
REIMBURSEMENT AGREEMENT

Between

SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT

and

BANK OF AMERICA, N.A.

Dated as of June __, 2011

Relating to

\$37,295,000

San Bernardino County Flood Control District
Judgment Obligation Refunding Bonds, Series 2008

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This REIMBURSEMENT AGREEMENT dated as of June __, 2011, between SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT, a body corporate and politic duly organized and validly existing under the Constitution and the laws of the State of California (the “District”) and BANK OF AMERICA, N.A., a national banking association (the “Bank”).

WITNESSETH:

WHEREAS, the District has caused to be issued \$37,295,000 aggregate principal amount of its San Bernardino County Flood Control District Judgment Obligation Refunding Bonds, Series 2008 (the “Bonds”) pursuant to the certain Indenture, by and between the District and Wells Fargo Bank, National Association, as Trustee, dated as of April 1, 2008 (as the same may be amended and supplemented in accordance with the terms hereof and thereof, the “Indenture”);

WHEREAS, pursuant to the Indenture, the District is required to maintain a letter of credit in support of the Bonds while said Bonds bear interest in an Adjustable Rate Mode (as defined in the Indenture);

WHEREAS, the Bonds are presently secured by a letter of credit (as amended and extended, the “Existing Letter of Credit”) issued by UBS AG, acting through its Stamford Branch (the “Existing Bank”), which Existing Letter of Credit was issued pursuant to a Letter of Credit and Reimbursement Agreement, dated as of April 1, 2008, between the Existing Bank and the District;

WHEREAS, the District has requested the Bank to issue its irrevocable transferable letter of credit, in substantially the form of Appendix I attached hereto in support of the Bonds and as a replacement for the Existing Letter of Credit; and

WHEREAS, in order to induce the Bank to enter into this Agreement (as defined herein) and issue the Letter of Credit (as defined herein), the District has agreed to the terms and conditions hereof; and

WHEREAS, the Bank has agreed to issue the Letter of Credit pursuant to and upon the terms and conditions stated in this Agreement;

NOW, THEREFORE, in consideration of the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Article One
Definitions

Section 1.1 Definitions. As used in this Agreement:

“Act” — has the meaning set forth in the Indenture.

“Additional Rights” – has the meaning set forth in Section 5.1(n).

“Agreement” — means this Reimbursement Agreement, as amended, modified and supplemented from time to time.

“Adjustable Rate Mode” — has the meaning set forth in the Indenture.

“Alternate Letter of Credit” — has the meaning set forth in the Indenture.

“Annual Debt Service” – means, for any fiscal year, the sum of: (i) the interest on all Senior Obligations paid during such fiscal year (except to the extent that such interest was capitalized); and (ii) the principal of and premium on all Senior Obligations paid during such fiscal year; in each case excluding (x) such payments made from amounts on deposit in debt service reserve funds established for such Senior Obligations and (y) amounts applied to optionally redeem Senior Obligations during such fiscal years so long as such amounts are derived from insurance proceeds, judgment proceeds and/or settlement proceeds.

“Authorized Representative” — has the meaning set forth in the Indenture.

“Applicable Law” — means all applicable provisions of all constitutions, statutes, rules, regulations and orders of all governmental and non-governmental bodies, all Governmental Approvals and all orders, judgments and decrees of all courts and arbitrators.

“Available Amount” — has the meaning set forth in the Letter of Credit.

“Bank” — has the meaning set forth in the introductory paragraph hereof.

“Bank Agreement” – means any credit agreement, reimbursement agreement, standby bond purchase agreement, floating rate note purchase agreement, liquidity agreement or other similar agreement (or any amendment, supplement or modification thereto) pursuant to which the provider of credit or liquidity thereunder or purchaser of floating rate notes (the *“Bank Agreement Provider”*) undertakes to make loans, extend credit or liquidity in respect of obligations of the District or purchase floating rate notes of the District.

“Bank Agreement Provider” – has the meaning set forth in the defined term *“Bank Agreement”*.

“Bank Bond CUSIP Number” — means the CUSIP number assigned to Bank Bonds by S&P’s CUSIP Bureau.

“Bank Bonds” — means Bonds (other than Bonds owned by or on behalf of the District) purchased with the proceeds of a Liquidity Drawing and registered in the name of the Bank or its nominee (which, so long as the Bonds are Book-Entry Bonds, shall initially be the Custodian) pursuant to the Custodian Agreement and to the Indenture. Each Bank Bond will represent the corresponding Liquidity Advance and Term Loan until said Liquidity Advance or Term Loan has been repaid in full.

“Bank Rate” — has the meaning set forth in the Fee Letter.

“Base Rate” — has the meaning set forth in the Fee Letter.

“Bond Documents” — means the Indenture, the Remarketing Agreement, the Remarketing Statement and the Bonds.

“Bonds” — has the meaning set forth in the recitals hereof.

“Book-Entry Bonds” — has the meaning set forth in the Indenture.

“Business Day” — has the meaning set forth in the Letter of Credit.

“Cap Interest Rate” — has the meaning set forth in the Letter of Credit.

“Capitalized Lease Obligation” — means the amount of the liability shown on the balance sheet of any Person in respect of a Capital Lease as determined in accordance with GAAP.

“Capital Lease” — means any lease of Property which in accordance with GAAP would be required to be capitalized on the balance sheet of the lessee.

“CCP” — has the meaning set forth in Section 7.13.

“Change of Law” — means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any law, rule, regulation, statute, treaty, policy, guideline or directive by any Governmental Authority, (b) any change in any law, rule, regulation, statute, treaty, policy, guideline or directive or in the application, interpretation, promulgation, implementation, administration or enforcement thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a *“Change of Law”*, regardless of the date enacted, adopted or issued.

“Claim” — has the meaning set forth in Section 7.13.

“Closing Date” — means the date on which the Letter of Credit is issued.

“Code” — means the Internal Revenue Code of 1986, and any successor statute thereto.

“Colonies Litigation” — means any and all actions, claims, counterclaims, proceedings and investigations that have arisen, or may arise, from or which relate, or may relate, specifically to: (i) the manner in which the Colonies Settlement Agreement was approved by the County and/or the District, (ii) violations or alleged violations of Section 1090 of the California Government Code, or (iii) any challenge by the District or any other Person to the judgment entered by the Superior Court of the State of California, County of San Bernardino in *San Bernardino County Flood Control District v. Colonies Partners, L.P.*, Case No. RCV 077034.

“Colonies Settlement Agreement” — means that certain settlement agreement, dated November 28, 2006, among the District, the County and Colonies Partners, L.P., a California limited partnership, which settled a series of disputes among the District and the County on the one hand and Colonies Partners, L.P. on the other hand, concerning a quiet title action and an inverse

condemnation action surrounding the construction of a portion of the Interstate 215 extension and the resulting construction of a storm drain and basin system.

“Conversion Date” — means the date on which all or a portion of the Bonds have been converted to bear interest at a mode other than a *“Daily Rate Mode”* or a *“Weekly Rate Mode”* in accordance with, and as such terms are defined in, the Indenture.

“County” — means the County of San Bernardino, California.

“County Employees Retirement Law” — means the County Employees Retirement Law of 1937, Sections 31450-31485.8 of the California Government Code.

“Court” — has the meaning set forth in Section 7.13.

“Custodian Agreement” — means the Custodian Agreement of even date herewith among the Bank, the District and the Trustee in its capacity as custodian of Bank Bonds and any successor agreement thereto entered into among the Bank, the District and the then current Trustee in its capacity as custodian of Bank Bonds.

“Debt” — means for any Person (without duplication) (a) all indebtedness created, assumed or incurred in any manner by such Person representing money borrowed (including by the issuance of debt securities), (b) all obligations for the deferred purchase price of property or services (other than trade accounts payable arising in the ordinary course of business), (c) all obligations secured by any Lien upon Property of such Person, whether or not such Person has assumed or become liable for the payment of such indebtedness, (d) all Capitalized Lease Obligations of such Person, (e) all obligations of such Person on or with respect to letters of credit, banker’s acceptances and other evidences of indebtedness representing extensions of credit whether or not representing obligations for borrowed money, (f) certificates of participation evidencing an undivided ownership interest in payments made by such Person as lessee under Capital Leases, as purchaser under an installment sale agreement or otherwise as an obligor in connection therewith, and (g) all Guaranteed Debt.

“Default Rate” — has the meaning set forth in the Fee Letter.

“Discretionary Expenditures” — means, for any fiscal year of the District, expenditures of general funds of the District which are recognized as expenditures in the audited financial statements for such fiscal year but that exclude expenditures identified by the District as capital outlay [and emergency maintenance expenditures].

“Discretionary Revenues” — means, for any fiscal year of the District, those Revenues which are recognized as revenue in the audited financial statements in the general funds of the District for such fiscal year.

“District” — has the meaning set forth in the introductory paragraph to this Agreement.

“Drawing” — means a drawing made by the Trustee under and in accordance with the terms of the Letter of Credit.

“DTC” — means The Depository Trust Company and its successors and assigns.

“*ERISA*” — means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute thereto.

“*Event of Default*” — has the meaning set forth in Section 6.1.

“*Excess Interest*” — has the meaning set forth in Section 2.15.

“*Existing Amortization Period*” — has the meaning set forth in Section 5.1(n).

“*Existing Bank*” — has the meaning set forth in the recitals hereof.

“*Existing Letter of Credit*” — has the meaning set forth in the recitals hereof.

“*Fee Letter*” — means the letter agreement between the Bank and the District regarding fees and expenses related to this Agreement, the Letter of Credit and the transactions contemplated hereby and thereby.

“*Flood Control Act*” — has the meaning set forth in the Indenture.

“*Flood Control System*” — has the meaning set forth in the Indenture.

“*GAAP*” — has the meaning set forth in the Indenture for the defined term “*Generally Accepted Accounting Principles*”.

“*Governmental Approval*” — means an authorization, consent, approval, license, or exemption of, registration or filing with, or report to any Governmental Authority.

“*Governmental Authority*” — means any nation or government, any state, department, agency or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government, and any corporation or other entity owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing.

“*Guaranteed Debt*” — means, without duplication, all Debt of any Person of the kind referred to in the definition of “*Debt*” which is guaranteed directly or indirectly in any manner by the District.

“*Highest Permissible Rate*” — means the highest rate of interest permissible by Applicable Law with respect to the obligation accruing interest thereon.

“*Indemnified Party*” — has the meaning set forth in Section 7.2(b).

“*Indenture*” — has the meaning set forth in the recitals hereof.

“*Interest Drawing*” — has the meaning set forth in the Letter of Credit.

“*Interest Payment Date*” — has the meaning set forth in the Indenture, but shall not be deemed to include clause (c) thereof.

“Letter of Credit” — means the irrevocable transferable letter of credit issued by the Bank for the account of the District in favor of the Trustee, in the form of Appendix I hereto with appropriate insertions, as amended and extended from time to time.

“Lien” — means any mortgage, lien, security interest, pledge, charge or encumbrance of any kind in respect of any Property, including the interests of a vendor or lessor under any conditional sale, Capital Lease or other title retention arrangement.

“Liquidity Advance” — has the meaning set forth in Section 2.3(a).

“Liquidity Drawing” — has the meaning set forth in the Letter of Credit.

“Material Adverse Effect” — means (a) a material adverse effect upon the District’s business, operations, assets, liabilities, financial condition, results of operations, Properties or business prospects, the Revenues or the Flood Control System, and (b) with respect to any Related Document to which the District is a party, a material adverse effect upon (i) the binding nature, validity or enforceability of such Related Document, (ii) the ability of the District to timely perform its obligations thereunder and/or (iii) the rights and remedies of the Bank thereunder. For the purposes hereof, a reduction of assets of the District in an amount equal to or in excess of \$10,000,000 will constitute a Material Adverse Effect for the District.

