

DANIEL A. MULE  
CITY TREASURER

**SALT LAKE CITY CORPORATION**  
DEPARTMENT OF ADMINISTRATIVE SERVICES  
TREASURER'S DIVISION

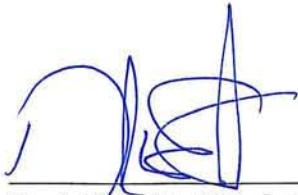
RECEIVED

OCT 29 2010  
RALPH BECKER  
CITY CLERK

Salt Lake City Mayor

SCANNED TO: Mayor  
SCANNED BY: JT  
DATE: 10/24/10

CITY COUNCIL TRANSMITTAL



David Everitt, Chief of Staff

Date Received:

Date sent to Council: 11/2/2010

**TO:** Salt Lake City Council  
JT Martin, Chair

**DATE:** October 29, 2010

**FROM:** Daniel A. Mulé, City Treasurer (801-535-6411)



**SUBJECT:** Salt Lake City Facility Revenue Bonds (McGillis School Project), Series 2010B

**DOCUMENT TYPE:** Resolution

**RECOMMENDATION:** That the City Council adopt the Bond Resolution for Salt Lake City Facility Revenue Bonds (McGillis School Project), Series 2010B, authorizing and providing for the issuance of up to \$3,000,000 tax-exempt Bonds. The City's Industrial Revenue Bond Advisory Committee recommends favorable action by the City Council.

**BUDGET IMPACT:** McGillis School has already paid a \$1,000 non-refundable application fee and will submit an additional \$14,000 at closing to reimburse the City for expenses incurred in issuing the Bonds.

**BACKGROUND/DISCUSSION:** The City Council held a briefing on October 19, 2010 to discuss the McGillis School Project. Also on October 19, 2010 an Inducement Resolution was adopted by the City Council and a TEFRA Hearing was scheduled for November 9, 2010. Following the closing of the TEFRA Hearing, the City Council will consider referring the adoption of the attached Bond Resolution to the November 16, 2010 Council meeting. A draft of the Loan Agreement to be entered into among Zions First National Bank as Lender, Salt Lake City as Issuer, and The McGillis School as Borrower, is Exhibit B of the Bond Resolution and is also attached.

Attachments

cc: Mike Akerlow, Gina Chamness, Boyd Ferguson, Gordon Hoskins, Marina Scott

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LOCATION: 451 SOUTH STATE STREET, ROOM 228, SALT LAKE CITY, UTAH 84111

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TELEPHONE: 801-535-7946 FAX: 801-535-6082

WWW.SLCGOV.COM



Ballard Spahr Draft:

Salt Lake City, Utah

November 16, 2010

The City Council of Salt Lake City, Utah (the "Council"), met in regular session at its regular meeting place in Salt Lake City, Utah on November 16, 2010, at 7:00 p.m., with the following members of the Council present:

Present:

JT Martin	Chair
Jill Remington Love	Vice Chair
Carlton Christensen	Council Member
Luke Garrott	Council Member
Stan Penfold	Council Member
Søren Dahl Simonsen	Council Member
Van Blair Turner	Council Member

There were also present:

Ralph Becker	Mayor
Edwin P. Rutan, II	City Attorney
Beverly Jones	Deputy City Recorder

Absent:

After the meeting had been duly called to order and after other matters not pertinent to this Resolution had been discussed, a Certificate of Compliance with Open Meeting Law with respect to this November 16, 2010 meeting was presented to the Council, a copy of which is attached hereto as Exhibit A.

After due deliberation, the following Resolution was considered, fully discussed and, pursuant to motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_, was adopted by the following vote:

Those voting YEA:

Those voting NAY:

This Resolution was then signed by the Chair and recorded by the City Recorder. The Resolution is as follows:

RESOLUTION NO. \_\_\_ of 2010

A Resolution of the City Council of Salt Lake City, Utah (the "Issuer") providing for the financing by the Issuer of the acquisition, construction, improvement, equipping and furnishing of certain facilities to be located in Salt Lake City, Utah in order that McGillis School, Inc. (the "Borrower") may be provided with facilities to promote the general health and welfare within the State of Utah; authorizing and providing for the issuance by the Issuer of its not to exceed \$3,000,000 Salt Lake City Facility Revenue Bonds (McGillis School Project), Series 2010B which will be payable solely from the revenues arising from the pledge of a Loan Agreement with the Borrower; authorizing the execution and delivery of a Loan Agreement between the Issuer, the Borrower and Zions First National Bank and related documents; and related matters.

WHEREAS, pursuant to the Utah Industrial Facilities and Development Act, Title 11, Chapter 17, Utah Code Annotated 1953, as amended (the "Act"), Salt Lake City, Utah (the "Issuer") is authorized to issue its revenue bonds to finance the costs of any "project" as defined in the Act to the end that the Issuer may be able to promote the general health and welfare within the State of Utah; and

WHEREAS, the Act provides that the Issuer may issue revenue bonds for the purpose of using substantially all of the proceeds thereof to pay or to reimburse a business for the costs of the acquisition and construction of the facilities of a project and that title to or in such facilities may at all times remain in the Borrower, and in such case the bonds of the Issuer shall be secured by a pledge of one or more notes, debentures, bonds or other secured or unsecured debt obligations of the Borrower; and

WHEREAS, as a result of negotiations between the Issuer and McGillis School, Inc. (the "Borrower"), a trust duly formed and authorized to do business in the State of Utah, contracts have been or will be entered into by the Borrower for the acquisition, construction, improvement, equipping and furnishing of certain facilities located in Salt Lake City, Utah consisting of an approximately 53,000 square-foot educational facility addition, to be located at approximately 668 South 1300 East, Salt Lake City, Utah, to be owned and used by the Borrower as an educational facility (collectively, the "Project"); and

WHEREAS, the Project will be of the character and will accomplish the purposes provided by the Act, and the Issuer is willing to issue its facility revenue bonds to finance the Project upon terms which will be sufficient to pay a portion of the costs of the Project as evidenced by such bonds, all as set forth in the details and provisions of the Loan Agreement (the "Loan Agreement") between the Issuer, the Borrower and Zions First National Bank (the "Lender") in substantially the form attached hereto as Exhibit B; and

WHEREAS, pursuant to the provisions of the Act, the Issuer proposes to enter into the Loan Agreement and related security documents in connection with the financing of the Project, pursuant to which the Issuer will issue its not to exceed \$3,000,000 Salt

Lake City Facility Revenue Bonds (McGillis School Project), Series 2010B (the “Bonds”); and

WHEREAS, the City Council of the Issuer (the “Council”) deems it necessary and advisable to authorize the issuance and confirm the sale of the Bonds and to authorize the execution and delivery of the Loan Agreement and related security documents; and

WHEREAS, pursuant to the provisions of the Loan Agreement, the Borrower will promise to pay amounts sufficient to pay when due the principal of, premium, if any, and interest on the Bonds, all in accordance with the requirements of the Act; and

WHEREAS, after published notice, a public hearing was held on November 9, 2010, at which any interested party had an opportunity to comment upon the proposed issuance of the Bonds or any other matter relating to the Project; and

WHEREAS, the Act and the documents to be signed by the Issuer provide that the Bonds shall not constitute nor give rise to a general obligation or liability of the Issuer or be a charge against its general credit or taxing powers and that the Bonds will be payable from and secured only by the revenues arising from the pledge and assignment under the Loan Agreement of the loan repayments to the Lender.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF SALT LAKE CITY, UTAH, AS FOLLOWS:

Section 1. All terms defined in the recitals hereto shall have the same meaning when used herein.

Section 2. The Issuer is authorized to issue the Bonds for the purpose of lending the proceeds thereof to the Borrower to finance the costs of the Project, all pursuant to the provisions of the Act. All action heretofore taken by the officers of the Issuer directed toward the issuance of the Bonds is hereby ratified, approved and confirmed.

Section 3. The Issuer is authorized and directed to issue the Bonds as fully registered bonds, in the aggregate principal amount of not to exceed \$3,000,000. The Bonds shall bear interest at, shall be payable on the dates, shall be subject to redemption prior to maturity, and shall mature within twenty-one (21) years of the date of delivery thereof, all as set forth in the Loan Agreement, the form of which is attached hereto as Exhibit B.

The form, terms and provisions of the Bonds and the provisions for the signatures, authentication, payment, registration, transfer, exchange, redemption and number shall be as set forth in the Loan Agreement. The Mayor and City Recorder are hereby authorized and directed to execute and seal the Bonds and to deliver said Bonds to the Lender. The signatures of the Mayor and the City Recorder may be by facsimile or manual execution.

The form of Bond is set out in the Loan Agreement, copies of which were before the Council at this meeting, which form is incorporated herein by reference and made a part hereof.

Section 4. The Bonds are to be issued in accordance with and pursuant to, and the Issuer is authorized and directed to execute and deliver, the Loan Agreement, in substantially the same forms presented to the Council at the meeting at which this Resolution was adopted. The Loan Agreement provides for the issuance of the Bonds solely for the purpose of financing the cost of acquiring and constructing the Project and for paying expenses incidental thereto. The Loan Agreement provides for certain representations and warranties by the Issuer and the Borrower, for certain conditions precedent to the purchase of the Bonds, for certain affirmative and negative covenants, and for remedies in connection with the failure to perform certain covenants thereunder. The Loan Agreement also specifically provides that the Bonds and the Loan Agreement shall not constitute nor give rise to a general obligation or liability of the Issuer or a charge against its general credit or taxing powers. Recourse on the Bonds executed and delivered by the Issuer pursuant to the Loan Agreement may be had only against the security for the Bonds as provided therein and in the Loan Agreement. The issuance of the Bonds shall also be subject to the approval of bond counsel.

Section 5. The Loan Agreement provides that the Borrower will cause the Project to be acquired, constructed and improved with the Borrower to have the right to requisition from the Lender the proceeds of the Bonds from time to time, all in accordance with the provisions of the Loan Agreement and, that if the proceeds of the Bonds are not sufficient to defray all costs and expenses of acquiring, constructing and improving the Project and all expenses incidental thereto, the Borrower will pay all such excess costs and expenses and will acquire, construct and improve the Project without additional cost to the Issuer.

Section 6. The Project will constitute certain facilities to be used in the Borrower's business as contemplated in the Act consisting of buildings and equipment and related property and improvements, including any modification thereof, substitutions therefor and amendments thereto.

Section 7. The Loan Agreement, in substantially the form presented to the Council of the Issuer at this meeting, with such changes as are authorized by Section 9 hereof, is hereby approved in all respects, and the Mayor (including any acting or deputy Mayor) is hereby authorized to execute the same on behalf of the Issuer and the City Recorder is authorized to affix the seal of the Issuer thereto and the acts of the Mayor and City Recorder in so doing are and shall be the act and deed of the Issuer. The Mayor, City Recorder and all other proper officers and employees of the Issuer are hereby authorized and directed to take all steps on behalf of the Issuer to perform and discharge the obligations of the Issuer under said instrument.

Section 8. The sale of the Bonds to the Lender in accordance with the Loan Agreement, is hereby authorized, approved and confirmed.

Section 9. The Mayor is hereby authorized to make, either prior or subsequent to the execution thereof, any alterations, changes or additions in the Loan Agreement and the Bonds herein authorized which may be necessary to correct any errors or omissions therein, to remove ambiguities therefrom, to conform the same to other provisions of said instruments, to the agreement of the Borrower and the Lender, to the provisions of this Resolution, or any other resolution adopted by the Issuer, or the provisions of the laws of the State of Utah or the United States as long as the rights of the Issuer are not materially adversely affected thereby.

Section 10. Pursuant to Section 11-17-13, Utah Code Annotated 1953, as amended, the Issuer includes herein the pledge and undertaking of the State of Utah that the State of Utah will not alter, impair or limit the rights vested hereunder or in the Bonds, the Loan Agreement or any of the documents contemplated hereby until the Bonds, together with all interest thereon, have been fully paid and discharged and all obligations of the Issuer thereunder and under the Loan Agreement are fully performed.

Section 11. In accordance with the provisions of Section 11-17-16 of the Act, the City Recorder caused the "Notice of Bonds to be Issued and of Public Hearing" to be published one time in The Salt Lake Tribune, a newspaper having general circulation in the Issuer, the affidavit of such publication being attached hereto as Exhibit C, and has caused a form of the Loan Agreement and Resolution No. 46 of 2010, adopted on October 19, 2010, to be kept on file in the office of the City Recorder for public examination during regular business hours for at least thirty (30) days from and after the date of publication of the Notice of Bonds to be Issued and of Public Hearing.

Section 12. It is hereby declared that all parts of this Resolution are severable and that if any section, paragraph, clause or provision of this Resolution shall, for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of any such section, paragraph, clause or provision shall not affect the remaining provisions of this Resolution.

Section 13. The Mayor, City Recorder and other officers of the Issuer are hereby authorized to execute all documents and take such action as they may deem necessary or advisable in order to carry out and perform the purpose of this Resolution and the execution or taking of such action shall be conclusive evidence of such necessity or advisability. All action heretofore taken by the Issuer, its officers and employees, with respect to the issuance and sale of the Bonds is hereby ratified and confirmed. Any action authorized by this Resolution to be taken by the Mayor may be taken by any duly authorized acting or deputy Mayor in the absence or unavailability of the Mayor. Any action authorized by this Resolution to be taken by the City Recorder may be taken by any duly authorized acting or deputy city recorder in the absence or unavailability of the City Recorder.

Section 14. All resolutions, orders and regulations or parts thereof heretofore adopted or passed which are in conflict herewith are, to the extent of such conflict, hereby repealed. This repealer shall not be construed so as to revive any resolution, order, regulation or part thereof heretofore repealed.

Section 15. This Resolution shall take effect immediately upon its approval and adoption.

PASSED AND APPROVED BY THE CITY COUNCIL OF SALT LAKE CITY,  
UTAH THIS 16TH DAY OF NOVEMBER, 2010.

---

Chair

(SEAL)

ATTEST:

---

City Recorder

PRESENTATION TO THE MAYOR

The foregoing Resolution was presented to the Mayor for his approval or disapproval on November 16, 2010.

By: \_\_\_\_\_  
Chair

MAYOR'S APPROVAL OR DISAPPROVAL

The foregoing Resolution is hereby approved on this November 16, 2010.

By: \_\_\_\_\_  
Mayor

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

I, Christine Meeker, the duly qualified and acting City Recorder of Salt Lake City, Utah (the "Issuer"), do hereby certify according to the records of the Issuer's City Council (the "Council") in my possession, that the foregoing constitutes a true, correct and complete copy of a Resolution adopted by the Council at a meeting held on November 16, 2010.

