

STATE OF NEW MEXICO     )  
COUNTY OF GRANT         ) ss.  
TOWN OF SILVER CITY     )

The Town Council (the “Council”) of the Town of Silver City (the “Town”), in the State of New Mexico, met in open regular session in full conformity with law and the ordinances and rules of the Town, in the Grant County Administration Center, 1400 Highway 180 East, Silver City, New Mexico, being the regular meeting place of the Council, at 6:00 p.m., on Tuesday, September 13, 2022, at which time there were present and answering the roll call the following members:

Mayor:	<u>Ken Ladner</u>
Councilors:	<u>Lucian Farmer</u>
	<u>Nicholas Prince</u>
	<u>Jose Ray, Jr.</u>
	<u>Guadalupe Cano</u>
Absent:	<u>None</u>

There was officially filed with the Town Clerk, the Mayor and each Councilor, a copy of a resolution in final form, which is as follows:

TOWN OF SILVER CITY, NEW MEXICO  
RESOLUTION NO. 2022-21

RELATING TO THE TOWN OF SILVER CITY, NEW MEXICO GROSS RECEIPTS TAX IMPROVEMENT REVENUE BONDS, SERIES 2022 TO BE ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF \$5,040,000; ESTABLISHING THE EXACT AGGREGATE PRINCIPAL AMOUNT, MATURITY DATES, RATES OF INTEREST, REDEMPTION FEATURES AND PRICE WITH RESPECT TO THE SERIES 2022 BONDS IN ACCORDANCE WITH TOWN ORDINANCE NO. 1306 ADOPTED ON SEPTEMBER 14, 2021; APPROVING DOCUMENTS RELATING TO THE SERIES 2022 BONDS; AND RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION THEREWITH AND REPEALING ALL ACTION INCONSISTENT WITH THIS RESOLUTION.

WHEREAS, unless otherwise defined in this Resolution (hereinafter the “Sale Resolution”) or the context requires otherwise, capitalized terms in this Sale Resolution have the same meaning assigned to those terms in Section 1 of Town Ordinance No. 1306 adopted by the Council on September 14, 2021 (the “Bond Ordinance” and together with this Sale Resolution, the “Bond Legislation”); and

WHEREAS, the Sale Resolution is adopted pursuant to the Bond Ordinance in order to approve the terms, sale price and other matters with respect to the Series 2022 Bonds; and

WHEREAS, the Council has adopted the Ordinance which authorizes the issuance of the Series 2022 Bonds and provides for the adoption of the Sale Resolution by the Council to approve specific terms and documents relating to the issuance, delivery, sale and administration of the Series 2022 Bonds, and the Sale Resolution is adopted by the Council for those purposes; and

WHEREAS, the Council has determined to issue the Series 2022 Bonds as tax-exempt obligations pursuant to the Act and Section 103 of the Code; and

WHEREAS, it is in the best interests of the Town to sell the Series 2022 Bonds to Hilltop Securities Inc., as the Purchaser, upon the terms as set forth in the Bond Legislation and the Bond Purchase Agreement; and

WHEREAS, Hilltop Securities Inc. has agreed to purchase the Series 2022 Bonds at a purchase price of \$5,099,475.70 and has presented a Bond Purchase Agreement, by and between the Purchaser and the Town, to the Council setting out the terms with respect to the purchase and sale of the Series 2022 Bonds for approval by the Council in connection with adoption of this Sale Resolution; and

WHEREAS, the Town has received a commitment from Build America Mutual Assurance Company for a reserve fund insurance policy and has presented a Debt Service Reserve Agreement, by and between the Town and the Bond Insurer, to the Council setting out the terms of the Reserve Fund Insurance Policy; and

WHEREAS, the Bond Purchase Agreement and Debt Service Reserve Agreement are on deposit with the Town and are presented to the Council; and

WHEREAS, all required authorizations, consents and approvals of any governmental body, agency or authority in connection with (i) the use and pledge of the Pledged Revenues for the payment of the Series 2022 Bonds, and (ii) the authorization, execution and delivery of the Series 2022 Bonds, which are required to have been obtained by the date on which the Sale Resolution is adopted have been or will have been obtained;

BE IT RESOLVED BY THE GOVERNING BODY OF THE TOWN OF SILVER CITY, NEW MEXICO:

Section 1. Definitions. For purposes of the Series 2022 Bonds, the defined term “Sale Certificate” in the Bond Ordinance shall be revised to “Sale Resolution.” Additionally, the following defined terms are included:

“Bond Insurer” or “BAM” means Build America Mutual Assurance Company, or any successor thereto.

“Bond Purchase Agreement” means the Bond Purchase Agreement by and between the Town and the Purchaser relating to the sale of the Series 2022 Bonds to the Purchaser.

“Debt Service Reserve Agreement” means the agreement by and between the Town and the Bond Insurer related to the Reserve Fund Insurance Policy.

“Parity Obligations” is revised to mean the Series 2022 Bonds and other obligations payable from the Pledged Revenues hereafter issued with a lien on the Pledged Revenues on parity with the Series 2022 Bonds.

“Purchaser” means Hilltop Securities Inc.

Section 2. Ratification of Prior Actions and Awarding the Series 2022 Bonds. All action previously taken (not inconsistent with the provisions of this Sale Resolution or the Bond Ordinance) by the Council and the officers of the Town, directed toward the authorization, pledge, collection and distribution of the Pledged Revenues and the authorization, issuance and sale of the Series 2022 Bonds is ratified, approved and confirmed, and the Series 2022 Bonds are awarded to Hilltop Securities Inc., as provided below.

