
CITY OF MIAMI BEACH, FLORIDA
and
U.S. BANK NATIONAL ASSOCIATION,
as Escrow Agent

ESCROW DEPOSIT AGREEMENT
Relating to
GENERAL OBLIGATION BONDS,
SERIES 2003

DATED AS OF _____ 1, 2019

ESCROW DEPOSIT AGREEMENT

THIS ESCROW DEPOSIT AGREEMENT (the "Agreement") made and entered into as of _____ 1, 2019, by and between the CITY OF MIAMI BEACH, FLORIDA (the "City") and U.S. BANK NATIONAL ASSOCIATION, as Escrow Agent (the "Escrow Agent").

WITNESSETH:

WHEREAS, the City has heretofore issued its \$62,465,000 aggregate principal amount City of Miami Beach, Florida General Obligation Bonds, Series 2003, dated July 22, 2003, presently outstanding in the principal amount of \$28,080,000 (the "Outstanding Series 2003 Bonds"), pursuant to the provisions of Resolution No. 2003-25240, adopted by the Mayor and City Commission of the City (the "Commission") on June 11, 2003 (the "Prior Resolution"); and

WHEREAS, the City desires to refund, defease and redeem the Outstanding Series 2003 Bonds as more particularly described in Schedule A attached hereto and made a part hereof (hereinafter referred to as the "Refunded Bonds"); and

WHEREAS, the City has issued its \$_____ aggregate principal amount City of Miami Beach, Florida General Obligation and Refunding Bonds, Series 2019 (the "Bonds"), pursuant to the provisions of Resolution No. 2019-_____ adopted by the Commission on _____, 2019 (the "Resolution"), a portion of the proceeds of which Bonds is to be deposited with the Escrow Agent to provide, with investment earnings thereon, for the defeasance and redemption of the Refunded Bonds; and

WHEREAS, a portion of the proceeds derived from the sale of the Bonds will be applied to the purchase of Government Obligations (as such term is hereinafter defined), which will mature and produce investment income and earnings at such time and in such amount as will be sufficient, together with certain moneys remaining uninvested, to pay the principal of and interest on the Refunded Bonds through and including their redemption date as more specifically set forth herein; and

WHEREAS, in order to provide for the proper and timely application of the moneys deposited hereunder, the maturing principal amount of the Government Obligations purchased therewith, and investment income and earnings derived therefrom to the payment of the Refunded Bonds, it is necessary for the City to enter into this Agreement with the Escrow Agent; and

WHEREAS, the Escrow Agent serves as Paying Agent and Bond Registrar with respect to the Bonds and is an Authorized Depository (as such terms are defined in the Prior Resolution);

NOW, THEREFORE, the City and the Escrow Agent, in consideration of the foregoing and the mutual covenants herein set forth and in order to secure the payment of the principal of and interest on all of the Refunded Bonds according to their tenor and effect, do hereby agree as follows:

ARTICLE I

CREATION AND CONVEYANCE OF TRUST ESTATE

Section 1.01. Creation and Conveyance of Trust Estate. The City hereby grants, warrants, remises, releases, conveys, assigns, transfers, aliens, pledges, sets over and confirms unto the Escrow Agent and to its successors in the trust hereby created, and to it and its assigns forever, all and singular the property hereinafter described, to wit:

DIVISION I

All right, title and interest in and to \$_____ in moneys deposited directly with the Escrow Agent and derived from the proceeds of the Bonds upon issuance and delivery of the Bonds and execution of and delivery of this Agreement.

DIVISION II

All right, title and interest in and to the Government Obligations described in Schedule B attached hereto and made a part hereof, together with the income and earnings thereon.

DIVISION III

Any and all other property of every kind and nature from time to time hereafter, by delivery or by writing of any kind, conveyed, pledged, assigned or transferred as and for additional security hereunder by the City, or by anyone on behalf of the City to the Escrow Agent for the benefit of the Refunded Bonds.

DIVISION IV

All property which is by the express provisions of this Agreement required to be subject to the pledge hereof and any additional property that may, from time to time hereafter, by delivery or by writing of any kind, by the City, or by anyone in its behalf, be subject to the pledge hereof.