IN WITNESS WHEREOF, I have hereunto subscribed my signature and impressed hereon the official seal of the City Recorder this 16th day of November, 2010.

---

City Recorder

(SEAL)

EXHIBIT A

CERTIFICATE OF COMPLIANCE WITH OPEN MEETING LAW

I, Christine Meeker, the undersigned City Recorder of Salt Lake City, Utah (the "City"), do hereby certify, according to the records of the City in my official possession, and upon my own knowledge and belief, that in accordance with the requirements of Section 52-4-202, Utah Code Annotated, 1953, as amended, I gave not less than twenty-four (24) hours public notice of the agenda, date, time, and place of the November 16, 2010, public meeting held by the City Council (the "Council") as follows:

(i) By causing a Notice, in the form attached hereto as Schedule 1, to be posted at the City's principal offices on November \_\_\_\_, 2010, at least twenty-four (24) hours prior to the convening of the meeting, said Notice having continuously remained so posted and available for public inspection until the completion of the meeting;

(ii) By causing a Notice, in the form attached hereto as Schedule 1, to be delivered to The Salt Lake Tribune on November \_\_\_\_, 2010, at least twenty-four (24) hours prior to the convening of the meeting; and

(iii) By causing a Notice, in the form attached hereto as Schedule 1, to be posted on the Utah Public Notice Website (<http://pmn.utah.gov>) at least twenty-four (24) hours prior to the convening of the meeting.

In addition, the 2010 Notice of Annual Meeting Schedule for the Council, in the form attached hereto as Schedule 2, was given specifying the date, time and place of the regular meetings of the Council to be held during the year, by causing said Notice to be (i) posted on January 5, 2010, at the principal office of the Council, (ii) provided to at least one newspaper of general circulation within the City on January 9, 2010 and (iii) published on the Utah Public Notice Website (<http://pmn.utah.gov>) during the current calendar year.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature this 16th day of November, 2010.

By: \_\_\_\_\_  
City Recorder

( S E A L )

SCHEDULE 1  
MEETING NOTICE

SCHEDULE 2

2010 ANNUAL MEETING NOTICE

EXHIBIT B

LOAN AGREEMENT

(See Transcript Document No. \_\_)

EXHIBIT C

AFFIDAVIT OF PUBLICATION OF  
NOTICE OF BONDS TO BE ISSUED AND OF PUBLIC HEARING

LOAN AGREEMENT

Dated as of November 1, 2010

Among

ZIONS FIRST NATIONAL BANK  
as Lender,

and

SALT LAKE CITY, UTAH,  
as Issuer,

and

THE MCGILLIS SCHOOL, INC.  
as Borrower

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## LOAN AGREEMENT

Lender: Zions First National Bank  
One South Main Street, Suite 300  
Salt Lake City, Utah 84111  
Telephone (801) 844-7159  
Telecopier (801) 524-2136

Issuer: Salt Lake City, Utah  
451 South State Street  
Salt Lake City, Utah 84111  
Telephone: (801) 535-6411  
Telecopier: (801) 535-6082

Borrower: The McGillis School, Inc.  
668 South 1300 East  
Salt Lake City, Utah 84102  
Telephone: (801) 583-0094  
Telecopier: (801) 583-0720

THIS LOAN AGREEMENT dated as of November 1, 2010 (this "Agreement") among Zions First National Bank, Salt Lake City, Utah, a national banking association, as lender (with its successors and assigns, the "Lender"), Salt Lake City, a body politic and corporate duly organized and validly existing under the laws of the State of Utah (the "State"), as issuer ("Issuer"), and The McGillis School, Inc., a Utah nonprofit corporation, as borrower ("Borrower").

### W I T N E S S E T H:

WHEREAS, Issuer is authorized and empowered under the laws of the State, including the Utah Industrial Facilities and Development Act, Title 11, Chapter 17, Utah Code Annotated 1953, as amended (the "Act"), to issue facility revenue bonds and to enter into loan agreements, contracts and other instruments and documents necessary or convenient to obtain loans for the purpose of facilitating the financing of certain projects as described in the Act; and

WHEREAS, in furtherance of the purposes of the Act and at the request of the Borrower, Issuer now proposes to authorize, execute and deliver its \$2,800,000 Facility Revenue Bonds (McGillis School Project), Series 2010B (the "Bond") to the Lender pursuant to the terms of this Agreement; and

WHEREAS, the Issuer proposes to lend the proceeds of the Bond to the Borrower for the purpose of financing the acquisition, construction, improvement, equipping and furnishing of the Project (defined below) upon the terms and conditions set forth herein; and

WHEREAS, Borrower shall make Loan Payments (defined below) directly to Lender as assignee of Issuer and holder of the Bond pursuant to the terms set forth in this Agreement; and

WHEREAS, this Agreement and the Bond shall not be deemed to constitute or give rise to a general obligation or liability of Issuer or the State or any political subdivision thereof, or a pledge of or charge against the general credit or taxing power of Issuer or the State or any political subdivision thereof, but shall be a special limited obligation of Issuer payable solely from the Loan Payments payable hereunder by Borrower to Lender as assignee of Issuer and holder of the Bond;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and in consideration of the premises contained in this Agreement, Lender, Issuer and Borrower agree as follows:

## ARTICLE I

### DEFINITIONS AND EXHIBITS

Section 1.1 Definitions. The following terms used herein will have the meanings indicated below unless the context clearly requires otherwise:

“Acquisition Costs” means the contract price paid or to be paid to the Vendors or reimbursed to Borrower for any portion of the Project upon Borrower’s acceptance thereof, including administrative, engineering, legal, financial and other costs incurred by the Borrower and Vendors in connection with the acquisition and financing by the Borrower of such Property.

“Agreement” means this Loan Agreement, including all exhibits hereto, as any of the same may be supplemented or amended from time to time in accordance with the terms hereof.

“Arbitrage and Tax Certificate” means the Arbitrage and Tax Certificate dated the Closing Date of Borrower and Issuer.

“Bond” means the Issuer’s Facility Revenue Bonds (McGillis School Project), Series 2010B in the form attached hereto as Exhibit E.

“Borrower” means The McGillis School, Inc., a Utah nonprofit corporation.

“Business Day” means a day, other than a Saturday or Sunday, or a day on which banks are authorized by law to be closed in Salt Lake City, Utah.

“Certificate of Acceptance” means a Certificate of Acceptance, in substantially the form set forth as Exhibit J hereto, whereby Borrower acknowledges receipt in good condition of particular portions of the Property identified therein and confirms the date of delivery thereof and certain other matters.

“Closing Date” means November 30, 2010.

“Code” means the Internal Revenue Code of 1986, as amended, and United States Treasury regulations promulgated thereunder.

“Costs of Issuance” means any costs, to the extent incurred in connection with, and allocable to, the issuance of an issue, including, without limitation, purchaser’s fees; counsel fees; financial advisory fees; rating agency fees; trustee fees; paying agents fees; bond registrar, certification and authentication fees; accounting fees; printing costs for bonds and offering documents; public approval and feasibility study costs; guarantee fees (other than for “qualified guaranties” as defined in Treasury Regulation Section 1.148-4(f)), and other similar costs.

“Deed of Trust” means the Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of November 1, 2010, executed by Borrower in favor of Lender, relating to the Property.

“Default” means an event that, with giving of notice or passage of time or both, would constitute an Event of Default as provided in Article XI hereof.

“Determination of Taxability” means any determination, decision or decree by the Commissioner of Internal Revenue, or any District Director of Internal Revenue or any court of competent jurisdiction, or an opinion obtained by Lender of counsel qualified in such matters, that an Event of Taxability shall have occurred. A Determination of Taxability also shall be deemed to have occurred on the first to occur of the following:

(a) the date when Borrower files any statement, supplemental statement, or other tax schedule, return or document, which discloses that an Event of Taxability shall have occurred; or

(b) the effective date of any federal legislation enacted after the date of this Agreement or promulgation of any income tax regulation or ruling by the Internal Revenue Service that causes an Event of Taxability after the date of this Agreement; or

(c) if upon sale, lease or other deliberate action taken with respect to the Property within the meaning of Treas. Reg. § 1.141-2(d), the failure to receive an opinion of bond counsel to the effect that such deliberate action will not cause interest payable by Borrower hereunder to become includable in the gross income of the recipient.

“Environmental Laws” means any federal, state and local laws relating to emissions, discharges, releases of Hazardous Wastes or Materials into ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Wastes or Materials.

“Event(s) of Default” has the meaning assigned to such term in Section 11.1 hereof.

“Event of Taxability” means, if as the result of any act, failure to act or use of the proceeds of the Loan, a change in use of the Property or any misrepresentation or inaccuracy in any of the representations, warranties or covenants contained in this Agreement, the Deed of Trust or the Arbitrage and Tax Certificate by Issuer or Borrower or the enactment of any federal legislation after the date of this Agreement or the promulgation of any income tax regulation or ruling by the Internal Revenue Service after the date of this Agreement, the Interest is or becomes includable in Lender’s gross income.

“Gross-Up Rate” means, with respect to any Interest payment (including payments made prior to the Event of Taxability), the rate necessary to calculate a total

payment in an amount sufficient such that the sum of the Interest payment plus an additional payment would, after reduced by the federal tax (including interest and penalties) actually payable thereon, equal the amount of the Interest payment.

“Hazardous Waste or Materials” means any substance or material defined in or designated as hazardous or toxic wastes, hazardous or toxic material, a hazardous, toxic or radioactive substance, or other similar term, by any Environmental Law now or hereafter in effect.

“Improvements” has the meaning defined under “Property” herein.

“Index Rate” means the 10-year LIBOR swap rate, as determined by the Lender on the date of determination of the Interest Rate for the Rate Term commencing on the applicable Rate Begin Date.

“Interest” means the portion of any payment from Issuer to Lender designated as and comprising interest as described in Section 2.3 herein.

“Interest Payment Date” means for so long as the Bond is outstanding, the first calendar day of each month on which date interest on the Bond is due and payable.

“Interest Rate” means (i) for the Rate Term commencing \_\_\_\_\_ and ending \_\_\_\_\_, \_\_\_\_% per annum and (ii) for each Rate Term commencing on the applicable Rate Begin Date and ending on the applicable Rate End Date, the Index Rate.

“Issue Date” means November 30, 2010, the delivery date of the Bond.

“Issuer” means Salt Lake City, Utah acting as issuer under this Agreement.

“Leases” has the meaning defined under “Property” herein.

“Lender” means (i) Zions First National Bank acting as lender under this Agreement, (ii) any surviving, resulting or transferee corporation of Zions First National Bank and (iii) except where the context requires otherwise, any assignee(s) of Lender.

“Loan” means the loan from Issuer to Borrower pursuant to this Agreement.

“Loan Documents” means, collectively, the Deed of Trust and this Agreement.

“Loan Payments” means the loan payments payable by Borrower pursuant to the provisions of this Agreement as specifically set forth in Exhibit A hereto. As provided in Article II hereof, Loan Payments shall be payable by Borrower directly to Lender, as assignee of Issuer, in the amounts and at the times as set forth herein and in Exhibit A hereto.

“Loan Proceeds” means the total amount of money to be advanced pursuant to Section 2.3 hereof by Lender in accordance with this Agreement.

“Payment Date” means the date that each Loan Payment is payable as set forth in Exhibit A hereto.

“Permitted Exceptions” means the permitted exceptions, if any, listed on Exhibit G hereto.

“Premises” has the meaning defined under “Property” herein.

“Prepayment Amount” means the amounts which Borrower may or must from time to time pay or cause to be paid to Lender as assignee of Issuer in order to prepay the Loan, as provided in Section 2.8 hereof, such amounts being set forth in Exhibit A hereto, together with principal, accrued interest and all other amounts due hereunder. Any Prepayment Amount paid by the Borrower to the Lender on the Loan shall result in a prepayment on the Bond in the same amount.

“Prepayment LIBOR Rate” means the LIBOR swap rate applicable to fixed rate loans with a maturity equal to the earlier of the maturity of the Loan or the next Rate Begin Date, as determined by Lender as of the date of prepayment or such earlier date selected by Lender that is not more than 10 days prior to the prepayment date.

“Principal” means the portion of any Loan Payment designated as principal in Exhibit A hereto, which amount shall be applied to the Bond as a reduction in principal thereof.

“Project” means the acquisition, construction, improvement, equipping and furnishing of facilities for use as educational facilities, together with related land, equipment and improvements to be located in Salt Lake City, Utah to be partially financed with Loan Proceeds and to be included with the Property.

“Project Account” means an interest bearing escrow account in the name of the Borrower, held by the Lender, into which the Loan Proceeds shall be deposited as described in Section 2.3 hereof.

“Project Approval” means the initial official action of Issuer declaring its intent with respect to the financing of the Project with the proceeds of Issuer’s Bond. The date of the Project Approval is October 19, 2010.

