

RESOLUTION NO. 2010-10

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF TOOELE COUNTY, UTAH (THE "COUNTY") AUTHORIZING THE ISSUANCE AND SALE OF NOT MORE THAN \$12,000,000 AGGREGATE PRINCIPAL AMOUNT OF RECOVERY ZONE FACILITY REVENUE BONDS, SERIES 2011 (GROCERY STORE PROJECT) TO FINANCE THE COSTS OF THE ACQUISITION, CONSTRUCTION AND IMPROVEMENT OF FACILITIES FOR STANSBURY CROSSING L.L.C.; PROVIDING FOR THE PUBLICATION OF A NOTICE OF BONDS TO BE ISSUED AND A NOTICE OF PUBLIC HEARING; PROVIDING FOR THE RUNNING OF A CONTEST PERIOD; AND RELATED MATTERS.

WHEREAS, the County is authorized by the Utah Industrial Facilities and Development Act, Chapter 17, Title 11, Utah Code Annotated 1953, as amended, (the "Act") to issue revenue bonds for the purpose of defraying the cost of acquiring, constructing, equipping and furnishing land, buildings, facilities and improvements which are suitable for use for any business purposes and that title to or in such facilities may at all times remain in the Borrower and in such case the bonds of the County 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, there has been presented to the County at this meeting a request from Stansbury Crossing L.L.C. (the "Borrower"), asking the County to adopt a resolution authorizing the issuance and sale of the County's recovery zone facility revenue bonds, the proceeds of which will be used to finance and refinance expenditures incurred by the Borrower for the acquisition, construction, improvement, equipping and furnishing of facilities for use as a grocery store and retail buildings to be located in Tooele County, Utah (the "Project"); and

WHEREAS, the Bonds shall be special limited obligations of the County payable solely from and secured by revenues, rights, interests and collections pledged by the Borrower and shall not constitute nor give rise to a general obligation or liability (legal or equitable) of the County or of the State of Utah or of any subdivision thereof or a charge against either of their general credit or taxing power; and

WHEREAS, the County has determined that it would be in furtherance of the purposes of the County and the Act to issue not more than \$12,000,000 of its Recovery Zone Facility Revenue Bonds, Series 2011 (Grocery Store Project) (the "Bonds") for the purpose of financing the Project; and

WHEREAS, Section 11-17-16 of the Act provides for the publication of a Notice of Bonds to be Issued, and the County desires to publish such a notice at this time in compliance with the Act with respect to the Bonds and to give notice of a public hearing to be held by the County with respect to the Bonds; and

WHEREAS, the Bonds are expected to be issued pursuant to a Loan Agreement in substantially the form which was before the Board at the time of adoption of this Resolution:

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF TOOELE COUNTY, UTAH, AS FOLLOWS:

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

Section 2. All action heretofore taken (not inconsistent with the provisions of this Resolution), by the County and by the officers of the County directed toward the issuance of the Bonds are hereby ratified, approved and confirmed.

Section 3. In order to finance and refinance the acquisition, construction, improvement, equipping and furnishing of the Project with the resulting public benefits which will flow therefrom, the County hereby expresses its intent to finance certain qualified expenditures incurred with respect to the Project with proceeds of an issue of Bonds issued and sold pursuant to the provisions of the Act in a principal amount sufficient to pay the cost of financing and refinancing the Project, together with costs incident to the authorization, sale and issuance of the Bonds (to the extent permitted by law), the aggregate cost of the Project and the cost of authorization, sale and issuance of the Bonds being presently estimated not to exceed \$12,000,000. The Board hereby authorizes the issuance of the Bonds and declares its intention to issue the Bonds according to the provisions of this Resolution, the Loan Agreement in substantially the form attached hereto as Exhibit B, and a Final Bond Resolution, to be adopted at or about the time of the sale of the Bonds. In addition, the Board hereby expresses the intent of the County to reimburse qualified costs of the Project in accordance with the provisions of Treasury Regulation Section 1.150-2. Notwithstanding anything herein contained to the contrary the County shall have no liability to the Borrower or any other person for any costs or funds advanced if the Bonds are not issued.

Section 4. The County is expected to loan the proceeds of the Bonds to the Borrower pursuant to a Loan Agreement between the County, Zions First National Bank, or other approved lender (collectively, the "Bank") and the Borrower whereby the Borrower will be obligated, among other things, (i) to make payments to the Bank in amounts and at times sufficient to pay the principal of and premium, if any, and interest on all of the Bonds and (ii) to provide, or cause to be provided, collateral or other security to secure payment of the Bonds in such manner and in such amounts as the Bank, as purchaser of the Bonds, deems appropriate. The County has not authorized the pledge of its credit for the payment of the Bonds or the financing or refinancing of the Project.

Section 5. In accordance with provisions of the Act and in order to comply with Section 147(f) of the Internal Revenue Code of 1986, as amended, the County Clerk is hereby authorized to publish one (1) time in The Salt Lake Tribune, a newspaper of general circulation within the County, a "Notice of Bonds to be Issued and of Public Hearing" at least fourteen (14) days prior to December 28, 2010, the hearing date set forth in said Notice, and the Board will meet in public session on December 28, 2010 to receive public comment on the proposed issuance of Bonds. The County Clerk shall also cause a copy of this Resolution (together with all exhibits hereto) to be kept on file in her office in Tooele, Utah, for public examination during the regular business hours of the County until at least thirty (30) days from and after the

date of publication thereof. The Notice of Bonds to be Issued and of Public Hearing shall be in substantially the following form:

NOTICE OF BONDS TO BE ISSUED
AND OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN pursuant to the provisions of the Utah Industrial Facilities and Development Act, Title 11, Chapter 17, Utah Code Annotated 1953, as amended (the "Act"), that on November 30, 2010, the Board of County Commissioners (the "Board") of Tooele County, Utah (the "County") adopted a resolution (the "Resolution") in which it authorized the issuance of the County's Recovery Zone Facility Revenue Bonds, Series 2011 (Grocery Store Project) (the "Bonds") in the aggregate principal amount of not to exceed \$12,000,000. Pursuant to the Resolution, the County proposes to lend the proceeds of the Bonds to Stansbury Crossing L.L.C. (the "Owner") for the purpose of financing and refinancing the costs of the acquisition, construction, improvement, equipping and furnishing of an approximately 85,000 square-foot grocery store and related retail buildings (the "Project"), to be located at approximately the southwest corner of the intersection of Highway 36 and Highway 138, Tooele County, Utah, to be owned and used by the Owner as retail buildings.

NOTICE IS FURTHER GIVEN that, in connection with the County's proposed issuance of the Bonds, the County will meet on Tuesday, December 28, 2010 at 47 South Main Street, Tooele, Utah, at 3:00 p.m. for the purpose of conducting a public hearing. Interested individuals are invited to express their views, both orally and in writing, on the proposed issue of the Bonds and the location and nature of the Project. Comments at the public hearing are invited. Written comments may be submitted to the Board at its Board's office located at 47 South Main Street, Tooele, Utah, until 5:00 p.m. on December 27, 2010. Additional information may be obtained from the County at its office shown above or by calling (435) 843-3150. Subsequent to the hearing, the Board will consider approving the Bonds for the Project.

The County is authorized to issue the Bonds pursuant to the Act. The Bonds will be special limited obligations of the County payable solely from amounts provided by the Owner, including monies and securities held from time to time under a Loan Agreement under which the Bonds are expected to be issued (the "Loan Agreement"). The Bonds and the interest thereon will not be a debt of the County or of the State of Utah or any political subdivision, and neither the County nor the State of Utah or any political subdivision will be liable thereon, and in no event will the Bonds or the interest thereon be payable out of any funds or properties other than those of the County expressly provided therefor under the Loan Agreement. The Bonds will not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

The Bonds are to be issued and sold by the County pursuant to the Resolution, including as part of said Resolution a form of the Loan Agreement and said Loan Agreement shall contain such terms and provisions as shall be approved by the County at the time of adoption of a Final Bond Resolution. A copy of the Resolution and the Loan Agreement are on file in the office of the County Clerk of the County at 47 South Main Street, Tooele, Utah, where they may be examined during regular business hours of the County Clerk from 7:00 a.m. to 6:00 p.m., Monday through Thursday, for a period of at least thirty (30) days from and after the date of publication of this notice.

NOTICE IS FURTHER GIVEN that a period of thirty (30) days from and after the date of the publication of this notice is provided by law during which any person in interest shall have the right to contest the legality of the Resolution, the Loan Agreement, or the Bonds, or any provision made for the security and payment of the Bonds, and that after such time, no one shall have any cause of action to contest the regularity, formality or legality thereof for any cause whatsoever.

Date: November 30, 2010

TOOELE COUNTY, UTAH

/s/ Marilyn K. Gillette
County Clerk

Section 6. If any provisions of this resolution should be held invalid, the invalidity of such provision shall not affect the validity of any of the other provisions of this resolution.

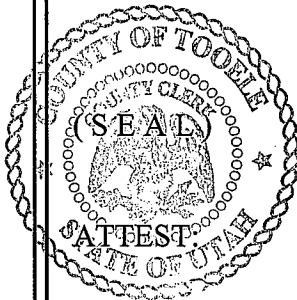
Section 7. No member of the Board or employee of the County has any interest, direct or indirect, in the transactions contemplated by the County as described herein.

Section 8. All resolutions of the County or parts thereof, inconsistent herewith, are hereby repealed to the extent only of such inconsistency.

Section 9. This resolution shall become effective immediately upon its adoption.

PASSED AND APPROVED BY THE BOARD OF COUNTY COMMISSIONERS OF TOOELE COUNTY, UTAH THIS 30TH DAY OF NOVEMBER, 2010.

