

RESOLUTION NO. EFC 2019-03-21-0001R

RESOLUTION OF THE BOARD OF DIRECTORS OF THE CITY OF SAN ANTONIO, TEXAS EDUCATION FACILITIES CORPORATION APPROVING AND AUTHORIZING THE EXECUTION OF AN AMENDMENT TO A LOAN AGREEMENT BY AND AMONG THE CITY OF SAN ANTONIO, TEXAS EDUCATION FACILITIES CORPORATION, THE UNIVERSITY OF THE INCARNATE WORD, AND DNT ASSET TRUST (A DELAWARE BUSINESS TRUST AND WHOLLY OWNED SUBSIDIARY OF JPMORGAN CHASE BANK, N.A.) FOR THE PURPOSE OF MODIFYING THE PRINCIPAL REPAYMENT SCHEDULE AT THE REQUEST OF THE UNIVERSITY

WHEREAS, the **CITY OF SAN ANTONIO, TEXAS** (the "**City**"), pursuant to Section 53.35(b), Texas Education Code (now amended and recodified as Section 53A.35(b), Texas Education Code, as amended), approved and created the **CITY OF SAN ANTONIO, TEXAS EDUCATION FACILITIES CORPORATION** (the "**Issuer**") as a nonprofit corporation to exercise the powers enumerated and provided in Chapter 53, Texas Education Code (now amended and recodified as Chapter 53A, Texas Education Code, as amended - the "**Act**"), for and on behalf of the City; and

WHEREAS, the **UNIVERSITY OF THE INCARNATE WORD** (the "**University**") is a Texas non-profit corporation and operates as an "institution of higher education" (within the meaning of the Act) within the corporate limits of the City; and

WHEREAS, Section 53A.34 of the Act authorizes the Issuer to issue and execute revenue bonds or other obligations to loan or otherwise provide funds to an institution of higher education, such as the University, to enable the University to acquire, construct, enlarge, extend, repair, renovate, or otherwise improve an "educational facility" or "housing facility" (as such terms are defined in the Act) or any facility incidental, subordinate, or related to or appropriate in connection with an educational facility or housing facility, or for acquiring land to be used for those purposes, or to create operating and debt service reserves for and to pay issuance costs related to the bonds or other obligations; and

WHEREAS, Section 53A.331 of the Act further authorizes the Issuer to refinance any educational facility or housing facility acquired, constructed, or improved; and

WHEREAS, at the request of the University, on March 12, 2015, the Board of Directors of the Issuer adopted a resolution which approved and authorized the execution by the Issuer of certain documents relating to a tax-exempt loan transaction in the principal amount of \$12,325,000 (the "**Loan**") to be provided to the University by **DNT ASSET TRUST** (the

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"**Lender**"), a Delaware business trust and wholly owned subsidiary of *JPMorgan Chase Bank, N.A.* (the "**Bank**"), through the Issuer as a conduit issuer under the Internal Revenue Code of 1986, as amended (the "**Code**"), for the purpose of refinancing certain then outstanding obligations which were used by the University to finance certain educational and housing facilities as permitted by the Act; and

WHEREAS, among the documents approved by the Issuer in connection with the Loan is the *Loan Agreement*, dated as of April 1, 2015, among the Issuer, the University and the Lender (the "**Original Loan Agreement**"); and

WHEREAS, all capitalized terms not otherwise defined herein shall have the meaning as set forth in the Original Loan Agreement; and

WHEREAS, the University has requested a restructuring of the Loan by deferring the scheduled April 1, 2019 principal payment (in the amount of \$2,500,000) to the April 1, 2020 final maturity date of the Loan, and the Lender has agreed to such request pending the Issuer's approval of this Resolution and the *Second Amendment to Loan Agreement* attached hereto as *Exhibit A* evidencing such principal restructuring (and also incorporating certain language being required by the Bank in most of its newer loan documents relating to changes expected to occur in the near future with respect to the ability to set LIBOR-based interest rates); and

WHEREAS, the University is a "501(c)(3) organization" within the meaning of Section 145 of the Code; and

WHEREAS, Section 147(f) of the Code requires that the issuance of any "qualified 501(c)(3) bonds" be approved by the governing body of the City, or a designee of the City, after a public hearing following reasonable public notice, and the Issuer Loan was considered a "qualified 501(c)(3) bond" for purposes of Section 147(f) of the Code; and

WHEREAS, Bond Counsel to the Issuer in connection with the Loan (McCall, Parkhurst & Horton L.L.P.) has advised the Issuer, the University and the Lender that the restructuring of the Loan requested by the University will constitute a "reissuance" of the Issuer Loan under the Code; and

WHEREAS, in order to comply with certain requirements under the Code relating to the requested restructuring of the Issuer Loan, on February 26, 2019, the Issuer published notice of a public hearing relating to such restructuring (the "**Public Notice**") in a newspaper of general circulation in the jurisdiction of the City as required by Section 147(f) of the Code, and such public hearing was held on March 14, 2019, by the representative of the Issuer ratified and approved by this Resolution; and