“Property” means, collectively, all of Borrower’s estate, right, title and interest, now owned or hereafter acquired, including any reversion or remainder interest, in the real property located in Salt Lake City, State of Utah described on Exhibit F hereto, and any land acquired in connection with the Project, including all heretofore or hereafter vacated alleys and streets abutting the property, and all easements, rights, appurtenances, tenements, hereditaments, rents, royalties, mineral, oil and gas rights and profits, water, water rights and water stock appurtenant to the property (collectively “Premises”); together with all of Borrower’s estate, right, title and interest, now owned or hereafter acquired, in:

(a) all buildings, structures, improvements, parking areas, landscaping (including, without limitation, the Project), fixtures, articles of real, personal or mixed property now or hereafter erected on, attached to, used or adapted for use in the operation of, or situated in or upon the Premises, including (without limitation) all heating, air conditioning, manufacturing and incinerating apparatus and equipment; all boilers, engines, motors, dynamos, medical and other equipment, furniture, furnishings, generating equipment, piping and plumbing fixtures, water heaters, ranges, cooking apparatus and mechanical kitchen equipment, cooling, ventilating, sprinkling and vacuum cleaning systems, fire extinguishing apparatus, gas and electric fixtures, carpeting, floor coverings, underpadding, elevators, escalators, partitions, mantels, built-in mirrors, window shades, blinds, draperies, screens, storm sash, awnings, signs, halls and lobbies, and shrubbery and plants, and including also all interest of any owner of the Premises in any of such items hereafter at any time acquired under conditional sale contract, chattel mortgage or other title retaining or security instrument, all of which property mentioned in this clause (a) shall be deemed part of the realty covered by this Agreement and not severable wholly or in part without material injury to the freehold of the Premises (all of the foregoing together with replacements and additions thereto are referred to herein as "Improvements");

(b) all compensation, awards, damages, rights of action and proceeds, including interest thereon and/or the proceeds of any policies of insurance therefor, arising out of or relating to (i) a taking or damaging of the Premises or Improvements thereon by reason of any public or private improvement, condemnation proceeding (including change of grade), sale or transfer in lieu of condemnation, or fire, earthquake or other casualty, or (ii) any injury to or decrease in the value of the Premises or the Improvements for any reason whatsoever;

(c) return premiums or other payments upon any insurance any time provided for the benefit of or naming Lender, and refunds or rebates of taxes or assessments on the Premises;

(d) all the right, title and interest of Borrower in, to and under all written and oral leases and rental agreements (including extensions, renewals and subleases; all of the foregoing shall be referred to collectively herein as the "Leases") now or hereafter affecting the Premises including, without limitation, all rents, issues, profits and other revenues and income therefrom and from the renting, leasing or bailment of Improvements and equipment, all guaranties of tenants' performance under the Leases, and all rights and claims of any kind that Borrower may have against any tenant under the Leases or in connection with the termination or rejection of the Leases in a bankruptcy or insolvency proceeding; and the leasehold estate, if applicable;

(e) plans, specifications, contracts and agreements relating to the design or construction of the Improvements; Borrower's rights under any payment, performance or other bond in connection with the design or construction

of the Improvements; all landscaping and construction materials, supplies and equipment used or to be used or consumed in connection with construction of the Improvements, whether stored on the Premises or at some other location; and contracts, agreements and purchase orders with contractors, subcontractors, suppliers and materialmen incidental to the design or construction of the Improvements;

(f) all contracts, accounts, rights, claims or causes of action pertaining to or affecting the Premises or the Improvements, including, without limitation, all options or contracts to acquire other property for use in connection with operation or development of the Premises or Improvements, management contracts, service or supply contracts, deposits, bank accounts, general intangibles (including without limitation trademarks, trade names and symbols), permits, licenses, franchises and certificates, and all commitments or agreements, now or hereafter in existence, intended by the obligor thereof to provide Borrower with proceeds to satisfy the loan evidenced hereby or improve the Premises or Improvements, and the right to receive all proceeds due under such commitments or agreements, including refundable deposits and fees;

(g) all books, records, surveys, reports and other documents related to the Premises, the Improvements, the Leases or other items of collateral described herein; and

(h) all additions, accessions, replacements, substitutions, proceeds and products of the real and personal property, tangible and intangible, described herein.

“Purchase Agreements” means Borrower’s purchase agreements with Vendors of the Project.

“Rate Begin Date” means \_\_\_\_\_, \_\_\_\_\_ or \_\_\_\_\_, as applicable.

“Rate End Date” means \_\_\_\_\_, \_\_\_\_\_ or \_\_\_\_\_, as applicable.

“Rate Term” means the period commencing with the respective Rate Begin Date and ending with the respective Rate End Date.

“Related Person” shall have the meaning set forth in Section 144(a)(3) of the Code and shall include (to the extent therein provided) any parent, subsidiary, affiliated corporation or unincorporated enterprise, majority shareholder and commonly owned entity.

“Remaining Term” means the number of days to the Rate End Date, divided by 365.

“State” means the State of Utah.

“Vendor” means the contractor, manufacturer, vendor or seller of any portion of the Project, as well as the agents or dealers of a manufacturer, from whom Borrower has purchased or is purchasing any portion of the Project.

Section 1.2 Exhibits. The following exhibits are attached hereto and made a part hereof:

<u>Exhibit A</u>	Schedule of Loan Payments setting forth the Loan Payments relating to the Property.
<u>Exhibit B</u>	Form of opinion of counsel to Issuer.
<u>Exhibit C</u>	Form of opinion of counsel to Borrower
<u>Exhibit D</u>	Form of opinion of bond counsel.
<u>Exhibit E</u>	Form of Bond.
<u>Exhibit F</u>	Legal Description of the Property.
<u>Exhibit G</u>	List of Permitted Exceptions.
<u>Exhibit H</u>	List of Trade Names.
<u>Exhibit I</u>	EnviroCheck Report
<u>Exhibit J</u>	Form of Certificate of Acceptance
<u>Exhibit K</u>	Title Commitment
<u>Exhibit L</u>	Investment Policy

Section 1.3 Rules of Construction.

(a) The singular form of any word used herein, including the terms defined in Section 1.1 hereof, shall include the plural, and vice versa. The use herein of a word of any gender shall include correlative words of all genders.

(b) Unless otherwise specified, references to Articles, Sections and other subdivisions of this Agreement are to the designated Articles, Sections and other subdivisions of this Agreement as originally executed. The words “hereof,” “herein,” “hereunder” and words of similar import refer to this Agreement as a whole.

(c) The headings or titles of the several articles and sections shall be solely for convenience of reference and shall not affect the meaning, construction or effect of the provisions hereof.

## ARTICLE II

### FINANCING OF PROJECT; TERMS OF LOAN AND BOND

Section 2.1 Acquisition of Project. Borrower either has acquired, improved, constructed, installed, equipped or ordered and/or shall acquire, improve, construct, install, equip or order the Project pursuant to one or more Purchase Agreements from one or more Vendors. Borrower shall remain liable to the Vendor or Vendors in respect of its duties and obligations in accordance with each Purchase Agreement and shall bear the risk of loss with respect to any loss or claim relating to any of the Project covered by any Purchase Agreement, and neither Lender nor Issuer shall assume any such liability or risk of loss. Borrower covenants and agrees to pay or cause to be paid (at no additional cost to Issuer) such amounts as may be necessary to complete the improvement, construction, acquisition, equipping and installation of the Project and to ensure that the Project is operational to the extent that the Loan Proceeds are insufficient to cause such improvement, construction, acquisition, equipping and installation.

Section 2.2 Purchase of Bond. The Issuer has authorized and hereby agrees to execute and deliver the Bond substantially in the form of Exhibit E hereto to the Lender, and the Lender agrees to purchase the Bond in the amount of \$2,800,000, for a purchase price of \$2,800,000, representing the par amount of the Bond (\$56,000 to be paid with the other Costs of Issuance [only 2% can go to costs of issuance]), all subject to the terms and conditions of this Agreement.

Section 2.3 Loan Proceeds; Interest on Bond and Loan. Issuer hereby agrees, subject to the terms and conditions of this Agreement, to lend the proceeds of the Bonds to Borrower and Borrower hereby agrees to borrow such proceeds from Issuer. The Loan shall be deemed to constitute the full purchase price of the corresponding principal amount of the Bond. On the date of fulfillment of the conditions set forth in Article III, the Issuer agrees to and hereby directs the Lender to disburse \$2,800,000 of the Loan Proceeds to the Project Account.

The principal amount of the Bond and the Loan hereunder outstanding from time to time shall bear interest (computed on the basis of actual days elapsed in a 360-day year) at the Interest Rate. Interest accruing on the principal balance of the Loan Proceeds advanced under the Loan and the Bond outstanding from time to time shall be payable as provided in Exhibit A and in the Bond, respectively, and upon earlier demand in accordance with the terms of Section 2.8. Upon the occurrence of a Determination of Taxability, Borrower shall, with respect to future interest payments, begin making Loan Payments calculated at the Gross-Up Rate and in addition, Borrower shall make immediately, upon demand of Lender, a payment to Lender sufficient to supplement prior Loan Payments to the Gross-Up Rate.

Section 2.4 Project Account and Disbursements.

(a) *Project Account*. Borrower may invest amounts from the Project Account in accordance with Borrower's written Investment Policy, attached in

current form as Exhibit L. All earnings on amounts in the Project Accounts shall be deposited in or remain on deposit therein for the benefit of the Borrower. Disbursements from the Project Account shall be conditioned upon the approval by the Lender of an application for payment by Borrower in conformity with this Agreement, and such approval shall not be unreasonably withheld. Upon completion of the Project any moneys remaining on deposit in the Project Account shall be used by the Borrower to prepay the Loan. Until disbursed, moneys on deposit in the Project Account are pledged to the repayment of the Loan. Notwithstanding anything to the contrary, no disbursement of Loan Proceeds from the Project Account shall be made until the Issuer certifies to the Borrower and the Lender that all costs of issuance with respect to the Bonds have been previously satisfied or shall be satisfied upon the initial disbursement request.

(b) *Timing of Disbursement.* Unless another provision of this Agreement specifies otherwise, and excepting an initial disbursal to pay costs of issuance with respect to the Bonds, on or about the tenth (10th) day of each month, or at such other times as Lender may approve or determine more appropriate, Borrower shall submit to Lender:

- (i) a description of the work performed, material supplied and/or costs incurred or due for which disbursement is requested; and
- (ii) the total amount incurred, expended and/or due for each requested item less prior disbursements.

Each application for payment by Borrower shall constitute a representation and warranty by Borrower that Borrower is in compliance with all the conditions precedent to a disbursement specified in this Agreement.

(c) *Lender's Right to Condition Disbursements.* Lender shall have the right to condition any disbursement upon Lender's receipt and approval of the following:

- (i) the application for payment and an itemized requisition for payment of items;
- (ii) bills, invoices, documents of title, vouchers, statements, payroll records, receipts and any other documents evidencing the total amount expended, incurred or due for any requested items;
- (iii) evidence of Borrower's use of a lien release, joint check and voucher system acceptable to Lender for payments or disbursements to any contractor, subcontractor, materialman, supplier or lien claimant;
- (iv) architect's, inspector's and/or engineer's periodic certifications of the percentage and/or stage of construction that has been completed and its conformance to the plans and specifications and

governmental requirements based upon any such architect's, inspector's and/or engineer's periodic physical inspections of the Property and Improvements;

(v) waivers and releases of any mechanics' lien, stop notice claim, equitable lien claim or other lien claim rights;

(vi) Certificate of Substantial Completion from the architect prior to the final retention;

(vii) any other document, requirement, evidence or information that Lender may request under any provision of the Loan Documents; and

(viii) evidence that any goods, materials, supplies, fixtures or other work in process for which disbursement is requested have been incorporated into the Improvements.

Borrower acknowledges that this approval process may result in disbursement delays and Borrower hereby consents to all such delays.

#### Section 2.5 Bond Payments and Loan Payments.

(a) Issuer shall pay the principal of, premium, if any in accordance with Section 2.8 hereof, and Interest on the Bond, but only from amounts available to the Issuer from Loan Payments paid by Borrower pursuant to this Agreement. Prior to the maturity of the Bond, and for so long as this Agreement is in effect, the Borrower shall be responsible for making the Loan Payments described in subparagraph (b) below and said payments shall be applied by the Lender upon receipt thereof in the same amounts and in the same designations (i.e., to the corresponding principal and interest portions of the Bond) to the amounts due on the Bond in accordance with the terms hereof and the terms of the Bond. No provision, covenant or agreement contained in this Agreement or any obligation imposed on Issuer herein or under the Bond, or the breach thereof, shall constitute or give rise to or impose upon Issuer a pecuniary liability, a charge upon its general credit or taxing powers or a pledge of its general revenues. In making the agreements, provisions and covenants set forth in this Agreement, Issuer has not obligated itself except with respect to the application of the Loan Payments to be paid by Borrower hereunder. No recourse shall be had by Lender or Borrower for any claim based on this Agreement, the Bond or the Arbitrage and Tax Certificate against any director, officer, employee or agent of Issuer alleging personal liability on the part of such person, unless such claim is based on the willful dishonesty of or intentional violation of law by such persons.

(b) Borrower shall pay to Lender, as assignee of Issuer, Loan Payments, in the amounts and on the dates set forth in Exhibit A hereto. Additionally, Borrower shall pay to Lender, as assignee of Issuer and holder of the Bond, an amount equal to the product of (i) 18% per annum (beginning ten (10) days after such payment date) and (ii) the delinquent amount of any Loan

Payment not paid when due. Such Loan Payments and other payments shall be made by Borrower directly to Lender, as Issuer's assignee and holder of the Bond, and shall be credited against Issuer's payment obligations hereunder and under the Bond. All amounts required to be paid by Borrower hereunder shall be paid in lawful money of the United States of America in immediately available funds.

(c) As security for its obligation to pay the principal of, premium, if any in accordance with Section 2.8 hereof, and interest on the Bond, Issuer assigns to Lender all of Issuer's right to receive Loan Payments from Borrower hereunder, all of Issuer's rights hereunder (except its rights to indemnifications and to notices) and Issuer irrevocably constitutes and appoints Lender and any present or future officer or agent of Lender as its lawful attorney, with full power of substitution and resubstitution, and in the name of Issuer or otherwise, to collect the Loan Payments and any other payments due hereunder and under the Bond and to sue in any court for such Loan Payments or other payments, to exercise all rights hereunder with respect to the Property, and to withdraw or settle any claims, suits or proceedings pertaining to or arising out of this Agreement upon any terms.

Section 2.6 Payment on Non-Business Days. Whenever any Loan Payment or payment under the Bond or any other payment due hereunder shall be stated to be due on a day which is not a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest or the fees hereunder, as the case may be.

Section 2.7 Loan Payments To Be Unconditional. The obligations of Borrower to make the Loan Payments required under this Article II and to make other payments hereunder and to perform and observe the covenants and agreements contained herein shall be absolute and unconditional in all events, without abatement, diminution, deduction, setoff or defense for any reason, including (without limitation) any failure of the Property to be delivered or installed, any defects, malfunctions, breakdowns or infirmities in the Property or any accident, condemnation, destruction or unforeseen circumstances. Notwithstanding any dispute between Borrower and any of Issuer, Lender, any Vendor or any other person, Borrower shall make all Loan Payments when due and shall not withhold any Loan Payments pending final resolution of such dispute, nor shall Borrower assert any right of setoff or counterclaim against its obligation to make such payments required under this Agreement.

Section 2.8 Prepayments.

(a) Borrower may, in its discretion, prepay the Loan in whole or in part as follows:

(i) Borrower may prepay at any time and without penalty any amount on any Rate Begin Date.

(ii) Borrower shall pay to Lender a fee equal to ninety percent (90%) of the difference between (A) the present value, as of the date of prepayment, of the interest scheduled to be paid on the principal amount to be so prepaid to the earlier of the maturity thereof or the next Rate Begin Date, and (B) the present value, as of the date of prepayment, of the interest that would accrue on the principal amount to be so prepaid if the Loan bore interest to the earlier of the maturity thereof or the next Rate Begin Date at the Prepayment LIBOR Rate, in each case discounted at a rate equal to the Prepayment LIBOR Rate. If such amount is a negative number, no prepayment penalty will be assessed.