Colleen S. Johnson
Chair



Marilyn K. Lulle
County Clerk

STATE OF UTAH)
 :SS.
COUNTY OF TOOELE)

I, Marilyn K. Gillette, the undersigned duly appointed, qualified and acting County Clerk of Tooele County, Utah (the "County"), do hereby certify:

1. The foregoing pages are a true, perfect and complete copy of a resolution duly adopted by the Board of County Commissioners (the "Board") of the County during proceedings of the Board of the County, had and taken at a lawful regular meeting of said Board held at the County offices in Tooele, Utah, on the 30th day of November, 2010, commencing at the hour of 3:00 p.m., as recorded in the regular official book of the proceedings of the County kept in my office, and said proceedings were duly had and taken as therein shown, and the meeting therein shown was duly held, and the persons therein were present at said meeting as therein shown.

2. All members of said Board of said County were duly notified of said meeting, pursuant to law.

3. There will be published one time in the Tooele Transcript Bulletin, a newspaper having general circulation in Tooele County, Utah, a Notice of Bonds to be Issued and of Public Hearing, the affidavit of which publication will, when available, be attached hereto.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said County this 30th day of November, 2010.

By: Marilyn K. Gillette
County Clerk

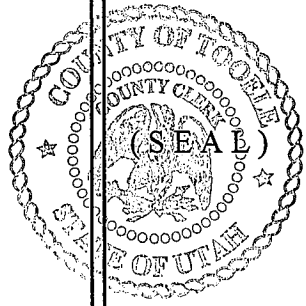


EXHIBIT A

CERTIFICATE OF COMPLIANCE WITH OPEN MEETING LAW

I, Marilyn K. Gillette, the undersigned County Clerk of Tooele County, Utah (the "County"), do hereby certify, according to the records of the County 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 30, 2010, public meeting held by the County's Board of County Commissioners, as follows:

(a) By causing a Notice, in the form attached hereto as Schedule 1, to be posted at the County's principal offices on November 23, 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;

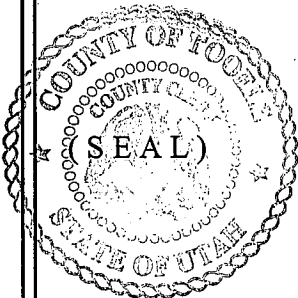
(b) By causing a copy of such Notice, in the form attached hereto as Schedule 1, to be delivered to the Tooele Transcript Bulletin on November 23, 2010, at least twenty-four (24) hours prior to the convening of the meeting; and

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

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

IN WITNESS WHEREOF, I have hereunto subscribed my official signature this 30th day of November, 2010.

By: Marilyn K. Gillette
County Clerk



SCHEDULE 1

SCHEDULE 2

EXHIBIT B

LOAN AGREEMENT

(See Transcript Document No. ___)

LOAN AGREEMENT

among

_____,
as Lender,

and

TOOELE COUNTY, UTAH,
as Issuer,

and

_____,
as Borrower

Dated as of _____ 1, 2010

This instrument constitutes a security agreement
under the Utah Uniform Commercial Code.

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LOAN AGREEMENT

Lender: _____

Telephone:
Telecopier:

Issuer: Tooele County, Utah
47 So. Main
Tooele, Utah 84074
Telephone: (435) 843-3150
Telecopier: (435) 843-3400

Borrower: Stansbury Crossing L.L.C.

Telephone:
Telecopier:

THIS LOAN AGREEMENT dated as of _____ 1, 2010 (this "Agreement"), among _____, as lender (with its successors and assigns, "Lender"), Tooele County, Utah, a body politic and corporate duly organized and validly existing under the laws of the state of Utah (the "State"), as issuer ("Issuer"), and Stansbury Crossing L.L.C., a [Utah limited liability company], as borrower ("Borrower").

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 industrial development 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 Borrower, Issuer proposes to finance all or a portion of the acquisition, improvement and construction of the Project (defined below) by Borrower pursuant to this Agreement by issuing an industrial development revenue bond and lending the proceeds thereof to Borrower; and

WHEREAS, pursuant to the American Recovery and Reinvestment Act of 2009 ("ARRA"), Tooele County, Utah (the "City"), has received an allocation in the amount of \$ _____ for Recovery Zone Facility Bonds ("Recovery Zone Facility Bonds"); and

WHEREAS, the Board of County Commissioners (the "Board") of the City has adopted Resolution No. _____ wherein the City designated the entire City, including the Issuer, as a recovery zone for purposes of ARRA; and

WHEREAS, ARRA provides that any portion of the Recovery Zone Facility Bond allocation received by the City may be reallocated in any reasonable manner as the City deems in good faith; and

WHEREAS, at the request of the Issuer, the City has allocated to the Issuer up to \$ _____ of the City's \$ _____ allocation for purposes of financing the Project as herein described located within the Issuer and the City; and

WHEREAS, a portion of the amount of total Recovery Zone Bond Allocation allocated to various cities and counties throughout the State have been transferred by said cities and counties to the State for reallocation and on _____, 2010, the Private Activity Bond Authority allocated to the Issuer an additional \$ _____ of said allocation to finance the Project; and

WHEREAS, Borrower proposes to borrow the proceeds of the Bond (defined below) upon the terms and conditions set forth herein to finance the Project Costs (defined below); 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 1.01 Definitions. The following terms used herein will have the meanings indicated below unless the context clearly requires otherwise:

“Agreement” means this 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.

“Bond” means Issuer’s \$ _____ Recovery Zone Facility Revenue Bonds (Grocery Store Project), Series 2010 in the form attached hereto as Exhibit E.

“Borrower” means _____, a [Utah limited liability company]. The Borrower is an affiliated entity of _____, a [Utah limited liability company].

“Borrower Documents” means, collectively, this Agreement, the Escrow Agreement, the Mortgage, the Environmental Indemnity Agreement, the Tax Matters Certificate, the Subordination Agreement and any other agreements, documents or certificates executed by Borrower in connection with the Loan contemplated by this Agreement.

“Business Day” means a day other than a Saturday or Sunday on which banks are generally open for business in New York, New York and Salt Lake City, Utah.

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

“Collateral” means (a) the Property, (b) all general intangibles, software intangibles and other property relating thereto, (c) all accessories, attachments, parts, equipment, and repairs now or hereafter attached or affixed or used in connection with any of the foregoing property, (d) all warehouse receipts, bills of lading and other documents of title now or hereafter covering any of the foregoing property, (e) all securities, funds, moneys, deposits and other property at any time held in or subject to the Escrow Fund, (f) all accessions thereto, (g) all substitutions for any of the foregoing property, and (h) products and proceeds of any of the foregoing property.

“Completion Date” means the earlier of (a) the first date on which (i) Borrower shall have received a certificate of occupancy from the Issuer with respect to the Project and (ii) _____ or its assigns have occupied the Project and are legally liable to make lease payments to Borrower, or (b) _____.

“Contractor” means any contractor, subcontractor, or seller of any portion of the Project, as well as the agents or dealers thereof.

“Contracts” means, collectively, all of Borrower’s contracts with Contractors of the Project.

“Costs of Issuance” means any costs, to the extent incurred in connection with, and allocable to, the issuance of an issue, including, without limitation, underwriter’s spread; 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.

“Damaged Collateral” means any portion of the Collateral that is lost, stolen, destroyed, or damaged beyond repair.

“Damaged Collateral Amount” means an amount equal to the product of (a) the then current Prepayment Amount and (b) a percentage equal to the original appraised value of the Damaged Collateral divided by the original appraised value of all of the Collateral.

“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 Project within the meaning of Treas. Reg. § 1.141-2(d), the failure to receive an unqualified 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 Indemnity Agreement” means the Environmental Indemnity Agreement regarding Hazardous Substances dated as of _____ 1, 2010, executed by Borrower and Guarantor for the benefit of Lender and as hereafter modified or amended.

“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.

“Escrow Agent” means _____, Corporate Trust Offices, as escrow agent under the Escrow Agreement, and its successors and assigns permitted under the Escrow Agreement.

“Escrow Agreement” means the Escrow Agreement dated as of _____ 1, 2010, among Lender, Issuer, Borrower, and Escrow Agent.

“Escrow Fund” means the fund established and held by Escrow Agent pursuant to the Escrow Agreement.

“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 Project or any misrepresentation or inaccuracy in any of the representations, warranties or covenants contained in this Agreement, the Mortgage or the Tax Matters Certificate by Issuer or Borrower, 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 or for any other reason, the Interest is or becomes includable in Lender’s gross income.

“Exempt Facility Bonds” means bonds issued to finance exempt facilities as defined in the Code or industrial development bonds as defined in Section 103(b)(2) of the Internal Revenue Code of 1954.

“Final Appraiser” means the appraisal required by Section 2.09 hereof conducted by a MAI certified appraiser chosen and engaged by Lender.

“Final Appraisal Amount” means the appraised amount described in the Final Appraisal.

“GAAP” means generally accepted accounting principles applied on a consistent basis.

“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.

“Guarantors” means collectively, _____, as individuals.

“Guaranty Agreement” means collectively, each Guaranty and Negative Pledge Agreement dated as of _____ 1, 2010, executed by Guarantors.

“Guarantor Documents” means the Guaranty Agreement and the Environmental Indemnity Agreement and any other agreements, documents or certificates executed by Guarantors in connection with the Loan contemplated by this Agreement.

“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.

“Index Rate” means a rate equal to the 5-year LIBOR Rate plus 3.0%.

“Initial Interest Rate” means a rate equal to the 90-day LIBOR Rate adjusted for each 90-day interval beginning _____, 2011, plus 3.0%, but in no event shall the Initial Interest Rate be less than 5.0% per annum.

“Interest” means the portion of any payment from Issuer to Lender designated as and comprising interest as shown in Exhibit A hereto.

“Interest Rate Adjustment Date” means the Completion Date and each fifth anniversary date thereafter until the Bonds are paid in full.

“Issuer” means Tooele County, Utah, acting as issuer under this Agreement.

“Lender” means (a) _____, acting as lender under this Agreement, (b) any surviving, resulting or transferee corporation of _____, and (c) except where the context requires otherwise, any assignee(s) of Lender.