A. The Series 2022 Bonds shall be issued as tax-exempt obligations in the aggregate principal amount of \$5,040,000, shall be dated the date of their issuance and delivery, shall bear interest from their date until maturity at the rates hereinafter designated, commencing on December 1, 2022 and semiannually thereafter on June 1 and December 1 in each year, and shall mature in the designated principal amounts on June 1 in each year, as follows:

<u>MATURITY</u> <u>(JUNE 1)</u>	<u>AMOUNTS</u> <u>MATURING</u>	<u>INTEREST</u> <u>RATE</u>
2023	\$70,000	5.00%
2024	75,000	5.00%
2025	195,000	5.00%
2026	210,000	5.00%
2027	105,000	5.00%
2028	110,000	5.00%
2029	115,000	5.00%
2033*	510,000	5.00%
2037*	610,000	5.00%
2042*	875,000	4.25%
2047*	1,010,000	4.50%
2052*	1,155,000	4.50%

\*Term bond, subject to mandatory redemption.

Section 3. Findings. The Council declares that it has considered all relevant information and data and makes the following findings:

A. The issuance of the Series 2022 Bonds under the Act to provide funds for the Improvement Project is necessary and in the interest of the public health, safety, morals and welfare of the residents of the Town.

B. The net effective interest rate of 4.479009% on the Series 2022 Bonds is reasonable under existing and anticipated bond market conditions and is less than 12.0%.

C. The Town will complete the Improvement Project with the proceeds of the Series 2022 Bonds together with other funds of the Town.

D. It is economically feasible to defray, in part, the cost of the Improvement Project by the issuance of the Series 2022 Bonds.

Section 4. Bond Details.

A. Principal Amount. The Series 2022 Bonds shall be issued in the aggregate principal amount of \$5,040,000 to provide funds, together with other available funds of the Town, if any, to (i) finance the Improvement Project, (ii) acquire a Bond Insurance Policy and Reserve Fund Insurance Policy in the amount of the Minimum Reserve, and (iii) pay Expenses relating to the issuance of the Series 2022 Bonds.

B. Series Date; Registration. The Series 2022 Bonds shall be dated as of the date of original issuance and delivery (the "Series Date"), and shall be issued in fully registered form only, without coupons, and when issued will be registered in the name of Cede & Co., as registered owner of the Series 2022 Bonds, all as provided in the Bond Legislation.

C. Record Date. The Record Date shall be the 15th day of the calendar month preceding each scheduled Interest Payment Date.

D. Optional Redemption. The Series 2022 Bonds maturing on and after June 1, 2033 shall be subject to redemption prior to maturity on and after June 1, 2029, at the Town's option in one or more units of principal of \$5,000 in whole or in part at any time, in such order of maturities as the City may determine (and by lot if less than all of the Series 2022 Bonds of such maturity is called, such selection by lot to be made by the Registrar in such manner considered appropriate and fair) at a redemption price equal to the principal amount of the Series 2022 Bonds or portions thereof to be redeemed plus accrued interest, if any, to the date fixed for redemption.

E. Mandatory Redemption.

The Bonds maturing on June 1, 2033 are subject to mandatory sinking fund redemption at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date on June 1 in the years and in the principal amounts stated below:

Term Bonds Due June 1, 2033

<u>Year</u>	<u>Amount</u>
2030	\$120,000
2031	125,000
2032	130,000
2033*	135,000

\*Maturity Date

The Bonds maturing on June 1, 2037 are subject to mandatory sinking fund redemption at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date on June 1 in the years and in the principal amounts stated below:

Term Bonds Due June 1, 2037

<u>Year</u>	<u>Amount</u>
2034	\$145,000
2035	150,000
2036	155,000
2037*	160,000

\*Maturity Date

The Bonds maturing on June 1, 2042 are subject to mandatory sinking fund redemption at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date on June 1 in the years and in the principal amounts stated below:

Term Bonds Due June 1, 2042

<u>Year</u>	<u>Amount</u>
2038	\$165,000
2039	170,000
2040	175,000
2041	180,000
2042*	185,000

\*Maturity Date

The Bonds maturing on June 1, 2047 are subject to mandatory sinking fund redemption at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date on June 1 in the years and in the principal amounts stated below:

Term Bonds Due June 1, 2047

<u>Year</u>	<u>Amount</u>
2043	\$190,000
2044	195,000
2045	200,000
2046	210,000
2047*	215,000

\*Maturity Date

The Bonds maturing on June 1, 2052 are subject to mandatory sinking fund redemption at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date on June 1 in the years and in the principal amounts stated below:

Term Bonds Due June 1, 2052

<u>Year</u>	<u>Amount</u>
2048	\$220,000
2049	225,000
2050	230,000
2051	235,000
2052*	245,000

\*Maturity Date

Section 5. Parameters of Resolution. The net effective interest rate on the Series 2022 Bonds is less than 12% per annum. The maturity dates of the Series 2022 Bonds do not exceed fifty years. All other terms and conditions relating to the Series 2022 Bonds and the sale

of the Series 2022 Bonds to the Purchaser set forth in this Sale Resolution are within the parameters established by the Bond Ordinance.

Section 6. Accounts and Funds. The Town shall establish such Funds and Accounts as required by the Bond Legislation and the net proceeds from the sale of the Series 2022 Bonds shall be deposited or used as follows:

A. \$5,000,000.00 shall be deposited in the Acquisition Fund for the Improvement Project.

B. \$70,000.00 shall be deposited in the Acquisition Fund for payment of Expenses.

C. \$17,754.15 shall be paid to the Bond Insurer for the premium to acquire the Municipal Bond Insurance Policy.

D. \$8,514.33 shall be paid to the Bond Insurer for the premium to acquire the Reserve Fund Insurance Policy.

E. \$3,207.22 shall be deposited in the Bond Fund for payment of debt service on the Series 2022 Bonds.

Section 7. Acquisition of Bond Insurance Policy. The Town has determined that it is in the best interests of the Town to obtain an municipal bond insurance policy from the Bond Insurer to insure the payment of principal and interest on the Series 2022 Bonds. The Town agrees to the provisions set forth in Appendix A hereto related to the Bond Insurance Policy and incorporates them into this Sale Resolution as required by the Commitment from the Bond Insurer.