(iii) The Borrower acknowledges that prepayment of such amount may result in Lender incurring additional costs, expenses and/or liabilities, and that it is difficult to ascertain the full extent of such costs, expenses and/or liabilities. The Borrower, therefore, agrees to pay the above-described prepayment fee and agrees that said amount represents a reasonable estimate of the prepayment costs, expenses and/or liabilities of Lender. If Borrower fails to pay any prepayment fee when due, the amount of such prepayment fee shall thereafter bear interest until paid at the rate of interest applicable to unpaid principal after maturity of the Loan.

(iv) All prepayments of principal shall be applied on the most remote principal installment or installments then unpaid.

(b) Borrower shall prepay the Loan;

A. in full immediately upon demand of Lender after the occurrence of an Event of Default by paying the applicable Prepayment Amount; or

B. in full immediately upon demand of Lender after the occurrence of a Determination of Taxability by paying the applicable Prepayment Amount plus an amount necessary to supplement the prior Loan Payments to the Gross-Up Rate.

(c) Any Prepayment Amounts paid to the Lender shall be applied to the amount due on the Bond. Upon any prepayment in part of the Loan, the prepayment shall be applied first to Interest accrued thereon and next to the Principal portion of the Loan Payments in the inverse order of maturity. The prepayment amount shall be applied by the Lender to the amount due on the Bond in the same manner.

Section 2.9 Assignment and Pledge to Lender. For and in consideration of the purchase of the Bonds by the Lender and to provide direct recourse to the source of payment of the Bond obligations as well as collateral securing the repayment of the same, the Issuer does hereby irrevocably and absolutely pledge, assign and transfer over to

Lender and grant a security interest in favor of Lender in all of the right, title and interest of Issuer arising out of or in connection with or comprised of this Loan Agreement, the Loan, the Loan Payments, the Loan Proceeds (only as and to the extent that the same have not been disbursed pursuant to this Agreement), the Deed of Trust and any other rights of the Issuer as the initial lender under the Loan to the Borrower, including all rights of recourse, collection and payment against the Borrower with respect to the Loan, the indebtedness represented thereby and the other obligations of Borrower with respect to the Loan, the Deed of Trust, the Property and otherwise. As elsewhere provided in this Agreement, the Lender, as the owner and holder of the Bonds has acknowledged that recourse to or against the Issuer is confined to and derived from the rights and interests of Issuer against the Borrower and the Property under and pursuant to the Loan, this Loan Agreement, the Deed of Trust and all associated and related documents, instruments and agreements. By execution hereof, the Borrower acknowledges the foregoing assignment, pledge, transfer and security interest and agrees hereby to perform directly to and make Loan Payments directly to the Lender, recognizing and agreeing that Borrower is directly obligated for the Loan, the Loan Payments and with respect to the Deed of Trust and the Property to the Lender by reason of the same. Borrower hereby acknowledges and agrees that, upon advance of the Loan Proceeds pursuant to this Agreement, the obligations and indebtedness to Lender hereunder and under the Deed of Trust and any associated agreements, documents, papers or instruments evidencing, governing or securing the obligations and indebtedness of the Borrower shall be unaffected by any actions, inactions, omissions, failures, breaches or defaults by the Issuer under the terms of the Loan Agreement or any of the related documents, agreements, papers or instruments (“Issuer Failures”). Borrower hereby affirmatively and knowingly waives, as a defense or counterclaim or other offset or excuse with respect to its obligations under the Loan Agreement, Deed of Trust and other related documents, papers, instruments and agreements, any such Issuer Failures.

## ARTICLE III

### CONDITIONS PRECEDENT

Section 3.1 Conditions of Closing. Lender's agreement to purchase the Bond and to disburse the Loan Proceeds on the Closing Date as described in Section 2.3 shall be subject to the condition precedent that Lender shall have received all of the following on or prior to the Closing Date, each in form and substance satisfactory to Lender:

(a) This Agreement, properly executed on behalf of Issuer and the Borrower, and each of the Exhibits hereto properly completed.

(b) The Deed of Trust.

(c) Evidence of filing of a UCC-1 Financing Statement with respect to the Property that constitutes personal property.

(d) The Bond properly executed on behalf of Issuer.

(e) The Arbitrage and Tax Certificate, properly executed on behalf of Issuer and Borrower.

(f) A certificate of the Issuer, certifying as to the signatures of the officers or agents of Issuer authorized to execute and deliver this Agreement and the Arbitrage and Tax Certificate and other instruments, agreements and certificates on behalf of Issuer.

(g) A certificate of the Borrower, certifying as to (i) the nonprofit corporate and instrumentality of the Issuer status of Borrower and resolution of the board of directors, authorizing the execution, delivery and performance of this Agreement and all related documents and (ii) the signatures of the officers or agents of Borrower authorized to execute and deliver this Agreement, the Deed of Trust and the Arbitrage and Tax Certificate and other instruments, agreements and certificates on behalf of Borrower.

(h) Copies of Borrower's Articles of Incorporation and/or Bylaws.

(i) A Certificate of Good Standing issued as to Borrower by the Division of Corporations of the State of Utah not more than 10 days prior to the Closing Date.

(j) A completed and executed Form 8038 for filing with the Secretary of Treasury.

(k) A resolution or evidence of other official action taken by or on behalf of Issuer to authorize the transactions contemplated hereby.

(l) An EnviroCheck Report in the form set forth in Exhibit I hereto.

(m) Commitment to issue ALTA mortgagee title policy in substantially the form attached hereto as Exhibit K, with only the Permitted Exceptions shown therein.

(n) An opinion of counsel to Issuer, addressed to Lender and Borrower, in the form attached hereto as Exhibit B.

(o) An opinion of counsel to Borrower, addressed to Lender and Issuer, in the form attached hereto as Exhibit C.

(p) An opinion of bond counsel, addressed to Lender, in the form attached hereto as Exhibit D.

(q) Payment of Lender's fees, commissions and expenses required by Section 2.3 and 12.1 hereof.

(r) Evidence of the insurance required by Section 7.11 of this Agreement, with Lender named as loss payee.

(s) Any other documents or items required by Lender.

Section 3.2 Conditions of Disbursal. In addition to the requirements set forth in Section 3.1 hereof, Lender's agreement to disburse the Loan Proceeds from the Project Account after the Closing Date, other than an initial disbursal to pay costs of issuance with respect to the Bonds as approved by the Borrower and the Issuer, shall be subject to the additional condition precedent that Lender shall have received all of the following on the date thereof, each in form and substance satisfactory to Lender:

(a) Lender shall have received, in form and substance satisfactory to Lender, Vendor invoice(s) and/or bill(s) of sale relating to the Project and, if such invoices have been paid by Borrower, evidence of payment thereof and, if applicable, evidence of official intent to reimburse such payment as required by the Code.

(b) The representations and warranties contained in Articles IV and V hereof are correct on and as of the date of such advance as though made on and as of such date, except to the extent that such representations and warranties relate solely to an earlier date.

(c) No Default, Event of Default or a Determination of Taxability has occurred.

(d) Certificates of the insurance required hereunder, containing a Lender's loss payable clause or endorsement in favor of Lender and the permanent loan insurance requirements set forth herein.

(e) An ALTA (or equivalent) mortgagee policy of title insurance in the aggregate amount of all advances from the Loan Proceeds (including, without

limitation, the proposed advance to be made on such date) or as determined by the Lender, with reinsurance and endorsements as Lender may require, containing no exceptions to title (printed or otherwise) which are unacceptable to Lender, and insuring that the Deed of Trust has the lien described therein on the Property and related collateral.

## ARTICLE IV

### REPRESENTATIONS, WARRANTIES AND COVENANTS OF ISSUER

Issuer represents, warrants and covenants for the benefit of Lender and Borrower, as follows:

(a) Issuer is a body politic and corporate duly created and validly existing under the Constitution and laws of the State and is an organization described in Section 501(c)(3) of the Code, and has obtained a determination letter dated \_\_\_\_\_ relating to said 501(c)(3) status pursuant to the Code, and remains in compliance with said determination letter and 501c3 status from the date thereof to the date hereof..

(b) Issuer will exercise its best efforts to preserve and keep in full force and effect its existence as a body corporate and politic.

(c) Issuer is authorized under the Constitution and laws of the State to issue the Bond and to enter into this Agreement, the Arbitrage and Tax Certificate and the transactions contemplated hereby and to perform all of its obligations hereunder.

(d) Issuer has duly authorized the issuance of the Bond and the execution and delivery of this Agreement and the Arbitrage and Tax Certificate under the terms and provisions of the resolution of its governing body or by other appropriate official approval, and further represents, covenants and warrants that all requirements have been met and procedures have occurred in order to ensure the enforceability of the Bond, this Agreement and the Arbitrage and Tax Certificate against Issuer. Issuer has taken all necessary action and has complied with all provisions of the Act, including but not limited to the making of the findings required by the Act, required to make the Bond, this Agreement and the Arbitrage and Tax Certificate the valid and binding obligation of Issuer.

(e) The officer of Issuer executing the Bond, this Agreement, the Arbitrage and Tax Certificate and any related documents has been duly authorized to issue the Bond and to execute and deliver this Agreement and the Arbitrage and Tax Certificate and such related documents under the terms and provisions of a resolution of Issuer's governing body, or by other appropriate official action.

(f) The Bond and this Agreement are legal, valid and binding special limited obligations of Issuer, enforceable in accordance with their respective terms, except to the extent limited by bankruptcy, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights.

(g) Issuer has assigned to Lender all of Issuer's rights in this Agreement (except any indemnification payable to Issuer pursuant to Section 7.8

hereof and notice to Issuer pursuant to Section 12.4 hereof) including the assignment of all rights in the security interest granted to Issuer by Borrower.

(h) Issuer will not pledge, mortgage or assign this Agreement or its duties and obligations hereunder to any person, firm or corporation, except as provided under the terms hereof.

(i) None of the issuance of the Bond or the execution and delivery of this Agreement or the Arbitrage and Tax Certificate, the consummation of the transactions contemplated hereby or the fulfillment of or compliance with the terms and conditions of the Bond, this Agreement or the Arbitrage and Tax Certificate violates any law, rule, regulation or order, conflicts with or results in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which Issuer is now a party or by which it is bound or constitutes a default under any of the foregoing or results in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Issuer under the terms of any instrument or agreement.

(j) No litigation in the state of Utah or federal courts has been served on Issuer or is, to the best of Issuer's knowledge, threatened against or affecting Issuer, challenging Issuer's authority to issue the Bond or to enter into this Agreement or the Tax Certificate or any other action wherein an unfavorable ruling or finding would adversely affect the enforceability of the Bond, this Agreement or the Tax Certificate or any other transaction of Issuer which is similar hereto, or the exclusion of the Interest from gross income for federal tax purposes under the Code, or would materially and adversely affect any of the transactions contemplated by this Agreement.

(k) Issuer will submit or cause to be submitted to the Secretary of the Treasury a Form 8038 (or other information reporting statement) at the time and in the form required by the Code.

(l) Issuer will comply fully at all times with the Arbitrage and Tax Certificate (but shall take no responsibility for Borrower's compliance with the Arbitrage and Tax Certificate), and Issuer will not take any action, or omit to take any action, which, if taken or omitted, respectively, would violate the Arbitrage and Tax Certificate.

(m) Issuer will take no action that would cause the Interest to become includable in gross income for federal income tax purposes under the Code (including, without limitation, intentional acts under Treas. Reg. § 1.148-2(c) or consenting to a deliberate action within the meaning of Treas. Reg. § 1.141-2(d)).

(n) Based on representations and information furnished to Issuer by or on behalf of Borrower, Issuer has found that the Project (i) will promote the health, safety and general welfare of the people of the State of Utah and in

particular those within the boundaries of Issuer and the public purposes of the Act, and will otherwise further the public purposes of the Act, (ii) is located within the boundaries of the State of Utah and within the boundaries of Issuer, and (iii) will constitute a project within the meaning of the Act.

(o) Issuer has not and will not pledge the income and revenues derived from this Agreement other than pursuant to and as set forth herein.

(p) Within the meaning of the Utah Public Officers' and Employees' Ethics Act (Title 67, Chapter 16, Utah Code Annotated 1953, as amended), to the best knowledge of Issuer after due inquiry, no "public officer" or "public employee" as defined in the Act, has a "substantial interest" in or is an officer, director, agent, employee, or owner of, or investor in, Borrower.

## ARTICLE V

### REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER

Borrower represents, warrants and covenants for the benefit of Lender and Issuer, as follows:

(a) Borrower is a nonprofit corporation duly organized, validly existing and in good standing under the laws of the State.

(b) The Borrower has the requisite corporate power and authority to enter into this Agreement and, its board of directors by proper action, has duly authorized the execution and delivery of this Agreement, the Deed of Trust, and the Arbitrage and Tax Certificate by Borrower. Borrower has all necessary rights and power to own, develop and operate the Property.

(c) The officer of Borrower executing this Agreement, the Deed of Trust and the Arbitrage and Tax Certificate and any related documents has been duly authorized to execute and deliver this Agreement, the Deed of Trust and the Arbitrage and Tax Certificate and such related documents under the terms and provisions of a consent of Borrower's board of directors.

(d) This Agreement and the Deed of Trust constitute valid and legally binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms, except to the extent limited by bankruptcy, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights.

(e) The execution and delivery of this Agreement, the Deed of Trust and the Arbitrage and Tax Certificate, the consummation of the transactions contemplated hereby and the fulfillment of the terms and conditions hereof do not and will not violate any United States federal or state of Utah law, rule, regulation or order, conflict with or result in a breach of any of the terms or conditions of the Articles of Incorporation of Borrower or of any corporate restriction or of any agreement or instrument to which Borrower is now a party and do not and will not constitute a default under any of the foregoing or result in the creation or imposition of any liens, charges or encumbrances of any nature upon any of the property or assets of Borrower contrary to the terms of any instrument or agreement.

(f) The authorization, execution, delivery and performance of this Agreement by Borrower do not require submission to, approval of, or other action by any governmental authority or agency, except such action with respect to this Agreement that has been taken and is final and nonappealable.

(g) There is no action, suit, proceeding, claim, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or

body pending or, to the best of Borrower's knowledge, threatened against or affecting Borrower, challenging Borrower's authority to enter into this Agreement, the Deed of Trust or the Arbitrage and Tax Certificate or any other action wherein an unfavorable ruling or finding would adversely affect the enforceability of this Agreement, the Deed of Trust or the Arbitrage and Tax Certificate or any other transaction of Borrower which is similar hereto, or the exclusion of the Interest from gross income for federal tax purposes under the Code, or would materially and adversely affect any of the transactions contemplated by this Agreement.

