECTION 5.6      Bond Redemption and Improvement Fund.**

There is hereby created a special fund to be known as the "Bond Redemption and Improvement Fund" which shall likewise be held in trust by the Trustee until applied as

hereinafter provided. The Trustee shall, after making provision for deposits required to be made under Sections 5.3 and 5.4, withdraw from the Revenue Fund and deposit in the Bond Redemption and Improvement Fund on the last Business Day of each Fiscal Year, commencing with the Fiscal Year ending September 30, 2015 all the uncommitted and unencumbered moneys at the time remaining on deposit in the Revenue Fund.

Whenever there shall be a deficiency in the Revenue Fund or the Debt Service and Sinking Fund resulting in the inability of the Trustee to make deposits or payments required by Sections 5.3, 5.4 or 5.5, the Trustee shall forthwith, without instructions from the Corporation, transfer a sufficient amount or amounts from the Bond Redemption and Improvement Fund into the fund or funds in which there is such deficiency to make good the entire amount of such deficiency. If there shall be no such deficiency in any of said funds, the money in the Bond Redemption and Improvement Fund in excess of \$10,000, shall be paid out from time to time by the Trustee upon written orders or letters of instruction signed on behalf of the Corporation by its President or Vice-President, containing the information set forth in the Form of Requisition set forth in Exhibit B attached hereto, upon which the Trustee may conclusively rely, for any one or more of the following purposes:

- (a) To purchase or redeem Bonds in accordance with Article VI hereof;
- (b) To pay or provide for the costs of any other proper purpose of the Corporation with respect to any Project Facilities; and
- (c) To pay, as and when the same shall become payable, any other debts, liabilities and obligations of the Corporation with respect to any Project Facility (including Operating Expenses), the Bonds or this Indenture for which provision for payment has not otherwise been made.

Whenever Bonds are purchased or called for redemption pursuant to this Section 5.6, any money which at the time is set aside in the Debt Service and Sinking Fund for the payment of the principal of or interest on the Bonds which are purchased or called for redemption shall, to the extent necessary, be withdrawn from the Debt Service and Sinking Fund and applied, together with the other available moneys, to the payment of the purchase or redemption price and accrued interest.

#### **SECTION 5.7      Project Fund.**

(a) There is hereby created a Project Fund, including necessary accounts or subaccounts, which shall be held by the Trustee and shall consist of funds transferred from the Settlement Account to the Project Fund pursuant to Section 2.12. The moneys in the Project Fund shall be held by the Trustee in trust, and shall be applied to the payment of the Costs of the Junction 18 Development Project or any other Economic Development Project.

The Trustee shall have no duty to inspect or oversee the construction of any Project Facility or to verify the truthfulness or accuracy of the certifications or directions of the Corporation regarding any disbursements for Costs hereunder.

Upon the occurrence and continuance of an Event of Default or an event which with notice or lapse of time would constitute an Event of Default, amounts on deposit in the Project Fund shall not be disbursed, but shall instead be applied to the payment of debt service or redemption price of the 2014 Bonds to the extent other funds are not available to make such payments.

(b) Payments shall be made from the Project Fund by the Trustee for Costs of the Junction 18 Development Project upon the order of the Corporation, and receipt of a requisition (the form of which is attached hereto as Appendix B) signed by the President or the Vice-President of the Corporation and by its Secretary, and approved by the Developer, stating with respect to each payment to be made (i) the requisition number; (ii) the name of the person, firm or corporation to whom payment is due; (iii) the amount to be paid; (iv) in reasonable detail the purpose for which the obligation was incurred; (v) that the obligation for which payment is requested has been properly incurred by the Corporation, is a proper charge against the Project Fund, is currently due and unpaid and has not been the basis of any paid requisition; and (vi) that with respect to the amount covered in the requisition, there are no vendors, mechanics, or other liens, bailment leases or conditional sale contracts which should be satisfied or discharged before the payment as requisitioned therein is made, or which will not be discharged by such payment.

#### **SECTION 5.8      Investment of Funds and Securing of Funds.**

(a) The money and investments in the Revenue Fund, Debt Service and Sinking Fund, Corporation Account, the Bond Redemption and Improvement Fund and the Project Fund created herein, shall be held by the Trustee until disbursed as authorized by this Article V in trust for the benefit of the Registered Owners from time to time of the Bonds issued and Outstanding under this Indenture, provided, however: (i) that money from time to time deposited and held in the Debt Service and Sinking Fund shall be held in trust by the Trustee for payment to the respective Registered Owners from time to time of the particular Bonds for the payment of which said money has been deposited in said fund; and (ii) that whenever Bonds shall be selected for redemption out of money on deposit in the Debt Service and Sinking Fund or Bond Redemption and Improvement Fund, the money in the applicable fund necessary to pay principal, and interest to the date fixed for redemption on the Bonds selected for redemption shall be held by the Trustee in trust for the payment to the respective Owners of the particular Bonds so selected for redemption.

(b) The Trustee agrees to secure (to the extent not insured) all monies held by it hereunder and to require the securing of any monies held in the funds established hereunder which are deposited in another bank or trust company. The Trustee shall, upon the written instructions of the Corporation, deposit or invest in Investment Securities as defined herein, funds from time to time held in the Revenue Fund, Debt Service and Sinking Fund, Corporation Account, the Project Fund and Bond Redemption and Improvement Fund which are not currently required to be applied to the current obligations of the Corporation or to the payment or redemption of principal of or the payment of interest on the Bonds, provided that such investments shall be subject to withdrawal, or shall mature or be subject to redemption at the option of the holder, as the case may be, not later than the date upon which the proceeds will be required for such payment or redemption. In the absence of any written directions from the



Corporation, any funds held by the Trustee shall be initially invested in the First American Funds Government Obligation Class D Fund. All interest and profit shall be deposited in the fund in which it is earned or, upon written direction of the Corporation, transferred to the Revenue Fund. The Trustee is hereby authorized to sell such investments from time to time as cash is required to purchase or redeem Bonds or for other purposes for which the fund was created.

(c) Such instructions of the Corporation, on which the Trustee may conclusively rely, may be given by Certified Resolutions or Officers' Certificates filed with the Trustee and may give general instructions or authorize specific transactions as the Trustee shall require.

(d) The securities purchased and deposits made with the money in each such Fund shall be deemed a part of such Fund and, for the purpose of determining the amount of money in such Fund, the securities therein shall be valued annually as of the end of the Fiscal Year at their market value in accordance with the methods set forth in the definition of Investment Securities herein.

(e) In no event shall the Trustee be liable for the selection of investments or for investment losses incurred thereon. The Trustee shall have no liability in respect of losses incurred as a result of the liquidation of any investment prior to its stated maturity or the failure of the Corporation to provide timely written investment direction. The Trustee may purchase or sell to itself or any affiliate, as principal or agent, investments authorized by this Agreement. The Trustee may conclusively rely upon such written direction from the Corporation as to both the suitability and legality of the directed investments. Although the Corporation acknowledges that to the extent the regulations of the Comptroller of the Currency or other appropriate regulatory entity grant it the right to receive brokerage confirmations on transactions as they occur, and the Corporation recognizes that it may obtain brokerage confirmations or written statements containing comparable information at no additional cost, the Corporation specifically waives receipt of confirmations to the extent permitted by law. The Corporation further agrees that that confirmations are not required to be issued by the Trustee for each month in which a monthly statement of investments is provided to it. No statement needs to be provided, however, for any Fund and Account for any month in which no investment activity occurred during such month in such Fund and Account.

#### **SECTION 5.9      Discontinuance of Funds-Redemption of Bonds.**

If the Corporation shall desire to redeem and pay all Outstanding Bonds, and the money in any one or more of the Funds established hereunder, together with other available funds, is sufficient to effect such redemption or payment, including in addition to principal and interest, redemption premium, and cost of redemption, said funds, or any one or more of said funds as the case may be, may be discontinued and the money therein applied toward such redemption or payment.

Any balance remaining in any of the Funds established hereunder, after all the Bonds shall have been paid or provision for their payment shall have been made, shall be applied by the Trustee as the Corporation may direct in writing.

## **SECTION 5.10      Cancellation of Bonds.**

Subject to Article XII hereof, all Bonds which shall be paid, purchased or redeemed by the Trustee or the Corporation pursuant to the terms and provisions of this Indenture, or of any Supplemental Indenture, shall be cancelled and destroyed by the Trustee in accordance with applicable law and regulations and the Trustee's policies and procedures, and the Trustee shall furnish the Corporation with its evidence of destruction.

## **ARTICLE VI. REDEMPTION OF BONDS.**

### **SECTION 6.1      Bonds Subject to Redemption.**

The Bonds issued or to be issued hereunder shall be subject to redemption at such time or times and from time to time, in such order, at such redemption prices, upon such notice, and upon such terms and conditions as may be expressed in the particular Bond, or, as the case may be, in this Indenture or in the pertinent Supplemental Indenture. If less than all of the Bonds are to be called for redemption, such Bonds shall be redeemed in the maturities or portion of each maturity designated by an Officers' Certificate, or if no such certificate is provided, in inverse order of maturity. If less than an entire maturity of Bonds is to be redeemed, the Bonds to be redeemed within such maturity will be selected by the Trustee by lot or in any customary manner determined in the sole discretion of the Trustee.