Section 8. Reserve Requirement; Acquisition of Reserve Fund Insurance Policy. The Minimum Reserve for the Series 2022 Bonds is hereby established at \$378,414.50. The Minimum Reserve shall be satisfied with the deposit of a municipal bond debt service reserve insurance policy issued by BAM relating to the Series 2022 Bonds in the Reserve Fund (the "Reserve Fund Insurance Policy"). The Town agrees to the provisions set forth in Appendix B hereto and incorporates them into this Resolution as required by the Reserve Fund Insurance Policy Commitment from Bond Insurer.

Section 9. Amendments to Bond Ordinance. For purposes of the Series 2022 Bonds, the Bond Ordinance is hereby amended as follows:

A. Section 19(E) is hereby replaced with the following:

Reserve Fund. Immediately upon the sale and delivery of the Series 2022 Bonds, the Town shall acquire a Reserve Fund Insurance Policy in an amount equal to all

or part of the Minimum Reserve so that the combined amount of cash in the Reserve Fund and the amount of the Reserve Fund Insurance Policy is equal to the Minimum Reserve. Amounts on deposit in the Income Funds, after making the deposits into the Bond Fund and the debt service funds for additional Parity Bonds required by the Bond Ordinance, shall also be used by the Town to make deposits into the Reserve Fund if required to meet the Minimum Reserve or to pay the annual premiums, reimbursement or other costs required by or associated with any Reserve Fund Insurance Policy. No payment need be made into the Reserve Fund so long as the moneys or the Reserve Fund Insurance Policy therein shall equal not less than the Minimum Reserve. The moneys in the Reserve Fund shall be accumulated and maintained as a continuing reserve to be used, except as provided in the Bond Ordinance, only to prevent deficiencies in the payment of the principal of and interest on the Series 2022 Bonds resulting from failure to deposit into the Bond Fund sufficient funds to pay the principal and interest as the same become due.”

B. Section 30(B) and 30(C) are hereby replaced with the following:

“(B) Nonpayment of Interest. Any payment of any installment of interest on the Series 2022 Bonds is not made when due and payable.”

“(C) Default of any Provision. Any failure by the Town to observe or perform any covenant, condition or agreement on its part to be observed or performed (other than as referred to in Section 30(A) or Section 30(B)), which failure continues for a period of 30 days after written notice specifying the failure and requesting that it be remedied has been given to the Town by the Bond Insurer or the Owners of 25% in principal amount of the Bonds then Outstanding.”

C. Section 43 is hereby included in the Bond Ordinance:

“Section 43. Additional Bonds or Other Obligations Payable from Pledged Revenues.

A. Limitations Upon Issuance of Parity Obligations Payable from Pledged Revenues. Nothing in this Bond Ordinance shall be construed in such a manner as to prevent the issuance by the Town of additional bonds or other obligations payable from the Pledged Revenues and constituting a lien upon the Pledged Revenues on a parity with, but not prior or superior to, the lien of the Series 2022 Bonds, nor to prevent the issuance of bonds or other obligations refunding all or a part of the Series 2022 Bonds herein authorized, provided, however, that before any such additional Parity Obligations are issued including those parity lien refunding bonds and other parity lien refunding obligations which refund subordinate lien bonds and other subordinate lien obligations, but not including parity lien refunding bonds and other parity lien refunding obligations which refund outstanding Parity Obligations:

(i) the Town is then current in all of the accumulations required to be made in the Bond Fund and Reserve Fund, if any, pursuant to Section 19; and

(ii) the Pledged Revenues received by the Town for the Fiscal Year immediately preceding the date of issuance of such additional Parity Obligations shall have been sufficient to pay an amount representing at least 200% of the combined maximum annual



principal and interest coming due in any subsequent Fiscal Year on the then Outstanding Bonds, all other then outstanding Parity Obligations and the Parity Obligations proposed to be issued (excluding any reserves therefor); provided that if such additional Parity Obligations are issued as variable rate obligations, the highest interest rate allowed by the instruments authorizing such additional Parity Obligations shall be used in making such calculation.

B. Certification or Opinion Regarding Pledged Revenues. A written certificate or opinion by the Town Manager/Finance Director that the Pledged Revenues are sufficient to pay the required amounts under the test in paragraph (A) of this Section, shall conclusively determine the right of the Town to issue additional Parity Obligations. The Town Manager/Finance Director may utilize the results of any annual audit to the extent it covers the applicable period.

C. Subordinate Obligations Permitted. Nothing contained in this Bond Ordinance shall be construed in such a manner as to prevent the issuance by the Town of additional bonds or other obligations payable from the Pledged Revenues and constituting a lien upon the Pledged Revenues subordinate, inferior and junior to the lien on the Series 2022 Bonds.

D. Superior Obligations Prohibited. Nothing contained herein shall be construed so as to permit the Town to issue bonds or other obligations payable from the Pledged Revenues having a lien thereon prior and superior to the Series 2022 Bonds.”

