

## ARTICLE III

### TAXES, YIELD PROTECTION AND ILLEGALITY

#### *Section 3.01. Taxes.*

(a) *Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.*  
(i) Subject to subsection (a)(ii) below, any and all payments by or on account of any obligation of the County hereunder or under any other Loan Document shall to the extent permitted by applicable Laws be made free and clear of and without reduction or withholding for any Taxes. If any applicable Laws require the withholding or deducting of any Tax, such Tax shall be withheld or deducted in accordance with such Laws as determined by the County or the Lender, as the case may be, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If the County is required by any applicable Laws to withhold or deduct any Taxes, including both United States Federal backup withholding and withholding taxes, from any payment, then (A) the County, as required by such Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) the County, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the County will be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the Lender, receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) *Payment of Other Taxes by the County.* Without limiting the provisions of subsection (a) above, the County shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of the Lender at its option to timely reimburse it for the payment of, any Other Taxes.

(c) *Tax Indemnifications.* (i) Without limiting the provisions of subsection (a) or (b) above, the County shall, and does hereby, indemnify the Lender, and shall make payment in respect thereof within thirty (30) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by the Lender or required to be withheld or deducted from a payment to the Lender, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the County by the Lender is conclusive absent manifest error.

(ii) Without limiting the provisions of subsection (a) or (b) above, the Lender shall, and does hereby, indemnify the County and shall make payment in respect thereof within ten (10)

days after demand therefor, against any and all Taxes and any and all related losses, claims, liabilities, penalties, interest and expenses (including the reasonable fees, charges and disbursements of any counsel for the County) incurred by or asserted against the County by any Governmental Authority as a result of the failure by the Lender to deliver, or as a direct result of the inaccuracy, inadequacy or deficiency of, any documentation required to be delivered by the Lender to the County pursuant to subsection (e). The agreements in this clause (ii) survive any assignment of rights by, or the replacement of, the Lender, the termination of the Commitment and the repayment, satisfaction or discharge of all other Obligations.

(d) *Evidence of Payments.* Upon request by the County or the Lender, as the case may be, after any payment of Taxes by the County or the payment of any Taxes by the Lender to a Governmental Authority as provided in this Section 3.01, the County shall deliver to the Lender or the Lender shall deliver to the County, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the County or the Lender, as the case may be.

(e) *Status of the Lender; Tax Documentation.* (i) If the Lender is entitled to an exemption from or reduction of withholding Tax with respect to payments made under this Agreement or the Note, the Lender shall deliver to the County, at the time or times reasonably requested by the County, such properly completed and executed documentation reasonably requested by the County as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, the Lender, if reasonably requested by the County, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the County as will enable the County to determine whether or not the Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(e)(ii) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject the Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of the Lender.

(ii) Without limiting the generality of the foregoing, the Lender shall deliver to the County (and from time to time thereafter upon the reasonable request of the County), executed originals of IRS Form W-9 certifying that the Lender is exempt from U.S. federal backup withholding tax.

(f) *Treatment of Certain Refunds.* If the Lender determines that it has received a refund of any Taxes as to which it has been indemnified by the County or with respect to which the County has paid additional amounts pursuant to this Section 3.01, it shall pay to the County an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the County under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses incurred by the Lender, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided* that the County, upon the request of the Lender, agrees to repay the amount paid over to the County (plus any penalties, interest or other charges imposed by the

relevant Governmental Authority, *provided*, that the County shall not be obligated to pay the Lender for any penalties, interest or expenses relating to Taxes or Other Taxes arising from the Lender's gross negligence or willful misconduct) to the Lender in the event the Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the Lender be required to pay any amount to the County pursuant to this subsection the payment of which would place the Lender in a less favorable net after-Tax position than the Lender would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This subsection shall not be construed to require the Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the County or any other Person.

(g) *Survival.* Each party's obligations under this Section survive the repayment, satisfaction or discharge of all Loans and other Obligations.