“LIBOR Rate” means the rate per annum quoted by _____ as its 90-day LIBOR Rate or 5-year LIBOR Rate, as applicable, based upon quotes from the London Interbank Offered Rate from the British Bankers Association Interest Settlement Rates as quoted for United States Dollars by Bloomberg or other comparable services selected by _____. This definition of “LIBOR Rate” is to be strictly interpreted and is not intended to serve any purposes other than providing an index to determine the interest rate used herein. It is not the lowest rate at which _____ may make loans to any of its customers, either now or in the future.

“Lien” means any security interest, mortgage, pledge, hypothecation, assignment, lien, charge, encumbrance or claim against or interest in property of any kind or nature whatsoever.

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

“Loan Payments” means the loan payments payable by Borrower pursuant to the provisions of this Agreement and the Bond 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 and holder of the Bond, in the amounts and at the times as set forth in Exhibit A hereto.

“Loan Proceeds” means the total amount of money to be paid pursuant to Section 2.02 hereof by Lender to Escrow Agent for deposit and application in accordance with the Escrow Agreement.

“LTV Amount” means the least of (a) \$ _____, (b) seventy-five percent (75%) of the cost of the Premises and Improvements, and (c) the product of (i) seventy-five percent (75%) and (ii) the Final Appraisal Amount.

“Mortgage” means the Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of the date hereof executed by Borrower for the benefit of Lender, relating to the Property.

“Optional Tender Date” means _____.

“Permitted Exceptions” means the permitted exceptions set forth in Exhibit B to the Mortgage.

“Prepayment Amount” means the amount which Borrower may or must from time to time pay or cause to be paid to Lender as assignee of Issuer and holder of the Bond in order to prepay the Loan and the Bond, as provided in Section 2.08 hereof, such amounts being set forth in Exhibit A hereto, together with accrued interest and all other amounts due hereunder.

“Principal” means the portion of any Loan Payment designated as principal in Exhibit A hereto.

“Principal User” shall mean, with respect to any facility, a “principal user” as such term is used in Section 144(a) of the Code, including, without limiting the generality of the foregoing, (a) any person whose ownership interest in such facility exceeds ten percent (10%) or, if no ownership interest in such facility exceeds ten percent (10%), any person (or persons, in the case of multiple equal owners) holding the largest ownership interest in such facility, (b) any person who leases more than ten percent (10%) of such facility under a lease with a term (taking into account all options to renew and reasonably anticipated renewals) of more than one year, and (c) any person who enjoys the use of such facility in a degree comparable to the enjoyment of a person described in clauses (a) and (b); for purposes of determining the extent of a person’s ownership interest, lease interest, lease term, and degree of enjoyment of a facility, the term “person” includes a person and all Related Persons with respect to such person.

“Project” means the acquisition and construction of a grocery store and retail buildings and related facilities and equipment to be located within the geographic boundaries of Issuer.

“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 _____.

“Project Costs” means the costs of the acquisition, improvement, construction, and equipping of the Project, including those paid or to be paid to any Contractor or reimbursed to Borrower for any portion thereof, and any administrative, engineering, legal, financial and other costs incurred by Lender, Issuer, Borrower, Escrow Agent or any Contractor in connection with the acquisition, construction and improvement and financing by Lender of such Project and costs of issuance that may be paid pursuant to the Tax Matters Certificate.

“Property” has the meaning assigned to such term in the Mortgage.

“Purchase Date” means the date on which Lender requires Borrower to purchase the Bond pursuant to Section 2.07 herein, but in no event earlier than six (6) months after the Optional Tender Date.

“Rehabilitation Expenditure” shall mean a “rehabilitation expenditure” as such term is defined in Section 147(d)(3) of the Code, including, without limiting the generality of the foregoing, a capital expenditure incurred in connection with the rehabilitation of a building or

structure which is part of the Project, if such expenditure is incurred by Borrower, the seller of such building to Borrower (if incurred pursuant to the sales contract between such seller and Borrower) or a successor to Borrower; provided, that:

(a) if an integrated operation is contained in such building or structure before its acquisition by Borrower, expenditures incurred to rehabilitate existing equipment or to replace existing equipment with equipment having substantially the same function is treated as incurred in connection with the rehabilitation of such building or structure; and

(b) notwithstanding the foregoing, the term "Rehabilitation Expenditure" does not include any expenditure:

(i) with respect to which the method and period of depreciation is other than the straight line method over a period determined under Section 168(c) or (g) of the Code, unless the alternative depreciation system of Section 168(g) of the Code applies to such expenditure by reason of Section 168(g)(1)(B) or (C) of the Code;

(ii) for the cost of acquiring any building or interest therein;

(iii) attributable to enlargement of an existing building;

(iv) attributable to the rehabilitation of a certified historic structure or a building in a registered historic district, unless either the rehabilitation is a certified rehabilitation or, with respect to a building other than a certified historic structure, the Secretary of the Interior has certified to the Secretary of the Treasury that the building is not of historic significance to the district (all terms used in this paragraph (iv) have the meanings assigned in Section 47(c)(2)(B) of the Code);

(v) allocable to the portion of such building which is, or may reasonably be expected to be, tax-exempt use property within the meaning of Section 168(h) of the Code; or

(vi) by a lessee of such building as provided in Section 47(c)(2)(B) of the Code.

"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.

"Small Issue Bonds" means bonds issued under the \$1,000,000 or \$10,000,000 limits imposed by Section 144(a) of the Code or Section 103 of the Internal Revenue Code of 1954.

"State" means the State of Utah.

“Subordination Agreement” means the Subordination, Attornment, and Lessee-Lessor Estoppel Agreement to be entered into between _____ and _____, or assigns, and as hereafter modified or amended.

“Tax Matters Certificate” means the Tax Matters Certificate dated _____, 2010, of Borrower and Issuer, as such Tax Matters Certificate may be amended from time to time in accordance with its terms.

“Terrorism Laws” means Executive Order 13224 issued by the President of the United States of America, the Terrorism Sanctions Regulations (Title 31 Part 595 of the U.S. Code of Federal Regulations), the Terrorism List Governments Sanctions Regulations (Title 31 Part 596 of the U.S. Code of Federal Regulations) and the Foreign Terrorist Organizations Sanctions Regulations (Title 31 Part 597 of the U.S. Code of Federal Regulations), and all other present and future federal, state and local laws, ordinances, regulations, policies and any other requirements of any governmental authority (including, without limitation, the United States Department of the Treasury Office of Foreign Assets Control) addressing, relating to, or attempting to eliminate, terrorist acts and acts of war, each as hereafter supplemented, amended or modified from time to time, and the present and future rules, regulations and guidance documents promulgated under any of the foregoing, or under similar laws, ordinances, regulations, policies or requirements of other states or localities.

“Test Period” means the three-year period beginning on the later of the date tax-exempt bonds are issued or the date the facilities financed by such tax-exempt bonds are placed in service.

“UCC” means the Uniform Commercial Code as adopted and in effect in the State.

[“Undersecured Amount” means the excess of (a) the Loan Proceeds over (b) the LTV Amount.]

Section 1.02 Exhibits. The following exhibits are attached hereto and made a part hereof:

Exhibit A: Schedule of Loan Payments setting forth the Loan Payments and Prepayment Amounts.

Exhibit B: Form of opinion of counsel to Borrower.

Exhibit C: Form of opinion of counsel to Issuer.

Exhibit D: Form of opinion of bond counsel.

Exhibit E: Form of Bond.

Section 1.03 Rules of Construction. (a) The singular form of any word used herein, including the terms defined in Section 1.01 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 subdivision 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 AND TERMS OF LOAN

Section 2.01 Construction of Project. Borrower shall acquire, improve, or construct the Project pursuant to one or more Contracts from one or more Contractors. Borrower shall remain liable to each Contractor in respect of its duties and obligations in accordance with each Contract and shall bear the risk of loss with respect to any loss or claim relating to any of the Project covered by any Contract, 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 such amounts as may be necessary to complete the improvement, construction, and acquisition 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, and acquisition.

Section 2.02 Loan. Lender hereby agrees, subject to the terms and conditions of this Agreement, to purchase the Bond at a price equal to \$ _____ representing the par amount of the Bond; Issuer hereby agrees, subject to the terms and conditions of this Agreement, to issue the Bond and to lend the proceeds thereof to Borrower; and Borrower hereby agrees to borrow such proceeds from Issuer. Upon fulfillment of the conditions set forth in Article III hereof, Lender shall deposit in incremental advances the Loan Proceeds in the Escrow Fund to be held, invested and disbursed as provided in the Escrow Agreement. Issuer's obligation to make payments on the Bond, and Borrower's obligation to repay the Loan, shall commence, and interest shall begin to accrue on each incremental advance, on the date that said advance is deposited in the Escrow Fund.

Section 2.03 Interest. The principal amount of the Bond and the Loan hereunder outstanding from time to time shall bear interest (computed on the basis of twelve 30-day months) at the Initial Interest Rate on each incremental advance from the date each such incremental advance is deposited in the Escrow Fund to the Completion Date. Thereafter, on the Completion Date (the initial Interest Rate Adjustment Date) and on each Interest Rate Adjustment Date thereafter, the interest payable 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 ten (10) days prior to each Interest Rate Adjustment Date, the Lender shall determine the Index Rate for the applicable Interest Rate Adjustment Date and shall give notification to the Issuer and the Borrower (by telephone or facsimile transmission), of the rate so determined. Beginning on each Interest Rate Adjustment Date, the interest rate on the Bond shall then be adjusted to equal the rate described above. In no event, however, shall the Bond bear interest at a rate exceeding _____ percent (____ %) per annum. Interest accruing on the principal balance of the Bond and the Loan outstanding from time to time shall be payable as provided in Exhibit A and in the Bond and upon earlier demand in accordance with the terms hereof or prepayment in accordance with the terms of the Bond and Section 2.08 hereof. 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. 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 2.04 Payments. Issuer shall pay the principal of, premium, if any in accordance with Section 2.08 hereof, and interest on the Bond, but only out of the amounts paid by Borrower pursuant to this Agreement. 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 (a) _____% per annum and (b) the delinquent amount of any Loan Payment not paid when due.] As security for its obligation to pay the principal of, premium, if any in accordance with Section 2.08 hereof, and interest on the Bond, Issuer assigns to Lender all of Issuer's right to receive Loan Payments from Borrower hereunder and all of Issuer's rights hereunder, 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 Collateral, and to withdraw or settle any claims, suits or proceedings pertaining to or arising out of this Agreement upon any terms. 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. 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. 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. No recourse shall be had by Lender or Borrower for any claim based on this Agreement, the Bond or the Tax Matters 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 person.