Section 10. Approval and Use of Documents. The form, terms and provisions of the Bond Purchase Agreement and Debt Service Reserve Agreement are on file with the Town Clerk and presented to the Council are ratified and approved. The Mayor is authorized and directed to execute and the Town Clerk is authorized and directed to affix the seal of the Town to and attest where applicable, the Bond Purchase Agreement and Debt Service Reserve Agreement in substantially the forms presented at this meeting, or with such changes therein as are not inconsistent with the Bond Legislation and as shall be approved by the Mayor, his execution thereof to constitute conclusive evidence of his approval of any and all changes or revisions thereof from the forms presented to the Council. The officers of the Town, including without limitation, the Mayor, Manager and Clerk be, and they hereby are, authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Sale Resolution, including, without limiting the generality of the foregoing, the distribution of material relating to the Series 2022 Bonds, the printing of the Series 2022 Bonds, and the execution of the Bond Purchase Agreement, Debt Service Reserve Agreement and such other certificates as may be required by the Purchaser or bond counsel.

Section 11. Sale of the Series 2022 Bonds. The Series 2022 Bonds are hereby sold to Hilltop Securities Inc. pursuant to a negotiated sale at the purchase price of \$5,099,475.70, which equals the par amount of \$5,040,000.00, plus a net reoffering premium of \$89,000.50, less an underwriting discount of \$29,524.80, as set forth in the Bond Purchase Agreement.

Section 12. Bond Ordinance. Except with respect to the terms set forth in this Sale Resolution, the Series 2022 Bonds are governed by the Bond Ordinance, which is hereby fully incorporated, ratified and confirmed as if adopted on the date hereof, except as modified herein. In the event of any conflict in the terms of this Sale Resolution and Bond Ordinance, the terms of

the Sale Resolution shall prevail. The adoption of this Resolution and the Bond Ordinance, and all procedures undertaken incident thereto, are in full compliance and conformity with all applicable requirements, provisions and limitations prescribed by the Constitution and laws of the state of New Mexico.

Section 13. Repealer Clause. All bylaws, orders and resolutions, or parts thereof, inconsistent with this Sale Resolution are repealed to the extent of such inconsistency. This repealer shall not be construed to revive any bylaw, order or resolution, or part thereof, previously repealed.

Section 14. Effective Date and Publication. This Sale Resolution shall be in full force and effect immediately upon adoption and approval by the Council and its execution and approval by the Mayor. A title and general summary of the subject matter contained in this Sale Resolution shall be published in substantially the following form after adoption of this Sale Resolution.

Town of Silver City, New Mexico

Notice of Adoption of Sale Resolution

Notice is hereby given of the title and of a general summary of the subject matter contained in Town Resolution No. 2022-21 duly adopted and approved by the Silver City Town Council on September 13, 2022, relating to the details of the Town's Gross Receipts Tax Improvement Revenue Bonds, Series 2022 as authorized pursuant to its Ordinance No. 1306 duly adopted by the Council on September 14, 2021. Complete copies of the Sale Resolution are available for public inspection during the normal and regular business hours of the Town Clerk, 101 West Broadway, Silver City, New Mexico.

The title of the Resolution is:

RELATING TO THE TOWN OF SILVER CITY, NEW MEXICO GROSS RECEIPTS TAX IMPROVEMENT REVENUE BONDS, SERIES 2022 TO BE ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF \$5,040,000; ESTABLISHING THE EXACT AGGREGATE PRINCIPAL AMOUNT, MATURITY DATES, RATES OF INTEREST, REDEMPTION FEATURES AND PRICE WITH RESPECT TO THE SERIES 2022 BONDS IN ACCORDANCE WITH TOWN ORDINANCE NO. 1306 ADOPTED ON SEPTEMBER 14, 2021; APPROVING DOCUMENTS RELATING TO THE SERIES 2022 BONDS; AND RATIFYING ACTION PREVIOUSLY TAKEN IN CONNECTION THEREWITH AND REPEALING ALL ACTION INCONSISTENT WITH THIS RESOLUTION.

The title sets forth a general summary of the subject matter contained in the Resolution.







## APPENDIX A

With respect to the Bond Insurance Policy, notwithstanding anything to the contrary set forth in the Bond Legislation, the Town and the Paying Agent agree to comply with the following provisions contained in this Appendix A. Any and all financial obligations of the Town described in this Appendix A are payable solely from and secured by the Pledged Revenues.

- 1) Notice and Other Information to be given to BAM. The Issuer will provide BAM with all notices and other information it is obligated to provide (i) under its Continuing Disclosure Agreement and (ii) to the holders of Insured Obligations or under the Security Documents.

The notice address of BAM is: Build America Mutual Assurance Company, 200 Liberty Street, 27<sup>th</sup> Floor, New York, NY 10281, Attention: Surveillance, Re: Policy No. \_\_\_\_\_, Telephone: (212) 235-2500, Telecopier: (212) 962-1710, Email: [notices@buildamerica.com](mailto:notices@buildamerica.com). In each case in which notice or other communication refers to an event of default or a claim on the Policy, then a copy of such notice or other communication shall also be sent to the attention of the General Counsel at the same address and at [claims@buildamerica.com](mailto:claims@buildamerica.com) or at Telecopier: (212) 962-1524 and shall be marked to indicate "URGENT MATERIAL ENCLOSED."

- 2) Defeasance. The investments in the defeasance escrow relating to Insured Obligation shall be limited to non-callable, direct obligations of the United States of America and securities fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America, or as otherwise maybe authorized under State law and approved by BAM.