*Section 3.02. Increased Costs.*

(a) *Increased Costs.* If, on or after the Closing Date, the Lender determines that the adoption or implementation of, or any change in, any applicable law, treaty, regulation, guideline or directive (including regulations and guidelines with respect to capital adequacy or liquidity promulgated by the FRB, the Bank for International Settlements, the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority as now and from time to time hereafter in effect) or any new law, treaty, regulation, guideline or directive, or any interpretation of any of the foregoing by any authority charged with the administration or interpretation thereof or any central bank of other fiscal, monetary or other authority having jurisdiction over the Lender or the transactions contemplated by this Agreement (whether or not having the force of law) (all of the foregoing being referred to as a "*Regulatory Change*") shall:

- (i) subject the Lender to any tax, deduction or withholding with respect to any payments by or to the Lender pursuant this Agreement or the Note (other than any tax measured by or based upon the overall net income of the Lender imposed by any jurisdiction having control over the Lender);
- (ii) impose, modify, require, make or deem applicable to the Lender any reserve requirement, capital requirement, special deposit requirement, insurance assessment or similar requirement against any assets held by, deposits with or for the account of, or loans, letters of credit or commitments by, an office of the Lender;
- (iii) change the basis of taxation of payments due the Lender under this Agreement or the Note (other than by a change in taxation of the overall net income of the Lender);
- (iv) cause or deem agreements of the general nature and terms of this Agreement to be assets held by the Lender and/or as deposits on its books; or

- (v) impose upon the Lender any other condition with respect to such amount paid or payable to or by the Lender with respect to this Agreement;

and the result of any of the foregoing is to increase the cost of the Lender of making any Loans under this Agreement, or to reduce the amount of any payment (whether of principal, interest or otherwise) receivable by the Lender hereunder, or to reduce the rate of return on the capital of the Lender (taking into consideration the Lender's policies with respect to capital adequacy) or to require the Lender to make any payment on or calculated by reference to the gross amount of any sum received by it, or to reduce the amount of any sum received or receivable by the Lender under this Agreement or the Note with respect thereto, in each such case by an amount which the Lender in its reasonable judgment deems material, then provided:

- (vi) the Lender shall notify the County in writing of the happening of such event within 180 days of the Lender's knowledge of its occurrence; and
- (vii) the Lender shall concurrent with such notice deliver to the County a certificate stating the precise nature of the Regulatory Change which has occurred and the tax, requirements, reduction of payments or other costs or conditions which have been imposed on the Lender as a result, together with the date thereof, the amount of such tax, cost, reduction of payment and a reasonable detailed description of the way in which such amount has been calculated (the Lender's determination of which, absent fraud or manifest error, shall be conclusive);

then the County shall pay to the Lender, within 90 days of the date of submission of such notice and certificate, the amount specified in such certificate as compensation to the Lender for such additional tax, cost or reduction of payment.

The protection of this paragraph shall be available to the Lender regardless of any possible contention of invalidity or inapplicability of the law, regulation or condition which has been imposed; provided, however, that if it shall later be determined by the Lender or a court of competent jurisdiction in a final, non-appealable judgment that any amount so paid by the County pursuant to this Section is in excess of the amount payable under the provisions hereof, the Lender shall refund such excess amount to the County within 90 days of receipt of written notice of any such judgment. Notwithstanding the foregoing, for purposes of this Agreement all requests, rules, guidelines or directives in connection with the Dodd-Frank Act that are applicable to the Lender shall be deemed to be a Regulatory Change, regardless of the date enacted, adopted or issued.

(b) *Delay in Requests.* Failure or delay on the part of the Lender to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of the Lender's right to demand such compensation so long as such Regulatory Change is in effect at the time Lender's delayed notice, certificate and demand for compensation is made.

*Section 3.03. Illegality.* If the Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for the Lender or its applicable Lending Office to make, maintain or fund Loans if interest thereon is determined by reference to

the Eurodollar Rate, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of the Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by the Lender to the County, any obligation of the Lender to make or continue Eurodollar Rate Loans or to convert Floating Rate Loans to Eurodollar Rate Loans shall be suspended, until the Lender notifies the County that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the County shall, upon demand from the Lender, prepay or, if applicable, convert all Eurodollar Rate Loans of the Lender to Floating Rate Loans. Upon any such prepayment or conversion, the County shall also pay accrued interest on the amount so prepaid or converted.