(h) The Borrower is not in default of any instrument, agreement or other document evidencing, relating to, or securing any indebtedness or other monetary obligation of the Borrower, unless in reasonable dispute and described to the Lender.

(i) The premises on which any portion of the Property is located is properly zoned for its current and anticipated use and the use of the Property will not violate any applicable zoning, land use, environmental or similar law or restriction. Borrower has all licenses and permits to use the Property.

(j) Lender has received an EnviroCheck Solutions, Inc. Report dated \_\_\_\_\_ (the "Report"). Except as disclosed in the Report, Borrower has received no notification of any kind suggesting that the Property or any adjacent property is or may be contaminated with any Hazardous Waste or Materials or is or may be required to be cleaned up in accordance with any applicable law or regulation; and Borrower further represents and warrants that, except as previously disclosed to Lender in writing, to the best of its knowledge as of the date hereof after due and diligent inquiry, there are no Hazardous Waste or Materials located in, on or under the Property or any adjacent property, or incorporated in any Improvements, nor has the Property or any adjacent property ever been used as a landfill or a waste disposal site, or a manufacturing, handling, storage, distribution or disposal facility for Hazardous Waste or Materials. Borrower has obtained all permits, licenses and other authorizations which are required under any Environmental Laws at Borrower's facilities or in connection with the operation of its facilities. Except as previously disclosed to Lender in writing, Borrower and all activities of Borrower at its facilities comply with all Environmental Laws and with all terms and conditions of any required permits, licenses and authorizations applicable to Borrower with respect thereto. Except as previously disclosed to Lender in writing, Borrower is also in compliance with all limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in Environmental Laws or contained in any plan, order, decree, judgment or notice of which Borrower is aware. Except as previously disclosed to Lender in writing, Borrower is not aware of, nor has Borrower received notice of, any events, conditions, circumstances, activities, practices, incidents, actions or plans which may interfere with or prevent continued compliance with, or which may give rise to any liability under, any Environmental Laws.

(k) The Project is of the type authorized and permitted to be financed with the proceeds of the Bond pursuant to the Act.

(l) Borrower owns or will own the Project and intends to operate the Project, or cause the Project to be operated, as a "project," within the meaning of the Act, until the date on which all of the Loan Payments have been fully paid or the applicable Prepayment Amount has been fully paid.

(m) Borrower will not take any action that would cause the Interest to become includable in gross income of the recipient for federal income tax purposes under the Code (including, without limitation, intentional acts under Treas. Reg. § 1.148-2(c) or deliberate action within the meaning of Treas. Reg. § 1.141-2(d)), and Borrower will take and will cause its officers, employees and agents to take all affirmative actions legally within its power necessary to ensure that the Interest does not become includable in gross income of the recipient for federal income tax purposes under the Code (including, without limitation, the calculation and payment of any rebate required to preserve such exclusion).

(n) Borrower has paid or caused to be paid to the proper authorities when due all federal, state and local taxes required to be withheld by it. Borrower has filed all federal, state and local tax returns which are required to be filed, and Borrower has paid or caused to be paid to the respective taxing authorities all taxes as shown on said returns or on any assessment received by it to the extent such taxes have become due.

(o) On the Closing Date, the Borrower will have good and absolute title to all Property and all proceeds thereof, free and clear of all mortgages, security interests, liens and encumbrances except for the security interest created pursuant to this Agreement and the Deed of Trust and other Permitted Exceptions.

(p) All financial and other information provided to Lender by or on behalf of Borrower in connection with Borrower's request for the Loan contemplated hereby is true and correct in all material respects and Borrower has not omitted to provide Lender with any information which would be material to Lender's decision to enter into this Agreement and, as to projections, valuations or pro forma financial statements present a good faith opinion as to such projections, valuations and pro forma condition and results.

(q) There has been no material adverse change in the financial condition or general affairs of the Borrower since \_\_\_\_\_.

(r) None of the Property constitutes a replacement of, substitution for or accessory to any property of Borrower subject to a lien of any kind. Borrower owns the Premises subject to no liens or encumbrances of any kind except the Permitted Exceptions.

(s) Upon acquisition, improvement, construction, installation or equipping of any portion of the Project, Borrower will provide to Lender a

completed and executed copy of the Certificate of Acceptance attached hereto as Exhibit J.

(t) Borrower will aid and assist Issuer in connection with preparing and submitting to the Internal Revenue Service a Form 8038 (or other applicable information reporting statement) at the time and in the form required by the Code.

(u) Borrower will comply fully at all times with the Arbitrage and Tax Certificate, and Borrower will not take any action, or omit to take any action, which, if taken or omitted, respectively, would violate the Arbitrage and Tax Certificate, and the representations and warranties in the Arbitrage and Tax Certificate are true and correct.

(v) Expenses for work done by officers or employees of Borrower in connection with the Property will be included as an Acquisition Cost, if at all, only to the extent (i) such persons were specifically employed for such particular purpose, (ii) the expenses do not exceed the actual cost thereof and (iii) such expenses are treated or capable of being treated (whether or not so treated) on the books of Borrower as a capital expenditure in conformity with generally accepted accounting principles applied on a consistent basis.

(w) Any costs incurred with respect to that part of the Property paid from the Loan Proceeds shall be treated or capable of being treated on the books of Borrower as capital expenditures in conformity with generally accepted accounting principles applied on a consistent basis.

(x) No part of the Loan Proceeds will be used to finance inventory or rolling stock or will be used for working capital or to finance any other cost not constituting an Acquisition Cost.

(y) No person other than Borrower or Borrower's authorized tenants or lessees are in occupancy or possession of any portion of the real property where any portion of the Property is located.

(z) The Project is property of the character subject to the allowance for depreciation under Section 167 of the Code.

(aa) The Project will promote the health, safety and general welfare of the residents of the State of Utah by promoting the continuation and expansion of health care facilities and will otherwise further the purposes of the Act. The Project is located entirely within the boundaries of Issuer. The Project is a project within the meaning of the Act and will be operated as such.

(bb) Borrower presently intends to use or operate the Project in a manner consistent with the Act until the date on which the Bond has been fully paid and knows of no reason why the Project will not be so used or operated.

(cc) The information furnished by Borrower and used by Issuer in preparing the arbitrage certificate pursuant to Section 148 of the Code and information statement pursuant to Section 149(e) of the Code is accurate and complete as of the delivery date of the Bond.

(dd) The non-refunding proceeds of the Bond will not exceed the Acquisition Costs.

(ee) Reserved.

(ff) No costs of the Project to be financed with the proceeds of the Bond have been paid by or on behalf of Borrower or any Related Person more than 60 days prior to the date of the Project Approval.

(gg) Borrower agrees to (i) engage an independent certified public accounting firm or firm of attorneys reasonably acceptable to Issuer in order to calculate and make such payments to the Internal Revenue Service of, any arbitrage rebate that may be owing with respect to the Bond under Section 148 of the Code and to pay the costs and expenses of said independent certified public accounting firm or firm of attorneys so engaged and (ii) simultaneously with any such payments send a report of the same to the Issuer. The obligation of Borrower to make such payments shall remain in effect and be binding upon Borrower notwithstanding the release and discharge of this Agreement.

(hh) Borrower covenants and represents that it will at all times do and perform all acts and things necessary or desirable and within its reasonable control in order to assure that interest paid on the Bond shall not be includable in the gross income of Lender for federal income tax purposes. Borrower also covenants and represents that it shall not take or omit to take, or permit to be taken on its behalf, any actions which, if taken or omitted, would adversely affect the excludability from the gross income of Lender of interest paid on the Bond for federal income tax purposes. Borrower covenants for the benefit of Lender that it will not use the proceeds of the Bond, any moneys derived, directly or indirectly, from the use or investment thereof or any other moneys on deposit in any fund or account maintained in respect of the Bond (whether such moneys were derived from the proceeds of the sale of the Bond or from other sources) in a manner which would cause the Bond to be treated as "arbitrage bonds" within the meaning of Section 148 of the Code.

(ii) Borrower will take such actions as shall be necessary or desirable, from time to time and within its reasonable control, to cause all of the representations and warranties in this Article to remain true and correct during such periods as shall be necessary to maintain the exclusion of interest paid on the Bond from the gross income of Lender for federal income tax purposes, pursuant to the requirements of the Code.

(jj) In connection with any lease or grant by Borrower of the use of the portion of the Project financed or refinanced with Bond proceeds, Borrower will require that the lessee or user of any portion of the Project and all Related Persons with respect to such lessee or user will not violate the covenants set forth herein.

(kk) The Borrower has no intention of offering any portion of the Project for sale during the term of the Bond.

(ll) All financial statements and information heretofore and hereafter delivered to Lender by Borrower, including, without limitation, information relating to the financial condition of Borrower, the Property, and the Improvements, fairly represent the financial condition of the subject thereof and have been prepared (except as noted therein) in accordance with generally accepted accounting principles consistently applied. The Borrower acknowledges and agrees that Lender may request and obtain additional information from third parties regarding any of the above, including, without limitation, credit reports.

(mm) The Improvements have been designed and have been or shall be constructed and completed, and thereafter maintained, in strict accordance and full compliance with all of the requirements of the Americans with Disabilities Act ("ADA"), of July 26, 1990, Pub. L. No. 101-336, 104 Stat. 327, 42 U.S.C. Section 12101, et seq., as amended from time to time. The Borrower shall be responsible for all ADA compliance costs.

(nn) The Borrower will take such actions as shall be necessary or desirable, from time to time and within its reasonable control, to cause all of the representations and warranties in this Section to remain true and correct during such periods as shall be necessary to maintain the exclusion of interest paid on the Bond from the gross income of the Lender for federal income tax purposes pursuant to the requirements of the Code.

(oo) Reserved.

(pp) Reserved.

(qq) Reserved.

(rr) Reserved.

(ss) The Borrower has not entered into, and has no present intent to enter into, any contract, agreement, letter of intent or other document, whether binding or non-binding, concerning the sale, assignment, lease, transfer or other disposition of all or any part of the Project. Neither title nor beneficial ownership of the Project will be transferred to any person other than an organization described in Section 501(c)(3) of the Code or a state or local government entity, unless the Borrower shall have previously received an opinion of bond counsel that such transfer will not affect the tax exemption of interest on the Bonds.

(tt) Reserved.

(uu) Borrower covenants and agrees to occupy and utilize the Premises and Improvements that is subject to the Deed of Trust for its operations and shall not sell, dispose of, close down, abandon or vacate any material portion of the same without the prior written consent of the Lender. Borrower also agrees that Lender may withhold its consent and also impose such conditions on the granting of such consent as shall be, in the reasoned business judgment of the Lender, necessary to continue to preserve the likelihood of full and timely payment of the Loan and to also accommodate for any negative impact upon the value of the Property subject of the Deed of Trust, as collateral for the Borrower's obligations under the Loan. No lease, sublease or license or other use of the Premises and Improvements subject to the Deed of Trust by any party other than the Borrower is permitted without the Lender's prior written consent, except Borrower may grant leases, subleases and licenses to occupy and use \_\_\_\_\_ facilities on and at the Premises and Improvements in the ordinary course of business without the prior written consent of Lender.

## ARTICLE VI

### TITLE TO PROPERTY; SECURITY INTEREST

Section 6.1 Title to Property. Legal title to the Property and any and all repairs, replacements, substitutions and modifications to such Property shall be in Borrower. Borrower will at all times protect and defend, at its own cost and expense, its title from and against all claims, liens and legal processes of creditors of Borrower, and keep all Property free and clear of all such claims, liens and processes.

Section 6.2 Security Interest in Property. Borrower agrees to execute such additional documents, including financing statements, assignments, affidavits, notices and similar instruments, in form satisfactory to Lender, and take such other actions that Lender deems necessary or appropriate to establish and maintain the security interest created by this Agreement, and Borrower hereby designates and appoints Lender as its agent, and grants to Lender a power of attorney (which is coupled with an interest), to execute on behalf of Borrower such additional documents and to take such other actions. If requested by Lender, Borrower shall obtain a landlord and/or mortgagee's consent and waiver with respect to the real property where any portion of the Property is located.

Section 6.3 Change in Name or Structure of Borrower; Change in Location of Borrower's Principal Place of Business. Borrower's chief executive office is located at the address set forth above, and all of Borrower's records relating to its business, and the Property are kept at such location. Borrower hereby agrees to provide written notice to Lender and Issuer of any change or proposed change in its name, corporate structure, place of business or chief executive office or change or proposed change in the location of the Property. Such notice shall be provided thirty (30) days in advance of the date that such change or proposed change is planned to take effect. Borrower does business, and has done business, only under its own name and the trade names, if any, set forth on Exhibit H hereto.

Section 6.4 Liens and Encumbrances to Title. Borrower shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Property ("Liens"), other than the respective rights of Lender as provided herein. Borrower shall promptly, at its own expense, take such action as may be necessary duly to discharge or remove any such Lien. Borrower shall reimburse Lender for any expenses incurred by Lender to discharge or remove any Lien.

## ARTICLE VII

### AFFIRMATIVE COVENANTS OF BORROWER

So long as the Loan shall remain unpaid, Borrower will comply with the following requirements:

Section 7.1 Reporting Requirements. Borrower will deliver, or cause to be delivered, to Lender each of the following, which shall be in form and detail acceptable to Lender:

(a) as soon as available, and in any event within 120 days after the end of each fiscal year of Borrower, audited consolidated and consolidating financial statements of Borrower with the audit report of independent certified public accountants selected by Borrower and acceptable to Lender expressing assurance that, based upon the audit, such accountants found nothing requiring material modification to the financing statements to conform with generally accepted accounting principles, which annual financial statements shall include the consolidated and consolidating balance sheet of Borrower as at the end of such fiscal year and the related consolidated and consolidating statements of operations, net assets and cash flows of Borrower for the fiscal year then ended, all in reasonable detail and prepared in accordance with generally accepted accounting principles applied on a consistent basis;

(b) quarterly, an internal consolidated and consolidating balance sheet and consolidated and consolidating statements of operations and net assets of the Borrower, in reasonable detail and due within 30 days after the end of each fiscal quarter;

(c) immediately after the commencement thereof, notice in writing of all litigation and of all proceedings before any governmental or regulatory agency affecting Borrower of the type described in Article V hereof or which seek a monetary recovery against Borrower in excess of \$100,000;

(d) as promptly as practicable (but in any event not later than five Business Days) after an officer of Borrower obtains knowledge of the occurrence of any event that constitutes a Default or an Event of Default hereunder, notice of such occurrence, together with a detailed statement by a responsible officer of Borrower of the steps being taken by Borrower to cure the effect of such Default or Event of Default;

(e) promptly upon knowledge thereof, notice of any material loss or destruction of or damage to any Property or of any material adverse change in any Property;

(f) promptly after the amending thereof, copies of any and all amendments to Borrower's Articles of Incorporation and/or Bylaws;

(g) promptly upon knowledge thereof, notice of any violation by Borrower of any law, rule or regulation, if such violation could adversely affect the financial or operating condition of Borrower or Borrower's ability to perform its obligations hereunder;

(h) promptly upon knowledge thereof, notice of any material adverse change in the financial or operating condition of Borrower; and

(i) promptly upon their filing, copies of each tax return filed by Borrower.