At least (three) 3 Business Days prior to any defeasance with respect to the Insured Obligations, the Issuer shall deliver to BAM draft copies of an escrow agreement, an opinion of bond counsel regarding the validity and enforceability of the escrow agreement and the defeasance of the Insured Obligations, a verification report (a "Verification Report") prepared by a nationally recognized independent financial analyst or firm of certified public accountants regarding the sufficiency of the escrow fund. Such opinion and Verification Report shall be addressed to BAM and shall be in form and substance satisfactory to BAM. In addition, the escrow agreement shall provide that:

- a) Any substitution of securities following the execution and delivery of the escrow agreement shall require the delivery of a Verification Report, an opinion of bond counsel that such substitution will not adversely affect the exclusion (if interest on the Insured Obligations is excludable) from gross income of the holders of the Insured Obligations of the interest on the Insured Obligations for federal income tax purposes and the prior written consent of BAM, which consent will not be unreasonably withheld.
- b) The Issuer will not exercise any prior optional redemption of Insured Obligations secured by the escrow agreement or any other redemption other than mandatory sinking fund redemptions unless (i) the right to make any such redemption has been expressly reserved in the escrow agreement and such reservation has been disclosed in detail in the official statement for the refunding bonds, and (ii) as a condition to any such redemption there shall be provided to BAM a Verification Report as to the sufficiency of escrow receipts

without reinvestment to meet the escrow requirements remaining following any such redemption.

- c) The Issuer shall not amend the escrow agreement or enter into a forward purchase agreement or other agreement with respect to rights in the escrow without the prior written consent of BAM.

3) Trustee and Paying Agent.

- a) BAM shall receive prior written notice of any name change of the trustee (the “Trustee”) or, if applicable, the paying agent (the “Paying Agent”) for the Insured Obligations or the resignation or removal of the Trustee or, if applicable, the Paying Agent. Any Trustee must be (A) a national banking association that is supervised by the Office of the Comptroller of the Currency and has at least \$250 million of assets, (B) a state-chartered commercial bank that is a member of the Federal Reserve System and has at least \$1 billion of assets, or (C) otherwise approved by BAM in writing.
- b) No removal, resignation or termination of the Trustee or, if applicable, the Paying Agent shall take effect until a successor, meeting the requirements above or acceptable to BAM, shall be qualified and appointed.\

4) Amendments, Supplements and Consents. BAM’s prior written consent is required for all amendments and supplements to the Security Documents, with the exceptions noted below. The Issuer shall send copies of any such amendments or supplements to BAM and the rating agencies which have assigned a rating to the Insured Obligations.

- a) *Consent of BAM.* Any amendments or supplements to the Security Documents shall require the prior written consent of BAM with the exception of amendments or supplements:
  - i. To cure any ambiguity or formal defect or omissions or to correct any inconsistent provisions in the transaction documents or in any supplement thereto, or
  - ii. To grant or confer upon the holders of the Insured Obligations any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the holders of the Insured Obligations, or
  - iii. To add to the conditions, limitations and restrictions on the issuance of bonds or other obligations under the provisions of the Security Documents other conditions, limitations and restrictions thereafter to be observed, or
  - iv. To add to the covenants and agreements of the Issuer in the Security Documents other covenants and agreements thereafter to be observed by the Issuer or to surrender any right or power therein reserved to or conferred upon the Issuer.
  - v. To issue additional parity debt in accordance with the requirements set forth in the Security Documents (unless otherwise specified herein).
- b) *Consent of BAM in Addition to Bondholder Consent.* Whenever any Security Document requires the consent of holders of Insured Obligations, BAM’s consent shall also be required. In addition, any amendment, supplement, modification to, or waiver of, any of the Security Documents that adversely affects the rights or interests of BAM shall be

subject to the prior written consent of BAM.

- c) *Insolvency.* Any reorganization or liquidation plan with respect to the Issuer must be acceptable to BAM. The Trustee and each owner of the Insured Obligations hereby appoint BAM as their agent and attorney-in-fact with respect to the Insured Obligations and agree that BAM may at any time during the continuation of any proceeding by or against the Issuer under the United States Bankruptcy Code or any other applicable bankruptcy, insolvency, receivership, rehabilitation or similar law (an “Insolvency Proceeding”) direct all matters relating to such Insolvency Proceeding, including without limitation, (A) all matters relating to any claim or enforcement proceeding in connection with an Insolvency Proceeding (a “Claim”), (B) the direction of any appeal of any order relating to any Claim, (C) the posting of any surety, supersedeas or performance bond pending any such appeal, and (D) the right to vote to accept or reject any plan of adjustment. In addition, the Trustee and each owner of the Insured Obligations delegate and assign to BAM, to the fullest extent permitted by law, the rights of the Trustee and each owner of the Insured Obligations with respect to the Insured Obligations in the conduct of any Insolvency Proceeding, including, without limitation, all rights of any party to an adversary proceeding or action with respect to any court order issued in connection with any such Insolvency Proceeding.
- d) *Control by BAM Upon Default.* Anything in the Security Documents to the contrary notwithstanding, upon the occurrence and continuance of a default or an event of default, BAM shall be entitled to control and direct the enforcement of all rights and remedies granted to the holders of the Insured Obligations or the Trustee or Paying Agent for the benefit of the holders of the Insured Obligations under any Security Document. No default or event of default may be waived without BAM’s written consent.
- e) *BAM as Owner.* Upon the occurrence and continuance of a default or an event of default, BAM shall be deemed to be the sole owner of the Insured Obligations for all purposes under the Security Documents, including, without limitations, for purposes of exercising remedies and approving amendments.
- f) *Consent of BAM for acceleration.* BAM’s prior written consent is required as a condition precedent to and in all instances of acceleration.
- g) *Grace Period for Payment Defaults.* No grace period shall be permitted for payment defaults on the Insured Obligations. No grace period for a covenant default shall exceed 30 days without the prior written consent of BAM.
- h) *Special Provisions for Insurer Default.* If an Insurer Default shall occur and be continuing, then, notwithstanding anything in paragraphs 4(a)-(e) above to the contrary, (1) if at any time prior to or following an Insurer Default, BAM has made payment under the Policy, to the extent of such payment BAM shall be treated like any other holder of the Insured Obligations for all purposes, including giving of consents, and (2) if BAM has not made any payment under the Policy, BAM shall have no further consent