*Section 3.04. Inability to Determine Rates.* If the Lender determines that for any reason in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof that (a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount of such Eurodollar Rate Loan, (b) adequate and reasonable means do not exist for determining the Eurodollar Rate with respect to a proposed Eurodollar Rate Loan or in connection with the conversion of an existing or proposed Floating Rate Loan, or (c) the Eurodollar Rate with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to the Lender of funding the Loan, the Lender will promptly so notify the County. Thereafter, the obligation of the Lender to make or maintain Eurodollar Rate Loans shall be suspended, until the Lender revokes such notice. Upon receipt of such notice, the County may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Floating Rate Loans, as applicable, in the amount specified therein.

*Section 3.05. Survival.* All of the County's and Lender's obligations under this Article III survive termination of the Commitment and repayment of all the Loans are other Obligations hereunder.

## **ARTICLE IV**

### **CONDITIONS PRECEDENT TO BORROWINGS**

*Section 4.01. Conditions of Initial Borrowing; Authority; Enforceability.* This Agreement shall become binding on the parties hereto upon the satisfaction of the following conditions precedent (all Loan Documents and other documents to be delivered to the Lender pursuant to this Section 4.01 are subject to prior approval as to form and substance by the Lender, with delivery by the Lender of its signature page to this Agreement evidencing such Person's acknowledgement that the conditions set forth in this Section 4.01 have been satisfied, unless otherwise waived in writing):

- (a) The Lender's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by an Authorized Representative, each dated the Closing Date (or, in the case of

certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Lender:

- (i) executed counterparts of this Agreement;
- (ii) a Note executed by the County in favor of the Lender;
- (iii) a certified copy of the Ordinance and any other ordinances of the County's Board of Commissioners (or similar governing body) authorizing the execution, delivery and performance of this Agreement, the Note and the Ordinance and the consummation of the transactions contemplated hereby and thereby, together with specimen signatures of the persons authorized to execute such documents on the County's behalf, all certified in each instance by the Board of Commissioners;
- (iv) a favorable opinion of external counsel to the County acceptable to the Lender addressed to the Lender, as to the matters set forth concerning the County and this Agreement, the Note and the Ordinance in form and substance satisfactory to the Lender;
- (v) a certificate signed by an Authorized Representative certifying (A) that the conditions specified in Sections 4.02(a) and (b) have been satisfied, and (B) that there has been no event or circumstance since November 30, 2014 that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect;
- (vi) recent evidence that the unenhanced long-term General Obligation Debt of the County has been assigned long-term ratings of at least "A2" by Moody's and "AA-" by S&P, respectfully; and
- (vii) such other assurances, certificates, documents, consents or opinions as the Lender reasonably may require.

For purposes of determining compliance with the conditions specified in this Section 4.01, the Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to the Lender.

*Section 4.02. Conditions to All Borrowings.* The obligation of the Lender to make a Loan pursuant to any Request for Borrowing is subject to the following conditions precedent:

- (a) The representations and warranties of the County contained in Article V hereof or in the Ordinance, or which are contained in any document furnished at any time under or in connection herewith or therewith, are true and correct on and as of the date of such Borrowing, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date,

and except that for purposes of this Section 4.02, the representations and warranties contained in Section 5.11 will be deemed to refer to the most recent statements furnished pursuant to clause (a) of Section 6.02.

(b) No Default or Event of Default exists, or would result from such proposed Borrowing or from the application of the proceeds thereof.

(c) The Lender has received a Request for Borrowing in accordance with the requirements hereof.

(d) After giving effect to any Loan, the aggregate principal amount of all Loans outstanding hereunder does not exceed the Commitment.

(e) Such Borrowing does not violate any order, judgment or decree of any court or authority of competent jurisdiction or any provision of law as then in effect.