Section 2.05 Payment on Non-Business Days. Whenever any payment to be made hereunder or under the Bond 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.

Section 2.06 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 Project to be completed, any defects, malfunctions, breakdowns or infirmities in the Project or any accident, condemnation, destruction or unforeseen circumstances. Notwithstanding any dispute between Borrower and any of Issuer, Lender, any Contractor 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 2.07 Optional Tender.

(a) On the Optional Tender Date, Lender may deliver to the Issuer and Borrower an Optional Tender Notice that requires Borrower to purchase, in whole, the Outstanding Bond owned by Lender on such Optional Tender Date, on or before the Purchase Date specified by Lender in such Optional Tender Notice. An Optional Tender Notice, once delivered to the Issuer and Borrower, shall be irrevocable with respect to the Bond subject thereto.

(b) Borrower shall purchase or shall cause its designee to purchase such tendered Bond on the specified Purchase Date at a purchase price equal to one hundred percent (100%) of the outstanding aggregate unpaid principal amount of such Bond, together with accrued interest thereon to such Purchase Date. The sale of the Bond so tendered to Borrower or its designee will take place on the specified Purchase Date at such place in Salt Lake City, Utah, as Lender shall designate. On the Purchase Date, Borrower or its designee shall deliver to Lender such amounts as shall be necessary to pay the purchase price for the Bond to be purchased by Borrower or its designee, and Lender shall deliver such Bond registered in its name to the Borrower or its designee with the assignment of such Bond appropriately executed, against payment of the purchase price by Borrower or its designee in federal or other immediately available funds. The sale of the Bond shall be without recourse to Lender and without any warranties and representations, express or implied, by Lender except that Lender shall warrant its authority to make the transfer of its title to the Bond sold by it, shall warrant such title is not encumbered or subject to the interest of any other person, and shall indemnify and hold harmless the Issuer against all costs and expenses (including, without limitation, attorneys' fees) incurred as a result of the claim of any other persons to title to the Bond immediately prior to the sale. Borrower's failure to purchase the Bond tendered pursuant to this Section on the specified Purchase Date shall constitute an Event of Default, and the non-purchased, but tendered, Bond shall accrue interest from such Purchase Date until paid in full, plus a late charge on the unpaid principal balance on the Bond as set forth in Section 11.04 hereof.

Section 2.08 Prepayments.

(a) Borrower may, in its discretion, prepay the Loan and the Bond in whole at any time by paying the remaining principal balance of the Loan and the Bond in an amount equal to the prepaid principal amount times the difference between: (i) the "Current LIBOR" and (ii) the "Original LIBOR" times the number of years and fractional years remaining until the earlier of maturity or the next Interest Rate Adjustment Date except that: (A) no prepayment fee shall be required if the "Current LIBOR" is greater than the "Original LIBOR" and (B) up to ten percent (10%), non cumulative, of the original amount of this Loan and Bond may be prepaid in any year without payment of any prepayment fee.

(i) "Current LIBOR" is defined as the LIBOR Rate in effect on the date of the prepayment for a term equal to the time to the earlier of maturity or the next Interest Rate Adjustment Date.

(ii) "Original LIBOR" is defined as the LIBOR Rate in effect on the more recent of the date the Loan was made or most recent Interest Rate Adjustment Date for a term equal to the time to the earlier of maturity or the next Interest Rate Adjustment Date.

(b) Borrower agrees that any prepayment shall be made to Lender in the form of cash or equivalent prior to 3:00 p.m. MST to facilitate investment of such prepayment funds for account of Lender. In the event this deadline is not met, interest will continue to accrue on the unpaid principal on the Note at the rate specified herein through and including Lender's next regular banking day.

(c) Borrower shall prepay the Loan and the Bond in whole or in part at any time pursuant to Sections 9.01 and 9.02 hereto by paying the applicable Damaged Collateral Amount.

(d) Borrower shall prepay the Loan and the Bond in full immediately upon demand of Lender after the occurrence of an Event of Default by paying the applicable Prepayment Amount. A portion of such prepayment may be made with funds remaining in the Escrow Fund pursuant to the Escrow Agreement.

(e) Borrower shall prepay the Loan and the Bond 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.

(f) On and after _____, 2015, Borrower shall prepay a portion of the Loan and the Bond if the debt coverage ratio falls below 1.30:1.0. The amount of the prepayment shall be an amount sufficient to insure that the debt coverage ratio shall be not less than 1.30:1.0 as calculated by Lender upon said prepayment.

(g) [If required pursuant to Section 2.09 hereof, Borrower shall prepay the Loan in part in the amount of the Undersecured Amount.]

Upon any prepayment in part of the Loan, the prepayment shall be applied to the Loan Payments and any other amounts due hereunder as determined by Lender.

Section 2.09 Final Appraisal. Upon completion of the acquisition, construction, and improvement of the Project and before any disbursement of the Loan Proceeds from the Escrow Fund, but in no event later than _____, Borrower shall provide to Lender the Final Appraisal. Borrower shall reimburse Lender for the cost of the Final Appraisal. Upon receipt of the Final Appraisal, if an Undersecured Amount exists, Borrower shall prepay in part, the Loan in the amount of the Undersecured Amount.

Section 2.10 Security. The obligations of Borrower to make the Loan Payments and to make any other payments required hereunder or under any other Borrower Document and to perform or observe the covenants and agreements contained herein and in all other Borrower Documents shall be secured by, among other things, a lien on the Collateral pursuant to this

Agreement and the Mortgage and by certain other documents executed and delivered in connection herewith.

ARTICLE III

CONDITIONS PRECEDENT

Section 3.01 Conditions of Closing. Lender's agreement to purchase the Bond and to disburse the Loan Proceeds shall be subject to the condition precedent that Lender shall have received all of the following, each in form and substance satisfactory to Lender:

- (a) This Agreement, properly executed on behalf of Issuer and Borrower, and each of the Exhibits hereto properly completed.
- (b) The Bond, properly executed on behalf of Issuer.
- (c) The Tax Matters Certificate, properly executed on behalf of Issuer and Borrower.
- (d) The Escrow Agreement, properly executed on behalf of Issuer, Borrower, and Escrow Agent.
- (e) The Mortgage, properly executed on behalf of Borrower.
- (f) The Environmental Indemnity Agreement, properly executed on behalf of Borrower.
- (g) The Guaranty Agreement, properly executed on behalf of Guarantors.
- (h) A certificate of the Secretary or an Assistant Secretary of Borrower, certifying as to (i) the consent of the managers and, if required, the members of Borrower, authorizing the execution, delivery and performance of the Borrower Documents, (ii) the operating agreement of Borrower, and (iii) the signatures of the officers or agents of Borrower authorized to execute and deliver the Borrower Documents on behalf of Borrower.
- (i) Currently certified copies of the Articles of Organization of Borrower.
- (j) A Certificate of Good Standing issued as to Borrower by the Secretary of State of Utah not more than twenty (20) days prior to the date hereof.
- (k) A completed and executed Form 8038 or evidence of filing thereof with the Secretary of Treasury.
- (l) A resolution or evidence of other official action taken by or on behalf of Issuer to authorize the transactions contemplated hereby.
- (m) Evidence that the issuance of the Bond for the purpose of financing of the Project has been approved by the "applicable elected representative" after a public hearing held upon reasonable notice.

(n) Financing statements authorized by Borrower, as debtor, and naming Lender as secured party, and/or the original certificate of title or manufacturer's certificate of origin and title application if any of the Collateral is subject to certificate of title laws.

(o) Financing statements authorized by Issuer, as debtor, and naming Lender, as secured party.

(p) An environmental engineering report for the Property prepared by an engineer engaged by Lender after consultation with Borrower and at Borrower's expense, which environmental engineering report shall be in form and substance acceptable to Lender.

(q) An opinion of counsel to Borrower and Guarantors, addressed to Lender and Issuer, in the form attached hereto as Exhibit B or such other form acceptable to Lender.

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

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

(t) Payment of Lender's fees, commissions and expenses required by Section 12.01 hereof.

(u) Payment of Issuer's fees, commissions, and expenses incurred in connection with this Agreement and the transactions contemplated hereby.

(v) An executed and full completion guarantee that warrants a lien-free and timely completion of the Project pursuant to the plans and specifications and construction budget for the Project.

(w) Borrower shall submit to Lender executed settlement statements for land acquisition as well as invoices and cancelled checks for costs of the Project totaling, in the aggregate not less than \$ _____ which represents Borrower's equity in the Project.

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

Section 3.02 Conditions of Disbursement. In addition to the requirements set forth in Section 3.01 hereof and provided that the representations and warranties contained in Articles IV and V hereof are correct on and as of the date of such disbursement as though made on and as of such date, except to the extent that such representations and warranties relate solely to an earlier date, and no Default or Event of Default has occurred hereunder, Lender's agreement to authorize any disbursement from the Escrow Fund 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) Each of the items required for a disbursement pursuant to the Escrow Agreement.

(b) Contractor invoice(s) 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.