### **SECTION 6.2      Notice of Redemption.**

When Bonds are to be optionally redeemed under this Indenture, the Corporation shall give the Trustee at least sixty (60) days' notice of the date fixed for redemption, or such shorter period as may be acceptable to the Trustee. The Corporation shall not be required to give the Trustee any notice with respect to Bonds called for mandatory redemption and the Trustee shall take all steps necessary to call Bonds for mandatory redemption as provided herein. When Bonds are called for redemption, the Trustee shall cause a notice to be deposited in the United States mail first class, postage prepaid, not more than forty-five (45) days nor less than thirty (30) days prior to the redemption date addressed to the Registered Owners of the Bonds called for redemption, at the addresses appearing in the records kept by the Trustee. Such Notice shall be given in the name of the Corporation, shall identify the Bonds to be redeemed by CUSIP number, date of issue, interest rate, maturity date and any other identifying information (and in the case of a partial redemption of any Bonds, the respective principal amounts thereof to be redeemed, the certificate numbers, and CUSIP numbers if applicable, of the Bonds to be redeemed which may, if appropriate, be expressed in designated blocks of numbers), shall specify the redemption date, the redemption price, and the Trustee's name and address and shall state that on the redemption date the Bonds called for redemption will be payable at the designated corporate trust offices of the Trustee and that from the date of redemption interest will cease to accrue; provided, however, that the Registered Owners of all Bonds to be redeemed may file written waivers of notice with the Trustee, and if so waived, such Bonds may be redeemed and all rights and liabilities of the Owners shall mature and accrue on the date set for

such redemption, without the requirement of written notice. Any defect in or failure to give such notice with respect to any particular Bond or Bonds shall not affect the validity of any such redemption of other Bonds.

If at the time of the notice of optional redemption the Corporation shall not have deposited with the Trustee money sufficient to redeem all the Bonds called for redemption, such notice shall state, unless the Corporation specifically directs otherwise in writing, that it is conditional, that is, subject to the deposit of the redemption money with the Trustee not later than the redemption date, and such notice shall be of no effect unless such money is so deposited.

### **SECTION 6.3      Payment of Redemption Price.**

Whenever Bonds are to be redeemed, all redemption costs, including the amounts necessary to pay all costs of required mailing and any other costs incidental to the redemption, and to pay the principal and all interest accrued and to accrue to the date fixed for redemption, shall be set aside and held in separate trust by the Trustee exclusively for such purposes. Notice having been given in the manner hereinbefore provided, or written waivers of notice having been filed with the Trustee prior to the date set for redemption, the Bonds so called for redemption shall become due and payable on the redemption date so designated and interest on such Bonds shall cease from the redemption date whether or not the Bonds shall be presented for payment. The principal amount of all Bonds or portions thereof so called for redemption, together with the accrued and unpaid interest thereon to the date of redemption, shall be paid by the Trustee mentioned in the Bond called for redemption, upon presentation and surrender thereof in negotiable form. If any Outstanding Bond is redeemed in part, the Trustee shall authenticate and deliver to the Registered Owner thereof a new Bond or Bonds of any authorized denomination as requested by such Registered Owner in an aggregate principal amount equal to the principal amount of the Outstanding Bond not called for redemption.

## **ARTICLE VII. INSURANCE.**

### **SECTION 7.1      Permanent Insurance.**

The Corporation covenants that so long as any of the Bonds shall remain Outstanding, it will insure any physical structures of any Project Facility against loss or damage by fire and such other risks as are generally included in extended coverage insurance, excepting only during the periods and to the extent that the Corporation or contractors shall carry builders risk or other insurance during construction. The policy or policies of such permanent insurance shall be issued by a responsible insurance company or companies authorized and qualified to do business under the laws of the State, in such reasonable amounts as is usually carried for like properties and as shall be recommended by an Insurance Consultant. A copy of the Insurance Consultant's written recommendation regarding insurance coverage shall be provided to the Trustee on request. All such insurance policies shall be written in the names of the Trustee and the Corporation, as their interests may appear, and the proceeds of any and all such insurance shall be paid to the Trustee as security for the Bonds issued and to be issued hereunder until paid



out as hereinafter provided. All policies shall provide for prompt notification in writing to the Trustee at least 30 days prior to cancellation of such policy. The Corporation annually shall certify its compliance with the provisions of this Article.

The Corporation covenants that it will file promptly with the Trustee either the policies and endorsements from time to time issued by the insurance company or companies, or proper memoranda of insurance, and as policies or endorsements are renewed from time to time the new policies or renewal endorsements, or memoranda thereof. If the Corporation shall at any time fail to maintain the required permanent insurance upon lapse of builders risk or other insurance carried during construction, or upon lapse of any permanent insurance or otherwise, the Trustee may, but shall be under no duty to do so, contract for the required insurance and require the Corporation to pay the insurance premiums.

## **SECTION 7.2      Insurance During Construction.**

The Corporation covenants to maintain or to require the contractors to maintain during the construction of any Project Facility, insurance against loss or damage by fire and lightning and other risks included in extended coverage, under separate insurance policies with builders risk and extended coverage endorsements, issued by responsible insurance companies authorized and qualified to do business in the State. Such policies shall be issued in such reasonable amounts as is usually carried for like work and materials covered by the construction contracts and as shall be required by the plans and specifications for the applicable Project Facility. Each such policy shall be written in the names of the Trustee, the Corporation and the contractor, as their interests may appear. The amount allocable to the loss suffered by the Corporation shall be deposited in the Corporation Account for application toward the completion of the Project Facility. The Corporation covenants to file each such policy, or a proper memorandum of insurance, with the Trustee. If any such insurance shall expire prior to completion and the maintenance of permanent insurance under Section 7.1, the Corporation covenants to file with the Trustee a proper renewal endorsement or memorandum thereof. If the proceeds of permanent insurance shall be applied as provided in subdivision (b) of Section 7.3 under construction contracts without additional financing, the Corporation shall maintain, or cause contractors to maintain, insurance during construction as above provided.

## **SECTION 7.3      Damage to or Destruction of the Project Facilities; Application of Insurance Proceeds.**

If any of the buildings, structures, additions or capital projects of the Project Facility shall be wholly or partially destroyed by fire or other casualty covered by permanent insurance, the Corporation covenants and agrees to take all such actions and do all such things as may be necessary to enable recovery to be made upon the policy or policies of insurance covering the risk to the end that all proceeds of insurance may be expeditiously collected.

The proceeds of permanent insurance shall be applied, subject to the provisions of this Section, to the reconstruction, restoration, replacement or repair of the damaged or destroyed property, or to the acquisition or construction of a Project Facility or to the redemption or purchase of Bonds as follows:

(a) Deposit in Corporation Account. If the Corporation shall by resolution determine to apply all or part of said proceeds to the reconstruction, restoration or repair of the damaged property or to the construction or acquisition of a Project Facility without the issuance of Additional Bonds in connection therewith, said proceeds or the portion thereof to be so applied shall be deposited in the Corporation Account and disbursed by the Trustee from time to time upon requisitions signed by the President or Vice-President of the Corporation, stating the amount to be paid and designating the payee and certifying that the payment is due and payable for the reconstruction, restoration, replacement or repair of the damaged or destroyed property or for the construction or acquisition of a Project Facility, provided, however, that if the Corporation shall certify to the Trustee that the amount to be so applied from said insurance proceeds is not more than \$500,000, then the Trustee may pay over to the Corporation such amount or amounts of said insurance proceeds, not exceeding \$500,000, as may be requested upon receipt (which shall be a complete release to the Trustee) stating that the amounts so paid over will be applied toward the reconstruction, restoration, replacement or repair of the damaged or destroyed property or toward the construction or acquisition of a Project Facility.

(b) Deposit in Bond Redemption and Improvement Fund. All proceeds of permanent insurance not applied as hereinabove authorized shall be transferred to the Trustee, if not paid directly to the Trustee, deposited in the Bond Redemption and Improvement Fund, and shall be applied to the optional redemption of Bonds at the earliest practicable redemption date.

Nothing in this Section shall be construed to relieve the Corporation under this Indenture from its obligation to cause the Project Facility to be maintained in good repair, working order and condition.

#### **SECTION 7.4      Other Insurance.**

The Corporation covenants that it will at all times cause its officers and employees handling its funds to be bonded in adequate amounts by responsible bonding companies. The Corporation further covenants that so long as any of the Bonds are Outstanding it will maintain public liability, including bodily injury and property damage insurance, with responsible insurance companies in such amounts as ordinary and customary and naming the Trustee as an additional insured as its interest may appear.

#### **SECTION 7.5      Miscellaneous.**

All insurance policies shall be open to the inspection of the Registered Owners of the Bonds and their representatives at all reasonable times. The Trustee is hereby authorized in its own name to demand, collect, sue and receive for the insurance money which may become due and payable under any policies payable to it. Any appraisal or adjustment of any loss or damage and any settlement or payment of indemnity therefor, which may be agreed upon between the Corporation and any insurer, shall be evidenced to the Trustee by an Officers' Certificate and may be assented to and accepted by the Trustee. The Trustee may rely upon such certificate as conclusive, and shall in no way be liable or responsible for the collection of insurance moneys in case of any loss or damage.

**ARTICLE VIII.**  
**PARTICULAR COVENANTS OF THE CORPORATION.**

**SECTION 8.1      Payment of Bonds.**

The Corporation covenants that it will promptly pay, but only out of its Pledged Revenues and any other available moneys as provided in this Indenture, the principal of and interest on every Bond issued and to be issued hereunder and secured hereby at the place and on the dates and in the manner specified herein and in said Bonds according to true intent and meaning thereof.

**SECTION 8.2      Maintenance of Existence - Operation of Project Facilities.**

The Corporation will at all times maintain its corporate existence and its rights, powers, franchises, permits and licenses as necessary to own the Annuity Investment and any Investment Securities and own and operate any Project Facilities.

**SECTION 8.3      No Impairment of Registered Owners Rights.**

The Corporation covenants and agrees that so long as any of the Bonds secured hereby are Outstanding, none of its Pledged Revenues shall be used for any purpose other than as provided in this Indenture, and that no contract or contracts shall be entered into or any action taken by which the rights of the Trustee or of the Registered Owners are materially impaired or diminished.