(f) The Lender shall have received, in form and substance satisfactory to it, such other assurances, certificates, documents or consents related to the foregoing as the Lender reasonably may require.

Each Request for Borrowing submitted by the County will be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a), (b) and (e) have been satisfied on and as of the date of the applicable Borrowing.

*Section 4.03. Payment of Fees and Expenses.* On or prior to the Closing Date, the County shall have paid the Lender's fees and expenses (including the legal fees of the Lender's counsel), which shall not exceed \$45,000.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES

The County represents and warrants to the Lender as follows:

*Section 5.01. Due Authorization.* The County has full legal right, power and authority to (i) adopt the Ordinance and (ii) enter into, to execute and deliver this Agreement and the other Loan Documents to which the County is a party as provided in this Agreement and in the Ordinance. The County has duly authorized and approved the execution and delivery of this Agreement and the other Loan Documents to which the County is a party.

*Section 5.02. Enforceability.* No further authorization or approval is required for the County's execution and delivery of this Agreement or the other Loan Documents to which the County is a party and this Agreement and the other Loan Documents to which the County is a party constitute legal, valid and binding obligations of the County, enforceable in accordance with their respective terms, except as such enforcement may be limited by bankruptcy,

reorganization, insolvency, moratorium or other laws relating to or affecting the enforcement of creditors' rights generally or by general principles of equity; and no further authorization or approval is required with respect to the enforceability of the County's obligations under this Agreement or under the other Loan Documents to which it is a party.

*Section 5.03. Ordinance.* The County has duly adopted the Ordinance and it is in full force and effect. In connection with the execution and delivery of this Agreement, the Note and the other Loan Documents to which it is a party, the County has complied in all material respects with the Ordinance and the laws of the State.

*Section 5.04. Consents.* All approvals, consents registrations, declarations and filings (except, if any, under applicable state blue sky or securities laws) with, any federal, state or other governmental body or instrumentality, having jurisdiction which would constitute a condition precedent to the performance by the County of its obligations under this Agreement or under the other Loan Documents to which the County is a party have been obtained or made.

*Section 5.05. No Violation.* The adoption of the Ordinance and compliance with the provisions thereof and with the provisions of this Agreement and the Note do not, and the execution and delivery of this Agreement and the other Loan Documents to which the County is a party do not and will not (a) violate, in any material respect, any existing law or administrative regulation of the State or of any department, division, agency or instrumentality thereof or of the United States, or any court or administrative regulation, judgment, decree or order to which the County is subject, (b) conflict with in a material manner or constitute on the part of the County a material breach of, or a material default under, any material provision of any agreement, indenture, mortgage, lease, note, resolution, agreement or other instrument to which the County is subject or by which it is bound, (c) contravene the Illinois Constitution of 1970, (d) require any consent or approval of any creditor of the County or (e) result in or require the creation or imposition of any lien upon or with respect to any property now owned or hereafter acquired by the County except such liens, if any, expressly created by the Ordinance and this Agreement.

*Section 5.06. Litigation.* Except as disclosed in writing to the Lender prior to the Closing Date, no action, suit or proceeding, at law or in equity, or before any court, public board or body is pending (or to the knowledge of the County threatened) against the County or any officers of the County in their respective capacities as such (i) to restrain or enjoin the delivery by the County of this Agreement or the Note, or (ii) questioning the authority of the County to adopt the Ordinance or to issue, or the issuance or validity of, the Note or the other Loan Documents to which the County is a party or (iii) questioning the constitutionality of any statute or the validity of any proceedings authorizing the issuance of the Note or (iv) questioning the validity or enforceability of the Ordinance or this Agreement, or (v) questioning in any manner the County's pledge of its full faith, credit and resources or the agreement to levy ad valorem taxes to pay the Note and the Loans, or (vi) questioning in any manner the County's obligation to pay Obligations from and all legally available funds.