TO HAVE AND TO HOLD, all and singular, the Trust Estate (as such term is hereinafter defined), including all additional property which by the terms hereof has or may become subject to the encumbrances of this Agreement, unto the Escrow Agent, and its successors and assigns, forever in trust, however, for the sole benefit and security of the holders from time to time of the Refunded Bonds, but if the principal of and interest on all of the Refunded Bonds shall be fully and promptly paid through and including their redemption date hereinafter set forth, in accordance with the terms thereof, then this Agreement shall be and become void and of no further force and effect except as otherwise provided herein; otherwise the same shall remain in full force and effect, and upon the trusts and subject to the covenants and conditions hereinafter set forth.

ARTICLE II

DEFINITIONS

Section 2.01. Definitions. In addition to words and terms elsewhere defined in this Agreement, the following words and terms as used in this Agreement shall have the following meanings, unless some other meaning is plainly intended.

“Government Obligations” shall mean direct general non-callable obligations of the United States of America.

“Trust Estate”, “trust estate” or “pledged property” shall mean the property, rights and interests described or referred to under Divisions I, II, III and IV in Article I above.

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. The word “person” shall include corporations, associations, natural persons and public bodies unless the context shall otherwise indicate. Reference to a person other than a natural person shall include its successors.

ARTICLE III

ESTABLISHMENT OF ESCROW DEPOSIT TRUST FUND; FLOW OF FUNDS

Section 3.01. Creation of Escrow Deposit Trust Fund and Deposit of Moneys. There is hereby created and established with the Escrow Agent a special and irrevocable trust fund designated “City of Miami Beach, Florida General Obligation Bonds, Series 2003 Escrow Deposit Trust Fund” (the “Escrow Deposit Trust Fund”), to be held by the Escrow Agent for the sole benefit of the holders of the Refunded Bonds and accounted for separate and apart from the other funds of the City and, to the extent required by law, of the Escrow Agent.

Concurrently with the delivery of this Agreement, the City herewith causes to be deposited with the Escrow Agent and the Escrow Agent acknowledges receipt of immediately available moneys for deposit in the Escrow Deposit Trust Fund in the amount of \$_____, consisting of the proceeds of the Bonds, which, when invested in Government Obligations (other than \$_____ to be held uninvested), will provide moneys sufficient to pay the principal of and interest on the Refunded Bonds through and including their redemption date, as more particularly described in Schedule C attached hereto and made a part hereof.

Section 3.02. Payment of Refunded Bonds. The Bond proceeds received by the Escrow Agent will be sufficient to purchase \$_____ par amount of Government Obligations, all as listed in Schedule B attached hereto and made a part hereof, which will mature in principal amounts and earn income at such times so that sufficient moneys will be available to pay all principal of and interest on the Refunded Bonds through and including their redemption date. Notwithstanding the foregoing, if the amounts deposited in the Escrow Deposit Trust Fund are insufficient to make said payments of principal and interest, the City shall cause to be deposited

into the Escrow Deposit Trust Fund the amount of any deficiency immediately upon notice from the Escrow Agent.

Section 3.03. Irrevocable Trust Created. The deposit of moneys and Government Obligations or other property hereunder in the Escrow Deposit Trust Fund shall constitute an irrevocable deposit of said moneys and Government Obligations and other property hereunder for the sole benefit of the holders of the Refunded Bonds, subject to the provisions of this Agreement. The holders of the Refunded Bonds, subject to the provisions of this Agreement, shall have an express lien on all moneys and principal of and earnings on the Government Obligations and other property in the Escrow Deposit Trust Fund. The moneys deposited in the Escrow Deposit Trust Fund and the matured principal of the Government Obligations and other property hereunder and the interest thereon shall be held in trust by the Escrow Agent, and shall be applied for the payment of Refunded Bonds, as more specifically set forth in Schedule C hereto.

Section 3.04. Purchase of Government Obligations.