**SECTION 8.4      Further Action.**

The Corporation covenants that it will, from time to time, execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the purpose of this Indenture.

**SECTION 8.5      Sale and Encumbrance of Facilities.**

The Corporation covenants that as long as the Bonds or any of them shall be Outstanding, it will not sell or otherwise dispose of any Project Facility or any part thereof, or any of its Pledged Revenues, except as in this Indenture otherwise permitted, and that it will promptly pay or contest any liens or judgments constituting liens on the property which may be filed against it. The Corporation may, however, from time to time, sell or permit the sale of any machinery, fixtures, apparatus, tools, instruments, or other movable property or any materials used in connection therewith which are obsolete or no longer needed or useful in connection with the operation and maintenance of the Project Facilities, and the proceeds thereof shall be applied to the replacement of the property so sold or disposed of or shall be deposited in the Bond Redemption and Improvement Fund.

**SECTION 8.6            Advances by Trustee.**

In case of failure by the Corporation to perform or cause the performance of any of the covenants contained in Sections 7.1, 7.2 or 8.1, the Trustee may, but shall be under no duty so to do, pay or make advances to perform the same whenever in its judgment the interests of the Registered Owners so require; and the Corporation covenants and agrees to pay to the Trustee at once all sums so paid or advanced, together with interest thereon at an annual rate equal to the Prime Rate, and the Trustee shall have a lien for such payments or advances on any funds held by it prior to that of the Registered Owners.

**SECTION 8.7            No Extension of Time for Payment of Interest.**

In order to prevent any accumulation of claims for interest after maturity, the Corporation covenants and agrees that it will not directly or indirectly extend or assent to the extension of time of payment of any claim for interest on any of the Bonds and will not, directly or indirectly, be a party to or approve any such arrangement by purchasing or funding such claims for interest or in any other manner. In case any such claim for interest shall be extended or funded, such claim for interest shall not be entitled in case of any default hereunder, to the benefit or security of this Indenture except subject to the prior payment in full of the principal of all Bonds issued and Outstanding hereunder, and of all claims for interest which shall not have been so extended or funded.

**SECTION 8.8            Employment of Accountant-Annual Audit.**

The Corporation covenants continuously to employ an Accountant to perform an annual examination of the records and accounts of the Corporation relating to the Bonds and any Project Facilities, and the Corporation shall furnish to the Trustee, not later than two hundred seventy (270) days after the close of each Fiscal Year, its financial statements for such Fiscal Year and the Accountant's report of his examination. For the purpose of such annual statements and reports the Corporation may adopt a Fiscal Year other than as defined herein as may be convenient for the proper management and operation of the Project Facilities. The Accountant shall report among other things upon the application of the Corporation Account during the period of construction of any Project Facility, the maintenance of Funds as required by Article V, the investment of Funds, and compliance with all provisions of this Indenture, to the extent within the scope of the audit. Upon written request the Corporation shall furnish copies of such statements and reports to any Bondholder, and the Trustee shall exhibit to any Bondholder requesting inspection thereof the copies of any such statements and reports on file with it. The Trustee shall not be under any duty with respect to any statements and reports filed with it except to retain the same in its files and to exhibit the same to any Bondholder requesting inspection thereof.

**SECTION 8.9            Annual Budgets.**

The Corporation covenants that it will file annually with the Trustee for the accounting period ending September 30, 2015 and each September 30th thereafter or such other annual accounting period as the Corporation may select, an annual budget setting forth the estimated Operating Expenses of the Corporation relating to any Project Facility, Debt Service

Requirements, other expenses, estimated sources of income other than Pledged Revenues and the estimated Pledged Revenues to be collected. The Corporation shall not make any payment or requisition for Operating Expenses in excess of the amount of the annual budget then in effect. Any budget may be amended or supplemented at any time, but such amended or supplement budget shall not supersede any adopted annual budget until it shall have been authorized by a Certified Resolution and placed on file with the Trustee.

#### **SECTION 8.10      Financing Statements.**

The Corporation represents that it has filed or will promptly file a financing statement with the Secretary of the State pursuant to the provisions of the Tribe and South Dakota Uniform Commercial Code, as amended, with copy to the Trustee, covering the Trust Estate pledged as security for the Bonds issued and from time to time Outstanding under the Indenture and supplements thereto or such of said pledged properties as shall be subject to the provisions of said Code. The Corporation hereby agrees to execute and file during each five-year period as required by said Code, as amended, continuation statements in such form as shall be prepared by the counsel for the Corporation, which continuation statements the Corporation covenants and agrees to have prepared and filed within the periods required by said Code, provided, however, that such filing of continuation statements may be dispensed with in the event that the Corporation shall file with the Trustee an opinion of its counsel that continuation statements are no longer required under the provisions of said Code as further amended. The Trustee shall provide notice 60 days prior to the date required for a continuation statement to the Corporation; if none is provided by 30 days prior to such date, the Trustee shall file a continuation statement (prepared by Counsel), the cost of which shall be paid by the Corporation.

### **ARTICLE IX. DEFAULTS AND REMEDIES.**

#### **SECTION 9.1      Events of Default; Acceleration.**

In case one or more of the following events, in this Indenture referred to as “Events of Default”, shall happen, that is to say: if,

(a) Payment of the principal of any of the Bonds shall not be made when the same shall become due and payable at maturity, upon redemption or otherwise; or

(b) Payment of any installment of interest shall not be made when the same shall become due and payable; or

(c) A bankruptcy proceeding shall be commenced by or against the Corporation, or Project Facility shall be the subject of an order for relief under the federal Bankruptcy Code (11 U.S.C.), or an order or decree shall be entered appointing a receiver or any Project Facility or any part thereof or of the revenues thereof with the consent or acquiescence of the Corporation or any Project Facility, or if such order or decree, having been entered without the acquiescence or consent of the Corporation, shall not be vacated or discharged or stayed on appeal within thirty (30) days after entry; or



(d) The Corporation shall default in due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Bonds, in this Indenture or any Supplemental Indenture on the part of the Corporation to be performed, and such default shall continue for thirty (30) days after written notice specifying such default and requiring the same to be remedied shall have been given to the Corporation by the Trustee, which may give such notice in its discretion and shall give such notice at the written request of the Registered Owners of not less than twenty-five percent (25%) in principal amount of the Bonds then Outstanding;

Then, in any such case, subject to Section 9.2, the Trustee may, and upon written request of the Owners of twenty-five percent (25%) in principal amount of the Bonds then Outstanding, shall, by notice in writing delivered to the Corporation, declare the principal of all Bonds then Outstanding to be due and payable immediately, and upon such declaration the said principal, together with the interest accrued thereon, shall become due and payable immediately at the place of payment provided therein, anything in this Indenture or in said Bonds to the contrary notwithstanding. Upon such declaration, the Trustee shall notify the Owners of such principal, together with the interest accrued thereon, becoming due and payable immediately.

Wherever in this Article IX the word "Trustee" is used, it shall be understood to mean and include any trustee appointed by an instrument or instruments signed by Owners of twenty-five percent (25%) in aggregate principal amount of Bonds Outstanding and filed with the Trustee hereunder.

## **SECTION 9.2      Legal Proceedings by Trustee.**

Upon the happening of any Event of Default specified in Section 9.1 and its continuance for the period, if any, specified in said Section, then, in every such case the Trustee, in its discretion may, and upon the written request of the Owners of twenty-five percent (25%) in principal amount of the Bonds then Outstanding, and upon receipt of indemnity to its satisfaction against the fees, costs, expenses and liabilities incurred or to be incurred therein or thereby, shall, in its own right:

(a) By mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Registered Owners, including, inter alia, the right to require the Corporation to institute a suit, action or proceeding with respect to the Annuity Investment or any Project Facility revenues or to require the Corporation to carry out any other agreements with or for the benefit of the Registered Owners;

(b) By action or suit in equity require the Corporation to account as if it were the trustee of an express trust for the Registered Owners; or

(c) By action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Registered Owners.

Provided however, the Trustee shall take no actions under this Section to the extent the Event of Default exists solely pursuant to Section 9.1(a), if the Corporation has paid at least seventy-five (75%) percent of the principal and interest due on the 2014 Bonds as of the Maturity Date.

### **SECTION 9.3      Discontinuance of Proceedings.**

In case any proceeding taken by the Trustee on account of any default shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every case the Corporation, the Trustee and the Registered Owners shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Trustee shall continue as though no such proceeding had been taken.

### **SECTION 9.4      Registered Owners May Direct Proceedings.**

Anything in this Indenture to the contrary notwithstanding the Owners of a majority in principal amount of the Bonds then Outstanding hereunder, after furnishing indemnity satisfactory to the Trustee against the fees, costs, expenses and liabilities incurred or to be incurred therein or thereby, by an instrument in writing, executed and delivered to the Trustee, shall have the right to direct the method and place of conducting all remedial proceedings to be taken by the Trustee hereunder provided that such direction shall not be in conflict with any rule of law or with this Indenture nor in the opinion of the Trustee unduly prejudicial to the rights of minority Owners.

### **SECTION 9.5      Limitations on Actions by Registered Owners.**

Subject to Section 9.2, no Owner of any of the Bonds shall have any right to institute any suit, action or proceeding in equity or at law for the execution of any trust hereunder, or for any other remedy hereunder or on said Bonds, unless such Owner previously shall have given to the Trustee written notice of an Event of Default as hereinabove provided, nor unless also the Owners of not less than twenty-five percent (25%) in principal amount of the Bonds then Outstanding shall have made written request of the Trustee, after the right to exercise such powers, or rights of action, as the case may be, shall have accrued, and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers hereinabove granted, or to institute such action, suit or proceedings in its or their name; nor unless, also, there shall have been offered to the Trustee security and indemnity satisfactory to it against the fees, costs, expenses and liabilities incurred or to be incurred therein or thereby, and the Trustee shall have refused or neglected to comply with such request, within a reasonable time; and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Indenture or for any other remedy hereunder; it being understood and intended that no one or more Owners of the Bonds hereby secured shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Indenture, or to enforce any right hereunder or under the Bonds, except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Owners of such Outstanding Bonds.