rights until the particular Insurer Default is no longer continuing or BAM makes a payment under the Policy, in which event, the foregoing clause (1) shall control. For purposes of this paragraph, "Insurer Default" means: (A) BAM has failed to make any payment under the Policy when due and owing in accordance with its terms; or (B) BAM shall (i) voluntarily commence any proceeding or file any petition seeking relief under the United States Bankruptcy Code or any other Federal, state or foreign bankruptcy, insolvency or similar law, (ii) consent to the institution of or fail to controvert in a timely and appropriate manner, any such proceeding or the filing of any such petition, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator or similar official for such party or for a substantial part of its property, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors, or (vi) take action for the purpose of effecting any of the foregoing; or (C) any state or federal agency or instrumentality shall order the suspension of payments on the Policy or shall obtain an order or grant approval for the rehabilitation, liquidation, conservation or dissolution of BAM (including without limitation under the New York Insurance Law).

5) Loan/Lease/Financing Agreement.

- a) The security for the Insured Obligations shall include a pledge and assignment of any agreement with any underlying obligor that is a source of payment for the Insured Obligations (a "Financing Agreement") and a default under any Financing Agreement shall constitute an Event of Default under the Security Documents. In accordance with the foregoing, any such Financing Agreement is hereby pledged and assigned to the Trustee for the benefit of the holders of the Insured Obligations.
- b) Any payments by the obligor under the Financing Agreement that will be applied to the payment of debt service on the Insured Obligations shall be made directly to the Trustee at least fifteen (15) days prior to each debt service payment date for the Insured Obligations.

6) BAM As Third Party Beneficiary. BAM is recognized as and shall be deemed to be a third party beneficiary of the Security Documents and may enforce the provisions of the Security Documents as if it were a party thereto.

7) Payment Procedure Under the Policy.

In the event that principal and/or interest due on the Insured Obligations shall be paid by BAM pursuant to the Policy, the Insured Obligations shall remain outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the Issuer, the assignment and pledge of the trust estate and all covenants, agreements and other obligations of the Issuer to the registered owners shall continue to exist and shall run to the benefit of BAM, and BAM shall be subrogated to the rights of such registered owners.

In the event that on the second (2<sup>nd</sup>) business day prior to any payment date on the Insured Obligations, the Paying Agent or Trustee has not received sufficient moneys to pay all

principal of and interest on the Insured Obligations due on such payment date, the Paying Agent or Trustee shall immediately notify BAM or its designee on the same business day by telephone or electronic mail, of the amount of the deficiency. If any deficiency is made up in whole or in part prior to or on the payment date, the Paying Agent or Trustee shall so notify BAM or its designee.

In addition, if the Paying Agent or Trustee has notice that any holder of the Insured Obligations has been required to disgorge payments of principal of or interest on the Insured Obligations pursuant to a final, non-appealable order by a court of competent jurisdiction that such payment constitutes an avoidable preference to such holder within the meaning of any applicable bankruptcy law, then the Paying Agent or Trustee shall notify BAM or its designee of such fact by telephone or electronic mail, or by overnight or other delivery service as to which a delivery receipt is signed by a person authorized to accept delivery on behalf of BAM.

The Paying Agent or Trustee shall irrevocably be designated, appointed, directed and authorized to act as attorney-in-fact for holders of the Insured Obligations as follows:

- a) If there is a deficiency in amounts required to pay interest and/or principal on the Insured Obligations, the Paying Agent or Trustee shall (i) execute and deliver to BAM, in form satisfactory to BAM, an instrument appointing BAM as agent and attorney-in-fact for such holders of the Insured Obligations in any legal proceeding related to the payment and assignment to BAM of the claims for interest on the Insured Obligations, (ii) receive as designee of the respective holders (and not as Paying Agent) in accordance with the tenor of the Policy payment from BAM with respect to the claims for interest so assigned, (iii) segregate all such payments in a separate account (the "BAM Policy Payment Account") to only be used to make scheduled payments of principal of and interest on the Insured Obligation, and (iv) disburse the same to such respective holders; and
- b) If there is a deficiency in amounts required to pay principal of the Insured Obligations, the Paying Agent or Trustee shall (i) execute and deliver to BAM, in form satisfactory to BAM, an instrument appointing BAM as agent and attorney-in-fact for such holder of the Insured Obligations in any legal proceeding related to the payment of such principal and an assignment to BAM of the Insured Obligations surrendered to BAM, (ii) receive as designee of the respective holders (and not as Paying Agent) in accordance with the tenor of the Policy payment therefore from BAM, (iii) segregate all such payments in the BAM Policy Payment Account to only be used to make scheduled payments of principal of and interest on the Insured Obligation, and (iv) disburse the same to such holders.

The Trustee shall designate any portion of payment of principal on Insured Obligations paid by BAM, whether by virtue of mandatory sinking fund redemption, maturity or other advancement of maturity, on its books as a reduction in the principal amount of Insured Obligations registered to the then current holder, whether DTC or its nominee or otherwise, and shall issue a replacement Insured Obligation to BAM, registered in the name directed by BAM, in a principal amount equal to the amount of principal so paid (without regard to authorized denominations); provided that the Trustee's failure to so designate any payment or issue any replacement Insured Obligation shall have no effect

on the amount of principal or interest payable by the Issuer on any Insured Obligation or the subrogation or assignment rights of BAM.