The Escrow Agent is hereby directed immediately to purchase the Government Obligations listed in Schedule B from the proceeds of the Bonds as described in Sections 3.01 and 3.02 hereof. The Escrow Agent shall purchase the Government Obligations solely from the moneys deposited in the Escrow Deposit Trust Fund as provided in this Agreement. The Escrow Agent shall apply the moneys deposited in the Escrow Deposit Trust Fund and the Government Obligations purchased therewith, together with all income or earnings thereon, in accordance with the provisions hereof. The Escrow Agent shall have no power or duty to invest any moneys held hereunder or to make substitutions of the Government Obligations held hereunder or to sell, transfer or otherwise dispose of the Government Obligations held hereunder except as provided in this Agreement. The Escrow Agent is hereby directed not to invest \$_____ deposited in the Escrow Deposit Trust Fund.

The City covenants to take no action in the investment, reinvestment or security of the Escrow Deposit Trust Fund in violation of this Agreement and recognizes that any such action in contravention of this Agreement might cause the Refunded Bonds or the Bonds to be classified as “arbitrage bonds” under the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the “Code”).

Section 3.05. Substitution of Certain Government Obligations.

(a) If so directed in writing by the City on the date of delivery of this Agreement, the Escrow Agent shall accept in substitution for all or a portion of the Government Obligations listed in Schedule B, Government Obligations (the “Substituted Securities”), the principal of and interest on which, together with any Government Obligations listed in Schedule B for which no substitution is made and moneys held uninvested by the Escrow Agent, will be sufficient to pay all principal of and interest of the Refunded Bonds as set forth in Schedule C hereof. The foregoing notwithstanding, the substitution of Substituted Securities for any of the Government Obligations listed in Schedule B may be effected only upon compliance with Section 3.05(b)(1) and (2) below.

(b) If so directed in writing by the City at any time during the term of this Agreement, the Escrow Agent shall sell, transfer, exchange or otherwise dispose of, or request the redemption of, all or a portion of the Government Obligations then held in the Escrow Deposit Trust Fund and shall substitute for such Government Obligations other Government Obligations, designated by the City, and acquired by the Escrow Agent with the proceeds derived from the sale, transfer, disposition or redemption of or by the exchange of such Government Obligations held in the Escrow Deposit Trust Fund, but only upon the receipt by the Escrow Agent of:

(1) an opinion of nationally recognized counsel in the field of law relating to municipal bonds stating that such substitution will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Refunded Bonds and the Bonds and is not inconsistent with the statutes and regulations applicable to the Refunded Bonds and the Bonds; and

(2) verification by a firm of independent certified public accountants stating that the principal of and interest on the substituted Government Obligations, together with any Government Obligations and any uninvested moneys remaining in the Escrow Deposit Trust Fund, will be sufficient, without reinvestment, to pay the principal of and interest on the Refunded Bonds as set forth in Schedule C hereof.

Any moneys resulting from the sale, transfer, disposition or redemption of the Government Obligations held hereunder and the substitution therefor of other Government Obligations not required to be applied for the payment of such principal of and interest on the Refunded Bonds (as shown in the verification report described in Section 3.05(b)(2) hereof delivered in connection with such substitution), shall be transferred to the City for deposit in the Principal and Interest Account established under the Resolution. Upon any such substitution of Government Obligations pursuant to Section 3.05, Schedule B hereto shall be appropriately amended to reflect such substitution.

The Escrow Agent shall be under no duty to inquire whether the Government Obligations as deposited in the Escrow Deposit Trust Fund are properly invested under the Code. The Escrow Agent may rely on all specific directions in this Agreement providing for the investment or reinvestment of the Escrow Deposit Trust Fund.

