

Agenda version

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THIRD SUPPLEMENTAL INDENTURE OF TRUST

by and between the

ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS

and

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,  
as Trustee

dated as of July 1, 2025

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### THIRD SUPPLEMENTAL INDENTURE OF TRUST

THIS THIRD SUPPLEMENTAL INDENTURE OF TRUST (this "Third Supplement"), dated as of July 1, 2025, is by and between the ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS, a joint exercise of powers authority organized and existing under the laws of the State of California (the "Authority"), and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as successor trustee (the "Trustee") under an Indenture of Trust, dated as of June 1, 2007 (the "Original Indenture") by and between the Trustee and the Authority, as previously supplemented and amended by the First Supplement (as defined below) and the Second Supplement (as defined below) (collectively, the "Existing Indenture").

#### RECITALS:

WHEREAS, the Authority is a joint exercise of powers authority organized and existing under and pursuant to the provisions of Articles 1 through 4 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Act"), and is authorized pursuant to Article 4 of the Act (the "Bond Law") to borrow money for the purpose of financing the acquisition of bonds, notes and other obligations; and

WHEREAS, on June 25, 2004, the Authority issued its \$30,000,000 initial principal amount of Community Facilities District No. 2004-2 (Windemere Ranch) 2004 Special Tax Bonds (the "Prior Special Tax Bonds"), and on August 12, 1999, June 27, 2000 and April 18, 2002, the Association of Bay Area Governments ("ABAG") issued respective series of its Limited Obligation Improvement Bonds for its Windemere Ranch Assessment District 1999-1 in the initial principal amounts of \$25,000,000, \$75,000,000 and \$25,000,000 consisting of Series 1999, Series 2000 and Series 2002, respectively (collectively, the "Prior Assessment Bonds"), all for the purpose of financing various public infrastructure improvements (the "Improvements") relating to the Windemere Ranch development; and

WHEREAS, on June 26, 2007, ABAG issued its \$104,520,000 initial principal amount of Limited Obligation Improvement Refunding Bonds, Series 2007-A, Association of Bay Area Governments Windemere Ranch Reassessment District (the "Reassessment Bonds") to refund the Prior Assessment Bonds, and on June 26, 2007, the Authority issued its \$30,235,000 initial principal amount of Community Facilities District No. 2004-2 (Windemere Ranch) Special Tax Refunding Bonds, Series 2007-A (the "Special Tax Refunding Bonds") to refund the Prior Special Tax Bonds and its \$15,000,000 initial principal amount of Community Facilities District No. 2004-2 (Windemere Ranch) Special Tax Bonds, Series 2007-B (together with the Special Tax Refunding Bonds, the "Special Tax Bonds") to provide additional financing for the Improvements, and

WHEREAS, on June 26, 2007, the Authority issued its ABAG Finance Authority For Nonprofit Corporations Revenue Bonds, Senior Series 2007-A (Windemere Ranch Infrastructure Financing Program), in the aggregate initial principal amount of \$112,545,000 (the "Series 2007-A Bonds") and its ABAG Finance Authority For Nonprofit Corporations Revenue Bonds,

Subordinate Series 2007-B (Windemere Ranch Infrastructure Finance Program) in the initial principal amount of \$45,560,000 (the "Series 2007-B Bonds"), pursuant to the Original Indenture and used proceeds of the Series 2007-A Bonds and of the Series 2007-B Bonds (collectively, the "2007 Bonds") to purchase the Reassessment Bonds and the Special Tax Bonds; and

WHEREAS, Section 2.11 of the Original Indenture authorizes the issuance by supplemental indenture of Parity Senior Bonds (as defined in the Original Indenture) secured under the Original Indenture on a parity with the Series 2007-A Bonds; and

WHEREAS, on August 28, 2014, the Authority issued its ABAG Finance Authority For Nonprofit Corporations Refunding Revenue Bonds, Senior Series 2014-A (Windemere Ranch Infrastructure Financing Program), in the initial principal amount of \$31,805,000 (the "Series 2014-A Bonds") as Parity Senior Bonds pursuant to the Original Indenture, as amended and supplemented by a First Supplemental Indenture of Trust, dated as of August 1, 2014 (the "First Supplement"), between the Authority and the Trustee, with proceeds of the Series 2014-A Bonds used to refund the then outstanding Series 2007-B Bonds; and

WHEREAS, the Original Indenture also allows for the issuance of "Parity Subordinate Bonds" secured under the Original Indenture on a subordinate basis to the Series 2007-A Bonds, the Series 2014-A Bonds and any future Parity Senior Bonds; and

WHEREAS, on June 29, 2017, the Authority issued its ABAG Finance Authority For Nonprofit Corporations Refunding Revenue Bonds, Subordinate Series 2017-A (Windemere Ranch Infrastructure Financing Program) (the "Series 2017-A Bonds"), and its ABAG Finance Authority For Nonprofit Corporations Taxable Refunding Revenue Bonds, Subordinate Series 2017-B (Windemere Ranch Infrastructure Financing Program) (the "Series 2017-B Bonds," and together with the Series 2017-A Bonds, the "Series 2017 Bonds") as Parity Subordinate Bonds pursuant to the Original Indenture, as amended and supplemented by a Second Supplemental Indenture of Trust, dated as of June 1, 2017 (the "Second Supplement"), between the Authority and the Trustee, with proceeds of the Series 2017 Bonds used to refund the then outstanding Series 2007-A Bonds; and