Payments with respect to claims for interest on and principal of Insured Obligations disbursed by the Paying Agent or Trustee from proceeds of the Policy shall not be considered to discharge the obligation of the Issuer with respect to such Insured Obligations, and BAM shall become the owner of such unpaid Insured Obligations and claims for the interest in accordance with the tenor of the assignment made to it under the provisions of the preceding paragraphs or otherwise. The Security Documents shall not be discharged or terminated unless all amounts due or to become due to BAM have been paid in full or duly provided for.

Irrespective of whether any such assignment is executed and delivered, the Issuer and the Paying Agent and Trustee agree for the benefit of BAM that:

- a) They recognize that to the extent BAM makes payments directly or indirectly (*e.g.*, by paying through the Paying Agent or Trustee), on account of principal of or interest on the Insured Obligations, BAM will be subrogated to the rights of such holders to receive the amount of such principal and interest from the Issuer, with interest thereon, as provided and solely from the sources stated in the Security Documents and the Insured Obligations; and
  - b) They will accordingly pay to BAM the amount of such principal and interest, with interest thereon as provided in the transaction documents and the Insured Obligations, but only from the sources and in the manner provided therein for the payment of principal of and interest on the Insured Obligations to holders, and will otherwise treat BAM as the owner of such rights to the amount of such principal and interest.
- 8) Additional Payments. The Issuer agrees unconditionally that it will pay or reimburse BAM on demand any and all reasonable charges, fees, costs, losses, liabilities and expenses that BAM may pay or incur, including, but not limited to, fees and expenses of BAM's agents, attorneys, accountants, consultants, appraisers and auditors and reasonable costs of investigations, in connection with the administration (including waivers and consents, if any), enforcement, defense, exercise or preservation of any rights and remedies in respect of the Security Documents ("Administrative Costs"). For purposes of the foregoing, costs and expenses shall include a reasonable allocation of compensation and overhead attributable to the time of employees of BAM spent in connection with the actions described in the preceding sentence. The Issuer agrees that failure to pay any Administrative Costs on a timely basis will result in the accrual of interest on the unpaid amount at the Late Payment Rate, compounded semi-annually, from the date that payment is first due to BAM until the date BAM is paid in full.

Notwithstanding anything herein to the contrary, the Issuer agrees to pay to BAM (i) a sum equal to the total of all amounts paid by BAM under the Policy ("BAM Policy Payment"); and (ii) interest on such BAM Policy Payments from the date paid by BAM until payment thereof in full by the Issuer, payable to BAM at the Late Payment Rate per annum (collectively, "BAM Reimbursement Amounts") compounded semi-annually.

Notwithstanding anything to the contrary, including without limitation the post default application of revenue provisions, BAM Reimbursement Amounts shall be, and the Issuer hereby covenants and agrees that the BAM Reimbursement Amounts are, payable from and secured by a lien on and pledge of the same revenues and other collateral pledged to the Insured Obligations on a parity with debt service due on the Insured Obligations.

- 9) Debt Service Reserve Fund. The prior written consent of BAM shall be a condition precedent to the deposit of any credit instrument provided in lieu of a cash deposit into the Debt Service Reserve Fund, if any. Amounts on deposit in the Debt Service Reserve Fund shall be applied solely to the payment of debt service due on the Insured Obligations.
- 10) Exercise of Rights by BAM. The rights granted to BAM under the Security Documents to request, consent to or direct any action are rights granted to BAM in consideration of its issuance of the Policy. Any exercise by BAM of such rights is merely an exercise of the BAM's contractual rights and shall not be construed or deemed to be taken for the benefit, or on behalf, of the holders of the Insured Obligations and such action does not evidence any position of BAM, affirmative or negative, as to whether the consent of the holders of the Insured Obligations or any other person is required in addition to the consent of BAM.
- 11) BAM shall be entitled to pay principal or interest on the Insured Obligations that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the Issuer (as such terms are defined in the Policy) and any amounts due on the Insured Obligations as a result of acceleration of the maturity thereof in accordance with the Security Documents, whether or not BAM has received a claim upon the Policy.
- 12) No contract shall be entered into or any action taken by which the rights of BAM or security for or source of payment of the Insured Obligations may be impaired or prejudiced in any material respect except upon obtaining the prior written consent of BAM.
- 13) If an event of default occurs under any agreement pursuant to which any Obligation of the Issuer has been incurred or issued and that permits the holder of such Obligation or trustee to accelerate the Obligation or otherwise exercise rights or remedies that are adverse to the interest of the holders of the Insured Obligations or BAM, as BAM may determine in its sole discretion, then an event of default shall be deemed to have occurred under the Bond Ordinance and the related Security Documents for which BAM or the Trustee, at the direction of BAM, shall be entitled to exercise all available remedies under the Security Documents, at law and in equity. For purposes of the foregoing "Obligation" shall mean any bonds, loans, certificates, installment or lease payments or similar obligations that are payable and/or secured on a parity or subordinate basis to the Insured Obligations.
- 14) Definitions.

“BAM” shall mean Build America Mutual Assurance Company, or any successor thereto.

“Insured Obligations” shall mean the Town of Silver City, New Mexico Gross Receipts Tax Improvement Revenue Bonds, Series 2022.

“Issuer” shall mean the Town of Silver City, New Mexico.