### **SECTION 9.6      Trustee May Enforce Rights Without Possession of Bonds.**

All rights of action under this Indenture, or under any of the Bonds secured hereby, enforceable by the Trustee, may be enforced by it without the possession of any of the

Bonds or the production thereof at the trial or other proceedings relative thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in its name for the ratable benefit of the Owners of the Bonds, subject to the provisions of this Indenture.

**SECTION 9.7 Remedies Not Exclusive.**

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

**SECTION 9.8 Delays and Omissions Not to Impair Rights.**

No delay or omission of the Trustee or of any Owner of the Bonds 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 of any such default, or an acquiescence therein; and every power and remedy given by this Article to the Trustee and the Owners of the Bonds, respectively, may be exercised from time to time, and as often as may be deemed expedient.

**SECTION 9.9 Application of Money on Event of Default.**

Any money received by the Trustee in the enforcement of this Indenture pursuant to this Article IX and any money received by any receiver from the operation of any Project Facility, after payment of all costs and expenses of the operations, maintenance and repair thereof and other amounts payable pursuant to Section 9.2, shall be applied:

First: to the payment of the fees, expenses, liabilities, advances (if any) and counsel fees and expenses of the Trustee and of the receiver, if any, and all costs and disbursements allowed by the court, if there be any court action.

Second: to the payment of the whole amount of principal and interest which shall then be unpaid and owing upon the Bonds entitled to such moneys, and in case such moneys shall be insufficient to pay in full the whole amount so due and unpaid, then to the payment of such principal due, then to the payment of any interest due.

Third: to the payment of the surplus, if any, to the Corporation, or to whoever is lawfully entitled to receive the same or as a court of competent jurisdiction may direct.



**ARTICLE X.  
CONCERNING THE TRUSTEE.**

**SECTION 10.1      Acceptance of Trust.**

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, and no implied covenants or obligations shall be read into this Indenture against the Trustee.

The Trustee accepts and agrees to execute the trust hereby created, but only upon the additional terms set forth in this Article, to all of which the parties hereto, and the respective holders of the Bonds agree. The permissive rights of the Trustee shall not be construed as duties. The Trustee shall have no responsibility for the offering documents used in the sale of Bonds or for the security for the Bonds or the use of proceeds of the Bonds or representations made to the owners of the Bonds disbursed by the Trustee in accordance with this Indenture.

**SECTION 10.2      No Responsibility for Recitals.**

The recitals, statements and representations in the Indenture or in the Bonds contained, save only the Trustee's authentication upon the Bonds, shall be taken and construed as made by and on the part of the Corporation, and not by the Trustee, and the Trustee assumes and shall be under no responsibility or obligation for the correctness of same.

**SECTION 10.3      Power to Act Through Agents; Liability Limited.**

The Trustee may execute any of the trusts or powers hereof and perform the duties required by it, by or through attorneys, agents, receivers, or employees, and shall be entitled to advice of counsel concerning all matters of trust hereof and its duty hereunder, and the Trustee shall not be answerable for the default or misconduct of any such attorney, agent, or employees selected by it with reasonable care. The Trustee shall not be answerable for the exercise of any discretion or power under this Indenture or under any Supplemental Indenture, nor for anything whatever in connection with the trust, except only its own willful misconduct or negligence. The Trustee shall not be liable for any action taken by it in good faith and reasonably believed by it to be within the discretion or power conferred upon it, or omitted to be taken by it in good faith and reasonably believed by it not to be within the power or discretion conferred upon it, or taken by it pursuant to any direction or instruction by which it is governed under this Indenture or omitted to be taken by it by reason of the lack of direction or instruction required for such action, including but not limited to investment of funds hereunder.

**SECTION 10.4      Compensation.**

The Corporation shall pay to the Trustee reasonable compensation for all services rendered by it hereunder and all advances, counsel fees and expenses and other expenses reasonably and necessarily made or incurred by the Trustee hereunder as has or shall be agreed to from time to time between the Corporation and the Trustee. In default of such payment by the Corporation, the Trustee may deduct the same from any money in the Bond Redemption and Improvement Fund and shall be entitled to a preference in payment over any other payments to

be made from such Fund, other than transfers to the Revenue Fund or Debt Service and Sinking Fund, to remedy any deficiency therein.

The Trustee shall be entitled to payment and reimbursement for its reasonable fees for its services rendered hereunder as and when the same become due and all expenses reasonably and necessarily made or incurred by the Trustee in connection with such services, including legal fees and expenses, as and when the same become due.

When the Trustee incurs expenses or renders services after the occurrence of an Event of Default, such expenses and the compensation for such services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law. Upon an Event of Default, and 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 premium, if any, and interest on any Bond, upon the trust estate for the foregoing fees, charges and expenses incurred by it.

#### **SECTION 10.5      No Duty to Effect or Renew Insurance.**

The Trustee shall be under no duty to effect or to renew any policies of insurance, nor shall the Trustee incur any liability for the failure of the Corporation to effect or renew insurance or to report claims thereunder.

#### **SECTION 10.6      Notice of Default; Right to Information.**

Unless otherwise required pursuant to Section 9.2 hereof, the Trustee shall not be required to take notice, or be deemed to have notice, of any default under this Indenture except for payment defaults under Section 9.1(a) or (b) hereof unless either specifically notified in writing of such default by the Owners of at least twenty-five percent (25%) in principal amount of the Bonds then Outstanding or actual notice by the individual trust officer primarily responsible for the administration of the trust. The Trustee may, however, at any time, in its discretion, require of the Corporation full information and advice as to the performance of any of the covenants, conditions and agreements.

#### **SECTION 10.7      Obligation to Act on Defaults.**

No provision of this Indenture shall require the Trustee to risk or expend its own funds. The Trustee shall be under no obligation to take any action in respect of any default or otherwise, or toward the execution or enforcement of any of the trusts hereby created, or to institute, appear in or defend any suit or other proceeding in connection therewith, unless requested in writing to do so by Owners of at least twenty-five percent (25%) in principal amount of the Bonds then Outstanding or unless otherwise required pursuant to Section 9.2 and, if in its opinion such action may tend to involve it in expense or liability, unless furnished, from time to time as often as it may require, with security and indemnity satisfactory to it; but the foregoing provisions are intended only for the protection of the Trustee, and shall not affect any discretion or power given by any provision of this Indenture to the Trustee to take action with respect to any default without such notice or request from the Registered Owners, or without such security or indemnity.

## **SECTION 10.8      Advances to Cure Defaults.**

If the Corporation shall fail to perform any of the covenants or agreements contained in this Indenture, the Trustee may, in its uncontrolled discretion and without notice to the Registered Owners, at any time and from time to time, make advances to effect performance of the same on behalf of the Corporation, but the Trustee shall be under no obligation so to do; and any and all moneys paid or advanced by the Trustee for any such purpose, together with interest thereon at an annual rate equal to the Prime Rate, shall be a lien in favor of the Trustee upon the Pledged Revenues; but no such advance shall operate to relieve the Corporation from any default hereunder.

## **SECTION 10.9      Reliance on Requisitions and Certificates; Indemnification.**

The Trustee shall be fully protected and shall incur no liability in acting or proceeding in good faith upon any resolution, opinion, notice, telegram, request, requisition, consent, waiver, certificate, statement, affidavit, voucher, bond, or other paper or document which it shall in good faith believe to be genuine and to have been passed or signed by the proper board or person or to have been prepared and furnished pursuant to any of the provisions of this Indenture, and the Trustee shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements. The Trustee may consult with counsel, who may or may not be counsel to the Corporation, and the opinion of such counsel shall be full and complete authorization and protection with respect to any action taken or suffered by it hereunder in good faith. In the exercise of the powers of the Trustee and its officers, employees and agents hereunder including (without limiting the foregoing) the application of moneys and the investment of funds, and otherwise generally in the exercise of any of the Trustee's duties hereunder, the Corporation shall, to the extent permitted by law, indemnify, protect, defend and save the Trustee and its agents and employees harmless for, from and against any and all losses, damages, injuries, costs or expenses (including reasonable attorneys fees) and for, from and against any and all claims, demands, suits, actions or other proceedings whatsoever, brought by any person whatsoever arising in connection with the exercise of such duties hereunder and which are not due to its negligence or bad faith.

Indemnification Covenant. (a) To the extent of monies then held in the Trust Estate (except for monies held in the Corporation Account prior to deposit into the Revenue Fund), the Corporation agrees to pay, defend, protect, indemnify, and hold each of the Trustee Indemnified Parties, harmless for, from and against (i) any and all fees, costs, expenses and liabilities ("Liabilities") directly or indirectly arising from or relating to the Loan, this Indenture, the Annuity Investment, and the Project Facilities and (ii) any and all Liabilities directly or indirectly arising from or relating to the Bonds, the Indenture, or any document related to the issuance and sale of the Bonds, including, but not limited to, the following:

(i) Any injury to or death of any person or damage to property in or upon the Project Facilities or growing out of or connected with the use, non-use, condition, or occupancy of the Project Facilities or any part thereof;

- (ii) Violation of any agreement, covenant, or condition of any of the documents relating to the Bonds;
- (iii) Violation of any agreement, contract, or restriction relating to the Project Facilities;
- (iv) Violation of any law, ordinance, or regulation affecting the Project Facilities or any part thereof or the ownership, occupancy, or use thereof;
- (v) The issuance and sale of the 2014 Bonds or any of them;
- (vi) Any environmental condition or omission related to the Project Facilities; and
- (vii) Any statement, information, or certificate furnished by the Corporation to the Purchaser or the Trustee which is misleading, untrue, incomplete, or incorrect in any respect.