WHEREAS, since the issuance of the Series 2017 Bonds, (i) the Association of Bay Area Governments ("ABAG") and the Authority, pursuant to the Act, entered into a Joint Exercise of Powers Agreement, which created the Advancing California Finance Authority ("ACFA"), (ii) on April 2, 2020, pursuant to Article VI(L) of the joint exercise of powers agreement pursuant to which the Authority was organized (under which the Authority has the power to assign, delegate or contract with a third party to perform any of the duties of the Authority's Board of Directors, including but not limited to, acting as administrator for the Authority) and Resolution No. 20-002, the executive committee of the Authority approved the transfer of the duties and responsibilities of the Authority's Board of Directors as administrator to ACFA and (ii) on May 21, 2020, pursuant to Resolution No. 2020-001, the Governing Board of ACFA approved, accepted and recognized the transfer of the duties of the Authority's Board of Directors to ACFA, including but not limited to, acting as administrator of the Authority; and

WHEREAS, the Trustee receives Revenues each year in excess of the amount needed to pay debt service on the Series 2014-A Bonds and the Series 2017 Bonds ("surplus Revenues") as a result of debt service savings achieved by refunding the 2007 Bonds, and the expected amount of future surplus Revenues may further increase if all or a portion of the Series 2014-A Bonds or the Series 2017 Bonds are refunded in the future as a result of favorable interest rates or otherwise redeemed with available Revenues;

WHEREAS, in order to achieve favorable economics results for the properties in the Windemere Ranch development paying the special assessments and special taxes that secure the Reassessment Bonds and the Special Tax Bonds, the Authority wishes to amend and supplement the Existing Indenture to provide for the redemption of a portion of the outstanding Series 2014-A Bonds with existing surplus Revenues, for a program of periodic redemptions of Outstanding Bonds with future surplus Revenues, and for other lawful uses of the surplus Revenues; and

WHEREAS, in order to provide for the redemption of a portion of the outstanding Series 2014-A Bonds with existing surplus Revenues, for a program of periodic redemptions of Outstanding Bonds with future surplus Revenues, and for other lawful uses of the surplus Revenues, it is necessary to supplement and amend the Section 4.4 of the Existing Indenture, as more particularly provided in Section 1 hereof, and

WHEREAS, Section 7.1(d) of the Existing Indenture authorizes the Authority to amend Section 4.4 without the consent of any Owners of the Outstanding Bonds; and

WHEREAS, Section 12.15(f) of the Existing Indenture authorizes the Authority to amend Section 4.4 without the consent of the 2017 Insurer; and

WHEREAS, this Third Supplement is a "Supplemental Indenture" within the meaning of the Existing Indenture; and

WHEREAS, the Authority has determined that all acts and proceedings required by law necessary to constitute the Existing Indenture, as amended and supplemented by this Third Supplement, a valid and binding agreement for the uses and purposes herein and therein set forth, have been done or taken.

#### **AGREEMENT:**

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained, and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

**SECTION 1. Supplement to Existing Indenture.** In accordance with the provisions of clause (d) of the second paragraph of Section 7.1 of the Existing Indenture, the Existing Indenture is hereby amended by amending and restating Section 4.4 as follows:

“Section 4.4 Surplus Fund. Any amounts transferred to the Surplus Fund, including amounts transferred thereto pursuant to clause (ix) of Section 4.2(a) hereof, shall no longer be considered Revenues, and are not pledged to repay the Bonds. Any amounts in the Surplus Fund may be withdrawn by the Authority from time to time upon submission of a Certificate of the Authority delivered to the Trustee specifying the amount to be withdrawn, to be used by the Authority for any lawful purpose including, but not limited to, (a) paying the expenses of ABAG and the Authority relating to the Bonds, the Local Obligations, the District or the Assessment District, (b) making transfers to the Fiscal Agent for deposit in the Redemption Fund established under Section 4.02(A) of the Fiscal Agent Agreement, dated as of June 1, 2007, between the Authority and the Fiscal Agent pursuant to which the Improvement Bonds were issued, to serve as a credit against the Reassessments, (c) making transfers to the Fiscal Agent for deposit by the Fiscal Agent in the Special Tax Fund established under Section 3.04 of the Fiscal Agent Agreement, dated as of June 1, 2007, between the Authority and the Fiscal Agent pursuant to which the Special Tax Bonds were issued, to serve as a credit against the Special Taxes, and (d) to provide for redemption of the Bonds.

**SECTION 2. Partial Invalidity.** If any section, paragraph, sentence, clause or phrase of this Third Supplement shall for any reason be held illegal, invalid or unenforceable, such holding shall not affect the validity of the remaining portions of this Third Supplement. The Authority hereby declares that it would have entered into this Third Supplement and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the redemption of Outstanding Bonds with surplus Revenues pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses, or phrases of this Third Supplement may be held illegal, invalid or unenforceable.

**SECTION 3. Execution in Counterparts.** This Third Supplement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**SECTION 4. Governing Law.** This Third Supplement shall be construed and governed in accordance with the laws of the State of California applicable to contracts made and performed in such state.

IN WITNESS WHEREOF, the ABAG FINANCE AUTHORITY FOR NONPROFIT CORPORATIONS has caused this Third Supplemental Indenture of Trust to be signed in its name by its Secretary, and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, in token of its acceptance of the trusts created hereunder, has caused this Third Supplemental Indenture of Trust to be signed in its corporate name by its officer thereunto duly authorized, all as of the day and year first above written.

ABAG FINANCE AUTHORITY FOR  
NONPROFIT CORPORATIONS

By: \_\_\_\_\_  
Frederick Castro,  
Secretary

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION, as Trustee

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