“Maximum Rate” — has the meaning set forth in the Indenture.

“Moody’s” — means Moody’s Investors Service, or any successor rating agency.

“Notice of Extension” — has the meaning set forth in Section 2.12.

“Obligations” — means the fees relating to the Letter of Credit, any and all obligations of the District to reimburse the Bank for any Drawings under the Letter of Credit including, without limitation, each Liquidity Advance, each Term Loan, and all other obligations of the District to the Bank arising under or in relation to this Agreement, the Fee Letter and the Custodian Agreement.

“Other Debt Documents” — has the meaning set forth in Section 5.2(k)(ii).

“Other Taxes” — has the meaning set forth in Section 2.16.

“Outstanding” — has the meaning set forth in the Indenture.

“Owner” — has the meaning set forth in the Indenture.

“Patriot Act” — has the meaning set forth in Section 7.18.

“Person” — means an individual, a corporation, a partnership, limited liability company, an association, a trust or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof.

“Plan” — means a pension plan providing benefits for employees of any person.

“Potential Default” — means an event or condition which, with the passage of time or the giving of notice, or both, would constitute an Event of Default.

“Prime Rate” — has the meaning set forth in the Fee Letter.

“Prior Bonds” — has the meaning set forth in the Indenture.

“Prior Indenture” — has the meaning set forth in the Indenture.

“Property” — means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, whether now owned or hereafter acquired.

“Purchase Date” — has the meaning set forth in the Indenture.

“Purchase Price” — has the meaning set forth in the Indenture.

“Rating Agencies” or *“Rating Agency”* — has the meaning set forth in the Indenture.

“Redemption Drawing” — has the meaning set forth in the Letter of Credit.

“Reimbursement Obligations” — has the meaning set forth in Section 2.14(a).

“Related Documents” — means this Agreement, the Custodian Agreement, the Fee Letter, the Letter of Credit, the Bond Documents and any other agreement or instrument relating thereto.

“Remarketing Agent” — has the meaning set forth in the Indenture.

“Remarketing Agreement” — has the meaning set forth in the Indenture.

“Remarketing Statement” — means the remarketing statement of the District related to the substitution of the Letter of Credit for the Existing Letter of Credit.

“Revenues” — has the meaning set forth in the Indenture.

“S&P” — means Standard & Poor’s Ratings Services, a division of The McGraw- Hill Companies, Inc., or any successor rating agency.

“Senior Obligations” has the meaning set forth in the Indenture.

“Shorter Amortization Period” — has the meaning set forth in Section 5.1(n).

“SIFMA Index” — means, as of any date, the per annum rate published or reported by Municipal Market Data on its SIFMA Municipal Swap Index most recently available, or if the SIFMA Municipal Swap Index is no longer published or reported, the rate per annum published or reported on the S&P Weekly High Grade Index (formerly the J.J. Kenny Index), or if neither the SIFMA Municipal Swap Index nor the S&P Weekly High Grade Index is published, a per annum rate equal to 65% of the London interbank offered rate (LIBOR) for one-month deposits in U.S. Dollars.

“State” — has the meaning set forth in the Indenture.

“Stated Expiration Date” — has the meaning set forth in the Letter of Credit.

“Stated Maturity Drawing” — has the meaning set forth in the Letter of Credit.

“Substitution Date” - has the meaning set forth in the Indenture.

“Supplemental Indenture” — has the meaning set forth in the Indenture.

“Taxes” — has the meaning set forth in Section 2.16.

“Termination Date” — has the meaning set forth in the Letter of Credit.

“Term Loan” — means, as long as the conditions for the creation of a Term Loan have been timely satisfied pursuant to Section 3.2, a Liquidity Advance that has not been fully repaid by the District on or before the ninetieth day from and including the date such Liquidity Advance was made or deemed made.

“Term Loan Amortization End Date” — means, with respect to any Term Loan, the first to occur of (a) the third (3rd)¹ anniversary of the Term Loan Amortization Start Date for such Term Loan, (b) the third (3rd) anniversary of the Termination Date Loan, (c) the date on which the Bank Bond representing such Term Loan is redeemed, prepaid, accelerated, defeased or otherwise cancelled pursuant to the Indenture, (d) the date on which the Bank Bond representing such Term Loan is remarketed pursuant to the Indenture and the Remarketing Agreement, (e) the Substitution Date and (f) the Conversion Date for the Bank Bond representing such Term Loan.

“Term Loan Amortization Payment Date” — means, with respect to any Term Loan, the related Term Loan Amortization Start Date and, thereafter, the first Business Day of each six month thereafter with the final payment of principal being due and payable on the final day of the Term Loan Period.

“Term Loan Amortization Start Date” — means the first Business Day of the calendar month immediately following the related Term Loan Commencement Date.

“Term Loan Commencement Date” — means, for a Term Loan, the 91st day following the date the related Liquidity Advance was made.

“Term Loan Period” — means, with respect to any Term Loan, the period commencing on the Term Loan Commencement Date and ending on the Term Loan Amortization End Date.

“Term Loan Rate” — has the meaning set forth in the Fee Letter.

“Termination Date” — means the date the Letter of Credit expires or terminates in accordance with its terms.

“Trustee” — means Wells Fargo Bank, National Association, and its successors and assigns.

¹ This reference and the following reference to third anniversary will change to second anniversary if the District selects a three year tenor.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms. Any capitalized terms used herein which are not specifically defined herein shall have the same meanings herein as in the Indenture. All references in this Agreement to times of day shall be references to New York time unless otherwise expressly provided herein. Unless otherwise inconsistent with the terms of this Agreement, all accounting terms shall be interpreted and all accounting determinations hereunder shall be made in accordance with GAAP.

Article Two Letter of Credit

Section 2.1 Issuance of Letter of Credit. Upon the terms, subject to the conditions and relying upon the representations and warranties set forth in this Agreement or incorporated herein by reference, the Bank agrees to issue the Letter of Credit. The Letter of Credit shall be in the original stated amount of \$37,908,069, which is the sum of (i) the principal amount of Bonds Outstanding on the Closing Date, plus (ii) interest thereon at the Cap Interest Rate for a period of fifty (50) days calculated on the basis of a 365/366-day year, as the case may be, and the actual number of days elapsed.

Section 2.2 Letter of Credit Drawings. The Trustee is authorized to make Drawings under the Letter of Credit in accordance with the terms thereof. The District hereby directs the Bank to make payments under the Letter of Credit in the manner therein provided. The District hereby irrevocably approves reductions and reinstatements of the Available Amount as provided in the Letter of Credit.

Section 2.3 Reimbursement of Liquidity Drawings under the Letter of Credit; Optional Redemption; Term Loans; Interest.

(a) If a Liquidity Drawing in the form of Exhibit E to the Letter of Credit is duly completed and timely delivered to the Bank as required thereby, the Bank will advance from its own funds to the Trustee on behalf of the District an amount equal to the principal and interest of the Bond (other than any Bank Bond or any Bond owned by or on behalf of the District) which has been tendered for purchase but not remarketed (each such advance being referred to herein as a “Liquidity Advance”). From and after the making of each Liquidity Advance, the Bank will be deemed and treated for all purposes of the Bond Documents as the Owner of the corresponding Bond, and said Bond shall, until such time as it no longer qualifies as a Bank Bond hereunder and under the Indenture, be accorded all the benefits associated with all other Bonds pursuant to the Bond Documents and as provided hereunder. Subject to the limitations described in Section 2.14 hereof, the District promises to pay to the Bank the full amount of each Liquidity Advance on the earliest of (i) the date on which any Bonds purchased with the proceeds of such Liquidity Advance mature, are redeemed, prepaid or cancelled pursuant to the Indenture, (ii) the date on which any Bonds purchased with the proceeds of such Liquidity Advance are remarketed pursuant to the Indenture, (iii) the Substitution Date, (iv) the Conversion Date for the Bonds purchased with the proceeds of such Liquidity Advance, (v) the Termination Date and (vi) the opening of business of the Bank on the ninety first day from (and including) the date on which such Liquidity Advance was made. The District also promises to pay to the Bank interest on the principal amount of each Liquidity Advance from the date such Liquidity Advance is made until it is paid in full as provided herein, at a rate per annum equal to the Bank Rate from

time to time in effect, payable on the first Business Day of each month and each date described in the immediately preceding sentence.

(b) Upon the making of each Liquidity Advance, the Bonds purchased with the proceeds of the related Liquidity Drawing shall be deemed sold to the Bank in an amount equal to the principal amount of such Bonds, plus interest accrued thereon to the Purchase Date and, prior to or simultaneously with the application of the proceeds of the related Liquidity Advance, such Bonds shall be held by the Trustee on behalf of the Bank as provided in the Custodian Agreement and in the Indenture. Upon reimbursement to the Bank in full or in part of any Bank Bond representing a Liquidity Advance or Term Loan, interest due and payable thereon pursuant to Section 2.3(a) hereof to the date of such reimbursement (including Excess Interest) and reinstatement of the Letter of Credit in accordance with its terms, the Bank shall cause to be released and delivered pursuant to the Indenture the principal amount of Bank Bonds being reimbursed as provided herein and in the Indenture. Anything in this paragraph to the contrary notwithstanding, in the event the Bonds are Book-Entry Bonds, beneficial ownership of Bank Bonds by the Bank shall be reflected in accordance with the book-entry system of DTC in accordance with the Custodian Agreement.

(c) (i) Notwithstanding the foregoing, each unreimbursed Liquidity Advance will automatically convert into a Term Loan beginning on the applicable Term Loan Commencement Date if the conditions precedent contained in Section 3.2 are satisfied in full on such Term Loan Commencement Date. Each Term Loan shall be repaid, in approximately equal semiannual installments of principal, commencing on the Term Loan Amortization Start Date and on each subsequent Term Loan Amortization Payment Date thereafter, with the last such payment being due and payable on the final day of the Term Loan Period. The semiannual amount to be paid, determined as of the Term Loan Commencement Date, shall be rounded upward or downward, as appropriate, if necessary, to the nearest \$100,000.

(ii) Interest on each Term Loan shall accrue at the Bank Rate and shall be payable, in arrears, on the first Business Day of each month and on the Term Loan Amortization End Date.

(d) Each Bank Bond representing an unreimbursed Liquidity Advance or Term Loan created pursuant to paragraph (a) above may be redeemed in whole or in part without premium or penalty on any Business Day upon one (1) Business Day's prior written notice.

(e) Upon the Bank's receipt of any payment or prepayment of any Bank Bond, the amount of the corresponding Liquidity Advance or Term Loan shall be reduced by the amount of such payment or prepayment.

(f) With respect to each Bank Bond, the District shall cause the Trustee to hold such Bonds for the benefit of the Bank in accordance with the terms of the Custodian Agreement. During such time as the Bank is the owner of any Bank Bonds, it shall have all the rights granted to Owners of Bonds under the Indenture and such additional rights as may be granted to the Bank hereunder. To the extent that the Bank actually receives the payment or prepayment of principal of or interest on any Bank Bond held by it, the corresponding Liquidity Advance or Term Loan shall be deemed to have been reduced *pro tanto*, with the Bank crediting any payment on such Bond received by it, first to the payment of any outstanding interest accrued on the corresponding Liquidity Advance or Term Loan, and second to the payment of the principal of

such corresponding Liquidity Advance or Term Loan, as applicable. Any such payment or prepayment to be applied to repay the principal of a Bank Bond hereunder shall be applied to the prepayment of Liquidity Advances and Term Loans in chronological order of their creation hereunder and, within each Liquidity Advance or Term Loan, in inverse order of the principal installments thereon.