(c) Certificates of the insurance required hereunder, containing a lender's loss payable clause or endorsement in favor of Lender,

(d) An ALTA (or equivalent) mortgagee policy of title insurance in the amount of the Loan or as determined by 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 Mortgage is a first-priority lien on the Property. Without limitation, such policy shall (i) be in the 1970 ALTA (as amended 84) form or, if not available, ALTA 1992 form (deleting arbitration and creditors' rights, if permissible) or, if not available, the form commonly used in the State, insuring Lender and its successors and assigns; and (ii) include the following endorsements and/or affirmative coverages: (A) ALTA 9 Comprehensive, (B) Survey, (C) Access, (D) Environmental Protection Lien, (E) Subdivision, (F) Contiguity (as applicable), (G) Tax Parcel, (H) Address and Improvement, (I) Usury, (J) Tax Sale (as applicable), (K) Doing Business, (L) First Loss, and (M) Last Dollar.

(e) A zoning compliance letter from the applicable City Planner's, County Clerk's, or Zoning Department's office. Without limitation, such zoning compliance letter shall (i) provide the zoning classification code for the Property, (ii) be addressed to Borrower and Lender, (iii) include the address of the Property, (iv) describe the type(s) of permitted use of the Property, and (v) include an expiration-dated copy of conditions or restrictions of use. If the applicable governmental agency does not, or is unwilling to, provide the required zoning compliance letter, Lender will require an ALTA 3.1 Zoning Endorsement (with additional coverage for number and type of parking spaces) to the mortgagee policy of title insurance.

Upon completion of the Project, Borrower shall provide to Lender the following, each in form and substance satisfactory to Lender

(i) The final, permanent, and unconditional certificate of occupancy for the Property.

(ii) An engineer's "walk-through" inspection prepared by an engineer acceptable to Lender at Borrower's expense, in form and substance acceptable to Lender.

(iii) A Final Appraisal of the Property addressed to Lender, in form and substance acceptable to Lender and prepared by an MAI certified appraiser acceptable to Lender in conformance with the guidelines and recommendations set forth in the Uniform Standards of Professional Appraisal Practice (USPAP) and the requirements of the Code of Professional Ethics and Standards of

Professional Appraisal Practice of the Appraisal Institute. In addition to the foregoing requirements, if the income approach is utilized by the appraiser, the report shall include a direct capitalization analysis as well as a discounted cash flow analysis and a final estimate of value based on the Property's fee simple estate.

(iv) Current searches of appropriate filing offices showing that (i) no state or federal tax liens have been filed and remain in effect against Borrower, (ii) no financing statements have been filed and remain in effect against Borrower relating to the Collateral except those financing statements filed by Lender, and (iii) all financing statements necessary to perfect the lien on the Collateral have been filed.

(v) A lease agreement between Borrower and

(vi) The Subordination Agreement.

(vii) Any other documents and items required by Lender.

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.

(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 Escrow Agreement, the Tax Matters 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, the Escrow Agreement and the Tax Matters 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, the Escrow Agreement and the Tax Matters 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, the Escrow Agreement, and the Tax Matters Certificate the valid and binding obligation of Issuer.

(e) The officer of Issuer executing the Bond, this Agreement, the Escrow Agreement, the Tax Matters Certificate and any related documents has been duly authorized to issue the Bond and to execute and deliver this Agreement, the Escrow Agreement and the Tax Matters 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, this Agreement, the Escrow Agreement and the Tax Matters Certificate are legal, valid and binding 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 7.07 hereof and notice to Issuer pursuant to Section 12.03 hereof).

(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, the Escrow Agreement or the Tax Matters Certificate, the consummation of the transactions contemplated hereby or the fulfillment of or compliance with the terms and conditions of the Bond, this Agreement, the Escrow Agreement or the Tax Matters 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) 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 Issuer's knowledge, threatened against or affecting Issuer, challenging Issuer's authority to issue the Bond or to enter into this Agreement, the Escrow Agreement or the Tax Matters Certificate or any other action wherein an unfavorable ruling or finding would adversely affect the enforceability of the Bond, this Agreement, the Escrow Agreement or the Tax Matters Certificate or any other transaction of Issuer which is similar hereto, or the excludability 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 Tax Matters Certificate, and Issuer will not take any action, or omit to take any action, which, if taken or omitted, respectively, would violate the Tax Matters 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.

(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 by alleviating unemployment and by maintaining employment at a high level and creating and developing business opportunities in the State of Utah and within Issuer, 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) The Issuer has been allocated Recovery Zone Facility Bond volume allocation of (i) up to \$ _____ by Tooele County, Utah, pursuant to a Resolution approved _____, 2010 (the "Allocation Resolution"), and (ii) \$ _____ by the Private Activity Bond Authority Board of the State of Utah as evidenced by a Certificate of Allocation for purposes of financing the Project. A copy of the Allocation Resolution and Certificate of Allocation are attached hereto as Exhibit. The Project is allocated within the jurisdiction of the City and the Issuer. Issuer will simultaneously with the issuance of the Bond deliver an allocation report to the State of Utah Private Activity Bond Review Board.

(p) The Bond has been approved by the Issuer's Board of County Commissioners (i) as the "applicable elected representative," as that term is defined under the Code, after a public hearing held upon reasonable notice, as required by the Code and (ii) as required by the Act.

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

(r) 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 limited liability company duly organized, validly existing and in good standing under the laws of the State of Utah, has power to enter into the Borrower Documents and by proper action has duly authorized the execution and delivery of the Borrower Documents. Borrower is in good standing and is duly licensed or qualified to transact business in the State and in all jurisdictions where the character of the property owned or leased or the nature of the business transacted by it makes such licensing or qualification necessary. Borrower's exact legal name is as set forth on the execution page hereof.

(b) Borrower has been fully authorized to execute and deliver the Borrower Documents under the terms and provisions of the consent of its managers, 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 Borrower Documents and the Borrower Documents have been duly authorized, executed and delivered.

(c) The officer of Borrower executing the Borrower Documents has been duly authorized to execute and deliver the Borrower Documents under the terms and provisions of a consent of Borrower's managers.

(d) The Borrower Documents 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 and general principles of equity.

(e) The execution and delivery of the Borrower Documents, the consummation of the transactions contemplated hereby and the fulfillment of the terms and conditions hereof do not and will not violate any law, rule, regulation or order, conflict with or result in a breach of any of the terms or conditions of the articles of organization or operating agreement of Borrower or of any 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, which action with respect to this Agreement has not been taken and which 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 the Borrower Documents or any other action wherein an unfavorable ruling or finding would adversely affect the enforceability of the Borrower Documents 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 could reasonably be expected to cause a material adverse effect on the financial condition, operations, business or prospects of Borrower.

(h) The Property 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 Collateral.

(i) Borrower has furnished to Lender the Report (as defined in the Environmental Indemnity Agreement). Except as disclosed to Lender 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 (as such term is defined in the Mortgage), 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.

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

(k) 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.

(l) 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.

(m) 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.

(n) Borrower has authorized Lender to file financing statements, and such financing statements when filed will be sufficient to perfect the security interest created pursuant to this Agreement. When such financing statements are filed in the offices noted therein, Lender will have a valid and perfected security interest in the Collateral, subject to no other Lien. None of the Collateral constitutes a replacement of, substitution for or accessory to any property of Borrower subject to a Lien. Borrower owns the Collateral subject to no Liens except for the Liens created hereby and by the Mortgage and the Permitted Exceptions.

(o) 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.

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

(q) No person other than Borrower and _____, is in occupancy or possession of any portion of the Property or the Project.

(r) Neither Borrower nor any individual or entity owning directly or indirectly any interest in Borrower is an individual or entity whose property or interests are subject to being "blocked" under any of the Terrorism Laws or is otherwise in violation of any of the Terrorism Laws.

(s) The Project will promote the stimulation of economic growth, development of enterprises, and the employment and the health, safety, and general welfare of the residents of the State of Utah by promoting the continuation and expansion of gainful employment opportunities for such residents 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.

(t) 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.

ARTICLE VI

TITLE TO COLLATERAL; SECURITY INTEREST

Section 6.01 Title to Collateral. Borrower shall have good, marketable, and insurable title in fee simple to all Collateral that is real property, and good title to all other Collateral. Borrower will at all times protect and defend, at its own cost and expense, such title from and against all Liens and legal processes of creditors of Borrower, and keep all Collateral free and clear of all such Liens and processes other than Liens created hereby and by the Mortgage and the Permitted Exceptions.

Section 6.02 Security Interest in Collateral. This Agreement is intended to constitute a security agreement within the meaning of the UCC. As security for Borrower's payment to Lender, as assignee of Issuer, of Loan Payments and all other amounts payable to Lender hereunder, Borrower hereby grants to Lender a security interest constituting a first lien on the Collateral. To the extent that the same entity (or an affiliate thereof) is the lender under this Agreement and under any other document or agreement with Borrower, the security interest in the Collateral shall secure all of Borrower's obligations under all such agreements, but shall not secure Borrower's obligations under any such agreements under which a different entity is the lender. Borrower ratifies its previous authorization for Lender to pre-file UCC financing statements and any amendments thereto describing the Collateral and containing any other information required by the applicable UCC. Borrower authorizes Lender and hereby grants Lender a power of attorney (which is coupled with an interest), to file financing statements and amendments thereto describing the Collateral and containing any other information required by the applicable UCC and all proper terminations of the filings of other secured parties with respect to the Collateral, in such form and substance as Lender, in its sole discretion, may determine. Borrower agrees to execute such additional documents, including demands for terminations, 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 Section, 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. Borrower hereby waives any right that Borrower may have to file with the applicable filing officer any financing statement, amendment, termination or other record pertaining to the Collateral.

Section 6.03 Change in Name or Corporate Structure of Borrower; Change in Location of Borrower's Chief Executive Office or Principal Executive Office. Borrower's chief executive office and principal executive office are located at the address set forth above, and all of Borrower's records relating to its business and the Collateral 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, chief executive office or principal executive office or change or proposed change in the location of the Collateral. Such notice shall be provided thirty days in advance of the date that such change or proposed change is planned to take effect.