Section 3.06. Transfers from Escrow Deposit Trust Fund. As the principal of the Government Obligations set forth in Schedule B shall mature and be paid, and the investment income and earnings thereon are paid, the Escrow Agent, in its capacity of Paying Agent and Bond Registrar with respect to the Refunded Bonds (herein referred to as the "Refunded Bonds Paying Agent"), no later than the payment date for the Refunded Bonds, as specified in Schedule C hereof, shall pay from such moneys the principal of and interest on the Refunded Bonds, as specified in Schedule C hereof. The City hereby irrevocably determines, and irrevocably instructs the Refunded Bonds Paying Agent, to call the Refunded Bonds for redemption on _____, 2019 at a redemption price of 100% of the principal amount thereof in accordance with the Prior Resolution. The City shall perform, and shall cause the Refunded Bonds Paying Agent to perform, as applicable, the responsibilities, described in the Prior Resolution, in connection with the redemption of the Refunded Bonds, including the giving of notice of redemption as required therein. The Refunded Bonds Paying Agent is hereby directed to mail a copy of such notice of redemption to National Public Finance Guarantee Corporation

(formerly MBIA Insurance Corporation) (the “Series 2003 Bond Insurer”). The City shall also file, or cause to be filed, a copy of such notice of redemption with the Municipal Securities Rulemaking Board (the “MSRB”).

Section 3.07. Investment of Certain Moneys Remaining in Escrow Deposit Trust Fund. Subject to the provisions of Section 3.04, the Escrow Agent shall invest and reinvest, at the written direction of the City, in Government Obligations any moneys remaining from time to time in the Escrow Deposit Trust Fund until such time as they are needed. Such moneys shall be reinvested in such Government Obligations for such periods and at such interest rates as the Escrow Agent shall be directed to invest by the City, which periods and interest rates shall be set forth in an opinion from nationally recognized counsel in the field of law relating to municipal bonds to the City and to the Escrow Agent, which opinion shall also be to the effect that such reinvestment of such moneys in such Government Obligations for such period and at such interest rates will not, under the statutes and regulations applicable to the Refunded Bonds and the Bonds, cause the interest on the Refunded Bonds or the Bonds to be included in gross income for federal income tax purposes and that such investment is not inconsistent with the statutes and regulations applicable to the Refunded Bonds and the Bonds. Any interest income resulting from reinvestment of moneys pursuant to this Section 3.07 not required to be applied for the payment of the principal of and interest on the Refunded Bonds shall be transferred to the City for deposit in the Principal and Interest Account established under the Resolution.

Section 3.08. Escrow Deposit Trust Fund Constitutes Trust Fund. The Escrow Deposit Trust Fund created and established pursuant to this Agreement shall be and constitute a trust fund for the purposes provided in this Agreement and shall be kept separate and distinct from all other funds of the City and, to the extent required by law, of the Escrow Agent and used only for the purposes and in the manner provided in this Agreement.

Section 3.09. Transfer of Funds After All Payments Required by this Agreement are Made. After all of the transfers by the Escrow Agent to the payment of the principal of and interest on the Refunded Bonds provided in Schedule C have been made, all remaining moneys and securities, together with any income and interest thereon, in the Escrow Deposit Trust Fund shall be transferred to the City for deposit in the Principal and Interest Account established under the Resolution; provided, however, that no such transfers (except transfers made in accordance with Sections 3.05 and 3.07 hereof) shall be made until all of the principal of and interest on the Refunded Bonds have been paid.

ARTICLE IV

CONCERNING THE ESCROW AGENT

Section 4.01. Liability of Escrow Agent. The Escrow Agent shall not be liable in connection with the performance of its duties hereunder except for its own negligence, misconduct or default. The Escrow Agent shall not be liable for any loss resulting from any investments made pursuant to the terms of this Agreement. The Escrow Agent shall not be liable for the accuracy of the calculations as to the sufficiency of moneys and of the principal amount of the Government Obligations and the earnings thereon to pay the Refunded Bonds. So long as the Escrow Agent applies any moneys, Government Obligations and interest earnings therefrom to pay the Refunded Bonds as provided herein, and complies fully with the terms of this

Agreement, the Escrow Agent shall not be liable for any deficiencies in the amounts necessary to pay the Refunded Bonds caused by such calculations.