Section 2.4 Reimbursement of Drawings Other Than Liquidity Drawings Under the Letter of Credit. The District agrees to reimburse the Bank for the full amount of each Interest Drawing, Redemption Drawing and Stated Maturity Drawing under the Letter of Credit immediately upon payment by the Bank of each such Drawing and on the date the Bank advances money in response to such Drawing. If the District does not make such reimbursement on such date, the Obligation created by such Interest Drawing, Redemption Drawing or Stated Maturity Drawing shall bear interest at the Default Rate and an Event of Default will be deemed to have occurred hereunder. A Bond for which the principal and interest have been paid with the proceeds of an unreimbursed Interest Drawing, Redemption Drawing or Stated Maturity Drawing made under the Letter of Credit as described in this Section 2.4 shall remain Outstanding under the Indenture and will be subject to the provisions of Section 6.03 or 6.04 thereof, as applicable.

Section 2.5 Fees.

(a) The District agrees to pay to the Bank the fees and expenses set forth in the fee letter at the times and in the amounts set forth therein.

(b) If the District shall fail to pay when due any fees and costs owing to the Bank under this Agreement or the Fee Letter, then, the District will pay the Bank, on demand, interest from the date after the day the payment was due until paid in full at the Default Rate.

Section 2.6 Method of Payment: Etc. All payments to be made by the District under this Agreement and the Fee Letter shall be made by means of wire transfer of funds to the Bank through the Federal Reserve Wire System for credit to Bank of America, N.A., ABA No: 026009593, Account No.: _____, for further credit: Standby Letter of Credit No: _____, Reference: San Bernardino County Flood Control District, or pursuant to such other direction as the Bank may specify in writing from time to time, not later than 2:00 p.m. on the Business Day next preceding the date when due and shall be made in lawful money of the United States of America in freely transferable and immediately available funds.

Section 2.7 Voluntary Termination. The District may, to the extent such termination is permitted by the Indenture, terminate the Letter of Credit upon: (i) thirty (30) days written notice to the Bank of such termination or such shorter notice as shall be acceptable to the Bank; (ii) the payment to the Bank with immediately available funds on or prior to the date of termination of all fees, expenses and other Obligations accrued hereunder and under the Fee Letter to the date of termination, including all principal and accrued interest owing on any Bank Bonds.

Section 2.8 Computation of Interest and Fees. All computations of interest payable by the District under this Agreement shall be made on the basis a 365/6-day year and actual days elapsed. All computations of fees payable by the District under this Agreement or the Fee Letters, as the case may be, shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue during each period during which interest is computed from and

including the first day thereof to and excluding the last day thereof. Notwithstanding any provision of this Agreement to the contrary, any failure by the Bank to submit an invoice shall neither affect nor diminish the obligation of the District to pay such amounts at the times and in the amounts required by the terms of this Agreement.

Section 2.9 Payment Due on Non-Business Day to Be Made on Next Business Day. If any sum becomes payable pursuant to this Agreement or the Fee Letter, as the case may be, on a day which is not a Business Day, the date for payment thereof shall be extended, without penalty, to the next succeeding Business Day, and such extended time shall be included in the computation of interest and fees.

Section 2.10 Late Payments. If the principal amount of any Obligation is not paid when due, such Obligation shall bear interest until paid in full at a rate per annum equal to the Default Rate, such Default Rate being payable on demand.

Section 2.11 Source of Funds. All payments made by the Bank pursuant to the Letter of Credit shall be made from funds of the Bank, and not from the funds of any other Person.

Section 2.12 Extension of Stated Expiration Date. On any date no earlier than one hundred eighty (180) days and not less than sixty (60) days prior to the then current Stated Expiration Date, the District may request the Bank to extend the then current Stated Expiration Date. If the Bank, in its sole discretion, elects to extend the Stated Expiration Date then in effect, it shall deliver to the Trustee a Notice of Extension in the form of Annex J to the Letter of Credit (herein referred to as a “*Notice of Extension*”) designating the date to which the Stated Expiration Date is being extended. Such extension of the Stated Expiration Date shall be effective upon delivery to the Trustee of such Notice of Extension and, thereafter, all references in this Agreement and the Letter of Credit to the Stated Expiration Date shall be deemed to be references to the date designated as such in the most recent Notice of Extension delivered to the Trustee. Any date to which the Stated Expiration Date has been extended in accordance with this Section 2.12 may be extended in like manner. Any failure of the Bank to deliver the Notice of Extension within thirty (30) days of the District’s request therefor shall be deemed a rejection by the Bank of the District’s request for said extension.

Section 2.13 Amendments upon Extension. Upon any extension of the Stated Expiration Date pursuant to Section 2.12 of this Agreement, the Bank and the District each reserves the right to renegotiate any provision hereof.

Section 2.14 Nature of District’s Obligations.

(a) Notwithstanding any provisions of this Agreement to the contrary, the Obligations of the District to reimburse the Bank hereunder for any Drawing honored by the Bank, whether represented by Bank Bonds, Liquidity Advances or Term Loans (“*Reimbursement Obligations*”), are payable solely from, and secured by, Revenues in accordance with the terms of the Indenture. To the extent that the Bank advances moneys to pay the principal or interest evidenced by a Bond by means of a Drawing (other than a Liquidity Drawing), it shall become the Owner of such portion of such Bond and the right to receive payment of such interest and principal and shall be fully subrogated to all of the Owner’s rights thereunder to the extent of the moneys so advanced, including the Owner’s rights to receive the payment thereof. To the extent Bonds are required to be purchased by the Bank under the

Indenture pursuant to a Liquidity Drawing, such Bonds shall become Bank Bonds and shall bear interest at the Bank Rate for each day from and including the date such Bonds become Bank Bonds to, but not including, the date such Bonds are paid or repaid in full or are remarketed in accordance with the Indenture and the Remarketing Agreement. As provided in the Prior Indenture and the Series 2007 Indenture, subject only to the provisions thereof permitting the application thereof for the purposes and on the terms and conditions set forth therein, all of the Revenues are pledged by the District to secure the payment of the principal of and interest on the Senior Obligations. As provided in the Prior Indenture and the Series 2007 Indenture, such pledge constitutes a first lien on the Revenues for the payment of the Senior Obligations. The Bonds and the Reimbursement Obligations constitute Senior Obligations.

(b) All other amounts payable by the District hereunder and under the Fee Letter are payable directly by the District.

(c) All amounts (including proceeds of the sale of the Bonds) held in the “Debt Service Account One,” the “Debt Service Account Two” and the “Other Replacement Proceeds Fund” established under the Indenture are pledged by the District to secure the payment of the principal of and interest on the Bonds in accordance with their terms, the provisions of the Indenture and the Act. The terms “Debt Service Account One,” “Debt Service Account Two” and “Other Replacement Proceeds Fund” have the respective meanings assigned thereto in the Indenture.

Section 2.15 Recapture. If the rate of interest payable hereunder shall exceed the Highest Permissible Rate for any period for which interest is payable, then (i) interest at the Highest Permissible Rate shall be due and payable with respect to such interest period and (ii) interest at the rate equal to the difference between (A) the rate of interest calculated in accordance with the terms hereof and (B) the Highest Permissible Rate (the “Excess Interest”), shall be deferred until such date as the rate of interest calculated in accordance with the terms hereof ceases to exceed the Highest Permissible Rate, at which time the District shall pay to the Bank, with respect to amounts then payable to the Bank that are required to accrue interest hereunder, such portion of the deferred Excess Interest as will cause the rate of interest then paid to the Bank to equal the Highest Permissible Rate, which payments of deferred Excess Interest shall continue to apply to such unpaid amounts hereunder until all deferred Excess Interest is fully paid to the Bank. Upon the termination of the Letter of Credit and this Agreement, in consideration for the limitation of the rate of interest otherwise payable hereunder, the District shall pay to the Bank a fee equal to the amount of all unpaid deferred Excess Interest.

Section 2.16 Net of Taxes.

(a) Any and all payments to the Bank by the District hereunder or under the Fee Letter shall be made free and clear of and without deduction for any and all taxes, levies, imposts, deductions, charges, withholdings or liabilities imposed thereon, excluding, however, taxes imposed on or measured by the net income or capital of the Bank by any jurisdiction or any political subdivision or taxing authority thereof or therein solely as a result of a connection between the Bank and such jurisdiction or political subdivision (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as “Taxes”). If the District shall be required by law to withhold or deduct any Taxes imposed by the United States or any political subdivision thereof from or in respect of any sum payable

hereunder or under the Fee Letter to the Bank, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.16), the Bank receives an amount equal to the sum it would have received had no such deductions been made, (ii) the District shall make such deductions and (iii) the District shall pay the full amount deducted to the relevant taxing authority or other authority in accordance with applicable law. In addition, the District agrees to pay as promptly as practicable after receiving notice of, any present or future stamp, recording or documentary taxes and any other excise or property taxes, charges or similar levies that arise under the laws of the United States of America, the State of New York or the State with respect to any payment made hereunder or under the Fee Letter or from the execution or delivery or otherwise with respect to this Agreement and the Fee Letter (hereinafter referred to as "*Other Taxes*"). The Bank shall provide to the District within a reasonable time a copy of any written notification it receives with respect to Taxes or Other Taxes owing by the District to the Bank hereunder; *provided* that the Bank's failure to send such notice shall not relieve the District of its obligations to pay such amounts hereunder, except as to any penalties, interest or expenses arising solely from the Bank's failure to provide timely written notice to the District that such Taxes or Other Taxes are payable.

(b) The District shall, to the fullest extent permitted by law, indemnify the Bank for the full amount of Taxes and Other Taxes including any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section 2.16 paid by the Bank or any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted; *provided*, that the District shall not be obligated to indemnify the Bank for any penalties, interest or expenses relating to Taxes or Other Taxes arising from the Bank's gross negligence or willful misconduct as determined by a final judgment of a court of competent jurisdiction. The Bank agrees to give notice to the District of the assertion of any claim against the Bank relating to such Taxes or Other Taxes as promptly as is practicable after being notified of such assertion; *provided*, that the Bank's failure to notify the District promptly of such assertion shall not relieve the District of their obligation under this Section 2.16, except as to any penalties, interest or expenses arising solely from the Bank's failure to provide timely written notice to the District that such Taxes or Other Taxes are payable. Payments by the District pursuant to this indemnification shall be made within thirty (30) days from the date the Bank makes written demand therefor, which demand shall be accompanied by a certificate describing in reasonable detail the basis thereof. Within thirty (30) days after the date of any payment of Taxes by the District, the District shall furnish to the Bank the original or a certified copy of a receipt evidencing payment thereof. The District shall compensate the Bank for all reasonable losses and expenses sustained by the Bank as a result of any failure by the District to so furnish such copy of such receipt.

(c) The obligations of the District under this Section 2.16 shall survive the termination of this Agreement.