Section 6.04 Liens. Borrower shall not, directly or indirectly, create, incur, assume, or suffer to exist any Lien on or with respect to the Collateral except for the Lien created hereby or

by the Mortgage and the Permitted Exceptions. 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.

Section 6.05 Assignment of Insurance. As additional security for the payment and performance of Borrower's obligations hereunder, Borrower hereby assigns to Lender any and all moneys (including, without limitation, proceeds of insurance and refunds of unearned premiums) due or to become due under, and all other rights of Borrower with respect to, any and all policies of insurance now or at any time hereafter covering the Collateral or any evidence thereof or any business records or valuable papers pertaining thereto, and Borrower hereby directs the issuer of any such policy to pay all such moneys directly to Lender. Borrower hereby assigns to Lender, as assignee of Issuer, any and all moneys due or to become due with respect to any condemnation proceeding affecting the Collateral. At any time, whether before or after the occurrence of any Event of Default, Lender may (but need not), in Lender's name or in Borrower's name, execute and deliver proof of claim, receive all such moneys, endorse checks and other instruments representing payment of such moneys, and adjust, litigate, compromise or release any claim against the issuer of any such policy or party in any condemnation proceeding.

Section 6.06 [Subdivision]. Borrower shall have the unilateral right to cause a portion of the land (the "Subdivided Parcel") to be subdivided from the Property (the "Subdivision"), so long as (a) no Default or Event of Default shall have occurred and be continuing hereunder, (b) all improvements financed with the Bond are located on the remaining property, and (c) Borrower shall have provided Lender with the following items, in form and substance acceptable to Lender:

(a) A plat of the Property showing the proposed Subdivision and Subdivided Parcel, which plat shall comply with all applicable laws and be properly certified, executed and recorded in the real estate records of Tooele County, Utah;

(b) An ALTA survey of the Property, which survey shall provide the new legal description for the Property as subdivided;

(c) Evidence of all easements over the Subdivided Parcel necessary or appropriate to provide (i) parking spaces in order to meet any applicable zoning laws, ordinances and regulations and (ii) access to the Property (collectively, the "Easements");

(d) An amendment to the Mortgage (the "Amendment") reflecting the new legal description of the Property, after the completion of the Subdivision, which description shall include a description of the Easements, which Amendment shall be properly recorded in the real estate records of Tooele County, Utah;

(e) A new title insurance policy or a date-down endorsement to Lender's current title insurance policy showing no additional exceptions or encumbrances other than those previously consented to by Lender, and such other customarily required title endorsements (including subdivision and separate tax parcel) insuring title to the Property, as subdivided, the Easements and the gap period from the date title was last examined;

(f) A new zoning endorsement to Lender's existing title policy or customarily acceptable evidence issued by the appropriate governing authority to the effect that upon completion of the Subdivision, the Property complies with all applicable zoning laws, ordinances and regulations;

(g) Evidence issued by the appropriate governing authority to the effect that upon completion of the Subdivision, the Property constitutes a separate tax parcel or parcels which does or do not include any other property, and, if necessary, the assessor's office for Tooele County, Utah shall have assigned a new tax identification number or numbers to the Property;

(h) Evidence issued by the appropriate governing authority to the effect that the Subdivision has been approved by the applicable governing body(ies) of Tooele County, Utah and complies with all requirements of Salt Lake County's subdivision act and all other state and local laws and ordinances applicable to the Subdivision;

(i) An appraisal of the remaining Property addressed to Lender, prepared by an MAI certified appraiser acceptable to Lender in conformance with the guidelines and recommendations set forth in the Uniform Standards of Professional Appraisal Practice (USPAP) and the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute, which appraisal indicates that 80% of then fair market value of such Property does not exceed the then outstanding principal balance of the Bond; and

(j) Such other approvals, items, and documentation required by Lender.

Borrower shall pay all out-of-pocket costs and expenses incurred by Lender (including, without limitation, Lender's reasonable attorneys' fees and disbursements) in connection with the Subdivision.

Upon satisfaction of the conditions set forth in this Section, Lender shall release the Subdivided Parcel from the lien of the Mortgage.]

ARTICLE VII

AFFIRMATIVE COVENANTS OF BORROWER

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

Section 7.01 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 financial statements of Borrower with the unqualified opinion of independent certified public accountants selected by Borrower and, in the event of a change in its certified public accountant, acceptable to Lender, which annual financial statements shall include the balance sheet of Borrower as at the end of such fiscal year and the related statements of income, retained earnings and cash flows of Borrower for the fiscal year then ended, all in reasonable detail and prepared in accordance with GAAP, together with a report signed by such accountants stating that in making the investigations necessary for said opinion they obtained no knowledge, except as specifically stated, of any Default or Event of Default hereunder and all relevant facts in reasonable detail to evidence, and a certificate of the chief financial officer of Borrower stating that such financial statements have been prepared in accordance with GAAP and whether or not such officer has knowledge of the occurrence of any Default or Event of Default hereunder and, if so, stating in reasonable detail the facts with respect thereto;

(b) (i) on or before May 1 of each year personal financial statements of each of the Guarantors and (ii) the tax returns of Borrower and each Guarantor within thirty (30) days of filing such returns;

(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 or Guarantors in excess of \$ _____;

(d) as promptly as practicable (but in any event not later than five Business Days) after the President, Executive Vice President or any Senior Vice President 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 loss or destruction of or damage to any Collateral in excess of \$ _____ in the aggregate or of any material adverse change in any Collateral;

(f) promptly after the amending thereof; copies of any and all amendments to its certificate of organization, articles of organization or operating agreement;

(g) promptly upon knowledge thereof, notice of any violation by Borrower of any law, rule or regulation, the noncompliance with which could reasonably be expected to cause a material adverse effect on its financial condition, operations, business or prospects;

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

(i) promptly upon receipt thereof, a copy of any notice of audit from the Internal Revenue Service;

(j) on each _____ 1, beginning _____ 1, _____, through _____ 1, _____, documentation showing the ratio of revenues generated from the Project and received by Borrower during the prior year to the debt service payable in the Bond for the same time period.

Section 7.02 Books and Records; Inspection and Examination. Borrower will keep accurate books of record and account for itself pertaining to the Collateral 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 GAAP 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 affairs of Borrower with any of its directors, officers, employees or agents. 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 Collateral at any time during Borrower's business hours.

Section 7.03 Compliance with Laws. Borrower will (a) comply with the requirements of applicable laws and regulations, the noncompliance with which could reasonably be expected to cause a material adverse effect on its financial condition, operations, business or prospects and (b) use and keep the Collateral, and will require that others use and keep the Collateral, 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 Collateral. Borrower shall comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each portion of the Collateral) with all laws of the jurisdictions in which its operations involving any portion of the Collateral may extend and of any legislative, executive, administrative or judicial body exercising any power or jurisdiction over any portion of the Collateral or its interest or rights under this Agreement.

Section 7.04 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 (to the extent caused or controlled by Borrower) any adjacent property, or

incorporated in any Improvements, at Borrower's expense. In the event that Lender at any time 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 they deem advisable to protect their 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 Mortgage 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 Mortgage 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 7.05 Payment of Taxes and Other Claims. Borrower will pay or discharge, when due, (a) all taxes, assessments and governmental charges levied or imposed upon it or upon its income or profits, upon any properties belonging to it (including, without limitation, the Collateral) or upon or against the creation, perfection or continuance of the lien created pursuant to this Agreement or the Mortgage, prior to the date on which penalties attach thereto, (b) all federal, state and local taxes required to be withheld by it, and (c) all lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien or charge upon any properties of Borrower; provided, that Borrower shall not be required to pay any such tax, assessment, charge or claim whose amount, applicability or validity is diligently being contested in good faith by appropriate proceedings. Borrower will pay, as the same respectively come due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Collateral, as well as all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Collateral.

Section 7.06 Preservation and Maintenance of Collateral. Borrower (a) shall, at its own expense, maintain, preserve and keep the Collateral in good repair, working order and condition, and shall from time to time make all repairs and replacements necessary to keep the Collateral in such condition, and in compliance with state and federal laws, ordinary wear and tear excepted, (b) shall maintain the Collateral in a condition suitable for certification by the manufacturer thereof (if certification is available) and in conformance with all manufacturer's recommended maintenance requirements, (c) shall not commit waste or permit impairment or deterioration of the Collateral, (d) shall not abandon the Collateral, (e) shall restore or repair promptly and in a good and workmanlike manner all or any portion of the Collateral to the equivalent of its original condition, or such other condition as Lender may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part

the costs of such restoration or repair, (f) shall keep all improvements, fixtures, equipment, machinery and appliances on the Property, in good repair and shall replace fixtures, equipment, machinery and appliances on the Property when necessary to keep such items in good repair, (g) if all or part of the Property is for rent or lease (other than to an Affiliate), then Lender, at its option after the occurrence of an Event of Default, may require Borrower to provide for professional management of the Property by a property manager satisfactory to Lender pursuant to a contract approved by Lender in writing, unless such requirement shall be waived by Lender in writing, (h) shall generally operate and maintain the Property in a manner to ensure maximum rentals, and (i) shall give notice in writing to Lender of and, unless otherwise directed in writing by Lender, appear in and defend any action or proceeding purporting to affect the Collateral, the security of this Agreement or the Mortgage or the rights or powers of Lender hereunder or thereunder. Neither Borrower nor any tenant or other person shall remove, demolish, or alter any improvement now existing or hereafter erected on the Property or any fixture in or on the Property except when incident to the replacement of fixtures with items of like kind. In the event that any portion of the Collateral become worn out, lost, destroyed, damaged beyond repair or otherwise rendered unfit for use, Borrower, at its own expense and expeditiously, will replace or cause the replacement of such portion by replacement property free and clear of all liens and encumbrances and with a value and utility at least equal to that of the property being replaced (assuming that such replaced portions were otherwise in good working order and repair). All such replacement property shall be deemed to be incorporated immediately into and to constitute an integral portion of the Collateral and, as such, shall be subject to the terms of this Agreement and the Mortgage. Neither Lender nor Issuer shall have any responsibility in any of these matters, or for the making of improvements or additions to the Collateral.