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WHEREAS, the University has represented to the Issuer and the City that the Loan provided by the Lender through the Issuer has been beneficial to the University by reducing the University's interest and transaction costs related to refinancing certain educational and housing facilities and that restructuring the Loan in the manner requested by the University will be beneficial to the University; and

WHEREAS, as provided in the Original Loan Agreement, the University has agreed and acknowledged that it is unconditionally obligated to the Issuer and the Lender to make or pay, or cause to be made or paid, without set-off, recoupment, or counterclaim, to the Lender the "Borrower Loan Payments" required by the Original Loan Agreement in amounts sufficient to pay the principal of and interest on the Borrower Loan, when due, and all other amounts required to be paid by the Original Loan Agreement; and

WHEREAS, it is hereby officially found and determined that the meeting at which this Resolution was adopted was open to the public and public notice of the time, place, and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code; and

WHEREAS, it is hereby deemed necessary and advisable that this Resolution be adopted; *NOW THEREFORE*:

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF SAN ANTONIO, TEXAS EDUCATION FACILITIES CORPORATION THAT:

SECTION 1. APPROVAL OF SECOND AMENDMENT TO LOAN AGREEMENT AND OTHER RELATED ACTIONS. The Second Amendment to Loan Agreement, in substantially the form attached hereto as *Exhibit A*, is hereby approved. The President, Vice President, Secretary and Treasurer of the Board of Directors of the Issuer and the Executive Director of the Issuer are each severally authorized to execute, enter into, attest and deliver all documents necessary to bind the Issuer pursuant to and in connection with the Second Amendment to Loan Agreement and are further authorized to take any actions deemed necessary to carry out the purposes of this Resolution and the Loan Agreement. In addition, the President, Vice President, Secretary and Treasurer of the Board of Directors of the Issuer, the Executive Director of the Issuer, and Bond Counsel for the Issuer related to the Loan are hereby authorized and directed to approve any technical changes or correction to the Second Amendment to Loan Agreement or to any other instruments authorized and approved by this Resolution necessary in order to correct any ambiguity or mistake or properly or more completely document the transactions contemplated and approved by this Resolution.

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SECTION 2. SECTION 147(f) HEARING. The Issuer hereby appoints Thomas K. Spurgeon, an attorney with McCall, Parkhurst & Horton L.L.P. serving as Bond Counsel to the Issuer relating to the Loan, as its hearing officer to conduct the public hearing required by Section 147(f) of the Code and ratifies the actions of such hearing officer in conducting the public hearing on March 14, 2019, on behalf of the Issuer.

SECTION 3. INCORPORATION OF RECITALS. The Issuer hereby finds that the statements set forth in the recitals of this Resolution are true and correct, and the Issuer hereby incorporates such recitals as a part of this Resolution.

SECTION 4. SEVERABILITY. If any provision of this Resolution or the application thereof to any circumstance shall be held to be invalid, the remainder of this Resolution and the application thereof to other circumstances shall nevertheless be valid, and this governing body hereby declares that this Resolution would have been enacted without such invalid provision.

SECTION 5. EFFECTIVE DATE. This Resolution shall become effective immediately after its adoption.

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ADOPTED AND APPROVED BY THE BOARD OF DIRECTORS OF THE CITY OF SAN ANTONIO, TEXAS EDUCATION FACILITIES CORPORATION THIS 21ST DAY OF MARCH, 2019.

By _____
President, Board of Directors
City of San Antonio, Texas
Education Facilities Corporation

ATTEST:

Secretary, Board of Directors
City of San Antonio, Texas
Education Facilities Corporation

** **

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EXHIBIT A

FORM OF SECOND AMENDMENT TO LOAN AGREEMENT

SECOND AMENDMENT TO LOAN AGREEMENT

among

CITY OF SAN ANTONIO, TEXAS EDUCATION FACILITIES CORPORATION,
as Issuer,

UNIVERSITY OF THE INCARNATE WORD,
as Borrower,

and

DNT ASSET TRUST,
as Lender

Dated as of
March __, 2019

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SECOND AMENDMENT TO LOAN AGREEMENT

THIS SECOND AMENDMENT TO LOAN AGREEMENT, dated as of March __, 2019 (the “Second Amendment”), amends that certain Loan Agreement, dated as of April 1, 2015 (the “Original Loan Agreement,” and together with this Second Amendment, and as the same may be further amended and supplemented, the “Agreement”), each among CITY OF SAN ANTONIO, TEXAS EDUCATION FACILITIES CORPORATION, a non-profit corporation, organized with the approval of the City of San Antonio, Texas (the “Issuer”), and existing pursuant to Chapter 53, Texas Education Code, as now in effect and as from time to time hereafter amended or supplemented (the “Act”), UNIVERSITY OF THE INCARNATE WORD (the “Borrower”), a Texas non-profit corporation, and DNT ASSET TRUST (the “Lender”), a Delaware business trust and wholly owned subsidiary of JPMorgan Chase Bank, N.A. and its successors and assigns.