The duties and obligations of the Escrow Agent shall be determined by the express provisions of this Agreement. The Escrow Agent may consult with counsel with respect to any matter relevant to this Agreement, who may or may not be counsel to the City, and be entitled to receive from the City reimbursement of the reasonable fees and expenses of such counsel, and in reliance upon the opinion of such counsel have full and complete authorization and protection in respect of any action taken, suffered or omitted by it in good faith in accordance therewith. Whenever the Escrow Agent shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering or omitting any action under this Agreement, such matter may be deemed to be conclusively established by a certificate signed by an authorized officer of the City and the Escrow Agent may in good faith conclusively rely upon such certificate.

The Escrow Agent shall have no lien, security interest or right of set-off whatsoever upon any of the moneys or investments in the Escrow Deposit Trust Fund for the payment of fees or expenses for the services rendered by the Escrow Agent under this Agreement.

Section 4.02. Permitted Acts. The Escrow Agent and its affiliates may become the owner of all or may deal in the Refunded Bonds as fully and with the same rights as if it were not the Escrow Agent.

Section 4.03. Payment to Escrow Agent. The City shall pay to the Escrow Agent reasonable compensation for all services rendered by it hereunder and also its reasonable expenses, charges and other disbursements and those of its attorneys, agents and employees incurred in and about the administration and execution of the trusts hereby created, and the performance of its powers and duties hereunder, including, without limitation, all advances, counsel fees and other expenses reasonably made or incurred by the Escrow Agent in connection with such services, all as provided in Schedule D hereto.

ARTICLE V

MISCELLANEOUS

Section 5.01. Amendments to this Agreement. This Agreement is made for the benefit of the holders from time to time of the Refunded Bonds and shall not be repealed, revoked, altered or amended without the written consent of all such holders of the Refunded Bonds, the Escrow Agent and the City; provided, however, that the City and the Escrow Agent may, without the consent of, or notice to, such holders, enter into such agreements supplemental to this Agreement which shall not adversely affect the rights of such holders and shall not be inconsistent with the terms and provisions of this Agreement for any one or more of the following purposes:

- (a) to cure any ambiguity or formal defect or omission in this Agreement; or
- (b) to grant to or confer upon the Escrow Agent for the benefit of the holders of the Refunded Bonds any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Escrow Agent.

The Escrow Agent shall be entitled to rely upon an unqualified opinion of a nationally recognized counsel in the field of law relating to municipal bonds with respect to compliance with this Section.

Prior to any repeal, revocation, alteration or amendment of this Agreement, the City shall provide written notice of such proposed repeal, revocation, alteration or amendment to S&P Global Ratings and Moody's Investors Service, Inc. at their addresses set forth below:

S&P Global Ratings
55 Water Street
New York, New York 10041
Attn: Municipal Ratings Desk/Refunded Bonds

Moody's Investors Service, Inc.
7 World Trade Center
250 Greenwich Street, 23rd Floor
New York, New York 10007

Section 5.02. Severability. If any one or more of the covenants or agreements provided in this Agreement on the part of the City or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

Section 5.03. Agreement Binding. All the covenants, proposals and agreements in this Agreement contained by or on behalf of the City or by or on behalf of the Escrow Agent shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

Section 5.04. Notices to Escrow Agent and City. Any notice, demand, direction, request or other instrument authorized or required by this Agreement to be given to or filed with the Escrow Agent or the City, shall be deemed to have been sufficiently given or filed for all purposes of this Agreement if personally delivered and receipted for, or if sent by registered or certified United States mail, return receipt requested, addressed as follows:

(a) As to the City -

City of Miami Beach, Florida
1700 Convention Center Drive
Miami Beach, Florida 33139
Attention: Chief Financial Officer

(b) As to the Escrow Agent -

U.S. Bank National Association
225 Water Street
Suite 700
Jacksonville, Florida 32202
Attention: Global Corporate Trust

Any party hereto may, by notice sent to the other parties hereto, designate a different or additional address to which notices under this Agreement are to be sent.

Section 5.05. Termination. This Agreement shall terminate when all transfers and payments required to be made by the Escrow Agent under the provisions hereof shall have been made.