Borrower represents, warrants, and covenants that the Property is and shall be in compliance with the Americans with Disabilities Act of 1990 and all of the regulations promulgated thereunder, as the same may be amended from time to time.

Section 7.07 Insurance. (a) Borrower shall obtain and maintain the following types of insurance upon and relating to the Collateral:

(i) "Special Form" property and fire insurance (with extended coverage endorsement including malicious mischief and vandalism) in an amount not less than the full replacement value of the Collateral (with a deductible not to exceed \$ _____), naming Lender under a lender's loss payable endorsement naming _____ as mortgagee and loss payee and including agreed amount, inflation guard, replacement cost and waiver of subrogation endorsements;

(ii) Commercial general liability insurance in an amount not less than \$2,000,000 per occurrence and on an occurrence basis, insuring against personal injury, death and property damage and naming Lender as additional insureds;

(iii) Business interruption insurance or rent loss insurance, as applicable, covering loss of rental or other income (including all expenses payable by tenants) for up to 12 months;

(iv) Flood hazard insurance with respect to the Property in amounts not less than the maximum limit of coverage then available with respect to the Property or the amount of the Property, whichever is less if the Property is located in an area designated by the Federal Emergency Management Act or is hereafter designated or identified as an area having special flood hazards by the Department of Housing and Urban Development or such other official as shall from time to time be authorized by federal or state law to make such designation pursuant to any national or state program of flood insurance; and

(v) Such other types of insurance or endorsements to existing insurance as may be required from time to time by Lender.

(b) Upon the request of Lender, Borrower shall increase the coverages under any of the insurance policies required to be maintained hereunder or otherwise modify such policies in accordance with Lender's standard commercial lending practices.

(c) All of the insurance policies required hereunder shall be issued by corporate insurers licensed to do business in the state in which the Property is located and having a Best's Rating-Financial Size Rating of A:VIII or better as determined and published by A.M. Best Company and shall be in form acceptable to Lender. Certificates of all insurance required to be maintained hereunder shall be delivered to Lender (which may include the requirement of an Acord 28 "Evidence of Property Insurance" form as to property insurance) prior to or contemporaneously with Borrower's execution of this Agreement. All such certificates shall be in form acceptable to Lender and shall require the insurance company to give to Lender at least thirty (30) days' prior written notice before canceling the policy for any reason or materially amending it. Certificates evidencing all renewal and substitute policies of insurance shall be delivered to Lender at least fifteen (15) days before termination of the policies being renewed or substituted. If any loss shall occur at any time during the continuance of a Default, Lender shall be entitled to the benefit of all insurance policies held or maintained by Borrower, to the same extent as if same had been made payable to Lender and upon foreclosure under the Mortgage, Lender shall become the owner thereof. Lender shall have the right, but not the obligation, to make premium payments, at Borrower's expense, to prevent any cancellation, endorsement, alteration or reissuance of any policy of insurance maintained by Borrower, and such payments shall be accepted by the insurer to prevent same.

(d) As among Lender, Borrower, and Issuer, Borrower assumes all risks and liabilities from any cause whatsoever, whether or not covered by insurance, for loss or damage to any portion of the Collateral and for injury to or death of any person or damage to any property, whether such injury or death be with respect to agents or employees of Borrower or of third parties, and whether such property damage be to Borrower's property or the property of others (in each case except as caused by the negligence or misconduct of Issuer). Except as otherwise provided in the immediately preceding sentence, whether or not covered by insurance, Borrower hereby assumes responsibility for and agrees to reimburse Lender and Issuer for and will indemnify, defend and hold Lender and Issuer harmless from and against all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable

attorneys' fees) of whatsoever kind and nature, imposed on, incurred by or asserted against Lender or Issuer that in any way relate to or arise out of this Agreement, the transactions contemplated hereby and the Collateral and the Project, including but not limited to, (i) the selection, manufacture, construction, purchase, acceptance or rejection of the Collateral or the Project or the ownership of the Collateral or the Project, (ii) the delivery, lease, possession, maintenance, use, condition, return or operation of the Collateral or the Project, (iii) the condition of the Collateral or the Project sold or otherwise disposed of after possession by Borrower, (iv) any patent or copyright infringement, (v) the conduct of Borrower, its officers, employees and agents, (vi) a breach of Borrower of any of its covenants or obligations under any Borrower Document, and (vii) any claim, loss, cost or expense involving alleged damage to the environment relating to the Collateral, including, but not limited to investigation, removal, cleanup and remedial costs. All amounts payable by Borrower pursuant to the immediately preceding sentence shall be paid immediately upon demand of Issuer, Lender, or as the case may be. This provision shall survive the termination of this Agreement.

Section 7.08 Preservation of Corporate Existence. Borrower will preserve and maintain its corporate existence and all of its rights, privileges and franchises necessary or desirable in the normal conduct of its business; and shall conduct its business in an orderly, efficient, and regular manner.

Section 7.09 Performance by Lender. If Borrower at any time fails to perform or observe any of the covenants or agreements contained in any Borrower 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 7.06 and 7.07 hereof, immediately upon the occurrence of such failure, without notice or lapse of time), Lender may, but needs 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 eighteen percent (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.

ARTICLE VIII

NEGATIVE COVENANTS OF BORROWER

So long as the Loan and the Bond shall remain unpaid, Borrower agrees that:

Section 8.01 Sale of Assets. Neither Borrower nor Guarantors will sell, lease, assign, transfer or otherwise dispose of all or a substantial part of its or their assets or of any of the Collateral or the Project or any interest therein (whether in one transaction or in a series of transactions). Notwithstanding any provision herein or in the Mortgage to the contrary, Borrower may lease the Property provided that Borrower provide Lender the following items in form and substance acceptable to Lender: (a) a copy of any such lease, and (b) a subordination, attornment and lessee-lessor estoppel agreement in substantially the same form as the Subordination Agreement, properly executed on behalf of Borrower and any such lessee.

Section 8.02 Consolidation and Merger. The 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 8.03 Accounting. Borrower will not adopt, permit, or consent to any material change in accounting principles other than as required by GAAP. Borrower shall not adopt, permit, or consent to any change in its fiscal year.

Section 8.04 Modifications and Substitutions. Borrower shall not make any material alterations, modifications or additions to, or substitutions of, the Collateral without the prior written consent of Lender; provided, however, that any substitutions made pursuant to Borrower's obligations to make repairs referenced under any provision of this Agreement shall not require such prior written consent. Borrower shall provide such documents or assurances as Lender may reasonably request to maintain or confirm the lien in favor of Lender on the Collateral as so altered, modified, or substituted.

Section 8.05 Use of Property. 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 Property 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 Property), (b) permit the use of the Property to become a non-conforming use under applicable zoning ordinances, (c) except as permitted by Section 6.06 hereof, file any subdivision or parcel map affecting the Property, or (d) amend, modify or consent to any easement or covenants, conditions and restrictions pertaining to the Property.

ARTICLE IX

DAMAGE AND DESTRUCTION; CONDEMNATION

Section 9.01 Damage and Destruction. Borrower shall provide a complete written report to Lender immediately upon any loss, theft, damage, or destruction of any Collateral and of any material accident involving any Collateral. With respect to any Damaged Collateral, Borrower shall as soon as practicable after such event either: (a) replace the same at Borrower's sole cost and expense with property having substantially similar specifications and of equal or greater value to the Damaged Collateral immediately prior to the time of the loss occurrence, such replacement property to be subject to Lender's approval, whereupon such replacement property shall be substituted in this Agreement and the other related documents by appropriate endorsement or amendment; or (b) pay the applicable Damaged Collateral Amount. Borrower shall notify Lender of which course of action it will take within fifteen (15) calendar days after the loss occurrence. If, within forty-five (45) calendar days of the loss occurrence, (i) Borrower fails to notify Lender; (ii) Borrower and Lender fail to execute an amendment to this Agreement and any related document to delete the Damaged Collateral and add the replacement property, or (iii) Borrower fails to pay the applicable Damaged Collateral Amount, then Lender may, at its sole discretion, declare the applicable Damaged Collateral Amount to be immediately due and payable, and Borrower is required to pay the same. The Net Proceeds of insurance with respect to the Damaged Collateral shall be made available by Lender to be applied to discharge Borrower's obligation under this Section. The payment of the Damaged Collateral Amount and the termination of Lender's interest in the Damaged Collateral is subject to the terms of Section 2.08 hereof. For purposes of this Section, the term "Net Proceeds" shall mean the amount remaining from the gross proceeds of any insurance claim after deducting all expenses (including reasonable attorneys' fees) incurred in the collection of such claim.