Article Three Conditions Precedent

Section 3.1 Conditions Precedent to Issuance of Letter of Credit. As conditions precedent to the obligation of the Bank to issue the Letter of Credit, (a) the District shall provide to the Bank on the Closing Date, in form and substance satisfactory to the Bank, the following:

(i) a written opinion or opinions of counsel to the District, dated the Closing Date, addressed to the Bank;

(ii) the written opinion of Orrick Herrington & Sutcliffe LLP, bond counsel for the District, dated the Closing Date, addressed to the Bank, in the form attached hereto as Appendix II;

(iii) a certificate signed by an Authorized Representative, dated the Closing Date, and stating that:

(A) the representations and warranties contained in Article Four of this Agreement and the other Related Documents to which the District is a party are true and correct on and as of the Closing Date as though made on such date;

(B) no Event of Default has occurred and is continuing, or would result from the issuance of the Letter of Credit or the execution, delivery or performance by the District of this Agreement, the Fee Letter or the Custodian Agreement, and no event has occurred and is continuing which, with the passage of time, the giving of notice, or both, would constitute an Event of Default;

(C) upon issuance of the Letter of Credit and delivery thereof to the Trustee, the Existing Letter will terminate, no further drawings will be permitted to be made thereunder and all amounts owing to the Existing Bank in respect of the Existing Letter of Credit will have been paid in full; and

(D) the District has not received service in respect of any action or proceeding that challenges or seeks to challenge the validity of the Bonds or the Prior Bonds;

(iv) evidence of the due authorization, execution and delivery by the District of this Agreement, the Fee Letter and the Custodian Agreement and evidence of the due authorization, execution and delivery by the Trustee of the Custodian Agreement;

(v) copies of the resolutions of the District and all other necessary approvals, if any, certified as of the Closing Date, authorizing, among other things, the issuance, sale and delivery of the Bonds, the execution, delivery and performance by the District of the Related Documents to which it is a party including, without limitation, this Agreement, and the preparation and distribution of the Remarketing Statement, said resolutions to be certified by an Authorized Representative (which certificate shall state that such resolutions are in full force and effect on the Closing Date, have not been modified, amended or supplemented through such date and constitute the only resolutions of the District relating to the subject matter thereof);

(vi) true and correct copies of all Governmental Approvals, if any, necessary for the District to execute, deliver and perform the Related Documents to which it is a party including, without limitation, this Agreement, the Fee Letter and the Custodian Agreement;

(vii) a certificate of an Authorized Representative certifying as to the names and true signatures of the officers of the District authorized to execute this Agreement, the Fee Letter and the Custodian Agreement;

(viii) counterparts of this Agreement, the Fee Letter and the Custodian Agreement signed by each party hereto and thereto and copies of each other Related Document fully executed by each of the parties thereto, together with a specimen of the Bonds and a copy of the Remarketing Statement;

(ix) evidence that (A) the Bonds have received long and short- term ratings from Moody's and S&P at least equal to "Aa2/VMIG1" and "A+/A-1", respectively, (B) the Bank Bonds have a long-term rating of at least "A3" by Moody's or "A-" by S&P and (C) a CUSIP number has been assigned to Bank Bonds that is separate and distinct from the Bonds;

(x) payment of the fees and expenses of counsel to the Bank on the Closing Date; and

(xi) such other documents, instruments, approvals (and, if requested by the Bank, certified duplicates of executed copies thereof) or opinions as the Bank may reasonably request relating to this Agreement or the Related Documents or the transactions contemplated hereby or thereby;

(b) no law, regulation, ruling or other action of the United States of America, the State of New York or the State or any political subdivision or authority therein or thereof shall be in effect or shall have occurred, the effect of which would be to prevent the Bank from fulfilling its obligations under this Agreement or the Letter of Credit or to prevent the District, the Trustee or the Remarketing Agent from fulfilling their respective obligations hereunder and under the other Related Documents to which each such entity is a party;

(c) in the opinion of the Bank, no adverse development shall have occurred in the Colonies Litigation;

(d) no action or proceeding shall have been commenced that seeks to challenge the validity of the Bonds or the Prior Bonds without the prior consent of the Bank; and

(e) all legal requirements provided herein incident to the execution, delivery and performance of the Related Documents and the transactions contemplated thereby shall be reasonably satisfactory to the Bank and Bank's counsel.

Section 3.2 Conditions Precedent to Term Loans. On each Term Loan Commencement Date, and unless the District shall have previously advised the Bank in writing that one or both of the following statements is no longer true, the District shall be deemed to have represented and warranted on such Term Loan Commencement Date that:

(a) the representations and warranties of the District contained in Article Four of this Agreement and in the other Related Documents (i) that are qualified by "materiality", "Material Adverse Effect" or similar qualifiers are correct in all respects on and as of the date of such payment as though made on and as of such date, *provided* that for purposes of restating the representation and warranty set forth in Section 4.1(g) the date referenced therein shall be the date of the most recent financial statements delivered to the Bank and (ii) that are not qualified by "materiality", "Material Adverse Effect" or similar qualifiers are correct in all material respects on and as of the date of such payment as though made on and as of such date; and

(b) no event has occurred and is continuing, or would result from the conversion of a Liquidity Advance to a Term Loan on the Term Loan Commencement Date, which constitutes a Potential Default or Event of Default.

Article Four Representations and Warranties

Section 4.1 Representations and Warranties of the District. In order to induce the Bank to enter into this Agreement and to issue the Letter of Credit, the District hereby represents and warrants to the Bank as follows:

(a) *Organization.* The District is a body corporate and politic duly organized and validly existing under and by virtue of the Constitution and laws of the State of California including, without limitation, the Flood Control Act.

(b) *Power and Authorization.* The District has all requisite power and authority to own its properties and to carry on its business as now conducted and as contemplated to be conducted under this Agreement and the other Related Documents to which the District is a party and to execute, deliver and to perform its obligations under this Agreement and the other Related Documents to which the District is a party, and the execution, delivery and performance of this Agreement and the other Related Documents to which the District is a party, the issuance, sale and delivery of the Bonds and the preparation and delivery of the Remarketing Statement were duly authorized by all necessary action.

(c) *No Legal Bar.* The District is not in violation of any of the provisions of the laws of the State which would affect its existence or its powers referred to in Section 4.1(b) hereof. The execution, delivery and performance by the District of this Agreement and of the other Related Documents to which the District is a party (i) will not (or, in the case of Related Documents to which the District is a party and which have previously been executed, did not at the time of execution and delivery) violate any provision of any Applicable Law or of any order, writ, judgment or decree of any court, arbitrator or other Governmental Authority, (ii) will not (or, in the case of Related Documents to which the District is a party and which have previously been executed, did not at the time of execution and delivery) violate any material provisions of any document constituting, regulating or otherwise affecting the operations or activities of the District including the operation of the Flood Control System, and (iii) will not violate any provision of, constitute a default under, or result in the creation or imposition of any lien (other than the lien created pursuant to the Indenture), mortgage, pledge, charge, security interest or encumbrance of any kind on the Revenues, the Flood Control System or any other assets of the District pursuant to the provisions of such mortgage, indenture, contract, agreement or other undertaking to which the District is a party or which purports to be binding upon the District or upon any of its assets.

(d) *Consents.* The District has obtained all consents, permits, licenses and approvals of, and has made all registrations and declarations with, each Governmental Authority and regulatory body required for the execution, delivery and performance by the District of this Agreement or the other Related Documents to which the District is a party and the preparation and delivery of the Remarketing Statement.

(e) *Enforceability.* This Agreement and the other Related Documents to which the District is a party, including the Bonds, constitute the legal, valid and binding obligations of the District, enforceable against the District in accordance with their respective terms (except as such enforceability may be limited by bankruptcy, moratorium or other similar laws affecting creditors' rights generally and provided that the application of equitable remedies is subject to the application of equitable principles). A violation or violations of Section 1090 of the California Government Code by members of the Board of the District and/or members of the Board of Supervisors of the County in connection with the approval of the settlement contained in the Colonies Settlement Agreement does not affect the validity of the Bonds.

(f) *Changes in Law.* To the best knowledge of the District, there is not pending any change of law which, if enacted or adopted, could reasonably be expected to have a Material Adverse Effect with respect to the assets, financial condition, properties, business or operations of the District, the Revenues and the Flood Control System or the performance of the obligations of the District under this Agreement or the other Related Documents to which the District is a party.

(g) *Financial Statements.* The combined balance sheets of the District, and the related combined statements of current funds, revenues, expenditures and other charges and changes in fund balances for the fiscal year ending June 30, 2010, accompanied by the auditors' report (copies of which have been furnished to the Bank), present fairly the financial position of the District at the date thereof, and the changes in fund balances, in conformity with GAAP applied on a consistent basis, and since June 30, 2010, there has been no Material Adverse Effect.

(h) *Sovereign Immunity.* To the extent that the District has, or hereafter may acquire under any Applicable Law, any right to immunity from set-off or legal proceedings, on the

grounds of sovereign immunity or any other similar doctrine, the District hereby irrevocably waives, to the full extent permitted by law, such rights to immunity for itself in respect of any contract claims arising under or related to this Agreement or any other Related Document. It is specifically understood and agreed that nothing contained in this Agreement shall be construed as an express or implied waiver by the District of its governmental immunity or the governmental immunity of the County or the State with respect to actions which lie in tort or could lie in tort.

(i) *Environmental Laws.* The District has not received notice to the effect that its operations are not in compliance with any of the requirements of applicable federal, state or local environmental, health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, in each case, relating to the Flood Control System, which non-compliance or remedial action could reasonably be expected to result in a Material Adverse Effect.

(j) *Plans.* The District currently has a Plan which is in compliance in all respects with the requirements of the County Employees Retirement Law including, without limitation, the obligation to pay contributions on behalf of its employees in accordance therewith, and the District has no Plan which is subject to the requirements of ERISA. No condition exists or event or transaction has occurred with respect to any Plan which could reasonably be expected to result in the incurrence by the District of any material liability, fine or penalty.

(k) *Incorporation of Representations and Warranties by Reference.* The District hereby makes to the Bank the same representations and warranties as are set forth by it in each Related Document (other than this Agreement) to which it is a party, which representations and warranties, as well as the related defined terms contained therein, are hereby incorporated herein by reference for the benefit of the Bank with the same effect as if each and every such representation and warranty and defined term were set forth herein in its entirety. No amendment to such representations and warranties or defined terms made pursuant to any Related Document shall be effective to amend such representations and warranties and defined terms as incorporated by reference herein without the prior written consent of the Bank.

(l) *Litigation.* Except for the Colonies Litigation, there is no action, suit, inquiry or investigation or proceeding to which the District is a party, at law or in equity, before or by any court, arbitrator, governmental or other board, body or official which is pending or, to the best knowledge of the District, threatened in connection with any of the transactions contemplated by this Agreement or against or affecting the assets of the District, nor, to the best knowledge of the District, is there any basis therefor, wherein an unfavorable decision, ruling or finding (i) would adversely affect the validity or enforceability of, or the authority or ability of the District to perform its obligations under, this Agreement or the other Related Documents to which the District is a party, (ii) could reasonably be expected to result in a Material Adverse Effect or (iii) would adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes or the exemption of such interest from State personal income taxes.

(m) *Disclosure of Information.* There are no facts known to the District (after diligent inquiry) that the District has failed to disclose to the Bank that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(n) *Tax-Exempt Status.* The District has not taken any action or omitted to take any action, and knows of no action taken or omitted to be taken by any other Person, which action, if taken or omitted, would adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes or the exemption of such interest from State personal income taxes.

(o) *Related Documents.* Each representation and warranty of the District contained in any Related Document is true and correct.

(p) *Regulation U.* The District is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System); and no proceeds of the Bonds were used to extend credit to others for the purpose of purchasing or carrying any margin stock.

(q) *Default, Etc.* The District is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any Related Document or other resolution, agreement or instrument to which it is a party which could have a Material Adverse Effect. No Event of Default or Potential Default has occurred and is continuing.

(r) *No Amendment.* To the best knowledge of the District, there is no amendment, or proposed amendment certified for placement on a statewide ballot, to the Constitution of the State or any published administrative interpretation of the Constitution of the State or any State law, or any legislation which has passed either house of the State legislature or is under consideration by any conference or similar committee, or any published judicial decision interpreting any of the foregoing, the effect of which could reasonably be expected to result in a Material Adverse Effect.

