

FIFTH SUPPLEMENTAL JUNIOR LIEN TRUST INDENTURE
BETWEEN
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
AND
THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., AS TRUSTEE
AMENDING AND SUPPLEMENTING THE
JUNIOR LIEN TRUST INDENTURE
DATED AS OF MAY 1, 1994

Dated as of July 1, 2020

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FIFTH SUPPLEMENTAL JUNIOR LIEN TRUST INDENTURE

THIS FIFTH SUPPLEMENTAL JUNIOR LIEN TRUST INDENTURE dated as of July 1, 2020 (this “Fifth Supplement” or this “Supplemental Indenture”), is made by and between the TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS (together with any successor to its rights, duties and obligations hereunder, the “Department”), a body politic and corporate and a public and official governmental agency duly created, organized and existing under the laws of the State of Texas, and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as trustee (as successor trustee to Bank One, Texas, NA, and together with any successor trustee hereunder, the “Trustee”), a national banking association.

Recitals

WHEREAS, the Department and the Trustee have executed and delivered that certain Junior Lien Trust Indenture dated as of May 1, 1994 (together with all amendments or supplements thereto, the “Indenture”), providing for the issuance from time to time by the Department of one or more series of its bonds, notes or other obligations; and

WHEREAS, the Department desires to amend the Indenture for the purpose of modifying certain provisions thereof as permitted by Section 1002(k) of the Indenture; and

WHEREAS, the execution and delivery of this Fifth Supplement have been in all respects duly and validly authorized by a resolution of the Governing Board of the Department; and

WHEREAS, the Trustee is a party to this Supplemental Indenture in order to acknowledge its acceptance of the terms and provisions hereof and to evidence its consent to the amendments to the Indenture made hereby; and

WHEREAS, pursuant to Section 1001(b) of the Indenture, the Trustee has received a Counsel’s Opinion relating to this Supplemental Indenture; and

NOW, THEREFORE, in consideration of the mutual undertakings, promises and agreements herein contained and other good and valuable consideration, the sufficiency of which are acknowledged hereby, the Department and the Trustee do covenant and agree hereby, for the equal and proportionate benefit of the respective holders from time to time of the Bonds, as follows:

ARTICLE I

DEFINITIONS AND STATUTORY AUTHORITY

Section 1.1. Supplemental Indenture. This Fifth Supplement is supplemental to, and is adopted in accordance with Article X of, the Indenture.

Section 1.2. Definitions.

(a) Unless the context shall require otherwise, all defined terms contained in the Indenture shall have the same respective meanings in this Supplemental Indenture as such defined terms are given in Section 101 of the Indenture.

(b) As used in this Supplemental Indenture, except as otherwise expressly provided or unless the context shall require otherwise:

(i) This “Fifth Supplement” or this “Supplemental Indenture” means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions of the Indenture.

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

(iii) Except where the context otherwise requires, words imparting the singular number shall include the plural number and vice versa.

Section 1.3. Effect of Headings and Table of Contents. The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 1.4. Indenture to Remain in Force. Except as amended by this Supplemental Indenture, the Indenture shall remain in full force and effect as to the matters covered therein.

Section 1.5. Authority. This Supplemental Indenture is executed and delivered pursuant to the Act and the Indenture.

Section 1.6. Effective Date of This Supplemental Indenture. This Supplemental Indenture shall become effective at such time as there are no Outstanding Texas Department of Housing and Community Affairs Taxable Junior Lien Single Family Variable Rate Mortgage Revenue Bonds, Series 2004A, which are the only Obligations currently Outstanding under the Indenture. Following the effectiveness of this Supplemental Indenture, the Indenture may be amended and restated to incorporate the amendments to the Indenture set forth in this Supplemental Indenture, such amendment and restatement of the Indenture to be in the form set forth in a Letter of Instructions accompanied by a Counsel’s Opinion to the effect that such amendment and restatement of the Indenture is valid and binding upon the Department and enforceable against the Department in accordance with its terms, subject to customary exceptions.

ARTICLE II

AMENDMENTS TO INDENTURE

Section 2.1. Amendment to Section 101 of the Indenture. The definition of “Rating Agency” in Section 101 of the Indenture is hereby amended to read as follows:

““Rating Agency” shall mean initially [rating agency], and thereafter any nationally-recognized credit rating agency whose rating has been requested or consented to in writing by the Department, and approved by the Bond Insurer or Credit Provider for the Series, and is then in effect with respect to any of the Obligations.”

Section 2.2. Amendment to Section 301 of the Indenture. Section 301(a) of the Indenture is hereby amended to read in its entirety as follows:

“(a) This Indenture provides for the issuance of Obligations of the Department to be designated as set forth in the Series Supplement authorizing the issuance of a particular Series (provided that the designation of any Series shall include “Junior Lien”) and creates a continuing pledge of and lien on the Trust Estate to secure the full and final payment of the Principal Amount or Redemption Price of and interest on all the Obligations. It is specifically intended by the Department that all Obligations are Junior Lien Bonds as defined in the Senior Lien Indenture. To the extent that a Series of Subordinated Obligations is issued hereunder, the designation of such Series may so indicate. The aggregate Principal Amount of the Obligations which may be executed, authenticated and delivered under the Indenture is not limited except as may be provided hereafter in the Indenture or as may be limited by the Act.”