*Section 5.07. Security.* The Note is a direct and general obligation of the County and the full faith and credit of the County are irrevocably pledged to the punctual payment of the principal of and interest thereon. In the event that funds sufficient to make any such payment of



principal of or interest on the Note when due are not available or are not reasonably expected to be available in the treasury of the County for such purposes, the County shall levy ad valorem taxes upon all taxable property in the County without limitation as to rate or amount to provide sufficient funds for such purposes. The County covenants and agrees with the Lender and the holder of the Note that so long as the Note remains outstanding, the County will take no action or fail to take any action which in any way would adversely affect the ability of the County to pay the principal of and interest on the Note or any other Obligations. The County shall pay the Unutilized Fees and any Obligations (other than principal of and interest on the Loans and the Note) when due from any legally available funds of the County.

*Section 5.08. Pension Plans.* The County is not in default of payments to The County Employees' and Officer's Annuity and Benefit Fund (the *Retirement Fund*") provided for in Section 9-169 of the Illinois Pension Code.

*Section 5.09. Pledge.* Under the Ordinance, the full faith and credit of the County are pledged to the punctual payment of the principal of and interest on the Note, which is a direct and general obligation of the County and, unless paid from other sources, the County shall be obligated to levy ad valorem taxes upon all taxable property in the County for the payment of the principal of and interest on the Note, without limitation as to rate or amount.

*Section 5.10. Organization.* The County is a body politic and corporate and home rule unit of government under the Constitution and laws of the State.

*Section 5.11. Financial Statements.* The most recent Audited Financial Statements of the County delivered to the Lender fairly present the financial position and results of operation of the County as of November 30, 2014, and the financial statements have been prepared in accordance with GAAP as consistently applied to governmental units, except as otherwise noted therein. Except as otherwise disclosed to the Lender in writing, no material adverse change in the financial position of the County as shown on such financial statements has occurred since November 30, 2014.

*Section 5.12. Absence of Default.* The County is not in default under any material provision of the Ordinance, this Agreement or under any other Loan Document to which it is a party. The County is not in default under any material agreements or instruments to the extent such default would have a Material Adverse Effect on the security for the Note and this Agreement or the County's ability to make payment and perform its obligations with respect thereto. No default by the County has occurred and is continuing in the payment of the principal of or premium, if any, or interest on any of its outstanding Parity Indebtedness or other General Obligation Debt of the County. No bankruptcy, insolvency or other similar proceedings pertaining to the County or any agency or instrumentality of the County are pending or presently contemplated. No Default or Event of Default has occurred and is continuing under this Agreement. The County is not in violation of any material term of any bond indenture or agreement to which it is a party related to its outstanding General Obligation Debt.

*Section 5.13. No Proposed Legal Changes.* Except as disclosed to the Lender in writing, there is no amendment, or to the knowledge of the County, 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 that has passed either house of the State legislature, or any published judicial decision interpreting any of the foregoing, the effect of which is to have a Material Adverse Effect on the Note or the ability of the County to perform its obligations under this Agreement, the Ordinance and the other Loan Documents to which the County is a party.

*Section 5.14. Investment Company.* The County is not an “investment company” or a company “controlled” by an “investment company,” as such terms are defined in the Investment Company Act of 1940, as amended.

*Section 5.15. Margin Stock.* The County is not engaged in the business of extending credit for the purpose of purchasing or carrying Margin Stock, and no part of the proceeds from the issuance of the Note will be used to purchase or carry any such Margin Stock or extend credit to others for the purpose of purchasing or carrying any such Margin Stock.

*Section 5.16. No Contract Immunity.* Except as provided in the Illinois Local Governmental Employees Tort Immunity Act, the County does not have sovereign immunity in contract under the laws of the State.

*Section 5.17. Swap Agreements.* The County has not entered into any Swap Contract relating to any of its outstanding Indebtedness (i) wherein any termination payment thereunder is senior to the payment of the Note or (ii) which requires the County to post cash collateral to secure its obligations thereunder.

*Section 5.18. Anti-Terrorism Laws.* The County is not in violation of any laws relating to terrorism or money laundering (“Anti-Terrorism Laws”), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the “Executive Order”), and the Patriot Act.

(a) The County is not any of the following:

(i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) a Person with which the Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order; or