(s) *Security.* The security for the repayment of the Obligations due and payable to the Bank hereunder including, without limitation, the Bank Bonds, is accurately summarized in Section 2.14 hereof. All action necessary to create a first lien on the property securing the Bonds and the Reimbursement Obligations pursuant to the Indenture, this Agreement and Applicable Law have been duly and validly taken.

(t) *No Limitation on Interest Rate.* Neither the laws nor the Constitution of the State impose any limitation on the rate of interest payable by the District hereunder or in connection with any Bank Bond.

(u) *Solvency.* The District is able to pay its debts and satisfy its liabilities as they come due, is solvent and has not made any assignment for the benefit of creditors.

Article Five Covenants

Section 5.1 Affirmative Covenants of the District. The District covenants and agrees with the Bank that it will do the following so long as any amounts may be drawn under the Letter of Credit and thereafter, so long as any amounts remain outstanding or Obligations remain unpaid or unfulfilled under this Agreement, unless the Bank shall otherwise consent in writing:

(a) *Use of Proceeds.* The District shall cause the Trustee to use the proceeds of any Drawing for the purposes described in the Indenture.

(b) *Laws, Permits, etc.* The District will comply with all Applicable Laws, including all consents, licenses, permits, orders, decrees, approvals, authorizations, registrations and filings required by any Governmental Authority having proper jurisdiction over the District and its Property, the noncompliance with which could reasonably be expected to have a Material Adverse Effect.

(c) *Taxes and Liabilities.* The District shall pay all its indebtedness and obligations promptly and in accordance with their terms and pay and discharge or cause to be paid and discharged promptly all taxes, assessments and governmental charges or levies imposed upon it or upon its income and profits, or upon any of its Property, or upon any part thereof, before the same shall become in default, except those indebtednesses, obligations, taxes, assessments or governmental charges or levies which the District shall in good faith contest by proper legal proceedings if the District shall in all such cases have set aside on its books adequate reserves with respect thereto.

(d) *Maintenance of Existence.* The District will at all times preserve and maintain its existence, rights and privileges in the State of California.

(e) *Maintenance of Property.* The District will maintain, preserve and keep the Flood Control System and all of its other Properties in good repair, working order and condition (ordinary wear and tear excepted) and will, from time to time, make all needful and proper repairs, renewals, replacements, additions and betterments thereto so that at all times the efficiency thereof shall be fully preserved and maintained.

(f) *Reporting Requirements.* The District will maintain a standard system of accounting in accordance with GAAP and will furnish to the Bank and its duly authorized representatives such information respecting the financial condition of the District as the Bank may reasonably request; and without any request, the District shall furnish to the Bank:

(i) as soon as available, and in any event no later than 270 days following the close of each fiscal year of the District, a copy of the balance sheet of the District as of the close of such fiscal year and the related statements of changes in fund balances and current funds, revenues, expenditures and other charges of the District for such period, and accompanying notes thereto, all in reasonable detail, accompanied by an unqualified opinion of a firm of independent public accountants of recognized national or regional standing, selected by the District, to the effect that the financial statements have been prepared in accordance with GAAP consistently applied and present fairly in accordance with GAAP the consolidated changes in fund balances of the District as of the close of such fiscal year and the results of operations for the fiscal year then ended and that an examination of such accounts in connection with such financial statements has been made in accordance with generally accepted auditing standards and, accordingly, such examination included such tests of the accounting records and such other auditing procedures as were considered necessary under the circumstances;

(ii) within 180 days of the end of each fiscal year of the District, a certificate of an Authorized Representative [in the form attached hereto as Appendix III²] setting forth the calculations necessary to determine compliance by the District with the covenant set forth in Section 5.3;

(iii) promptly after receipt thereof, any additional written reports, management letters or other detailed information contained in writing concerning significant aspects of the District's operations and financial affairs given to it by its independent public accountants or required to be provided to the Trustee under the Indenture;

(iv) as soon as available, and in any event within ten (10) days following the adoption of the annual budget by the District, a certificate of an Authorized Representative confirming that the annual budget of the District has been duly adopted by the District and that such budget includes amounts estimated to be sufficient to pay all amounts due in connection with the Bonds, the other Senior Obligations and all Obligations due hereunder during the next fiscal year;

(v) promptly after knowledge thereof shall have come to the attention of an Authorized Representative, written notice of any adopted State legislation or threatened or pending litigation or governmental proceeding against the District which, if adversely determined, could reasonably be expected to have a Material Adverse Effect;

(vi) promptly after the adoption thereof, copies of any amendments of or supplements to the Flood Control Act;

(vii) as soon as available, copies of correspondence sent by the Securities and Exchange Commission or the Internal Revenue Service regarding the Bonds or any other Debt of the District which, could reasonably be expected to have a Material Adverse Effect;

(viii) as soon as available, copies of any public documents filed by the District or served upon the District that challenge or seek to challenge the validity of the Bonds or the Prior Bonds;

(ix) as soon as practicable but, in any event, within five (5) Business Days after the adoption thereof any amendment, supplement or other modification to the Indenture, the other Related Documents to which the District is a party and any offering document for the Bonds, including the Remarketing Statement, together with a copy of each such amendment, supplement or modification; and

(x) promptly, such other information respecting the assets, financial condition, properties, business or operations of the District, the Revenues or the Flood Control System as the Bank may from time to time reasonably request.

As and to the extent the information required by this Section 5.1(f) has been properly and promptly filed with any national municipal securities repository, and provided the Bank has

² The District will prepare a sample compliance certificate for the Bank to review.

access to said information without cost, the District will be deemed to have complied with the provisions hereof.

(g) *Visitation and Examination.* Upon receipt of reasonable notice, the District will permit any Person designated by the Bank to visit any of its offices to examine the books and financial records, and make copies thereof or extracts therefrom, and to discuss its affairs, finances and accounts with its principal officers, all at such reasonable times and as often as the Bank may reasonably request.

(h) *Defaults.* The District will promptly (and, in any event, not later than five (5) Business Days after the District has knowledge thereof) notify the Bank of any Event of Default or Potential Default of which the District has knowledge, setting forth the details thereof and any action which the District, as applicable, proposes to take with respect thereto.

(i) *Insurance.* The District will insure and keep insured all of its properties, including the Flood Control System, in accordance with the terms of the Indenture. The District shall continue to use the assets comprising the Flood Control System for the same purpose as presently conducted.

(j) *Plans.* The District will (i) remain at all times in compliance with any Applicable Law (including any legally available grace periods) with respect to any Plan including without limitation any rules, regulations or requirements of the County Employees Retirement Law, and (ii) maintain each Plan as to which it may have any liability in compliance in all material respects with the applicable provisions of the County Employees Retirement Law or ERISA, as the case may be, and the regulations and published interpretations thereunder, the failure to comply with which could subject the District to any tax or penalty which tax or penalty, taken together, with all other taxes and penalties which could be assessed against the District by reason of all other non-compliances, would have a Material Adverse Effect.

(k) *Compliance with Documents; Incorporation of Covenants.*

(i) The District will perform and comply with each and every obligation, covenant and agreement required to be performed or observed by it in or pursuant to this Agreement and each other Related Document to which it is a party, which provisions, as well as related defined terms contained therein, are hereby incorporated by reference herein with the same effect as if each and every such provision were set forth herein in its entirety and all of which shall be deemed to be made for the benefit of the Bank and shall be enforceable by the Bank against the District. No termination of or amendment to such covenants and agreements or defined terms or release of the District with respect thereto made pursuant to the Related Documents shall be effective to terminate or amend such covenants and agreements and defined terms or release of the District with respect thereto as incorporated by reference herein without the prior written consent of the Bank. Notwithstanding any termination or expiration of any Related Document, the District shall continue to observe the covenants therein contained for the benefit of the Bank until the termination of this Agreement. All such incorporated covenants shall be in addition to the express covenants contained herein and shall not limit or be limited by the express covenants contained herein.

(ii) In addition to the provisions of clause (k)(i) above, the District agrees that the covenants of the District set forth in any other document related to the Senior Obligations (including the Prior Indenture and the Series 2007 Indenture) existing as of

the Closing Date or that shall be entered into and created subsequent to the Closing Date (the documents related to such Senior Obligations being referred to herein as “*Other Debt Documents*”, which Other Debt Documents shall include, without limitation, the Related Documents, the Prior Indenture, the Series 2007 Indenture, any supplemental indenture, and any bond insurance agreement, line of credit or reimbursement agreement, liquidity facility, interest rate hedge agreement and surety bond relating to such Senior Obligations), together with the related definitions of terms contained therein, are hereby incorporated by reference in this Agreement for the benefit of the Bank; *provided, however,* that clause (k)(i) above and this clause (k)(ii) are not intended to provide, and do not provide, the Bank with a security interest in, any benefit to, or any other rights in, any debt service reserve fund or other security or collateral created or otherwise set aside pursuant to any Other Debt Documents or for any other Debt, other than the Bank’s rights as the Bank under and pursuant to the Indenture and as Owner from time to time of Bank Bonds.

(iii) To the extent that any covenant and the related definitions incorporated by reference herein pursuant to clauses (k)(i) and (k)(ii) above require, by their terms, the consent, approval or permission of the entity providing any such bond insurance, line of credit, reimbursement agreement, liquidity facility, interest rate hedge agreement or surety bond, in the case of such Other Debt Documents, in order for the same to be amended, supplemented, waived or otherwise modified, said covenants and related definitions may be so amended, supplemented, waived or modified without the consent of the Bank; *provided, however,* that the provisions of the Indenture (and the related definitions) relating to the security and the rights, duties and obligations of the Bank under the Indenture, whether as provider of the Letter of Credit or as Owner of Bank Bonds, may not, notwithstanding the foregoing provisions of this clause (k)(iii), be amended, supplemented, waived or otherwise modified without the prior written consent of the Bank.

(l) *Investments.* The District shall at all times comply with the provisions of Sections 5922(d), 53601 and 53635 of the California Government Code, and, in addition, shall not:

(i) enter into repurchase agreements or similar agreements solely for the purpose of investment, in an amount at any time greater than forty percent (40%) of the total of the District’s unleveraged investment portfolio; or

(ii) knowingly maintain any of the District’s investment portfolio in a pool of investments managed by another Person, with the exception of money-market mutual funds which the District uses in accordance with state law, whose investment practices would result in the indirect violation of the limitation set forth in clause (i) above; or

(iii) invest in any instrument or execute any agreement commonly known as a derivative (such as by way of example, an inverse floater or any other variable rate or floating rate security the interest rate on which is not determined on a basis designed to result in a value of the security approximately equal to par) or invest in any other security with a derivative embedded in it (such as, by way of example, a structured note), except to the extent that any such investments or agreements do not exceed twenty percent (20%) of the District’s unleveraged investment portfolio and except that for the purposes

of this subsection the term “derivative” shall not include principal or interest strips of direct obligations of the United States which, if held to maturity, would yield to the District the face amount of such security; *provided, however*, notwithstanding the foregoing provision, the District shall have the right to enter into transactions, agreements or investments without regard to the limitations set forth in this clause (iii) for legitimate hedging purposes with respect to the District’s investment portfolio, consistent with sound investment practices for investors similarly situated.

In determining whether the District’s investment in a pool of investments described in clause (ii) above would cause a violation of clause (i) above, the amount of the District’s investment in the pool will be considered borrowed money for the purposes of clause (i) above in an amount equal to the product of the amount of such investment times the percentage by which such pool is leveraged.