Section 7.2 Books and Records; Inspection and Examination. Borrower will keep accurate books of record and account for itself pertaining to the Property and pertaining to Borrower's business and financial condition and such other matters as Lender may from time to time request in which true and complete entries will be made in accordance with generally accepted accounting principles consistently applied and, upon request of Lender, will permit any officer, employee, attorney or accountant for Lender to audit, review, make extracts from, or copy any and all corporate and financial books, records and properties of Borrower at all times during ordinary business hours, and to discuss the financial condition of Borrower with any of its directors, officers, or employees designated by a director or officer. Borrower will permit Lender, or its employees, accountants, attorneys or agents, to examine and copy any or all of its records and to examine and inspect the Property during Borrower's regular office business hours upon receipt of notice from Lender at least twenty-four (24) hours prior thereto. However, notwithstanding anything to the contrary in this Section, Lender's inspection rights are limited to financial records of the Borrower and records associated with the management of the Property, and do not include patient or employment records or other records which may relate to individuals who are in the employ of the Borrower.

Section 7.3 Compliance With Laws. Borrower will (a) comply with the requirements of applicable laws and regulations, the noncompliance with which would materially and adversely affect its business or its financial condition and (b) use and keep the Property, and will require that others use and keep the Property, only for lawful purposes, without violation of any federal, state or local law, statute or ordinance. Borrower shall secure all permits and licenses, if any, necessary for the installation and operation of the Property. Borrower shall comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each item of the Property) with all laws of the jurisdictions in which its operations involving any component of Property may extend and of any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the items of the Property or its interest or rights under this Agreement.

Section 7.4 Environmental Compliance. Borrower shall promptly comply with all statutes, regulations and ordinances, and with all orders, decrees or judgments of governmental authorities or courts having jurisdiction, relating to the use, collection, treatment, disposal, storage, control, removal or cleanup of Hazardous Waste or Materials in, on or under the Property, or any adjacent property, or incorporated in any

Improvements, at Borrower's expense. In the event that Lender at any time reasonably believes that the Property is not free of all Hazardous Waste or Materials or that Borrower has violated any applicable Environmental Laws with respect to the Property, then immediately, upon request by Lender, Borrower shall obtain and furnish to Lender, at Borrower's sole cost and expense, an environmental audit and inspection of the Property from an expert satisfactory to Lender. In the event that Borrower fails to immediately obtain such audit or inspection, Lender or its agents may perform or obtain such audit or inspection at Borrower's sole cost and expense. Lender may, but is not obligated to, enter upon the Property and take such actions and incur such costs and expenses to effect such compliance as it deems advisable to protect its interest in the Property; and whether or not Borrower has actual knowledge of the existence of Hazardous Waste or Materials on the Property or any adjacent property as of the date hereof, Borrower shall reimburse Lender as provided herein for the full amount of all costs and expenses incurred by Lender prior to Lender acquiring title to the Property through foreclosure or acceptance of a deed in lieu of foreclosure, in connection with such compliance activities. Neither this provision nor any provision herein or in the Deed of Trust or related documents shall operate to put Lender in the position of an owner of the Property prior to any acquisition of the Property by Lender. The rights granted to Lender herein and in the Deed of Trust or related documents are granted solely for the protection of Lender's lien and security interest covering the Property and do not grant to Lender the right to control Borrower's actions, decisions or policies regarding Hazardous Waste or Materials.

Section 7.5 Preservation of Existence. Borrower will preserve and maintain its not for profit corporate existence and all of its rights, privileges and franchises necessary or desirable in the normal conduct of its business or otherwise preserve its instrumentality of the Issuer and tax-exempt status under the Code.

Section 7.6 Performance by Lender. If Borrower at any time fails to perform or observe any of the covenants or agreements contained in this Agreement, in the Deed of Trust or any other related document, and if such failure shall continue for a period of ten (10) calendar days after Lender gives Borrower written notice thereof (or in the case of the agreements contained in Sections 7.6 and 7.7 hereof, immediately upon the occurrence of such failure, without notice or lapse of time), Lender may, but need not, perform or observe such covenant on behalf and in the name, place and stead of Borrower (or, at Lender's option, in Lender's name) and may, but need not, take any and all other actions which Lender may reasonably deem necessary to cure or correct such failure (including, without limitation, the payment of taxes, the satisfaction of security interests, liens or encumbrances, the performance of obligations owed to account debtors or other obligors, the procurement and maintenance of insurance, the execution of assignments, security agreements and financing statements, and the endorsement of instruments); and Borrower shall thereupon pay to Lender on demand the amount of all moneys expended and all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with or as a result of the performance or observance of such agreements or the taking of such action by Lender, together with interest thereon from the date expended or incurred at the lesser of 18% per annum or the highest rate permitted by law. To facilitate the performance or observance by Lender of such

covenants of Borrower, Borrower hereby irrevocably appoints Lender, or the delegate of Lender, acting alone, as the attorney in fact of Borrower with the right (but not the duty) from time to time to create, prepare, complete, execute, deliver, endorse or file in the name and on behalf of Borrower any and all instruments, documents, assignments, security agreements, financing statements, applications for insurance and other agreements and writings required to be obtained, executed, delivered or endorsed by Borrower under this Agreement.

Section 7.7 Limitations of Liability. In no event, whether as a result of breach of contract, warranty, tort (including negligence or strict liability), indemnity or otherwise, shall Lender, its assignees, if any, or Issuer be liable for any special, consequential, incidental, punitive or penal damages, including, but not limited to, loss of profit or revenue, loss of use of the Property or any associated equipment, service materials or software, damage to associated equipment, service materials or software, cost of capital, cost of substitute property, service materials or software, facilities, services or replacement power or downtime costs.

Section 7.8 Indemnification. The Borrower releases the Issuer and Lender from, agrees that the Issuer shall not be liable for, and indemnifies the Issuer against, all liabilities, claims, costs and expenses, including attorney's fees and expenses, imposed upon, incurred by or asserted against the Issuer or the Lender, as applicable, on account of: (a) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the construction, maintenance, operation and use of the Property; (b) any breach or default on the part of the Borrower in the performance of any covenant or agreement of the Borrower under this Agreement or any related document, or arising from any act or failure to act by the Borrower, or any of its agents, contractors, servants, employees or licensees; (c) the authorization, issuance, sale, trading, redemption, remarketing or servicing of the Bond, and the provision of any information or certification furnished in connection therewith concerning, the Bond, the Property, or the Borrower, any information furnished by the Borrower for, and included in, or used as a basis for preparation of, any certifications, information statements or reports furnished by the Issuer, and any other information or certification obtained from the Borrower to assure the exclusion of the interest on the Bond from gross income for federal income tax purposes; (d) the Borrower's failure to comply with any requirement of this Agreement or the Code pertaining to such exclusion of that interest and any failure of compliance by the Borrower with the provisions of the Act; (e) any action taken by or on behalf of the Issuer or Lender (other than gross negligence or willful misconduct) pursuant to the Loan Agreement or Deed of Trust, as applicable and (f) any claim, action or proceeding brought with respect to the matters set forth in (a), (b), (c), (d) and (e) above.

In case any action or proceeding is brought against the Issuer or Lender in respect of which indemnity may be sought hereunder, the party seeking indemnity promptly shall give notice of that action or proceeding to the Borrower, and the Borrower upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceeding; provided, that failure of a party to give that notice shall not relieve the Borrower from any of their obligations under this Section. At its own expense, an

indemnified party may employ separate counsel and participate in the defense. The Borrower shall not be liable for any settlement made without its consent.

The indemnification set forth above is intended to and shall include the indemnification of all affected officials, directors, officers and employees of the Issuer and Lender. The indemnification set forth above shall survive the termination of this Agreement for a period not to exceed five (5) years from the closing date. That indemnification is intended to and shall be enforceable by the Issuer and Lender to the full extent permitted by law.

Section 7.9 Debt Service Coverage Ratio. Borrower shall maintain its financial condition as follows using generally accepted accounting principles consistently applied and used consistently with prior practices (except to the extent modified by the definitions herein). Borrower will maintain, or cause to be maintained, as of the end of each fiscal quarter, commencing with the fiscal quarter ending \_\_\_\_\_, the Debt Coverage Ratio for Borrower at not less than 2.50 times, measured with respect to the twelve months ending as of the end of such fiscal quarter, with "Debt Coverage Ratio" defined as the ratio of EBITDA (as defined below) less annual unfunded capital expenditures, but excluding all Project expenditures, divided by Debt Service (as defined below). "EBITDA" means, with respect to the applicable period of determination, the change in unrestricted net assets plus interest expense plus depreciation plus amortization plus lease expense). "Debt Service" means the Borrower's interest expense plus the current portion of any long-term debt or lease expense due in the applicable period.

Section 7.10 Reserved.

Section 7.11 Insurance. Borrower shall, while any obligation of Borrower under this Agreement remains outstanding, maintain at Borrower's sole expense, with licensed insurers approved by Lender, the following policies of insurance in form and substance reasonably satisfactory to Lender:

(a) *Property Insurance*. A Builders Risk Completed Value Hazard Insurance policy, including, without limitation, such endorsements as Lender may require, insuring Lender against damage to the Premises and Improvements in an amount reasonably acceptable to Lender. Lender shall be named on the policy under a Lender's Loss Payable Endorsement (form #438BFU or equivalent).

(b) *Flood Hazard Insurance*. A policy of flood insurance, as required by applicable governmental regulations.

(c) *Liability Insurance*. A policy of comprehensive general liability insurance with limits as reasonably required by Lender, insuring against liability for injury and/or death to any person and/or damage to any property occurring on the Premises and/or in the Improvements from any cause whatsoever.

(d) *General*. Borrower shall provide to Lender certificates of insurance of all required insurance policies. All insurance policies shall provide that the insurance shall not be cancelable or materially changed without ten (10)

days prior written notice to Lender. Lender shall be named under a Lender's Loss Payable Endorsement (form #438BFU or equivalent) on all insurance policies which Borrower actually maintains with respect to the Premises and Improvements.

Section 7.12 Reserved.

## ARTICLE VIII

### NEGATIVE COVENANTS OF BORROWER

So long as the Loan and the Bond shall remain unpaid, Borrower agrees that, without the written consent of the Lender, which consent shall not be unreasonably conditioned or withheld:

Section 8.1 Additional Liabilities. The Borrower may not assume any additional interest bearing liabilities outside of trade accounts payable. Notwithstanding the foregoing, Borrower may assume up to \$1,000,000 in additional interest bearing liabilities without the consent of Lender, so long as such liabilities are incurred in the normal course of business.

Section 8.2 Sale of Assets. Borrower will not sell, lease, assign, transfer or otherwise dispose of its assets or the Property, or any interest therein except as may be required by law (whether in one transaction or in a series of transactions), provided however that Borrower may, without Lender's consent, sell, lease, assign, transfer or otherwise dispose of assets on the Property not exceeding \$500,000 in value.

Section 8.3 Consolidation and Merger. Borrower will not consolidate with or merge into any person, or permit any other person to merge into it or acquire (in a transaction analogous in purpose or effect to a consolidation or merger) all or substantially all of the assets of any other person.

Section 8.4 Accounting. Borrower will not adopt, permit or consent to any material change in accounting principles other than as required by generally accepted accounting principles. Borrower will not adopt, permit or consent to any change in its fiscal year.

Section 8.5 Other Defaults. Borrower will not permit any breach, default or event of default to occur under any note, loan agreement, indenture, lease, mortgage, contract for deed, security agreement or other contractual obligation binding upon Borrower or any judgment, decree, order or determination applicable to Borrower.

Section 8.6 Place of Business. Borrower will not permit any of the Property or any records pertaining to the Property to be located in any state or area in which, in the event of such location, a financing statement covering such Property would be required to be, but has not in fact been, filed in order to perfect the security interest created pursuant to this Agreement.

Section 8.7 Use of Premises. Unless required by applicable law or unless Lender has otherwise agreed in writing, Borrower shall not allow changes in the use for which all or any part of the Premises was intended at the time this Agreement was executed. Borrower shall not, without Lender's prior written consent, (a) initiate or acquiesce in a change in the zoning classification (including any variance under any existing zoning ordinance applicable to the Premises), (b) permit the use of the Premises

to become a nonconforming use under applicable zoning ordinances, (c) file any subdivision or parcel map affecting the Premises, or (d) amend, modify or consent to any easement or covenants, conditions and restrictions pertaining to the Premises.

## ARTICLE IX

### CONSTRUCTION COVENANTS

Section 9.1 Commencement and Completion. Borrower shall commence construction of the Project without delay after recordation of the Deed of Trust and expects to complete construction of the Project.

Section 9.2 Reserved.

Section 9.3 Liens and Stop Notices. If a claim of lien is recorded which affects the Property or Improvements or a bonded stop notice is served upon Lender, Borrower shall, within 20 calendar days of such recording or service or within 5 calendar days of Lender's demand, whichever occurs first: (a) pay and discharge the claim of lien or bonded stop notice; (b) effect the release thereof by recording or delivering to Lender a surety bond in sufficient form and amount; or (c) provide Lender with other assurances which Lender deems, in its sole discretion, to be satisfactory for the payment of such claim of lien or bonded stop notice and for the full and continuous protection of Lender from the effect of such lien or bonded stop notice.

Section 9.4 Construction Responsibilities. Borrower shall construct the Improvements in a workmanlike manner. Borrower shall comply with all applicable laws, ordinances, rules, regulations, building restrictions, and requirements of all regulatory authorities having jurisdiction over the Property or Improvements. Borrower shall be solely responsible for all aspects of the construction of the Improvements, including, without limitation, for the quality and suitability of the plans and specifications for the Improvements and their compliance with all governmental requirements, the supervision of the work of construction, the qualifications, financial condition and performance of all architects, engineers, contractors, material suppliers, consultants and property managers, and the accuracy of all applications for payment and the proper application of all disbursements. Lender is not obligated to supervise, inspect or inform Borrower or any third party of any aspect of the construction of the Improvements or any other matter referred to above.