Section 9.02 Condemnation. If the Collateral, or any part thereof, shall be condemned for any reason, including without limitation fire or earthquake damage, or otherwise taken for public or quasi-public use under the power of eminent domain, or be transferred in lieu thereof, all damages or other amounts awarded for the taking of, or injury to, the Collateral shall be paid to Lender who shall have the right, in its sole and absolute discretion, to apply the amounts so received against (a) the costs and expenses of Lender, including attorneys' fees incurred in connection with collection of such amounts, and (b) the balance against the amounts due hereunder; provided, however, that if (i) no Event of Default shall have occurred and be continuing hereunder, (ii) Borrower provides evidence satisfactory to Lender of its ability to pay all amounts becoming due hereunder during the pendency of any restoration or repairs to or replacement of the Collateral, (iii) Lender determines, in its sole discretion, that the proceeds of such award are sufficient to restore, repair, replace and rebuild the Collateral as nearly as possible to its value, condition and character immediately prior to such taking (or, if the proceeds of such award are insufficient for such purpose, if Borrower provides additional sums to Lender's satisfaction so that the aggregate of such sums and the proceeds of such award will be sufficient for such purpose), and (iv) Borrower provides evidence satisfactory to Lender that none of the tenants of the Property will terminate their lease agreements as a result of either the condemnation or taking or the repairs to or replacement of the Collateral, the proceeds of such award, together with additional sums provided by Borrower, shall be placed in a separate account for the benefit of Lender and Borrower to be used to restore, repair, replace and rebuild the

Collateral as nearly as possible to its value, condition and character immediately prior to such taking. All work to be performed in connection therewith shall be pursuant to a written contract therefor, which contract shall be subject to the prior approval of Lender. To the extent that any funds remain after the Collateral has been so restored and repaired, the same shall be applied against the amounts due hereunder in such order as Lender may elect. To enforce its rights hereunder, Lender shall be entitled to participate in and control any condemnation proceedings and to be represented therein by counsel of their own choice, and Borrower will deliver, or cause to be delivered to Lender such instruments as may be requested by them from time to time to permit such participation. In the event Lender, as a result of any such judgment, decree, or award, believes that the payment or performance of the Loan or the Bond is impaired, Lender may declare all of the amounts due hereunder immediately due and payable.

ARTICLE X

ASSIGNMENT, SUBLEASING, AND SELLING

Section 10.01 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 replacement bonds, notices of assignment and chattel mortgages, which may be reasonably requested by Lender or its assignee to protect their interest in the Collateral and in this Agreement.

Section 10.02 No Sale or Assignment by Borrower. This Agreement and the interest of Borrower in the Collateral may not be sold, assumed, assigned, or encumbered by Borrower other than by the lien created hereunder and under the Mortgage and the Permitted Exceptions.

ARTICLE XI

EVENTS OF DEFAULT AND REMEDIES

Section 11.01 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 and the continuation of such failure for a period of ten (10) days;

(b) failure by Borrower to maintain insurance on the Collateral in accordance with Section 7.07 hereof;

(c) failure by Borrower to comply with the provisions of Sections 6.04, 7.01, 8.01 or 8.02 hereof or failure by Guarantors to comply with the provisions of the Guaranty Agreement;

(d) failure by Borrower, Guarantors, or Issuer to observe and perform any other covenant, condition or agreement contained in any Borrower Document, in any Guarantor Document or in any other document or agreement executed in connection herewith on its part to be observed or performed for a period of thirty (30) days after written notice is given to Borrower, Guarantors, 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, Guarantors, or Issuer, as the case may be, within the applicable period and diligently pursued until the default is corrected;

(e) 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;

(f) Borrower or either Guarantor 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 or either Guarantor 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 either Guarantor, as the case may be; or Borrower or either Guarantor 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 either Guarantor; 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 or either Guarantor;

(g) determination by Lender that any representation or warranty made by Borrower, Issuer or either Guarantor in any Borrower Document, in any Guarantor Document or in any other document executed in connection herewith was untrue in any material respect when made;

(h) an Event of Taxability shall occur;

(i) an amendment or termination relating to a filed financing statement describing any of the Collateral is filed, or caused to be filed, by Borrower;

(j) the occurrence of a default or event of default under any instrument, agreement or other document evidencing, relating to or securing any indebtedness or other monetary obligation of Borrower or either Guarantor in excess of \$_____;

(k) Either Guarantor shall repudiate, purport to revoke or fail to perform Guarantor's obligations under the Guaranty Agreement;

(l) ownership of Borrower changes during the period that the Loan is outstanding (Borrower hereby acknowledges that Lender has made its decision to enter into the transactions contemplated hereby based upon the management expertise of the current owners and their ownership of Borrower);

(m) the occurrence of a default or an event of default under any Borrower Document, or any other agreement between or among Lender or any of its affiliates and Borrower or Guarantors;

(n) failure by Borrower to satisfy all of the conditions contained in Section 3.02 hereof by _____.

Section 11.02 Remedies on Default. Whenever an Event of Default described in Section 11.01(f) hereof shall have occurred, the Prepayment Amount automatically shall be due and payable, whereupon the Prepayment Amount automatically 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. Whenever any Event of Default shall have occurred, Lender shall have the right, at its sole option without any further demand or notice, to take anyone 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, declare the Prepayment Amount to be forthwith due and payable, whereupon the Prepayment Amount 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) take possession of the Collateral wherever situated, without any court order or other process of law and without liability for entering the premises, and lease, sublease or make other disposition of the Collateral for use over a term in a commercially reasonable manner, all for the account of Lender, provided that Borrower shall remain directly liable for the deficiency, if any, between the rent or other amounts paid by a

lessee or sublessee of the Collateral pursuant to such lease or sublease during the same period of time, after deducting all costs and expenses, including reasonable attorneys' fees and expenses, incurred with respect to the recovery, repair and storage of the Collateral during such period of time;

(c) take possession of the Collateral wherever situated, without any court order or other process of law and without liability for entering the Property, and sell the Collateral in a commercially reasonable manner. All proceeds from such sale shall be applied in the following manner:

FIRST, to pay all proper and reasonable costs and expenses associated with the recovery, repair, storage, and sale of the Collateral, including reasonable attorneys' fees and expenses;

SECOND, to pay (i) Lender the amount of all unpaid Loan Payments or other obligations (whether direct or indirect owed by Borrower to Lender), if any, which are then due and owing, together with interest and late charges thereon, (ii) Lender the then applicable Prepayment Amount (taking into account the payment of past-due Loan Payments as aforesaid), plus a pro rata allocation of interest, at the rate utilized to calculate the Loan Payments, from the next preceding due date of a Loan Payment until the date of payment by the buyer, and (iii) any other amounts due hereunder, including indemnity payments, taxes, charges, reimbursement of any advances and other amounts payable to Lender or Issuer hereunder; and

THIRD, to pay the remainder of the sale proceeds, purchase moneys or other amounts paid by a buyer of the Collateral to Borrower;

(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 any Borrower Document;

(f) take whatever action at law or in equity that may appear necessary or desirable to enforce its rights with respect to the Collateral. 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 11.03 No Remedy Exclusive. 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 11.04 Late Charge. Any Loan Payment not paid by Borrower on the due date thereof shall, to the extent permissible by law, bear a late charge equal to the lesser of five cents (\$.05) per dollar of the delinquent amount or the lawful maximum, and Borrower shall be obligated to pay the same immediately upon receipt of Lender's written invoice therefor.

ARTICLE XII

MISCELLANEOUS

Section 12.01 Costs and Expenses of Lender. Borrower shall pay to Lender in addition to the Loan Payments payable by Borrower hereunder, such amounts 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 Collateral, expenses (including, without limitation, attorneys' fees and disbursements), 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 30 days after receipt of the bill by Borrower.

Section 12.02 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 COLLATERAL, OR ANY OTHER WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT THERETO. In no event shall Lender be liable for any loss or damage in connection with or arising out of this Agreement, the Collateral or the existence, furnishing, functioning or Borrower's use of any item or products or services provided for in this Agreement. In no event shall Issuer be liable for any loss or damage in connection with or arising out of this Agreement, the Collateral or the existence, furnishing, functioning or Borrower's use of any item or products or services provided for in this Agreement (except as caused by the negligence or misconduct of Issuer).

Section 12.03 Notices. All notices, certificates, requests, demands and other communications provided for hereunder or under any Borrower Document 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 party 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 (i) the date received if personally delivered, (ii) when deposited in the mail if delivered by mail, (iii) the date sent if sent by overnight courier, or (iv) the date of transmission if delivered by telecopy. If notice to Borrower of any intended disposition of the Collateral 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 12.04 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 any Borrower Document and any rights of Lender thereunder.

Section 12.05 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 12.06 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 12.07 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 12.08 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, provided that only the original marked "Original: 1 of 4" on the execution page thereof shall constitute chattel paper under the UCC. A purchase of this chattel paper from Issuer would violate the rights of Lender.

Section 12.09 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

Section 12.10 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 12.11 Entire Agreement. The Borrower Documents and all exhibits thereto constitute the entire agreement among Lender, Issuer, Borrower, and Escrow Agent. There are no understandings, agreements, representations or warranties, express or implied, not specified herein or in such documents regarding this Agreement or the Project financed hereby.

Section 12.12 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.

Section 12.13 Bound Transcripts. Within 45 days of the day of closing, Borrower shall cause to be prepared and furnished, at Borrower's expense, to Lender and its counsel, bound transcripts containing the Borrower Documents and all other documents related thereto.

Section 12.14 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 Collateral, 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 12.15 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 12.16 Pledge of State. Pursuant to Section 11-17-13, Utah Code Annotated 1953, as amended, Issuer includes herein the pledge and undertaking of the State that the State will not alter, impair, or limit the rights vested hereunder or in the Bond, this Agreement, or any of the documents contemplated hereby until the Bond, together with all Interest thereon, have been fully paid and discharged and all obligations of Issuer thereunder and under this Agreement are fully performed.

Section 12.17 Waiver of Jury Trial. TO THE EXTENT PERMITTED BY LAW, LENDER, ISSUER AND BORROWER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS AGREEMENT, ANY OF THE RELATED DOCUMENTS, ANY DEALINGS AMONG LENDER, ISSUER, OR BORROWER RELATING TO THE SUBJECT MATTER OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY RELATED TRANSACTIONS, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED AMONG LENDER, ISSUER, AND BORROWER. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT (INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS). THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY

SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT, ANY RELATED DOCUMENTS, OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY RELATED TRANSACTIONS. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

[REMAINDER OF PAGE INTENTIONALLY BLANK; EXECUTION PAGE FOLLOWS.]

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: _____

By: _____
Title: Vice President

Issuer: TOOELE COUNTY, UTAH

By: _____
Title: Chair

Countersigned and Attested:

By: _____
County Clerk

Borrower: _____

By: _____
Title:

[EXECUTION PAGE OF LOAN AGREEMENT (REAL ESTATE)]

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