(b) To the extent of monies then held in the Trust Estate (except for monies held in the Corporation Account prior to deposit into the Revenue Fund), the Corporation also agrees to pay, defend, protect, indemnify, and hold each of the Trustee Indemnified Parties harmless for, from, and against any and all Liabilities directly or indirectly arising from or relating to (i) any errors or omissions of any nature whatsoever contained in any legal proceedings or other official representation or inducement made by or to the Purchaser or the Tribe by or on behalf of the Corporation pertaining to the Bonds, and (ii) any fraud or misrepresentations or omissions contained in the proceedings of the Corporation or the Tribe relating to the issuance of the Bonds or pertaining to the financial condition of the Corporation which, if known to the Purchaser of any of the Bonds, might be considered a factor in such Person's decision to purchase such Bonds.

(c) Paragraphs (a) and (b) above are intended to provide indemnification to each Trustee Indemnified Party for his or her active or passive negligence or misconduct; provided, however, nothing in paragraphs (a) and (b) above shall be deemed to provide indemnification to any Trustee Indemnified Party with respect to any Liabilities arising from the successful allegation of fraud, gross negligence, or willful misconduct of such party.

(d) Any party entitled to indemnification hereunder shall notify the Corporation of the existence of any claim, demand, or other matter to which the Corporation's indemnification obligation applies, and shall give the Corporation a reasonable opportunity to defend the same at its own expense and with counsel satisfactory to the Trustee Indemnified Party, provided that the Trustee Indemnified Party shall at all times also have the right to fully participate in the defense. If the Trustee Indemnified Party is advised in an Opinion of Counsel that there may be legal defenses available to them which are different from or in addition to those available to the Corporation or if the Corporation shall, after receiving notice of the Corporation's indemnification obligation and within a period of time necessary to preserve any and all defenses to any claim asserted, fails to assume the defense or to employ counsel for that purpose satisfactory to the Trustee Indemnified Party, the Trustee Indemnified Party shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle the claim or other matter on behalf of, for the account of, and at the risk of, the Corporation.

To the extent of monies then held in the Trust Estate (except for monies held in the Corporation Account prior to deposit into the Revenue Fund), the Corporation shall be responsible for the reasonable counsel fees, costs, and expenses of the Trustee Indemnified Parties in conducting its defense.

**SECTION 10.10      Right to Deal in Bonds.**

The Trustee may, in good faith, buy, sell, own, hold and deal in any of the Bonds issued hereunder and secured by this Indenture, and may join in any action which any Owner may be entitled to take with like effect as if the Trustee were not a party to this Indenture. The Trustee may also engage in or be interested in any financial or other transaction with the Corporation; provided however that if the Trustee determines that any such relationship is in conflict with its duties under this Indenture, it shall eliminate the conflict or resign as Trustee.

**SECTION 10.11      Construction of Indenture.**

The Trustee may construe any of the provisions of this Indenture insofar as the same may appear to be ambiguous or inconsistent with any other provision hereof; and any construction of any such provisions hereof by the Trustee in good faith shall be binding upon the Registered Owners.

**SECTION 10.12      Resignation of Trustee.**

The Trustee may resign and be discharged of the trust created by this Indenture, by executing an instrument in writing, resigning such trust, specifying the date when such resignation shall take effect, and filing the same with the Secretary of the Corporation not less than sixty (60) days before the date specified in such instrument when such resignation shall take effect, and by giving notice of such resignation to Registered Owners by first class mail postage prepaid. Such resignation shall take effect on the date specified in such instrument and notice, unless previously a successor Trustee shall be appointed as hereinafter provided, in which event such resignation shall take effect immediately on the appointment of such successor Trustee.

**SECTION 10.13      Removal of Trustee.**

The Trustee may be removed at any time for any reason upon thirty (30) days written notice by an instrument in writing, filed with the Trustee and executed by either (i) the Owners of a majority in principal amount of the Bonds Outstanding; or (ii) so long as no Event of Default has occurred and is continuing nor any event that but for passage of time or the giving of notice, or both would be an Event of Default, the Corporation. Such Trustee shall continue to act as Trustee hereunder until a successor is in fact appointed. If a successor is not appointed within 45 days of Trustee's receipt of a notice of removal, the Trustee shall have the right, at the Corporation's expense, to petition a court of competent jurisdiction for the appointment of a successor Trustee.



#### **SECTION 10.14      Appointment of Successor Trustee.**

In case at any time the Trustee, or any Trustee hereinafter appointed, shall resign, or shall be removed, or be dissolved, or its property or affairs shall be taken under the control of any state or federal court or administrative body because of insolvency or bankruptcy, or for any other reason, a vacancy shall forthwith and ipso facto exist in the office of Trustee and a successor may be appointed by the Owners of a majority in principal amount of the Bonds then Outstanding, by an instrument or instruments in writing filed with the Secretary of the Corporation, signed by such Registered Owners or by their attorneys in fact duly authorized. Copies of each instrument shall be promptly delivered by the Corporation to the predecessor Trustee, to the Trustee so appointed.

Until a successor Trustee shall be appointed by the Registered Owners as herein authorized, the Corporation, by a certified resolution of its Board, may appoint a Trustee to fill such vacancy. After any appointment by the Corporation, it shall cause notice of such appointment to be given to all Registered Owners by first class mail postage prepaid. Any new Trustee so appointed by the Corporation shall immediately and without further act be superseded by a Trustee appointed by the Registered Owners in the manner above provided. In case at any time the Trustee shall resign and no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Article prior to the date specified in the notice of resignation as the date when such resignation shall take effect, the retiring Trustee or any Bondholder may forthwith apply, at the Corporation's expense, to a court of competent jurisdiction for the appointment of a successor Trustee. Such court may thereupon after such notice, if any, as it may deem proper and prescribe, appoint a successor Trustee.

#### **SECTION 10.15      Qualification of Successor Trustee.**

Every successor in the trust appointed in pursuance of the provisions of this Article X shall be a national association, trust company or bank in good standing located in or incorporated under the laws of the State or of the United States of America, duly authorized to exercise trust powers and subject to examination by federal or state authorities, having a reported capital and surplus of at least fifty million dollars (\$50,000,000), if there be such a national association, bank or trust company willing and able to accept the trust on reasonable and customary terms.

#### **SECTION 10.16      Instruments of Succession.**

Any successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Corporation an instrument accepting such appointment hereunder, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become fully vested with all the estates, property, rights, powers, trusts, duties and obligations of its predecessor in the trust hereunder, with like effect as if originally named Trustee herein. Upon request of such Trustee, the Trustee ceasing to act and the Corporation shall execute and deliver an instrument transferring to such successor Trustee all the estates, property, rights, powers and trusts hereunder of the Trustee so ceasing to act; and the Trustee so ceasing to act shall pay over to the successor Trustee all moneys at the time held by it hereunder.



**SECTION 10.17      Merger of Trustee.**

Any corporation or association into which any Trustee hereunder may be merged or with which it may be consolidated or association, or any corporation resulting from any merger or consolidation to which any Trustee hereunder shall be a party, or any corporation or association purchasing all or substantially all of the Trustee's corporate trust business, shall be the successor Trustee under this Indenture, without the execution or filing of any paper or any further act on the part of the parties hereto, anything herein to the contrary notwithstanding.

**ARTICLE XI.  
AMENDMENTS AND MODIFICATIONS.**

**SECTION 11.1      Amendments without Registered Owners Consent.**

In addition to Supplemental Indentures otherwise authorized by this Indenture, the Corporation and the Trustee may, from time to time and at any time, enter into a Supplemental Indenture, (a) to cure any ambiguity, or formal defect or omission in this Indenture or in any Supplemental Indenture, (b) to grant to and confer upon the Registered Owners, or to the Trustee for the benefit of the Registered Owners, any additional rights, remedies, powers, authority or security that may be lawfully granted to or conferred upon the Registered Owners or the Trustee, or (c) to amend the Indenture in any other respect not materially adverse to the Bondholders. The Trustee may rely upon an opinion of nationally recognized bond counsel setting forth their opinions that in the case of an amendment under clause (c) above, the same is not materially adverse to the interests of the Bondholders.

**SECTION 11.2      Amendments with Registered Owners Consent.**

This Indenture may also be amended or modified from time to time, except with respect to the interest payable upon the Bonds, or with respect to the dates of maturity or redemption provisions of the Bonds, or with respect to this Article XI, by a Supplemental Indenture executed by the Corporation and the Trustee, authorized by a Certified Resolution and the Registered Owners of not less than 51% in principal amount of the Bonds Outstanding as of a record date established by the Trustee.

**SECTION 11.3      General Provisions.**

The Trustee, in entering into any Supplemental Indenture pursuant to this Article, shall be fully protected in relying upon an opinion of counsel in accordance with Section 10.9 satisfactory to the Trustee stating that such Supplemental Indenture has been duly and lawfully adopted in accordance with the provisions of this Article, is authorized or permitted by this Article, and is valid and binding upon the Corporation and enforceable in accordance with its terms.