“Late Payment Rate” means the lesser of (a) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank, N.A., at its principal office in The City of New York, New York, as its prime or base lending rate (“Prime Rate”) (any change in such Prime Rate to be effective on the date such change is announced by JPMorgan Chase Bank, N.A.) plus 5%, and (ii) the then applicable highest rate of interest on the Insured Obligations and (b) the maximum rate permissible under applicable usury or similar laws limiting interest rates. In the event JPMorgan Chase Bank, N.A., ceases to announce its Prime Rate, the Prime Rate shall be the prime or base lending rate of such other bank, banking association or trust company as BAM, in its sole and absolute discretion, shall designate. Interest at the Late Payment Rate on any amount owing to BAM shall be computed on the basis of the actual number of days elapsed in a year of 360 days.

“Policy” shall mean the Municipal Bond Insurance Policy issued by BAM that guarantees the scheduled payment of principal of and interest on the Insured Obligations when due.

“Security Documents” shall mean the Bond Legislation, resolution, trust agreement, indenture, ordinance, loan agreement, lease agreement, bond note, certificate and/or any additional or supplemental document executed in connection with the Insured Obligations.

## APPENDIX B

With respect to the Reserve Fund Insurance Policy, notwithstanding anything to the contrary set forth in the Bond Legislation, the Town and the Paying Agent agree to comply with the following provisions contained in this Appendix B. Any and all financial obligations of the Town described in this Appendix B are payable solely from and secured by the Pledged Revenues.

1) The Town shall repay BAM any draws under the Reserve Fund Insurance Policy and pay all related reasonable charges, fees, costs, losses, liabilities and expenses (the "Administrative Expenses") that BAM may pay or incur. Interest shall accrue and be payable on such draws and expenses from the date of payment by BAM at the Late Payment Rate. "Late Payment Rate" means the lesser of (a) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank at its principal office in the City of New York, as its prime or base lending rate ("Prime Rate") (any change in such Prime Rate to be effective on the date such change is announced by JPMorgan Chase Bank) plus 5%, and (ii) the then applicable highest rate of interest on the Insured Obligations, as applicable, and (b) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Late Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days. In the event JPMorgan Chase Bank ceases to announce its Prime Rate publicly, the Prime Rate shall be the publically announced prime or base-lending rate of such national bank, banking association or trust company as BAM, in its sole and absolute discretion, shall specify.

Repayment of draws and payment of Administrative Expenses and accrued interest thereon at the Late Payment Rate (collectively, the "Policy Costs") shall commence in the first month following each draw, and each such monthly payment shall be in an amount at least equal to 1/12 of the aggregate of Policy Costs related to such draw.

Amounts in respect of Policy Costs paid to BAM shall be credited first to interest due, then to the expenses due and then to principal due. As and to the extent that payments are made to BAM on account of principal due, the coverage under the Reserve Fund Insurance Policy will be increased by a like amount, subject to the terms of the Reserve Fund Insurance Policy.

All cash and investments in the Reserve Fund established for the Insured Obligations shall be transferred to the Bond Fund for payment of the debt service on the Insured Obligations before any drawing may be made on the Reserve Fund Insurance Policy or on any alternative credit instrument on deposit in the Reserve Fund in lieu of cash (the "Alternative Credit Instrument").

Payment of any Policy Cost shall be made prior to replenishment of any cash amounts. Draws on all Alternative Credit Instruments (including the Debt Service Reserve Policy) on which there is available coverage shall be made on a pro-rata basis (calculated by reference to the available coverage under each such Alternative Credit Instrument) after applying all available cash and investments in the Reserve Fund. Payment of Policy Costs and reimbursement of amounts with respect to other Alternative Credit Instruments shall be made on a pro-rata basis prior to replenishment of any cash drawn from the Reserve Fund. For the avoidance of doubt, "available coverage" means the coverage then available for disbursement pursuant to the terms

of the applicable alternative credit instrument without regard to the legal or financial ability or willingness of the provider of such instrument to honor a claim or draw thereon or the failure of such provider to honor any such claim or draw.

2) Draws on the Reserve Fund Insurance Policy may only be used to make payments on the Insured Obligations (and for the avoidance of doubt, not any other obligations of the Town, whether issued on parity with the Insured Obligations, or otherwise).

3) If the Town shall fail to pay any Policy Costs in accordance with the requirements of (1) above, the Bond Insurer shall be entitled to exercise any and all legal and equitable remedies available to it, including those provided under the Bond Legislation other than (i) acceleration of the maturity of the Insured Obligations, or (ii) remedies which would adversely affect owners of the Insured Obligations.

4) The Bond Legislation shall not be discharged until all Policy Costs owing to the Bond Insurer shall have been paid in full. The Town' obligation to pay Policy Costs related to the Reserve Fund Insurance Policy shall expressly survive payment in full of the Insured Obligations.

5) In order to secure the Town's payment obligations with respect to the Policy Costs, there is hereby granted and perfected in favor of the Bond Insurer a security interest (subordinate only to that of the owners of the Insured Obligations) in all Pledged Revenues.

6) The Paying Agent shall ascertain the necessity for a claim upon the Reserve Fund Insurance Policy in accordance with the provisions of (1) hereof and provide notice to the Bond Insurer in accordance with the terms of the Reserve Fund Insurance Policy at least five business days prior to each date upon which interest or principal is due on the Insured Obligations.

7) The Reserve Fund Insurance Policy shall expire on the earlier of the date the Insured Obligations are no longer outstanding under the Bond Legislation and the final maturity date of the Insured Obligations.

8) The Policy Costs due and owing shall be included in debt service requirements for purposes of calculation of the additional bonds test and the rate covenant in the Bond Legislation.

9) Any amendment, supplement, modification to, or waiver of, the Bond Legislation or any other documents executed in connection with the Insured Obligations (collectively, the "Security Documents") that requires the consent of holders of the Insured Obligations or adversely affects the rights or interests of the Bond Insurer shall be subject to the prior written consent of the Bond Insurer.