Section 9.5 Inspections. Lender shall have the right to enter upon the Premises at all reasonable times to inspect the Improvements and the construction work. Any such inspection by Lender is solely to determine whether Borrower is properly discharging its obligations to Lender and may not be relied upon by Borrower or by any third party as a representation or warranty of compliance with this Agreement or any other agreement. Lender owes no duty of care to Borrower or any third party to protect against, or to inform Borrower or any third party of, any negligent, faulty, inadequate or defective design or construction of the Improvements.

## ARTICLE X

### ASSIGNMENT AND SELLING

Section 10.1 Assignment by Lender. This Agreement, and the obligations of Borrower to make payments hereunder, may be assigned and reassigned in whole or in part to one or more assignees or subassignees (who shall be purchaser of the Bond or an interest therein) by Lender at any time subsequent to its execution, without the necessity of obtaining the consent of Issuer or Borrower; provided, however, that no such assignment or reassignment shall be effective unless and until (a) Issuer and Borrower shall have received notice of the assignment or reassignment disclosing the name and address of the assignee or subassignee, which notice Issuer shall maintain as evidence of the ownership and registration of the Bond, and (b) in the event that such assignment or reassignment is made to a bank or trust company as trustee for holders of certificates representing interests in this Agreement and the Bond, such bank or trust company agrees to maintain, or cause to be maintained, a book-entry system by which a record of the names and addresses of such holders as of any particular time is kept and agrees, upon request of Issuer or Borrower, to furnish such information to Issuer or Borrower. Upon receipt of notice of assignment, Borrower will reflect in a book-entry the assignee designated in such notice of assignment, and shall agree to make all payments to the assignee designated in the notice of assignment, notwithstanding any claim, defense, setoff or counterclaim whatsoever (whether arising from a breach of this Agreement or otherwise) that Issuer and Borrower may from time to time have against Lender or the assignee. Issuer and Borrower agree to execute all documents, including notices of assignment and chattel mortgages or financing statements, which may be reasonably requested by Lender or its assignee to protect their interest in the Property and in this Agreement.

Section 10.2 No Sale or Assignment by Borrower. This Agreement and the interest of Borrower in the Premises and Improvements may not be sold, assumed, assigned or encumbered by Borrower without written consent of Lender, which consent will not be unreasonably conditioned or withheld, except for the Permitted Exceptions.

## ARTICLE XI

### EVENTS OF DEFAULT AND REMEDIES

Section 11.1 Events of Default. The following constitute “Events of Default” under this Agreement:

(a) failure by Borrower to pay to Lender, as assignee of Issuer, when due any Loan Payment or to pay any other payment required to be paid hereunder;

(b) failure by Borrower or Issuer to observe and perform any other covenant, condition or agreement contained herein, in the Deed of Trust, in the Arbitrage and Tax Certificate or in any other document or agreement executed in connection herewith on its part to be observed or performed for a period of 30 days after written notice is given to Borrower or Issuer, as the case may be, specifying such failure and directing that it be remedied; *provided, however*, that, if the failure stated in such notice cannot be corrected within such 30-day period, Lender will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Borrower or Issuer, as the case may be, within the applicable period and diligently pursued until the default is corrected;

(c) initiation by Issuer of a proceeding under any federal or state bankruptcy or insolvency law seeking relief under such laws concerning the indebtedness of Issuer;

(d) Borrower shall be or become insolvent, or admit in writing its inability to pay its debts as they mature, or make an assignment for the benefit of creditors; or Borrower shall apply for or consent to the appointment of any receiver, trustee or similar officer for it or for all or any substantial part of its property; or such receiver, trustee or similar officer shall be appointed without the application or consent of Borrower, or Borrower shall institute (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction; or any such proceeding shall be instituted (by petition, application or otherwise) against Borrower; or any judgment, writ, warrant of attachment or execution or similar process shall be issued or levied against a substantial part of the property of Borrower;

(e) determination by Lender that any representation or warranty made by Borrower or Issuer herein or in the Deed of Trust or in the Arbitrage and Tax Certificate or in any other document executed in connection herewith was untrue in any material respect when made;

(f) an Event of Taxability shall occur;

(g) the occurrence of a default or an event of default under any instrument, agreement or other document evidencing, relating to or securing any indebtedness or other monetary obligation of Borrower if such default or event of default has not been cured within any applicable cure periods provided thereunder and could result in the acceleration of the obligations thereunder;

(h) the occurrence of a default or an event of default under the Deed of Trust, or any other agreement between or among Lender or any of its affiliates and Borrower;

(i) the discovery of any significant Hazardous Materials in, on or about the Property or Improvements. Any such Hazardous Materials shall be "significant" for this purpose if such Hazardous Materials, in Lender's sole discretion, have a materially adverse impact on the value of the Property or Improvements.

Section 11.2 Remedies on Default. Whenever any Event of Default shall have occurred, Lender, as assignee of Issuer, shall have the right, at its sole option without any further demand or notice, to take any one or any combination of the following remedial steps which are accorded to Lender, as assignee of Issuer, by applicable law:

(a) By notice to Issuer and Borrower, Lender may declare the entire unpaid principal amount of the Loan then outstanding, all interest accrued and unpaid thereon and all other amounts payable under this Agreement to be forthwith due and payable, whereupon the Loan, all such accrued interest and all such amounts shall become and be forthwith due and payable, without presentment, notice of dishonor, protest or further notice of any kind, all of which are hereby expressly waived by Borrower;

(b) In the event of a Default occasioned by Borrower's failure to pay money to a third party as required by this Agreement, Lender may but shall not be obligated to make such payment from the Loan proceeds or other funds of Lender. Borrower shall immediately repay such funds upon written demand of Lender. The Default with respect to which any such payment has been made by Lender shall not be deemed cured until such deposit or repayment (as the case may be) has been made by Borrower to Lender;

(c) If Lender determines at any time that the Improvements are not being constructed in accordance with all governmental requirements, Lender may immediately cause all construction to cease on any of the Improvements affected by the condition of nonconformance. Borrower shall thereafter not allow any construction work, other than corrective work, to be performed on any of the Improvements affected by the condition of nonconformance until such time as Lender notifies Borrower in writing that the nonconforming condition has been corrected;

(d) Proceed by appropriate court action to enforce specific performance by Issuer or Borrower of the applicable covenants of this Agreement or to recover for the breach thereof, including the payment of all amounts due from Borrower. Borrower shall pay or repay to Lender or Issuer all costs of such action or court action, including, without limitation, reasonable attorneys' fees;

(e) Exercise all rights and remedies under the Deed of Trust; and

(f) Take whatever action at law or in equity that may appear necessary or desirable to enforce its rights with respect to the Property. Borrower shall pay or repay to Lender or Issuer all costs of such action or court action, including, without limitation, reasonable attorneys' fees.

Notwithstanding any other remedy exercised hereunder, Borrower shall remain obligated to pay to Lender any unpaid portion of the Prepayment Amount.

Section 11.3 No Remedy Exclusive. Subject to the mandatory procedures, waivers and terms of Section 11.4, no remedy herein conferred upon or reserved to Lender or Issuer is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lender or Issuer to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice other than such notice as may be required by this Article. All remedies herein conferred upon or reserved to Lender or Issuer shall survive the termination of this Agreement.

Section 11.4 Jury Trial Waiver; Arbitration If Jury Trial Waiver Not Enforceable and Class Action Waiver AS PERMITTED BY APPLICABLE LAW, THE LENDER, ISSUER AND BORROWER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BEFORE A JURY IN CONNECTION WITH ANY DISPUTE (HEREINAFTER DEFINED), AND DISPUTES SHALL BE RESOLVED BY A JUDGE SITTING WITHOUT A JURY. IF A COURT DETERMINES THAT THIS PROVISION IS NOT ENFORCEABLE FOR ANY REASON AND AT ANY TIME PRIOR TO TRIAL OF THE DISPUTE, BUT NOT LATER THAN 30 DAYS AFTER ENTRY OF THE ORDER DETERMINING THIS PROVISION IS UNENFORCEABLE, ANY PARTY SHALL BE ENTITLED TO MOVE THE COURT FOR AN ORDER COMPELLING ARBITRATION AND STAYING OR DISMISSING SUCH LITIGATION PENDING ARBITRATION ("Arbitration Order").

If a claim, dispute, or controversy arises between the parties to this Agreement with respect to this Agreement, the Deed of Trust, the Arbitrage and Tax Certificate or any related agreement (all of the foregoing, a "Dispute"), and only if a jury trial waiver is not permitted by applicable law or ruling by a court, any party may require that the Dispute be resolved by binding arbitration before a single arbitrator at the request of any

party. By agreeing to arbitrate a Dispute, the parties are giving up any right they may have to a jury trial, as well as other rights the parties would have in court that are not available or are more limited in arbitration, such as the rights to discovery and to appeal.

Arbitration shall be commenced by filing a petition with, and in accordance with the applicable arbitration rules of JAMS or National Arbitration Forum (“Administrator”) as selected by the initiating party (such arbitration without an Administrator to be conducted by reference to the Commercial Arbitration Rules of the American Arbitration Association or to such alternate rules to which the parties may agree). If the parties agree, arbitration may be commenced by appointment of a licensed attorney who is selected by the parties and who agrees to conduct the arbitration without an Administrator. Disputes include matters relating to a deposit account, application for or denial of credit, enforcement of any of the obligations the parties have to each other, compliance with applicable laws and/or regulations, performance or services provided under any agreement by any party, including but not limited to the validity, enforceability, meaning, or scope of this arbitration provision, and including a dispute based on or arising from an alleged tort or matters involving the employees, agents, affiliates, or assigns of a party. However, Disputes do not include the validity, enforceability, meaning, or scope of this arbitration provision and such matters may be determined only by a court. If a third party is a party to a Dispute, each party will consent to including the third party in the arbitration proceeding for resolving the Dispute with the third party. Venue for the arbitration proceeding shall be at a location determined by mutual agreement of the parties or, if no agreement, in the city and state where Lender is headquartered.

After entry of an Arbitration Order, the non-moving party shall commence arbitration. The moving party shall, at its discretion, also be entitled to commence arbitration but is under no obligation to do so, and the moving party shall not in any way be adversely prejudiced by electing not to commence arbitration. The arbitrator will (i) hear and rule on appropriate dispositive motions for judgment on the pleadings, for failure to state a claim, or for full or partial summary judgment, (ii) will render a decision and any award applying applicable law, (iii) give effect to any limitations period in determining any Dispute or defense, (iv) enforce the doctrines of compulsory counterclaim, res judicata, and collateral estoppel, if applicable, (v) with regard to motions and the arbitration hearing, apply rules of evidence governing civil cases, and (vi) apply the law of the state specified in the agreement giving rise to the Dispute. Filing of a petition for arbitration shall not prevent any party from (i) seeking and obtaining from a court of competent jurisdiction (notwithstanding ongoing arbitration) provisional or ancillary remedies including but not limited to injunctive relief, property preservation orders, foreclosure, eviction, attachment, replevin, garnishment, and/or the appointment of a receiver, (ii) pursuing non-judicial foreclosure, or (iii) availing itself of any self-help remedies such as setoff and repossession. The exercise of such rights shall not constitute a waiver of the right to submit any Dispute to arbitration.

Judgment upon an arbitration award may be entered in any court having jurisdiction except that, if the arbitration award exceeds \$4,000,000, any party shall be entitled to a de novo appeal of the award before a panel of three arbitrators. To allow for

such appeal, if the award (including Administrator, arbitrator, and attorney's fees and costs) exceeds \$4,000,000, the arbitrator will issue a written, reasoned decision supporting the award, including a statement of authority and its application to the Dispute. A request for de novo appeal must be filed with the arbitrator within 30 days following the date of the arbitration award; if such a request is not made within that time period, the arbitration decision shall become final and binding. On appeal, the arbitrators shall review the award de novo, meaning that they shall reach their own findings of fact and conclusions of law rather than deferring in any manner to the original arbitrator. Appeal of an arbitration award shall be pursuant to the rules of the Administrator or, if Administrator has no such rules, then the JAMS arbitration appellate rules shall apply.

Arbitration under this provision concerns a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1 et seq. The provisions of this arbitration provision shall survive any termination, amendment, or expiration of this Agreement. If the terms of this provision vary from the Administrator's rules, this arbitration provision shall control.

**CLASS ACTION WAIVER.** EACH PARTY WAIVES THE RIGHT TO LITIGATE IN COURT OR ARBITRATE ANY CLAIM OR DISPUTE AS A CLASS ACTION, EITHER AS A MEMBER OF A CLASS OR AS A REPRESENTATIVE, OR TO ACT AS A PRIVATE ATTORNEY GENERAL.

**MEDIATION.** In addition to, and not in derogation of the foregoing jury trial waiver, arbitration and class action provisions, each party hereby agrees to engage and participate in good faith in expedited mediation of any Dispute, regardless of the pendency of any court action or arbitration. Neither a demand for mediation nor the pendency of any mediation proceeding shall stay the filing or prosecution of any court action or arbitration. The mediator shall be jointly agreed upon by the parties, but if no agreement is promptly reached then the mediation shall be administered by the mediation service offered through the court in which any action on the Dispute is pending; if no action is pending or the court does not offer such service then the mediation shall be administered by JAMS. No party shall be required to participate in more than one mediation, but each party agrees to consider in good faith any request by a party for subsequent mediation of the Dispute.

**RELIANCE.** Each party (i) certifies that no one has represented to such party that the other party would not seek to enforce jury and class action waivers in the event of suit, and (ii) acknowledges that it and the other parties have been induced to enter into this Agreement by, among other things, the mutual waivers, agreements, and certifications in this section.

## ARTICLE XII

### MISCELLANEOUS

#### Section 12.1 Costs and Expenses of Lender.

(a) Borrower shall pay to Lender, in addition to the Loan Payments payable by Borrower hereunder, such amounts in each year as shall be required by Lender in payment of any reasonable costs and expenses incurred by Lender in connection with the execution, performance or enforcement of this Agreement, including but not limited to payment of all reasonable fees, costs and expenses and all administrative costs of Lender in connection with the Property, expenses (including, without limitation, attorneys' fees and advances), fees of auditors or attorneys, insurance premiums not otherwise paid hereunder and all other direct and necessary administrative costs of Lender or charges required to be paid by it in order to comply with the terms of, or to enforce its rights under, this Agreement. Such costs and expenses shall be billed to Borrower by Lender from time to time, together with a statement certifying that the amount so billed has been paid by Lender for one or more of the items above described, or that such amount is then payable by Lender for such items. Amounts so billed shall be due and payable by Borrower within thirty (30) days after receipt of the bill by Borrower.