**ARTICLE XII  
DEFEASANCE. MISCELLANEOUS**

## **SECTION 12.1      Defeasance.**

(a) If and when the Bonds shall have been fully paid or retired by redemption or otherwise or if and when provision for such payment or retirement shall have been duly made by deposit with the Trustee of funds, including any interest to be earned thereon, sufficient to effect such payment or retirement irrevocably pledged for the purpose and, in the case of retirement of the Bonds by redemption, by filing with the Trustee (i) a Certified Resolution of the Corporation calling such Bonds for redemption and fixing the date for redemption and (ii) either (aa) proof of mailing of the required redemption notice or (bb) irrevocable instruction to the Trustee to give such notice accompanied by funds sufficient to pay all expenses of mailing and all of the Corporation's requirements set forth in Section 5.2 (relating to full payment of the notional amount of the Annuity Investment plus interest) having been paid or otherwise provided for by the Annuity Provider; then and in that case, the right, title and interest of the Trustee shall thereupon cease, determine and become void, and the Trustee in such case, on demand of the Corporation, shall release this Indenture and extinguish and cancel the pledge of the Pledged Revenues, and shall execute such documents to evidence such release as may be reasonably required by the Corporation and shall turn over to the Corporation or to such person, body or Corporation as may be entitled to receive the same, all balances remaining in any of the Funds remaining in its hands; otherwise this Indenture shall be, continue and remain in full force and effect.

(b) For the purposes of paragraph (a) of this Section 12.1, provision for payment or retirement of Bonds shall have been made when there has been set aside and held in trust by the Trustee (through deposit by the Corporation or otherwise) funds sufficient to effect such payment or retirement. Funds sufficient to effect such payment or retirement shall be deemed to have been deposited, if there shall be deposited with the Trustee Defeasance Obligations and if the principal amount of any combination of the foregoing together with the income to be earned thereon will provide moneys sufficient to pay the principal when due, redemption premium, if any, and interest due and to become due on and prior to the maturity date of the Bonds.

(c) Neither the investments nor moneys deposited with the Trustee pursuant to this Section 12.1 nor principal or interest payments on any such investments shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal and interest on said Bonds; provided that any cash received from such principal or interest payments on such investments deposited with the Trustee, if not then needed for such purpose shall, to the extent practicable, be reinvested in Government Obligations or deposited at the Corporation's written direction and insured or secured as aforesaid, maturing at times and in amounts sufficient to pay when due the principal, and interest to become due on said Bonds on and prior to such maturity date thereof, as the case may be, and interest earned from such reinvestments shall be paid over to the Corporation as received by the Trustee, free and clear of any trust, lien or pledge.

(d) The deposit with the Trustee of funds sufficient to pay (within the meaning of Section 12.1(b) above) the interest on and principal of Bonds when and as due notwithstanding, such Bonds shall be subject to earlier redemption prior to maturity in

accordance with the provisions of such Bonds and this Indenture relating to earlier redemption of Bonds.

(e) To accomplish defeasance, the Corporation shall cause to be delivered (i) a report of an independent firm of nationally recognized certified public accountants or such other accountant as shall be acceptable to the Trustee verifying the sufficiency of the escrow established to pay the Bonds in full on the maturity or redemption date ("Verification"), (ii) an escrow deposit agreement regarding the deposit of such escrow funds, (iii) an opinion of nationally recognized bond counsel to the effect that the Bonds are no longer Outstanding under the Indenture and (iv) a certificate of discharge of the Trustee with respect to the Bonds; each Verification and defeasance opinion shall be acceptable in form and substance, and addressed, to the Corporation and Trustee.

#### **SECTION 12.2      No Personal Recourse.**

No recourse shall be had for any claim based on the Indenture or the Bonds against any member, officer or employee, past, present or future of the Corporation or the Trustee or of any successor body as such, either directly or through the Corporation, the Trustee or any such successor body, under any constitutional provision, statute or rule of law or by the enforcement of any assessment or penalty or otherwise.

#### **SECTION 12.3      Deposit of Funds for Payment of Bonds.**

If the Corporation deposits with the Trustee funds sufficient to pay the principal or redemption price of any Bonds becoming due, either at maturity or by call for redemption or otherwise, together with all interest accruing thereon to the due date, interest on the Bonds shall cease to accrue on the due date and all liability of the Corporation with respect to such Bonds shall likewise cease, except as hereinafter provided. Thereafter, the Owners of such Bonds shall be restricted exclusively to the funds so deposited for any claim of whatsoever nature with respect to such Bonds and the Trustee shall hold such funds in trust for such Owners.

Money so deposited with the Trustee which remains unclaimed five years after the date payment thereof becomes due shall, upon the written request of the Corporation, if the Trustee does not have knowledge at such time of the Corporation being in default with respect to any covenant in the Indenture or the Bonds, be paid to the Corporation; and the Owners of the Bonds for which the deposit was made shall thereafter be limited to a claim against the Corporation.

#### **SECTION 12.4      No Rights Conferred on Others.**

Nothing herein contained shall confer any right upon any person other than the parties hereto, if there is one, and the Owners of the Bonds.

#### **SECTION 12.5      Illegal Provisions Disregarded.**

In case any provision in the Indenture or the Bonds shall for any reason be held invalid, illegal, or unenforceable in any respect, the Indenture shall be construed as if such provision had never been contained therein.

**SECTION 12.6      Substitute Notice.**

If for any reason it shall be impossible to make publication of any notice required hereby in a newspaper or newspapers, then such publication in lieu thereof as shall be made with the approval of the Trustee shall constitute a sufficient publication of such notice.

**SECTION 12.7      Notices to Trustee and Corporation.**

Any notice to or demand upon the Trustee may be served, presented or made at the corporate trust office of the Trustee at U.S. Bank National Association, U.S. Bank Center, LM-AZ-X16P, 101 North First Avenue, Suite 1600, Phoenix, Arizona 85003, Attn: Keith Henselen. Any notice to or demand upon the Corporation shall be deemed to have been sufficiently given or served by the Trustee for all purposes by being sent by registered or certified United States mail to the Corporation, at Wakpamni Lake Community Corporation, #1 Wakpamni Lake Housing, Batesland, South Dakota 57716, Attention: President, or such other address as may be filed in writing by the Corporation with the Trustee. Any notice, report, certificate, or other documentation provided hereunder to the Trustee shall also be provided to the Purchaser.

**SECTION 12.8      Successors and Assigns.**

All the covenants, promises and agreements in the Indenture contained by or on behalf of the Corporation or by or on behalf of the Trustee shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

**SECTION 12.9      Headings for Convenience Only.**

The descriptive headings in the Indenture are intended for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

**SECTION 12.10      Counterparts.**

The Indenture may be executed in any number of counterparts, each of which when so executed and delivered shall be an original; but such counterparts shall together constitute but one and the same instrument.

**SECTION 12.11      Governing Law.**

The laws of the South Dakota shall govern the construction of this Indenture and of all Bonds issued hereunder.

**SECTION 12.12      Limited Waiver of Sovereign Immunity.**

(a) The Corporation is a wholly-owned subsidiary of the Community, which in turn is a subordinate governmental unit of the Tribe, a federally-recognized Indian Tribe, and is vested with the sovereign immunity of the Tribe unless and until the Corporation has granted a waiver of sovereign immunity in accord with Community and Tribal law. In order to permit enforcement of the obligations of the Corporation under the Indenture, the Bonds and the transaction contemplated hereunder and the documents related hereto, the Corporation expressly

and unequivocally grants solely to Trustee and Purchaser a limited waiver of the Corporation's sovereign immunity from suit as provided in the Resolution Regarding Limited Waiver of Sovereign Immunity adopted by the Corporation's Board of Directors on August 8, 2014. for the sole purpose of enforcement of this Indenture, to the extent set forth in this Section 12.12 and limited herein, from suits, actions or arbitration proceedings and consents to suits, actions or proceedings arising under this Indenture, all in accordance with the terms and limitations herein.

(b) The Corporation expressly waives its immunity from suit and consents to suit as provided and limited herein and/or to be sued in any of the following: the United States District Court for the District of South Dakota; South Dakota state district courts; and appellate courts therefrom for both jurisdictions.

(c) This waiver is granted solely as to the Corporation and to no other governmental or economic entity of the Community or the Tribe, and solely to the Trustee and Purchaser or their permitted successors or assigns relating to claims arising under this Indenture.. Such waiver and consent is expressly limited to proceedings initiated by the Trustee or Purchaser seeking remedies available under the Indenture, the Bonds and the documents related thereto and, is limited to the amount of the principal and interest of the Bonds, operating and administrative expenses of the Trustee or Purchaser, costs incident to the issuance of the Bonds and compensation for expenses incidental to the enforcement of the Indenture, the Bonds and related documents, including reasonable attorney's fees and costs.

(d) The laws of South Dakota shall apply to any such suit.

(e) The Corporation agrees that it shall not plead or raise as a defense to any action brought by Trustee or Purchaser or their permitted successors or assigns any right or claim of right to the requirement of exhaustion of tribal court remedies. The Corporation hereby expressly waives any requirement which may exist for exhaustion of any remedies available in any Tribal forum prior to the commencement of any dispute, controversy, suit, action or proceeding in any state or federal court even if any such Tribal forum would have concurrent jurisdiction over any such dispute, controversy, suit, action or proceeding but for such waiver, and any application of the abstention doctrine and any other law or interpretation thereof that might otherwise require, as a matter of law or comity, that resolution of any claim, controversy or dispute be heard first in a Tribal forum, whether such Tribal forum now exists or is hereinafter created.

(f) The limited waiver of sovereign immunity of the Corporation as provided for in this Section 12.12 shall expire at the conclusion of the longer of (i) one (1) year after the termination or expiration of this Indenture, or (ii) at the conclusion of any litigation matter with respect to this Indenture pending at the termination or expiration of this Indenture.