(m) *Best Efforts.* In the event (i) the District does not request an extension of the Stated Expiration Date or the Bank denies or fails to respond to a request to extend the Stated Expiration Date or (ii) the Bank purchases all outstanding Bonds following the occurrence of an Event of Default or (iii) the District’s underlying rating falls below “[]” by Moody’s or below “[]” by S&P, the District shall use its best efforts to secure an Alternate Letter of Credit for the Bonds, convert the Bonds to a mode of interest that does not require credit enhancement, redeem the Bonds or defease the Bonds as soon as practicable.

(n) *Other Bank Facilities.* In the event the District shall enter into any Bank Agreement which Bank Agreement provides the Bank Agreement Provider with (i) covenants of the District not included in this Agreement, (ii) covenants of the District which are included in this Agreement but which are significantly more favorable to the Bank Agreement Provider, (iii) events of default not included in this Agreement (other than additional events of default the remedy for which is in an immediate termination or suspension of the obligations of the Bank Agreement Provider), (iv) events of default which are included in this Agreement but which are more favorable to the Bank Agreement Provider (e.g., shorter cure periods) and/or (e) collateral in addition to a pledge of Revenues (collectively, the “*Additional Rights*”), then the Additional Rights shall automatically be incorporated into this Agreement and the Bank shall have the benefit of such the Additional Rights as soon as such Bank Agreement becomes effective. Promptly following the District’s execution and delivery of a Bank Agreement containing the Additional Rights, the District shall give the Bank written notice thereof and the District shall enter into an amendment to this Reimbursement Agreement to include such Additional Rights, provided that the Bank shall maintain the benefit of such Additional Rights even if the District fails to provide such amendment. If the District shall amend the Bank Agreement such that it no longer provides for such Additional Rights or if the Bank Agreement terminates, then, without the consent of the Bank, this Reimbursement Agreement shall automatically no longer contain the Additional Rights and the Bank shall no longer have the benefits of any of the Additional Rights. In the event that the District shall enter into any Bank Agreement which provides that the District shall repay the obligations thereunder that are secured by Revenues over a period of time that is shorter (such shorter amortization period, the “*Shorter Amortization Period*”) than the amortization period provided herein (the “*Existing Amortization Period*”), this Agreement shall automatically be deemed amended so that the Existing Amortization Period shall become the Shorter Amortization Period. Promptly following the District’s execution and delivery of a Bank Agreement containing a Shorter Amortization Period, the District shall give the Bank

written notice thereof and the District shall enter into an amendment to this Agreement to include such Shorter Amortization Period, provided that the Bank shall maintain the benefit of such Shorter Amortization Period even if the District fails to provide such amendment. If the District shall amend the Bank Agreement such that it no longer provides for such Shorter Amortization Period or if the Bank Agreement terminates, then, without the consent of the Bank, this Agreement shall automatically be amended so that the Shorter Amortization Period reverts to the Existing Amortization Period in effect immediately prior to the entry into such Bank Agreement.

Section 5.2 Negative Covenants of the District. The District covenants and agrees with the Bank that so long as any amounts may be drawn under the Letter of Credit and, thereafter, so long as any amounts remain outstanding or Obligations remain unpaid or unfulfilled:

(a) *No Change in Related Documents.* The District will not cancel, terminate, amend, supplement, modify or waive any of the provisions of the Related Documents, and will not consent to any such cancellation, termination, amendment, supplement, modification or waiver without the written consent of the Bank, which will not shall not unreasonably be withheld; *provided, however*, that the District may terminate, or consent to such termination, of a Related Document as and to the extent such termination, or consent thereto, is permitted by the terms of such Related Document.

(b) *Arbitrage.* The District shall not use, or permit the use of, any Bond proceeds in any manner which would cause the Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Code.

(c) *Maintenance of Tax-Exempt Status of the Bonds.* The District will not take any action or omit to take any action which, if taken or omitted, would adversely affect the exclusion of interest on the Bonds from gross income for purposes of federal income taxation or the exemption of such interest from State personal income taxes.

(d) *Partial Substitution.* The District will not permit an Alternate Letter of Credit or other substitute credit enhancement other than the Letter of Credit to become effective for all or any portion of the Bonds unless the Letter of Credit shall have been returned to the Bank for cancellation and all Obligations owing to the Bank hereunder shall have been paid in full; *provided, however*, that in no event shall the foregoing require the Letter of Credit to remain outstanding for in excess of one (1) Business Day following the close of business on the Substitution Date in accordance with the Indenture.

(e) *Successor Trustee; Remarketing Agent.* The District will not appoint or consent to the appointment of a successor Trustee without the prior written consent of the Bank, which consent will not be unreasonably withheld. The District will not permit the Remarketing Agent to remarket any Bonds at a price less than the principal amount thereof plus accrued interest, if any, thereon to the respective dates of remarketing. The District shall not remove the Remarketing Agent or appoint any successor thereto without the prior written consent of the Bank. If the Remarketing Agent fails to perform its duties under, and in accordance with the terms of, the Remarketing Agreement or if the Remarketing Agent fails to remarket Bank Bonds for thirty (30) consecutive calendar days, the District shall, at the written direction of the Bank, remove the Remarketing Agent. If the Remarketing Agent is removed or resigns, the District shall appoint a successor thereto in accordance with the terms of the Indenture and with the prior written consent

of the Bank. Such appointment shall be made as soon as practicable and, in the case of resignation, no later than the resignation effective date. The District shall not enter into any Remarketing Agreement unless such Remarketing Agreement contains the following: (i) an agreement on the part of the Remarketing Agent to use its best efforts to remarket Bonds, including Bank Bonds, at rates up to and including the “*Maximum Rate*” (as defined in the Indenture); and (ii) a provision that requires that the Remarketing Agent’s resignation shall not become effective until thirty (30) day’s following the Remarketing Agent’s delivery of written notice to the District and the Bank and, if the District has not appointed a successor Remarketing Agent by the end of such thirty (30) day notice period but continues to pay remarketing fees to the Remarketing Agent, the Remarketing Agent’s resignation shall not become effective until the earlier of (A) the date on which a successor Remarketing Agent is appointed and (B) thirty (30) days from the expiration of such initial thirty (30) day notice period. Without limiting the preceding sentence, the District will not enter into any successor Remarketing Agreement without the prior written consent of the Bank, which consent shall not be unreasonably withheld, unless such successor Remarketing Agreement contains provisions that are substantially the same as those contained in, and affords protection to the rights and interests of the Bank that is substantially the same as that afforded by, the predecessor Remarketing Agreement.

(f) *Liens.* The District will not take any action or actions which would result in the District’s Obligations hereunder or under the Bank Bonds having a Lien on the Revenues that is junior or subordinate to the Lien in support thereof, of the other Senior Obligations or any other Debt incurred or issued by the District whether pursuant to the Indenture, the Prior Indenture, the Series 2007 Indenture or any other indenture, agreement, contract or document to which the District is a party.

(g) *Termination of Agreements; Replacement of Letter of Credit.* The District will not, so long as any of the District’s Obligations hereunder or the Bank Bonds remain unpaid, terminate or permit the termination of this Agreement or any of the other Related Documents to which the District is a party.

(h) *Optional Redemption.* The District will not optionally redeem, or cause or permit the redemption of, any Bonds, unless all funds required to reimburse the Bank for any Drawing under the Letter of Credit with respect to such redemption are on deposit with the Trustee prior to the mailing of any redemption notice or unless such Bonds are redeemed with the proceeds of refunding Bonds for which the District shall have a firm commitment to purchase from an underwriter or other purchaser. In addition, the District will not permit, nor cause the optional redemption of, any Bond (other than Bank Bonds) prior to the redemption of Bank Bonds and payment in full of all Obligations payable to the Bank hereunder and under the Indenture.

(i) *Additional Debt.* The District will not issue or incur any additional Debt unless such issuance or incurrence complies with the Constitution and other laws of the State, including the Flood Control Act, and with the Indenture.

(j) *Consolidation, Merger, etc.* The District will not consolidate or merge with or into any entity or sell, lease or otherwise transfer all or substantially all of its assets to any other entity.

(k) *Bank Disclosure.* The District will not, except with respect to information provided in writing by the Bank for inclusion in the Remarketing Statement, refer to the Bank in the Remarketing Statement or any other offering or reoffering document with respect to the Bonds or any other disclosure document of the District, whether related to the Bonds or otherwise, or make any changes in reference to the Bank in any revision of such Remarketing Statement or any such offering or reoffering document or any other disclosure document of the District, whether related to the Bonds or otherwise without the prior written consent of the Bank, which consent shall not be unreasonably withheld or delayed; *provided, however*, that the District may, without the Bank's prior written consent, make limited reference to the existence of this Agreement, the date thereof, the name of the Bonds supported thereby and the parties thereto (including the Bank), in any such other disclosure document of the District, whether related to the Bonds or otherwise.

(l) *Swap Termination Payments.* The District shall ensure that all termination payments, if any, under any interest rate swap agreement or similar instrument that are secured by Revenues shall be expressly subordinate to the repayment of the Bonds and Reimbursement Obligations.

(m) *Validity.* The District shall not commence any action or proceeding (including by way of counterclaim) that seeks to challenge the validity of the Bonds or the Prior Bonds or which challenges the judgment approving the issuance of the Prior Bonds without the prior written consent of the Bank.

(n) *Accounting Policies and Procedures.* Unless required by GAAP or the Government Auditing Standards, the District shall not change its accounting policies and procedures.

Section 5.3 Financial Coverage. The District shall ensure that (i) Discretionary Revenues minus Discretionary Expenditures for each fiscal year divided by (ii) Annual Debt Service for such fiscal year is not less than 1.25.

Article Six Defaults; Remedies

Section 6.1 Events of Default and Remedies. If any of the following events shall occur, each such event shall be an "Event of Default":

(a) any material representation or warranty made by the District in this Agreement (or incorporated herein by reference) or in any of the other Related Documents or in any certificate, document, instrument, opinion or financial or other statement contemplated by or made or delivered pursuant to or in connection with this Agreement or with any of the other Related Documents (i) that is qualified by "material", "Material Adverse Effect" or similar qualifier, shall prove to have been incorrect, incomplete or misleading in any respect or (ii) that is not qualified by "material", "Material Adverse Effect" or similar qualifier, shall prove to have been incorrect, incomplete or misleading in any material respect;

(b) any "event of default" shall have occurred under any of the Related Documents (as defined respectively therein);