(b) Borrower may apply to Lender for a waiver of a Default or an Event of Default that Lender may, in its sole discretion, grant; provided, however, if the waiver is in connection with a Default that relates to the tax covenants set forth in Article V of this Agreement, Lender will consider such waiver only if Borrower provides Lender with an opinion of nationally recognized bond counsel to the effect that such Default does not adversely affect the tax-exempt status of the Bond.

Section 12.2 Issuer Not Liable. Notwithstanding any other provision of this Agreement, neither Issuer nor any official, officer, agent, servant or employee of Issuer shall be liable to Borrower, Lender or any other person for (a) any action taken by Issuer or by any official, officer, agent, servant or employee of Issuer under this Agreement (except for its gross negligence or willful misconduct), or (b) any failure of Issuer or any official, officer, agent, servant or employee of Issuer to take action under this Agreement (except due to its gross negligence or willful misconduct) unless Issuer (i) is requested in writing by an appropriate person to take such action, (ii) is assured of payment of or reimbursement for any expenses in such action and (iii) is afforded a reasonable period under the circumstances to take such action, except that Issuer agrees to take, or refrain from taking, any action as required by an injunction and to comply with any final judgment for specific performance. In acting under this Agreement, or in refraining from acting under this Agreement, Issuer may conclusively rely on the advice of its counsel.

Section 12.3 Disclaimer of Warranties. LENDER AND ISSUER MAKE NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO

THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR FITNESS FOR USE OF THE PROPERTY OR ANY OTHER WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT THERETO. In no event shall Lender or Issuer be liable for any loss or damage in connection with or arising out of this Agreement, the Property or the existence, furnishing, functioning or Borrower's use of any item or products or services provided for in this Agreement.

Section 12.4 Notices. All notices, certificates, requests, demands and other communications provided for hereunder or the Arbitrage and Tax Certificate shall be in writing and shall be (a) personally delivered, (b) sent by first class United States mail, (c) sent by overnight courier of national reputation, or (d) transmitted by telecopy, in each case addressed to the parties to whom notice is being given at its address as set forth above and, if telecopied, transmitted to that party at its telecopier number set forth above or, as to each party, at such other address or telecopier number as may hereafter be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section. All such notices, requests, demands and other communications shall be deemed to have been given on (a) the date received if personally delivered, (b) when deposited in the mail if delivered by mail, (c) the date sent if sent by overnight courier, or (d) the date of transmission if delivered by telecopy. If notice to Borrower of any intended disposition of the Property or any other intended action is required by law in a particular instance, such notice shall be deemed commercially reasonable if given (in the manner specified in this Section) at least ten (10) calendar days prior to the date of intended disposition or other action.

Section 12.5 Further Assurance and Corrective Instruments. Issuer and Borrower hereby agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further acts, instruments, conveyances, transfers and assurances, as Lender reasonably deems necessary or advisable for the implementation, correction, confirmation or perfection of this Agreement, the Deed of Trust or the Arbitrage and Tax Certificate and any rights of Lender hereunder or thereunder.

Section 12.6 Binding Effect; Time of the Essence. This Agreement shall inure to the benefit of and shall be binding upon Lender, Issuer, Borrower and their respective successors and assigns. Time is of the essence.

Section 12.7 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12.8 Amendments. To the extent permitted by law, the terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written instrument signed by the parties hereto, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.

Section 12.9 Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument, and any of the parties hereto may execute this Agreement by signing any such counterpart.

Section 12.10 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State, including, but not limited to, the Governmental Immunity Act of Utah, Title 63G, Chapter 7, Utah Code Annotated 1953, as amended, and the Governmental Records Access and Management Act, Title 63G, Chapter 2, Utah Code Annotated 1953, as amended.

Section 12.11 Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 12.12 Entire Agreement. This Agreement, the Deed of Trust the Arbitrage and Tax Certificate and the exhibits hereto and thereto constitute the entire agreement among Lender, Issuer and Borrower. There are no understandings, agreements, representations or warranties, express or implied, not specified herein or in such documents regarding this Agreement or the Property financed hereby.

Section 12.13 Usury. It is the intention of the parties hereto to comply with any applicable usury laws; accordingly, it is agreed that, notwithstanding any provisions to the contrary in this Agreement, in no event shall this Agreement require the payment or permit the collection of interest or any amount in the nature of interest or fees in excess of the maximum permitted by applicable law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in their respective corporate names by their duly authorized officers, all as of the date first written above.

**Lender:**

ZIONS FIRST NATIONAL BANK

By: \_\_\_\_\_

Title: \_\_\_\_\_

**Issuer:**

SALT LAKE CITY, UTAH

By: \_\_\_\_\_

Mayor

[SEAL]

ATTEST:

By: \_\_\_\_\_

City Recorder

**Borrower:**

THE MCGILLIS SCHOOL, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

EXHIBIT A

SCHEDULE OF LOAN PAYMENT DATES  
AND PRINCIPAL AMOUNTS

**Closing Date:** November 30, 2010

**Coupon Rate:** Initial Interest Rate of \_\_\_\_% per annum

**Issue Date:** November 30, 2010

**Prepayment Amount:** The Amount of principal outstanding on the Loan and the Bond at par, plus accrued interest to the date of prepayment, plus such other amounts required to be paid as set forth in Section 2.8 of the Loan Agreement.

**Payment Dates:**

Interest Payments Payable on the first day of each month, beginning \_\_\_\_\_; provided, however, that the interest rate on the Bond shall be adjusted on each Rate Begin Date as provided below).

Principal Payments Payable on the first day of each month, beginning \_\_\_\_\_, as described below (subject to adjustment for the "Total Principal Sum" actually advanced as described in the Loan Agreement and the Bond):

<u>Payment Date</u>	<u>Principal Amount</u>	<u>Interest</u>	<u>Total</u>
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\* Interest rate subject to adjustment as described in the Loan Agreement.

The Bond shall bear interest from the Issue Date to, but not including, the first Rate Begin Date at the rate of interest set forth above. On the Rate Begin Date, the interest rate on the Bond shall be adjusted to equal the Index Rate (rounded to the nearest one-hundredth of one percent). On the last Business Day which is at least twenty (20) days, but not more than 45 days prior to the Rate Begin Date, the Lender shall determine the Index Rate for the Rate Term commencing on the next Rate Begin Date and shall give notification to the Borrower (by telephone or facsimile transmission) of the rate so determined. Beginning on the Rate Begin Date, the interest rate on the Bond shall then be adjusted to equal such Index Rate.

EXHIBIT B

FORM OF OPINION OF COUNSEL TO ISSUER

(See Transcript Document No. \_\_)

EXHIBIT C

FORM OF OPINION OF COUNSEL TO BORROWER

(See Transcript Document No. \_\_)

EXHIBIT D

FORM OF OPINION OF BOND COUNSEL

(See Transcript Document No. \_\_)

EXHIBIT E  
FORM OF BOND

No.: R-1

\$ \_\_\_\_\_  
Salt Lake City, Utah  
Facility Revenue Bonds  
(McGillis School Project)  
Series 2010B

Maturity Date: \_\_\_\_\_

Issue Date: \_\_\_\_\_

SALT LAKE CITY, UTAH, a body politic and corporate duly created and validly existing under the laws of the State of Utah (hereafter referred to as "Issuer"), for value received, hereby promises to pay Zions First National Bank, Salt Lake City, Utah 84111, or to registered assigns, but solely from the Loan Payments hereinafter described:

The principal shall be payable in registered installments on the first day of each of the months as set forth in the Repayment Schedule attached as Schedule 1 hereto.

Interest shall accrue on the advanced but unpaid Principal Sum from the Issue Date at the initial interest rate of \_\_\_\_% per annum (subject to the Gross-Up Rate as described in the Loan Agreement and to the 18% delinquent rate of interest as described in the Loan Agreement).

The Bond shall bear interest from the Issue Date to, but not including \_\_\_\_\_ at the rate of \_\_\_\_% per annum. On each Rate Begin Date (as described in the Loan Agreement), the interest rate on the Bond shall be adjusted to equal the Index Rate (as described in the Loan Agreement) rounded to the nearest one-hundredth of one percent. On the last Business Day which is at least twenty (20) days but not more than 45 days prior to the Rate Begin Date, the Lender shall determine the Index Rate for the Rate Begin Date and shall give notification to the Borrower (by telephone or facsimile transmission) of the rate so determined. Beginning on the Rate Begin Date, the interest rate on the Bond shall then be adjusted to equal such Index Rate.

Such payments shall be made in any coin or currency of the United States of America which on the date of payment thereof is the legal tender for the payment of public and private debts, and all such payments of interest, principal or interest and principal to be payable at the time and place, in the amounts and in accordance with the terms set forth in that certain Loan Agreement dated as of November 1, 2010 (the "Loan Agreement") among Issuer, Zions First National Bank ("Lender") and The McGillis

School, Inc. (“Borrower”). All terms used herein in capitalized form and not otherwise defined herein shall have the meanings ascribed thereto in the Loan Agreement.

This Bond is payable as to principal and prepayment premium, if any, and interest solely from Loan Payments to be made by Borrower and is secured by, among other things, a lien on the Property financed pursuant to the Loan Agreement.

**This Bond shall not represent or constitute a debt or pledge of the faith and credit of Issuer, and this Bond is payable solely from the revenues pledged therefor pursuant to the Loan Agreement, and no moneys of Issuer raised by taxation shall be obligated or pledged for the payment of Loan Payments or any other amounts due under this Bond.**

**This Bond is a special limited obligation of Issuer and does not and shall not represent or constitute or give rise to a general obligation or liability of Issuer or a charge against the general credit or taxing power of Issuer, the State of Utah, or any political subdivision thereof. The debt service payments on the Bond will be payable solely from the revenues pledged and assigned to secure payment thereof by the Loan Agreement.**

This Bond is subject to prepayment upon the terms and conditions set forth in the Loan Agreement.

This Bond is issued pursuant to the Utah Industrial Facilities and Development Act Title 11, Chapter 17 Utah Code Annotated 1953, as amended (the “Act”).

It is hereby certified, recited and declared that all acts, conditions and things required to exist, to happen and to be performed precedent to and in the issuance of this Bond exist, have happened and have been performed in regular and due form and time as required by the Constitution and laws of the State of Utah applicable thereto (including the Act) and that the issuance of this Bond is in full compliance with all Constitutional and statutory limitations, provisions and restrictions.

Section 11-17-13, Utah Code Annotated 1953, as amended, contains a pledge and undertaking of the State of Utah that the State of Utah will not alter, impair or limit the rights vested in this Bond, the Loan Agreement or any of the documents contemplated hereby until the Bond, together with all interest thereon, has been fully paid and discharged and all obligations of the Issuer hereunder and under the Loan Agreement are fully performed. The Issuer gives no opinion nor makes any representation as to the enforceability of such pledge and undertaking.

IN WITNESS WHEREOF, SALT LAKE CITY, UTAH has issued this Bond and has caused the same to be signed by the signature of its authorized representatives this \_\_\_ day of \_\_\_\_\_, 2010.

SALT LAKE CITY, UTAH

By: \_\_\_\_\_  
Mayor

[SEAL]

ATTEST:

By: \_\_\_\_\_  
City Recorder

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned \_\_\_\_\_ (the "Transferor")  
hereby sells, assigns and transfers unto \_\_\_\_\_ (the "Transferee"):

\_\_\_\_\_  
(Social Security or Other Identifying Number of Assignee)

\_\_\_\_\_  
(Please Print or Typewrite Name and Address of Assignee)

the within Bond and all rights thereunder, and hereby irrevocably constitutes and  
appoints \_\_\_\_\_ as attorney to register the transfer of the within Bond on the books  
kept for registration of transfer thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

NOTICE: The signature on this assignment  
must correspond with the name(s) of the  
Registered owner as it appears upon the face  
of the within Bond in every particular  
without alteration or enlargement or any  
change whatsoever.

SIGNATURE GUARANTEED:

\_\_\_\_\_  
NOTICE: The signature(s) should be  
guaranteed by an eligible guarantor  
institution (banks, stockbrokers, savings and  
loan associations and credit unions with  
membership in an approved signature  
guarantee medallion program), pursuant to  
S.E.C. Rule 17Ad-15.

SCHEDULE 1  
REPAYMENT SCHEDULE

<u>Payment Date</u>	<u>Principal Amount</u>	<u>Interest</u>	<u>Total</u>
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\* Interest rate subject to adjustment as described in the Loan Agreement.

EXHIBIT F

LEGAL DESCRIPTION OF PROPERTY

That certain real property, located in Salt Lake County, State of Utah and more particularly described as follows:

EXHIBIT G

LIST OF PERMITTED EXCEPTIONS

EXHIBIT H

LIST OF TRADE NAMES

EXHIBIT I  
ENVIROCHECK REPORT

EXHIBIT J

FORM OF CERTIFICATE OF ACCEPTANCE

I, the undersigned, hereby certify that I am the duly qualified and acting \_\_\_\_\_ of The McGillis School, Inc. ("Borrower") and, with respect to the Loan Agreement dated as of November 1, 2010 (the "Agreement") by and among Borrower, Zions First National Bank ("Lender") and Salt Lake City, Utah ("Issuer"), that:

(a) The Project (as defined in the Agreement) has been constructed and equipped in accordance with Borrower's specifications and has been accepted by Borrower.

(b) Borrower has obtained for the Project insurance with respect to all risks required to be covered thereby pursuant to Section 7.10 of the Agreement.

(c) Attached to this Certificate of Acceptance are Vendor invoice(s) and/or bill(s) of sale relating to the Project and, if such invoices have been paid by Borrower, evidence of payment thereof and, if applicable, evidence of official intent to reimburse such payment as required by the Code (as defined in the Agreement).

(d) Borrower hereby directs Lender, on behalf of Issuer, to pay the Loan Proceeds (as defined in the Agreement) as follows:

(e) All of the representations and warranties of Borrower contained in the Agreement are true and correct as of the date hereof and no Default or Event of Default has occurred thereunder.

Dated: \_\_\_\_\_

THE MCGILLIS SCHOOL, INC.

Borrower:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT K

TITLE COMMITMENT

EXHIBIT L  
INVESTMENT POLICY