(g) The decision of any court of competent jurisdiction rendered against the Corporation shall be a limited recourse obligation of Corporation. Any amounts due and owing to Trustee or Purchaser are hereby limited solely to assets of Corporation and its subsidiaries and not to any other Excluded Assets. For purposes of this Indenture, Excluded Assets include: any assets, revenues or real or personal property of the Tribe, or any other Tribal subdivision, unincorporated entity, limited liability company, enterprise, board or commission, District or



Community other than the Wakpamni Lake Community. In the event a judicial decision from a court of competent jurisdiction awards damages to Trustee or Purchaser to be paid by Corporation, such damages awarded against Corporation shall be satisfied solely from assets of the Corporation. In no instance shall any enforcement of any kind whatsoever be allowed against any Excluded Assets or any other Tribal body, entity or subdivision. Nothing herein shall be deemed a waiver of sovereign immunity of the Tribe, or any Tribal body, entity or subdivision of the Tribe other than the Corporation.

**SECTION 12.13. Electronic Communications.**

The Trustee shall have the right to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that the instructions or directions shall be signed by a person as may be designated and authorized to sign for the Corporation by an authorized representative of the Corporation, who shall provide to the Trustee an incumbency certificate listing such designated persons, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If the Corporation elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Corporation agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.



IN WITNESS WHEREOF, Wakpamni Lake Community Corporation, party of the first part, has caused this Indenture to be executed by its President or Vice-President and its corporate seal to be hereunto affixed, attested by its Secretary or Assistant Secretary, and U.S. Bank National Association, as Trustee, party of the second part, has caused this Indenture to be executed by one of its officers authorized to do the same, all as of the day and year first above written.

Attest: Wilma Standing Bear  
Secretary

WAKPAMNI LAKE COMMUNITY  
CORPORATION,  
as Issuer

By: [Signature]  
President

U.S. BANK NATIONAL ASSOCIATION, as  
Trustee

By: \_\_\_\_\_  
Name:  
Title:

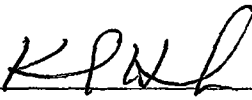
IN WITNESS WHEREOF, Wakpamni Lake Community Corporation, party of the first part, has caused this Indenture to be executed by its President or Vice-President and its corporate seal to be hereunto affixed, attested by its Secretary or Assistant Secretary, and U.S. Bank National Association, as Trustee, party of the second part, has caused this Indenture to be executed by one of its officers authorized to do the same, all as of the day and year first above written.

WAKPAMNI LAKE COMMUNITY  
CORPORATION, as Issuer

Attest: \_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
President

U.S. BANK NATIONAL ASSOCIATION, as  
Trustee

By:  \_\_\_\_\_  
Name: Keith Henselen  
Title: Vice President

**APPENDIX A TO TRUST INDENTURE  
(FORM OF 2014 BONDS)**

**THIS BOND HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR APPLICABLE STATE SECURITIES LAWS. THIS BOND WAS OFFERED PURSUANT TO EXEMPTIONS PROVIDED BY THE SECURITIES ACT, CERTAIN STATE SECURITIES LAWS AND CERTAIN RULES AND REGULATIONS PROMULGATED THERETO. THIS BOND MAY NOT BE SOLD, PLEDGED OR OTHERWISE TRANSFERRED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS UNLESS AN EXEMPTION FROM SUCH REGISTRATION AND QUALIFICATION REQUIREMENTS IS AVAILABLE AND THIS BOND IS TRANSFERRED PURSUANT TO AN EXEMPTION PROVIDED BY THE SECURITIES ACT.**

**NO PERSON OR ENTITY MAY PURCHASE THIS BOND UNLESS SUCH PERSON OR ENTITY IS AN "ACCREDITED INVESTOR," AS THAT TERM IS DEFINED IN REGULATION D PROMULGATED UNDER THE SECURITIES ACT. THE CORPORATION AND THE TRUSTEE WILL BE RELYING ON THE REPRESENTATIONS AND WARRANTIES SET FORTH BY THE PURCHASER AS TO THE APPLICABILITY TO THIS OFFERING OF EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF FEDERAL AND STATE LAW.**

No. R-

\$ \_\_\_\_\_

WAKPAMNI LAKE COMMUNITY CORPORATION  
a subdivision of the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota  
Special Limited Revenue Bonds (Taxable), Series of 2014  
(Economic Development Program)

Interest Rate  
5.62%

Maturity Date  
September 1, 2024

Issue Date  
August 25, 2014

CUSIP

REGISTERED OWNER: \_\_\_\_\_

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

WAKPAMNI LAKE COMMUNITY CORPORATION (the “**Corporation**”), a tribally-chartered corporation, wholly-owned by the Wakpamni Lake Community, a subdivision of the Wakpamni Lake District, each a subordinate unit of the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota (“**Tribe**”), for value received, hereby promises to pay to the Registered Owner hereof, but only from the revenues and moneys hereinafter specified, on the Maturity Date set forth above, unless this 2014 Bond shall have been duly called for prior redemption and payment of the redemption price shall have been made or provided for, the Principal Amount set forth above and to pay interest thereon from August 25, 2014 or from the most recent Interest Payment Date to which interest on the Bonds has been paid or provided for, on the first day of September each year commencing September 1, 2015 (each, an “**Interest Payment Date**”), until maturity or redemption prior to maturity as provided herein, at the Annual Interest Rate set forth above, calculated on the basis of a 360-day year of twelve (12) thirty (30) day months.

This 2014 Bond shall bear interest at the interest rate of five point sixty-two percent (5.62%) per annum until maturity. This 2014 Bond shall bear interest until payment of such principal amount and provisions therefore shall have been made upon redemption, at maturity or upon acceleration. Payment of the interest of and principal on the 2014 Bonds shall be in accordance with the schedule listed on Schedule I attached hereto. In the event any of the payments of interest on or principal of this 2014 Bond, in whole or in part, are made beyond their due date, Corporation shall pay the Registered Owner at the Default Rate. “Default Rate” means nine point sixty-two percent (9.62%) per annum.

The principal and interest rate of this 2014 Bond due shall be payable to the Registered Owner, upon presentation hereof (or other means acceptable to the Trustee), at the corporate trust agency office of U.S. Bank National Association in Phoenix, Arizona (together with any successors in the trust, the “**Trustee**”) under the Trust Indenture dated as of August 25, 2014 between the Corporation and the Trustee (the “**Indenture**”).

Interest on this 2014 Bond will be paid on each Interest Payment Date by check or by wire transfer within the United States to a Registered Owner in whose name this 2014 Bond is registered on the registration books of the Corporation maintained by the Trustee, as bond registrar, at the address appearing thereon at the close of business on the fifteenth (15<sup>th</sup>) day next preceding such Interest Payment Date (each, a “**Regular Record Date**”). Any such interest not so timely paid or duly provided for shall cease to be payable to the person who is the Registered Owner hereof as of the Regular Record Date, and shall be payable to the person who is the Registered Owner hereof at the close of business on a Special Record Date for the payment of such defaulted interest. Such Special Record Date shall be fixed by the Trustee whenever moneys become available for payment of the defaulted interest, and notice of the Special Record Date and payment date shall be given to Registered Owners of the Bonds not more than fifteen (15) days nor less than ten (10) days prior to the Special Record Date. The principal of and interest on this 2014 Bond are payable in lawful money of the United States of America. This 2014 Bond may only be issued in denominations of at least \$100,000 and \$1 increments thereafter (“Authorized Denominations”).

This 2014 Bond is a duly authorized issue of the \$24,844,089 Wakpamni Lake Community Corporation, Special Limited Revenue Bonds (Taxable), Series of 2014 (Economic

Development Project), of the Corporation (the “**2014 Bonds**”) issued under the Indenture and equally and ratably secured thereunder by an assignment to the Trustee of the Pledged Revenues (as defined in the Indenture) of the Corporation. The 2014 Bonds are issued to finance the Project (as defined in the Indenture).

This 2014 Bond is a special obligation of the Corporation payable as to principal or redemption price, interest and all other obligations hereunder solely from, and enforceable only against, the Pledged Revenues and certain other money available therefor as provided in the Indenture, and there shall be no recourse against the Corporation or any other property now or hereafter owned by it.

Additional Bonds may be issued under the Indenture for the purposes and upon the terms and conditions set forth therein. The 2014 Bonds and any Additional Bonds are herein collectively referred to as the “Bonds”. Reference is hereby made to the Indenture, an executed copy of which is on file at the corporate trust office of the Trustee in Phoenix, Arizona for a statement of the particular revenues of the Corporation pledged for the payment of the Bonds, the nature, extent and manner of enforcement of the security, the terms and conditions under which the Indenture may be amended or modified, the rights of the Registered Owners of the Bonds and of the Trustee in respect to such security, and the terms and conditions under which the Bonds are issued and under which Additional Bonds may be issued. Capitalized terms used in this 2014 Bond but not defined herein shall have the meanings given to them in the Indenture.

If an Event of Default, as defined in the Indenture, shall occur, the principal of all Bonds issued under the Indenture may be declared due and payable upon the conditions and in the manner and with the effect provided in the Indenture.

#### OPTIONAL REDEMPTION

The 2014 Bonds are subject to redemption in whole or in part, prior to maturity at the option of the Corporation on any date upon payment of the principal amount Outstanding plus accrued interest out of the Corporation’s Annuity Investment Distributions. Any partial redemption of principal may be credited against such stated installments of principal on the 2014 Bonds as the Corporation may designate in writing to the holder at the time of redemption; otherwise a partial redemption shall be applied against the principal installments hereof, by date, due and payable.

Redemption shall be made, subject to further requirements set forth in Section 6.2 of the Indenture, as provided in the Indenture upon not more than forty-five (45) and not less than thirty (30) days written notice by first class mail to the Registered Owner of each 2014 Bond called for redemption. Notice having been so given and provision having been made for redemption from funds on deposit with the Trustee, all interest on 2014 Bonds or portions thereof called for redemption accruing after the date fixed for redemption shall cease. No representation is made as to the accuracy of such numbers either as printed on the 2014 Bonds or as contained in any notice of redemption and reliance may be placed only on the identification number printed hereon.