Section 5.06. Execution by Counterparts. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

Section 5.07. Notice of Defeasance. Upon deposit of the moneys with the Escrow Agent and investment thereof as provided in this Agreement, the Escrow Agent is hereby directed to mail to the registered owners of the Refunded Bonds and the Series 2003 Bond Insurer, a notice of defeasance of the Refunded Bonds, substantially in the form attached hereto as Schedule E. The City shall also file, or cause to be filed, a copy of such notice of defeasance with the MSRB.

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IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officers and, with respect to the City, its official seal to be hereunto affixed and attested as of the date first above written.

CITY OF MIAMI BEACH, FLORIDA

(SEAL)

Mayor

ATTEST:

City Clerk

U.S. BANK NATIONAL ASSOCIATION,
as Escrow Agent

By: _____
Assistant Vice President

U.S. Bank National Association, as Refunded Bonds Paying Agent, hereby agrees to the provisions of this Agreement applicable to the Refunded Bonds Paying Agent.

U.S. BANK NATIONAL ASSOCIATION,
as Refunded Bonds Paying Agent

By: _____
Assistant Vice President

SCHEDULE A
REFUNDED BONDS

Maturity Date

Principal Amount
\$

Interest Rate
%

SCHEDULE B
INVESTMENT OF BOND PROCEEDS

<u>Type of Security</u>	<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
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SCHEDULE C
SCHEDULE OF PAYMENTS ON
REFUNDED BONDS

<u>Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
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SCHEDULE D

ESCROW AGENT FEES AND EXPENSES

- (i) In consideration of the services to be rendered by the Escrow Agent under the Agreement, the City upon execution hereof agrees to pay the Escrow Agent a one-time fee of \$_____ to be paid at closing for all services to be incurred as Escrow Agent in connection with such services, plus agrees to pay as incurred reimbursement at cost for ordinary out-of-pocket expenses. The term “ordinary out-of-pocket expenses” means expenses of holding, investing and disbursing the Escrow Deposit Trust Fund as provided herein and includes, but is not limited to publication costs, postage and legal fees as incurred.
- (ii) The City shall also reimburse the Escrow Agent for any extraordinary expenses incurred by it in connection herewith. The term “extraordinary expenses” includes (a) expenses arising out of the assertion of any third party to any interest in the Escrow Deposit Trust Fund or any challenge to the validity hereof, including reasonable attorneys’ fees, (b) expenses relating to any reinvestment under Section 3.07 or substitution under Section 3.05 hereof, and (c) expenses (other than ordinary expenses) not occasioned by the Escrow Agent’s misconduct or negligence.
- (iii) The fees and expenses payable by the City under clause (i) or (ii) above shall not be paid from the Escrow Deposit Trust Fund, but shall be paid by the City from legally available funds of the City.

SCHEDULE E

NOTICE OF DEFEASANCE

City of Miami Beach, Florida
General Obligation Bonds, Series 2003

Dated: July 22, 2003

<u>Maturity Date</u> <u>(September 1,)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>CUSIP Numbers*</u>
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NOTICE IS HEREBY GIVEN that monies have been deposited with U.S. Bank National Association, as Escrow Agent, for the payment of the principal and interest on the above bonds (the "Bonds"), and such monies, except to the extent maintained in cash, have been invested in direct obligations of the United States of America. U.S. Bank National Association, as Paying Agent and Bond Registrar for the Bonds, has been irrevocably instructed to call the Bonds for redemption on _____, 2019 (the "Redemption Date") at a redemption price of 100% of the principal amount thereof.

The moneys so deposited and invested as aforesaid has been calculated to be adequate to pay, when due, the principal of and interest on the Bonds to and including the Redemption Date. In accordance with Resolution No. 2003-25240 adopted by the Mayor and City Commission of the City of Miami Beach, Florida on June 11, 2003 (the "Resolution"), the Bonds are no longer deemed to be outstanding under the provisions of the Resolution and have ceased to be entitled to any lien, benefit or security under the Resolution other than to receive payment of principal and interest from such moneys.

U.S. BANK NATIONAL ASSOCIATION,
as Escrow Agent

Dated: _____, 2019

* No representation is made as to the correctness of these CUSIP numbers either as printed on the Bonds or contained in this Notice.