- (c) failure to pay to the Bank any Obligations when and as due hereunder;
- (d) (i) default in the due observance or performance by the District of any covenant set forth in Section 5.1(a), 5.1(d), 5.1(e), 5.1(h), 5.1(j), 5.1(k) or 5.2 or 5.3 hereof or (ii) default in the due observance or performance by the District of any covenant set forth in Section 5.1(f)(i) or 5.1(f)(ii) and such default shall continue unremedied for five (5) Business Days;
- (e) default in the due observance or performance by the District of any other term, covenant or agreement set forth in this Agreement and the continuance of such default for thirty (30) days after the District's receipt of notice of occurrence thereof;
- (f) a court of competent jurisdiction shall determine that the Bonds were not validly issued, or any material provision of this Agreement or any of the Related Documents shall cease to be valid and binding, or the District shall contest any such provision, or the District or any agent or trustee on behalf of the District shall deny that it has any or further liability under this Agreement or any of the Related Documents;
- (g) the District shall (i) have entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, (ii) not pay, or admit in writing its inability to pay, its debts generally as they become due, (iii) make an assignment for the benefit of creditors, (iv) apply for, seek, consent to, or acquiesce in, the appointment of a custodian, receiver, trustee, examiner, liquidator or similar official for it or any substantial part of its Property, (v) institute any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code, as amended, to adjudicate it insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, marshalling of assets, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (vi) take any action in furtherance of any matter described in parts (i) through (v) above, or (vii) fail to contest in good faith any appointment or proceeding described in Section 6.1(h) hereof;
- (h) a custodian, receiver, trustee, examiner, liquidator or similar official shall be appointed for the District or any substantial part of its Property, or a proceeding described in Section 6.1(g)(v) hereof shall be instituted against the District and such appointment continues undischarged or any such proceeding continues undismissed or unstayed for a period of sixty (60) or more days;
- (i) dissolution or termination of the existence of the District;
- (j) a default shall occur under any Senior Obligation or any other evidence of Debt issued, assumed or guaranteed by the District or under any indenture, agreement or other instrument under which the same may be issued (including, without limitation, the Prior Indenture and the Series 2007 Indenture), and such default shall continue for a period of time (not to exceed 30 days) sufficient to permit the acceleration of the maturity of such Senior Obligation or such Debt (whether or not such maturity is in fact accelerated) or any such Senior Obligation or Debt shall not be paid when and as due (whether by lapse of time, acceleration or otherwise);
- (k) any judgment or judgments, writ or writs or warrant or warrants of attachment, or any similar process or processes in an aggregate amount in excess of \$10,000,000 shall be

entered or filed against the District or against any of its Property, or result in the imposition of a Lien upon the Revenues in such amount, which shall not be covered by available insurance (for which coverage has not been challenged or denied by the insurer) and such judgment or judgments, writ or writs, warrant or warrants of attachment or similar process or processes remain unvacated, unbonded or unstayed for a period of thirty (30) days;

(l) any Rating Agency shall have (i) withdrawn for credit related reasons its respective ratings of the District's long-term unenhanced Senior Obligations or any underlying rating, (ii) suspended for credit related reasons respective ratings of any of the District's long-term unenhanced Senior Obligations, or (iii) lowered its ratings of the District's long-term unenhanced Senior Obligations to below "Baa2" in the case of Moody's or "BBB" in the case of S&P (or to the equivalent rating then in effect with respect to Moody's and S&P), respectively;

(m) any of the funds or accounts established pursuant to the Indenture or any Revenues on deposit, or otherwise to the credit of, such funds or accounts shall become subject to any stay, writ, judgment, warrant of attachment, execution or similar process by any of the creditors of the District and such stay, writ, judgment, warrant of attachment, execution or similar process shall not be released, vacated or stayed within fifteen (15) days after its issue or levy;

(n) any pledge or security interest created by the Indenture or this Agreement to secure any amount due by the District thereunder, under this Agreement or with respect to the Bonds (including the Bank Bonds) shall fail to be fully enforceable with the priority required thereunder or hereunder;

(o) any event which materially and adversely affects the financial condition of the District or the ability of the District to observe and perform the terms of this Agreement or the Indenture shall have occurred and be continuing; or

(p) there shall have been rendered a determination that interest on any of the Bonds is includable in the gross income of the Owners thereof for federal income tax purposes, as a result of the entry of any decree or judgment by a court of competent jurisdiction, or the taking of any official action by the Internal Revenue Service, whether or not such decree, judgment or action is appealable or deemed to be final under applicable procedural law, or delivery to the District, the Bank and the Trustee of an opinion of nationally recognized bond counsel selected by the Bank, and reasonably acceptable to the District and the Trustee, to the effect that the interest borne by the Bonds is includable in the gross income of the recipients thereof generally for federal income tax purposes.

Section 6.2 Remedies. Upon the occurrence of any Event of Default, the Bank may exercise any one or more of the following rights and remedies in addition to any other remedies herein or by law provided:

(a) by written notice to the Trustee, and subject to the provisions of Section 10.02 and Section 10.03 of the Indenture, notify the Trustee of the Event of Default hereunder and direct that the principal of all Bonds Outstanding and the accrued interest thereon become immediately due and payable;

(b) by written notice to the Trustee, direct the Trustee to cause a mandatory tender of the Bonds pursuant to Section 5.02 of the Indenture as a result of the occurrence of an Event of Default hereunder, which notice will further advise the Trustee that the Letter of Credit will expire on the tenth (10th) day following the date of such notice;

(c) by written notice to the District, declare all Obligations hereunder to be, and such amounts shall thereupon become, immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the District;

(d) pursue any rights and remedies it may have under the other Related Documents;
and

(e) pursue any other action available at law or in equity.

Article Seven Miscellaneous

Section 7.1 Increased Costs.

(a) If any Change of Law shall:

(i) subject the Bank to any tax, charge, fee, deduction or withholding of any kind with respect to its Letter of Credit or this Agreement or the Fee Letter, or any amount paid or to be paid by the Bank as an issuer of such Letter of Credit (other than any tax measured by or based upon the overall net income of the Bank);

(ii) impose, modify or deem applicable any reserve, premium, special deposit or similar requirements against any assets held by, deposits with or for the account of, or loans, letters of credit or commitments by, any office of the Bank;

(iii) change the basis of taxation of payments due the Bank under this Agreement and the Fee Letter (other than a change in taxation of the overall net income of the Bank); or

(iv) impose upon the Bank any other condition with respect to such amount paid or payable to or by the Bank or with respect to this Agreement, the Fee Letter or the Letter of Credit;

and the result of any of the foregoing is to increase the cost to the Bank of agreeing to issue, issuing, making any payment under or maintaining its Letter of Credit, or to reduce the amount of any payment (whether of principal, interest or otherwise) receivable by the Bank or to require the Bank to make any payment on or calculated by reference to the gross amount of any sum received by it, in each case, by an amount which the Bank in its judgment deems material, then: (1) the Bank shall promptly deliver to the District a certificate stating the change which has occurred or the reserve requirements or other costs or conditions which have been imposed on the Bank or the request, direction or requirement with which it has complied together with the date thereof, the amount of such increased cost, reduction or payment and the way in which such amount has been calculated, including a reasonably detailed calculation, and the Bank's determination of such amounts, absent fraud or manifest error, shall be conclusive; and

(2) the District shall pay to the Bank such amount or amounts as will compensate the Bank for such additional cost, reduction or payment. Such amount shall be payable by the District no later than the Interest Payment Date next succeeding the date thirty (30) days after the date notice is delivered to the District as described in (1) above. Interest shall be payable on such amount from, and including, such Interest Payment Date at the Base Rate until the date thirty (30) days after such Interest Payment Date and, thereafter, at the Default Rate, which interest shall be payable upon demand.

(b) In addition to the foregoing, if after the date hereof the Bank shall have determined that a Change of Law has or would have the effect of reducing the rate of return on the capital of the Bank to a level below that which the Bank could have achieved but for such adoption, change or compliance (taking into consideration the policies of the Bank with respect to capital adequacy) by an amount deemed by the Bank to be material, or affects or would affect the amount of capital required or expected to be maintained by the Bank or any corporation controlling the Bank by an amount deemed by the Bank to be material, as a consequence of its obligations hereunder or under the Letter of Credit, then from time to time the District shall be obligated to pay to the Bank such additional amount or amounts as will compensate the Bank for such reduction or capital increase with respect to any period during which such reduction or capital increase was in effect. A certificate setting forth in reasonable detail such reduction in the rate of return on capital, or such capital increase, of the Bank as a result of any event mentioned in this paragraph shall be promptly submitted by the Bank, to the District and such certificate shall, in the absence of fraud or manifest error, be conclusive as to the amount thereof. Such amounts shall be payable by the District no later than the Interest Payment Date next succeeding the date thirty (30) days after the date such certificate is delivered to the District as described in the preceding sentence. Interest shall be payable on such amount from, and including, such Interest Payment Date at the Base Rate until the date thirty (30) days after such Interest Payment Date and, thereafter, at the Default Rate, which interest shall be payable upon demand.

(c) The obligations of the District under this Section 7.1 shall survive the termination of this Agreement.

Section 7.2 Cost and Expense; Indemnity.

(a) The District will promptly pay all costs and expenses, if any, in connection with the enforcement of this Agreement and any other documents which may be delivered in connection herewith or therewith, including in each case the fees and disbursements of counsel to the Bank. In addition, the District shall pay any and all stamp and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing, and recording of this Agreement and the transactions contemplated by the Related Documents and agrees to hold the Bank harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such taxes and fees. In addition, the District agrees to pay, after the occurrence of an Event of Default, all costs and expenses (including attorneys' fees and costs of settlement) incurred by the Bank in enforcing any obligations or in collecting any payments due from the District hereunder or under the Fee Letter by reason of such Event of Default or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "workout" or of any insolvency or bankruptcy proceedings.

(b) To the maximum extent permitted by law, the District agrees to indemnify and hold harmless the Bank, its officers, directors, employees and agents (each an "*Indemnified Party*") from and against any and all claims, damages, losses, liabilities, reasonable costs or expenses whatsoever which an Indemnified Party may incur (or which may be claimed against an Indemnified Party by any Person) by reason of or in connection with (i) the execution and delivery of and consummation of the transactions contemplated under this Agreement, the Letter of Credit and any other Related Document and in connection with the enforcement of the District's Obligations under this Agreement and the Fee Letter, including, without limitation,

(A) the remarketing or resale of Bonds (including, without limitation, by reason of any untrue statement or alleged untrue statement contained or incorporated by reference in any offering document for the Bonds, including the Remarketing Statement, or in any supplement or amendment thereof, prepared with respect to the Bonds, or the omission or alleged omission to state therein a material fact necessary to make such statements, in light of the circumstances under which they are or were made, not misleading or the failure to deliver the Remarketing Statement to any offeree or purchaser of Bonds) and (B) the execution and delivery of, or payment or failure to pay by any Person (other than the Bank, as and when required by the terms and provisions of the Letter of Credit) under this Agreement and (ii) the Colonies Litigation and action or proceeding that challenges or seeks to challenge the validity of the Bonds or the Prior Bonds; *provided, however*, that the District shall not be required to indemnify the Bank for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by (y) the willful misconduct or gross negligence of the Bank as determined by a court of competent jurisdiction or (z) the material inaccuracy of any information included or incorporated by reference in the Remarketing Statement concerning the Bank which was furnished in writing by the Bank expressly for inclusion or incorporation by reference therein. Nothing in this Section 7.2 is intended to limit the Obligations of the District under the Bonds or to pay its Obligations hereunder and under the Related Documents.

(c) The obligations of the District set forth in this Section shall survive the termination of this Agreement and any renewal or extension hereof.

Section 7.3 Obligations Absolute. The obligations of the District under this Agreement and the Fee Letter shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances.

Section 7.4 Liability of the Bank. The District assumes all risks of the acts or omissions of the Trustee, or any agent of the Trustee, and any transferee beneficiary of the Letter of Credit with respect to its use of the Letter of Credit. Neither the Bank nor any of its officers or directors shall be liable or responsible for: (a) the use which may be made of the Letter of Credit or for any acts or omissions of the Trustee, any agent of the Trustee and any transferee beneficiary in connection therewith; (b) the validity or genuineness of documents, or of any endorsement(s) thereon, even if such documents should in fact prove to be in any or all respects invalid, fraudulent or forged; (c) payment by the Bank against presentation of documents which do not comply with the terms of the Letter of Credit, including failure of any documents to bear any reference or adequate reference to the Letter of Credit; or (d) any other circumstances whatsoever in making or failing to make payment under the Letter of Credit; *provided, however*, that the District shall have a claim against the Bank, and the Bank shall be liable to the District, to the extent of any direct compensatory, as opposed to consequential, damages suffered by the District which are determined by a final judgment of a court of competent jurisdiction to have resulted from the Bank's failure to pay under the Letter of Credit after the presentation to it by the Trustee of a certificate strictly complying with the terms and conditions of the Letter of Credit or the Bank's willful or grossly negligent payment under the Letter of Credit. The Bank is hereby expressly authorized and directed to honor any demand for payment which is made under the Letter of Credit without regard to, and without any duty on its part to inquire into the existence of, any disputes or controversies between or among the District, the County, the State, the Trustee, any transferee beneficiary of the Letter of Credit or any other Person or the respective rights, duties

or liabilities of any of them, or whether any facts or occurrences represented in any of the documents presented under the Letter of Credit are true and correct.