The pledge of revenues and other security under the Indenture may be discharged at or prior to the maturity or redemption of the Bonds upon the making of provision for the payment of the principal of and interest on the Bonds in accordance with the terms and conditions set forth in the Indenture. If the Corporation deposits with the Trustee funds sufficient to pay the principal or redemption price of any Bonds becoming due at maturity, by call for redemption, or otherwise, together with interest accrued to the due date, interest on such Bonds will cease to accrue on the due date, and thereafter the Registered Owners will be restricted to the funds so deposited as provided in the Indenture.

No recourse shall be had for the payment of the principal or redemption price of or the interest on this 2014 Bond or for any claim based hereon or on the Indenture, against any past, present, or future member, officer or employee, as such, of the Corporation, either directly or through the Corporation or otherwise, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all such liability being by the acceptance hereof and, as a material part of the consideration for the issue hereof, expressly waived and released.

The Corporation and the Trustee may treat the Registered Owner of this 2014 Bond as the absolute owner of this 2014 Bond for all purposes whether or not this 2014 Bond be overdue, and neither the Corporation nor the Trustee shall be affected by any notice to the contrary.

This 2014 Bond shall not be entitled to any benefit under the Indenture or be valid or become obligatory for any purpose until this 2014 Bond shall have been authenticated by the execution by the Trustee of the certificate of authentication endorsed hereon.

#### LIMITED WAIVER OF SOVEREIGN IMMUNITY

(a) The Corporation is a wholly-owned subsidiary of the Community, which in turn is a subordinate governmental unit of the Tribe, a federally-recognized Indian Tribe, and is vested with the sovereign immunity of the Tribe unless and until the Corporation has granted a waiver of sovereign immunity in accord with Community and Tribal law. In order to permit enforcement of the obligations of the Corporation under the Indenture, the Bonds and the transaction contemplated hereunder and the documents related hereto, the Corporation expressly and unequivocally grants solely to Trustee and Purchaser a limited waiver of the Corporation's sovereign immunity from suit as provided in the Resolution Regarding Limited Waiver of Sovereign Immunity adopted by the Corporation's Board of Directors on August 8, 2014. for the sole purpose of enforcement of this Indenture, to the extent set forth in this Section 12.12 and limited herein, from suits, actions or arbitration proceedings and consents to suits, actions or proceedings arising under this Indenture, all in accordance with the terms and limitations herein.

(b) The Corporation expressly waives its immunity from suit and consents to suit as provided and limited herein and/or to be sued in any of the following: the United States District Court for the District of South Dakota; South Dakota state district courts; and appellate courts therefrom for both jurisdictions.



(c) This waiver is granted solely as to the Corporation and to no other governmental or economic entity of the Community or the Tribe, and solely to the Trustee and Purchaser or their permitted successors or assigns relating to claims arising under this Indenture.. Such waiver and consent is expressly limited to proceedings initiated by the Trustee or Purchaser seeking remedies available under the Indenture, the Bonds and the documents related thereto and, is limited to the amount of the principal and interest of the Bonds, operating and administrative expenses of the Trustee or Purchaser, costs incident to the issuance of the Bonds and compensation for expenses incidental to the enforcement of the Indenture, the Bonds and related documents, including reasonable attorney's fees and costs.

(d) The laws of South Dakota shall apply to any such suit.

(e) The Corporation agrees that it shall not plead or raise as a defense to any action brought by Trustee or Purchaser or their permitted successors or assigns any right or claim of right to the requirement of exhaustion of tribal court remedies. The Corporation hereby expressly waives any requirement which may exist for exhaustion of any remedies available in any Tribal forum prior to the commencement of any dispute, controversy, suit, action or proceeding in any state or federal court even if any such Tribal forum would have concurrent jurisdiction over any such dispute, controversy, suit, action or proceeding but for such waiver, and any application of the abstention doctrine and any other law or interpretation thereof that might otherwise require, as a matter of law or comity, that resolution of any claim, controversy or dispute be heard first in a Tribal forum, whether such Tribal forum now exists or is hereinafter created.

(f) The limited waiver of sovereign immunity of the Corporation as provided for in this Section 12.12 shall expire at the conclusion of the longer of (i) one (1) year after the termination or expiration of this Indenture, or (ii) at the conclusion of any litigation matter with respect to this Indenture pending at the termination or expiration of this Indenture.

(g) The decision of any court of competent jurisdiction rendered against the Corporation shall be a limited recourse obligation of Corporation. Any amounts due and owing to Trustee or Purchaser are hereby limited solely to assets of Corporation and its subsidiaries and not to any other Excluded Assets. For purposes of this Indenture, Excluded Assets include: any assets, revenues or real or personal property of the Tribe, or any other Tribal subdivision, unincorporated entity, limited liability company, enterprise, board or commission, District or Community other than the Wakpamni Lake Community. In the event a judicial decision from a court of competent jurisdiction awards damages to Trustee or Purchaser to be paid by Corporation, such damages awarded against Corporation shall be satisfied solely from assets of the Corporation. In no instance shall any enforcement of any kind whatsoever be allowed against any Excluded Assets or any other Tribal body, entity or subdivision. Nothing herein shall be deemed a waiver of sovereign immunity of the Tribe, or any Tribal body, entity or subdivision of the Tribe other than the Corporation.

IN WITNESS WHEREOF, WAKPAMNI LAKE COMMUNITY CORPORATION has caused this 2014 Bond to be signed by the manual or facsimile signature of its President and its corporate seal to be affixed hereto and attested by the manual or facsimile signature of its Secretary.

(Seal)

WAKPAMNI LAKE COMMUNITY  
CORPORATION

Attest:

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
President

TRUSTEE'S AUTHENTICATION CERTIFICATE

This 2014 Bond is one of the 2014 Bonds described in the within mentioned Indenture.

U.S. Bank National Associations, as Trustee

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

Date of Authentication:

\_\_\_\_\_

ASSIGNMENT AND TRANSFER

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

PLEASE INSERT SOCIAL SECURITY OR  
EMPLOYER IDENTIFICATION

\_\_\_\_\_  
/ \_\_\_\_\_ /

\_\_\_\_\_  
the within Bonds and all rights thereunder, and hereby irrevocably constitutes and appoints

\_\_\_\_\_  
said Bonds on the books of the within named Trustee, with full power of substitution in the premises.

Dated:

Signature Guaranteed by:

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by an institution that is a participant in a signature guarantee program recognized by the Securities Transfer Association.

\_\_\_\_\_  
NOTICE: The signature to this Assignment must correspond with the name as it appears upon the face of the within Bonds in every particular, without alteration or enlargement or any change whatsoever.

(END OF 2014 BONDS FORM)

SCHEDULE I

PRINCIPAL AND INTEREST DUE ON THE 2014 BONDS

Bond	Par Amount	Rate	Days	Sep-15	Sep-16
R-1	\$4,344,640.00	5.62%	360	\$248,238.25	\$244,168.77
R-2	\$4,073,499.00	5.62%	360	\$232,746.15	\$228,930.64
R-3	\$8,102,154.00	5.62%	360	\$462,930.07	\$455,341.05
R-4	\$2,829,171.00	5.62%	360	\$161,649.40	\$158,999.41
R-5	\$1,376,549.00	5.62%	360	\$78,651.42	\$77,362.05
R-6	\$4,118,076.00	5.62%	360	\$235,293.14	\$231,435.87
				<b>\$1,419,508.43</b>	<b>\$1,396,237.80</b>
Tranche 2					
R-1	\$1,254,027.00	5.62%	360	\$71,259.39	\$70,476.32
R-2	\$283,146.00	5.62%	360	\$16,089.61	\$15,912.81
R-3	\$696,174.00	5.62%	360	\$39,559.70	\$39,124.98
	<b>\$2,233,347.00</b>			<b>\$126,908.70</b>	<b>\$125,514.10</b>



REQUISITION PURSUANT TO TRUST INDENTURE  
DATED AS OF AUGUST 25, 2014  
FROM THE WAKPAMNI LAKE COMMUNITY CORPORATION

REQUISITION NO. \_\_\_\_

Date: \_\_\_\_\_, 2014

To: U.S. Bank National Association, as Trustee

Facility Project Reference:  
\_\_\_\_\_

On behalf of the Wakpamni Lake Community Corporation, pursuant to Section 5.6 of the Trust Indenture dated as of August 25, 2014 as the same from time to time may be supplemented or amended (the “**Indenture**”) from the Corporation to U.S. Bank National Association, as Trustee, you are hereby requested to make the following disbursement from the Bond Improvement and Redemption Fund in connection with the Project referenced above.

- a. Name and Address of Payee: \_\_\_\_\_
- b. Amount to be Paid \$ \_\_\_\_\_
- c. Purpose for which obligation was incurred \_\_\_\_\_

Capitalized terms used and not defined herein shall have the meaning given such terms in the Indenture.

It is hereby certified that: (1) the obligation referred to above was properly incurred in connection with an Economic Development Project of the Corporation and is a proper charge against the Project Fund; (2) the amount requisitioned hereby is currently due and unpaid; (3) the amount requisitioned hereby has not been the subject of any previously paid requisition; (4) the amount requisitioned hereby has not been the subject of any vendors, mechanics, or other liens, bailment leases or conditional sales contracts, which should be satisfied or discharged before the payment as requisitioned herein is made or which will not be discharged by such payments; and (5) such revenues from the Economic Development Project shall be deemed revenues from a Project Facility and shall become Pledged Revenues under the Indenture; and (6) we shall provide any additional certificates and documentation as the Trustee may require.

WAKPAMNI LAKE COMMUNITY  
CORPORATION

By: \_\_\_\_\_  
Treasurer or Secretary

By: \_\_\_\_\_  
President or Vice-President

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

DEVELOPER APPROVAL:

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

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