Section 2.3. Amendment to Section 302 of the Indenture. Section 302(a)(iii)(B) of the Indenture is hereby amended to read in its entirety as follows:

“(B) The purpose for which a Series of Obligations is being issued, which may be for any lawful purpose.”

Section 2.4. Amendment to Section 1004 of the Indenture. Section 1004 of the Indenture is hereby amended to read in its entirety as follows:

“SECTION 1004. Consent of Obligation Owners. Each Supplemental Indenture executed and delivered pursuant to the provisions of Section 1003 shall take effect only when and as provided in this Section 1004. A copy of such Supplemental Indenture (or brief summary thereof or reference thereto in form approved by the Trustee), together with a request to Obligation Owners for their consent thereto in form satisfactory to the Trustee, shall be sent by the Department to Obligation Owners by registered or certified mail, postage prepaid, provided that a failure to mail such request shall not affect the validity of the Supplemental Indenture when consented to as provided in this Section 1004. Such Supplemental Indenture shall not be effective unless and until there shall have been filed with the

Trustee (i) the written consents of Owners of the percentages of Outstanding Obligations specified in Section 1003, and (ii) a Counsel's Opinion stating that such Supplemental Indenture has been duly and lawfully adopted by the Department in accordance with the provisions of the Indenture, is authorized or permitted by the Indenture, and is valid and binding upon the Department and enforceable against the Department in accordance with its terms, subject to customary exceptions. Any such consent shall be binding upon the Obligation Owner giving such consent and upon any subsequent Owner of such Obligations and of any Obligations issued in exchange therefor or in lieu thereof (whether or not such subsequent Owner thereof has notice thereof), unless such consent is revoked in writing by the Obligation Owner giving such consent or a subsequent Owner of such Obligations by filing such revocation with the Trustee prior to the time when the written statement of the Trustee provided for hereinafter in this Section 1004 is filed. The fact that a consent has not been revoked likewise may be proven by a certificate of the Trustee to the effect that no revocation thereof is on file with the Trustee. At any time after the Owners of the required percentages of Obligations shall have filed their consents to such Supplemental Indenture, the Trustee shall make and file with the Department and each Bond Insurer and Credit Provider a written statement that the Owners of the required percentages of Obligations have filed such consents. Such written statement shall be conclusive that such consents have been so filed. At any time thereafter, the Trustee may give written notice to the Obligation Owners, stating in substance that the Supplemental Indenture (which may be referred to as a Supplemental Indenture adopted by the Department on a stated date, a copy of which is on file with the Trustee) has been consented to by the Owners of the required percentages of Obligations and will be effective as provided in the Indenture, which notice shall be sent to Obligation Owners by registered or certified mail, postage prepaid. A record, consisting of the papers required or permitted to be filed with the Trustee by this Section 1004, shall be proof of the matters therein stated. Such Supplemental Indenture shall be deemed conclusively binding upon the Department, the Fiduciaries and the Owners of the Obligations upon the Trustee's receipt of the items required by this Section 1004."

ARTICLE III

MISCELLANEOUS

Section 3.1. Successors and Assigns. All covenants and agreements in this Supplemental Indenture by the Department and the Trustee shall bind their respective successors and assigns, whether so expressed or not.

Section 3.2. Separability Clause. In case any provision in this Supplemental Indenture shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 3.3. Benefits of Supplemental Indenture. Nothing in this Supplemental Indenture or in the Obligations, express or implied, shall give to any Person, other than the parties hereto, their successors hereunder, any Bond Insurer, any Credit Enhancer and the Owners of

Obligations, any benefit or any legal or equitable right, remedy or claim under this Supplemental Indenture.

Section 3.4. Governing Law. This Supplemental Indenture shall be construed in accordance with and governed by the laws of the State of Texas.

Section 3.5. Ratification and Reaffirmation. The Department and the Trustee hereby ratify and reaffirm all the terms and conditions of the Indenture, as specifically amended and supplemented by this Supplemental Indenture, and each hereby acknowledges that the Indenture remains in full force and effect, as so amended and supplemented.

Section 3.6. Execution in Several Counterparts. This Fifth Supplement may be simultaneously executed in several counterparts, all of which shall constitute one and the same instrument and each of which shall be, and shall be deemed to be, an original.

[signature page follows]

IN WITNESS WHEREOF, the Department and the Trustee have caused this Fifth Supplement to be signed on their behalf by their duly authorized representatives, all as of the date first hereinabove written.

TEXAS DEPARTMENT OF HOUSING AND
COMMUNITY AFFAIRS

By _____
Director of Bond Finance and Chief Investment
Officer

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A.,
as Trustee

By: _____
Authorized Officer