Section 7.5 Participants. The Bank shall have the right to grant participations in the Letter of Credit to one or more other Persons, and such Persons shall be entitled to the benefits of this Agreement and the Fee Letter including, without limitation, Sections 2.5, 2.16, 7.1 and 7.2 hereof, to the same extent as if they were a direct party hereto; *provided, however*, that no such participation by any such participant shall in any way affect the obligation of the Bank under the Letter of Credit; and *provided further* that no such participant shall be entitled to receive payment hereunder of any amount greater than the amount which would have been payable had the Bank not granted a participation to such participant.

Section 7.6 Survival of this Agreement. All covenants, agreements, representations and warranties made in this Agreement shall survive the issuance by the Bank of the Letter of Credit and shall continue in full force and effect so long as the Letter of Credit shall be unexpired or any Obligations shall be outstanding and unpaid. The obligation of the District to reimburse the Bank pursuant to Sections 2.5, 2.16, 7.1 and 7.2 hereof shall survive the payment of the Bonds and termination of this Agreement and the Letter of Credit.

Section 7.7 Modification of this Agreement. No amendment, modification or waiver of any provision of this Agreement, and no consent to any departure by the District therefrom, shall be effective unless the same shall be in writing and signed by the Bank and the District, and no amendment, modification or waiver of any provision of the Letter of Credit shall in any event be effective unless the same shall be in writing and signed by the Bank. Any such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the District in any case shall entitle the District to any other or further notice or demand in the same, similar or other circumstances.

Section 7.8 Waiver of Rights by the Bank. No course of dealing or failure or delay on the part of the Bank in exercising any right, power or privilege hereunder or under the Letter of Credit, this Agreement or any other Related Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right or privilege. The rights of the Bank under the Letter of Credit and the rights of the Bank under this Agreement are cumulative and not exclusive of *any* rights or remedies which the Bank would otherwise have.

Section 7.9 Severability. In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 7.10 Governing Law. EACH OF THIS REIMBURSEMENT AGREEMENT AND THE FEE LETTER SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK IN SO FAR AS IT IS ENFORCEABLE AGAINST THE BANK AND THE LAWS OF THE STATE OF CALIFORNIA IN SO FAR AS

IT IS ENFORCEABLE AGAINST THE DISTRICT AND APPLICABLE FEDERAL LAW WITHOUT REGARD TO CHOICE OF LAW RULES.

Section 7.11 Notices. All notices hereunder shall be given by United States certified or registered mail or by telecommunication device capable of creating written record of such notice and its receipt. Notices hereunder shall be effective when received and shall be addressed:

If to the Bank, to:

Bank of America, N.A.
333 South. Hope St., 13th Floor
Mail Stop: CA9-193-13-17
Los Angeles, CA 9007
Attention: Paul F. Sutherlen, Senior Vice President
Credit Products Officer
Facsimile: (213) 621-3606

with a copy to:

Bank of America, N.A.
Trade Operation Center
Mail Stop: CA9-705-07-05
1000 West Temple Street, 7th Floor
Los Angeles, CA 90012-1514
Attention: Standby Letter of Credit Department
Facsimile: (213) 457-8841

If to the District, to:

San Bernardino County Flood Control District
825 East Third Street
San Bernardino, California 92415-0835
Attention: Director
Facsimile: (909) 387-7911

With a copy to:

County of San Bernardino
385 North Arrowhead Avenue 4th Floor San
Bernardino, California 92415
Attention: Deputy Administrative Officer
Facsimile: (909) 387-4202

If to the Trustee, to:

Wells Fargo Bank, National Association
201 Main St., Ste 301
MAC T5441-030
Fort Worth, Texas 76102
Attention: Kathleen Wagner
Facsimile: (817) 885-8650

The foregoing addresses and facsimile numbers may be changed by the respective addressees by giving notice in the manner provided above.

Section 7.12 Successors and Assigns. Whenever in this Agreement the Bank is referred to, such reference shall be deemed to include the successors and assigns of the Bank and all covenants, promises and agreements by or on behalf of the District which are contained in this Agreement shall inure to the benefit of such successors and assigns. The rights and duties of the District hereunder, however, may not be assigned or transferred, except as specifically provided in this Agreement or with the prior written consent of the Bank, and all obligations of the District hereunder shall continue in full force and effect notwithstanding any assignment by the District of any of its rights or obligations under any of the Related Documents or any entering into, or consent by the District to, any supplement or amendment to any of the Related Documents.

Section 7.13 Dispute Resolution by California Judicial Reference.

(a) The parties prefer that any dispute between them be resolved in litigation subject to a waiver of jury trial as set forth in Section 7.14 hereof, but the California Supreme Court has held that pre-dispute waivers of jury trial not authorized by statute are unenforceable. This California judicial reference provision will be applicable until: (i) the California Supreme Court holds that a pre-dispute waiver of jury trial provision similar to that set forth herein is valid or enforceable; or (ii) the State legislature enacts a statute which becomes law, authorizing pre-dispute waivers of jury trial of the type set forth herein and, as a result, such waivers become enforceable.

(b) Other than the appointment of a receiver or the exercise of other provisional remedies (any of which may be initiated pursuant to applicable law), any controversy, dispute or claim brought in a California court or a Federal court located in the State (each, a “*Claim*”) between the parties arising out of or relating to this Agreement or any other Related Document among the parties that is will be resolved by a reference proceeding in California in accordance with the provisions of Section 638 et seq. of the California Code of Civil Procedure (“*CCP*”), or successor sections, which shall constitute the exclusive remedy for the resolution of any Claim, including whether the Claim is subject to the reference proceeding. Except as otherwise provided in the Related Documents, venue for the reference proceeding will be in the Superior Court or any Federal District Court located in the Central District of California (the “*Court*”).

(c) The referee shall be a retired Judge or Justice selected by mutual written agreement of the parties. If the parties do not agree, the referee shall be selected by the Presiding Judge of the Court (or his or her representative). A request for appointment of a referee may be heard on an *ex parte* or expedited basis, and the parties agree that irreparable harm would result if *ex parte* relief is not granted. The referee shall be appointed to sit with all the powers provided by law. Pending appointment of the referee, the Court has power to issue temporary or provisional remedies.

(d) The parties agree that time is of the essence in conducting the reference proceedings. Accordingly, the referee shall be requested, subject to change in the time periods specified herein for good cause shown, to (i) set the matter for a status and trial-setting conference within fifteen (15) days after the date of selection of the referee, (ii) if practicable, try all issues of law or fact within ninety (90) days after the date of the conference and (iii) report a statement of decision within twenty (20) days after the matter has been submitted for decision.

(e) The referee will have power to expand or limit the amount and duration of discovery. The referee may set or extend discovery deadlines or cutoffs for good cause, including

a party's failure to provide requested discovery for any reason whatsoever. Unless otherwise ordered based upon good cause shown, no party shall be entitled to "priority" in conducting discovery, depositions may be taken by either party upon seven (7) days written notice, and all other discovery shall be responded to within fifteen (15) days after service, All disputes relating to discovery which cannot be resolved by the parties shall be submitted to the referee whose decision shall be final and binding.

(f) Except as expressly set forth in this Agreement, the referee shall determine the manner in which the reference proceeding is conducted including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the reference proceeding. All proceedings and hearings conducted before the referee, except for trial, shall be conducted without a court reporter, except that when any party so requests, a court reporter will be used at any hearing conducted before the referee, and the referee will be provided a courtesy copy of the transcript.

(g) The referee shall be required to determine all issues in accordance with existing case law and the statutory laws of the State. The rules of evidence applicable to proceedings at law in the State will be applicable to the reference proceeding. The referee shall be empowered to enter equitable as well as legal relief, provide all temporary or provisional remedies, enter equitable orders that will be binding on the parties and rule on any motion which would be authorized in a trial, including without limitation motions for summary judgment or summary adjudication. The referee shall issue a decision and pursuant to CCP §644, the referee's decision shall be entered by the Court as a judgment or an order in the same manner as if the action had been tried by the Court. The final judgment or order or from any appealable decision or order entered by the referee shall be fully appealable as provided by law. The parties reserve the right to findings of fact, conclusions of laws, a written statement of decision, and the right to move for a new trial or a different judgment, which new trial, if granted, is also to be a reference proceeding under this provision.

(h) If the enabling legislation which provides for appointment of a referee is repealed (and no successor statute is enacted), any dispute between the parties that would otherwise be determined by reference procedure will be resolved and determined by arbitration. The arbitration will be conducted in accordance with the Federal Arbitration Act.

(i) THE PARTIES RECOGNIZE AND AGREE THAT ALL DISPUTES RESOLVED UNDER THIS REFERENCE PROVISION WILL BE DECIDED BY A REFEREE AND NOT BY A JURY. AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR OWN CHOICE, EACH PARTY KNOWINGLY AND VOLUNTARILY AND FOR THEIR MUTUAL BENEFIT AGREES THAT THIS REFERENCE PROVISION WILL APPLY TO ANY DISPUTE BETWEEN THEM WHICH ARISES OUT OF OR IS RELATED TO THIS AGREEMENT.

Section 7.14 WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED UNDER CALIFORNIA LAW, EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE OTHER RELATED DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL

BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH OF THE PARTIES HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER RELATED DOCUMENTS, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH OF THE PARTIES HERETO WARRANTS AND REPRESENTS THAT EACH HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

Section 7.15 Captions. The captions in this Agreement are for convenience of reference only and shall not define or limit the provisions hereof.

Section 7.16 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original but all taken together to constitute one instrument.

Section 7.17 Entire Agreement. This Agreement constitutes the entire understanding of the parties with respect to the subject matter thereof and any prior agreements, whether written or oral, with respect thereto are superseded.

Section 7.18 Patriot Act. The Bank hereby notifies the District that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Patriot Act”), it is required to obtain, verify and record information that includes the name and address of the District and other information that will allow the Bank to identify the District in accordance with the Patriot Act. The District agrees to provide documentary and other evidence of its identity as may be requested by the Bank at any time to enable the Bank to verify its identity or to comply with any applicable law or regulation, including, without limitation, Section 326 of the Patriot Act.

Section 7.19 Assignment to Federal Reserve Bank. The Bank may assign and pledge all or any portion of the Obligations to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank, *provided* that any payment in respect of such assigned Obligations made by the District to the Bank in accordance with the terms of this Agreement or any other Related Document shall satisfy the obligations of the District hereunder or thereunder in respect of such assigned Obligation to the extent of such payment. No such assignment shall release the Bank from its obligations hereunder or under the Letter of Credit.

Section 7.20 Further Assurances. The District shall execute, acknowledge where appropriate, and deliver, and cause to be executed, acknowledged where appropriate, and delivered, from time to time promptly at the request of the Bank, all such instruments and documents as in the reasonable opinion of the Bank are necessary to carry out the intent and purpose of this Agreement and the other Related Documents.

(Remainder of page intentionally left blank; signature page follows.)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

BANK OF AMERICA, N.A.

By: _____
Name: Paul F. Sutherlen
Title: Senior Vice President

SAN BERNARDINO COUNTY FLOOD
CONTROL DISTRICT

By: _____
Name: _____
Title: _____