RECITALS

WHEREAS, the Issuer previously made the Borrower Loan to the Borrower, pursuant to the Original Loan Agreement, to refinance the Projects; and

WHEREAS, pursuant to the Original Loan Agreement, and at the request of the Borrower, the Lender previously made the Issuer Loan to the Issuer, for the purpose of providing funds to the Issuer to use to make the Borrower Loan to refinance the Projects; and

WHEREAS, the Issuer, the Borrower and the Lender wish to defer the April 1, 2019 principal payment to the maturity date on April 1, 2020; and

WHEREAS, the Issuer executes and delivers this Second Amendment based upon the approval of the Board of Directors of the Issuer by a Resolution, adopted on March 21, 2019;

NOW, THEREFORE, in consideration of the premises set forth herein, the Issuer, the Borrower and the Lender agree as follows:

Section 101. Definitions. Except as otherwise set forth herein or as required by the context, all terms used herein that are defined in the Original Loan Agreement shall have the meanings assigned to them in the Original Loan Agreement.

Section 102. Amendment to Article III of Original Loan Agreement. Article III of the Original Loan Agreement is hereby amended to add the following Section 3.11 to read in full as follows:

Section 3.11. *LIBOR Notification; Alternate Rate of Interest.*

The interest rate on the Borrower Loan is determined by reference to the LIBOR Rate, which is derived from the London interbank offered rate (“LIBOR”). LIBOR is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. In July 2017, the U.K. Financial Conduct Authority announced that, after the end of 2021, it would no longer persuade or compel contributing banks to make rate submissions to the ICE Benchmark

Administration (together with any successor to the ICE Benchmark Administrator, the “IBA”) for purposes of the IBA setting LIBOR. As a result, it is possible that commencing in 2022, LIBOR may no longer be available or may no longer be deemed an appropriate reference rate upon which to determine the interest rate on the Borrower Loan. In light of this eventuality, public and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of LIBOR. In the event LIBOR is no longer available (or in certain other circumstances), this Section provides a mechanism for determining an alternative rate of interest. The Lender will notify the Borrower, pursuant to this Section, in advance of any change to the reference rate upon which the interest rate of the Borrower Loan is based. However, the Lender does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to LIBOR or other rates in the definition of “LIBOR Rate” or with respect to any alternative, successor rate thereto, or replacement rate thereof, including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of the LIBOR Rate or have the same volume or liquidity as did LIBOR prior to its discontinuance or unavailability.

If at any time the Lender determines (which determination shall be conclusive absent manifest error) that (i) adequate and reasonable means do not exist for ascertaining the Adjusted One Month LIBOR Rate or the LIBOR Rate, as applicable (including, without limitation, by means of an Interpolated Rate or because the LIBOR Screen Rate is not available or published on a current basis) and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in clause (i) have not arisen but either (w) the supervisor for the administrator of the LIBOR Screen Rate has made a public statement that the administrator of the LIBOR Screen Rate is insolvent (and there is no successor administrator that will continue publication of the LIBOR Screen Rate), (x) the administrator of the LIBOR Screen Rate has made a public statement identifying a specific date after which the LIBOR Screen Rate will permanently or indefinitely cease to be published by it (and there is no successor administrator that will continue publication of the LIBOR Screen Rate), (y) the supervisor for the administrator of the LIBOR Screen Rate has made a public statement identifying a specific date after which the LIBOR Screen Rate will permanently or indefinitely cease to be published or (z) the supervisor for the administrator of the LIBOR Screen Rate or a governmental authority having jurisdiction over the Lender has made a public statement identifying a specific date after which the LIBOR Screen Rate may no longer be used for determining interest rates for loans, then the Lender and the Borrower shall endeavor to establish an alternate rate of interest to the LIBOR Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for bank loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable (but, for the avoidance of doubt, such related changes shall not include a reduction of the LIBOR Rate).

Section 103. Amendment to Exhibit B to Original Loan Agreement. Exhibit B to the Original Loan Agreement is hereby amended to read in full as follows:

EXHIBIT B

SCHEDULE OF PRINCIPAL PAYMENTS

<u>Payment Date</u>	<u>Principal Payment (\$)</u>
April 1, 2016	2,400,000
April 1, 2017	2,430,000
April 1, 2018	2,460,000
April 1, 2019	0
April 1, 2020	<u>5,035,000</u>
Total	<u>12,325,000</u>

Section 104. Representations of the Borrower. The representations of the Borrower as set forth in Sections 4.03 and 8.04(e) of the Original Loan Agreement are true and correct as of the date hereof.

Section 105. Conditions to Execution of this Second Amendment. The obligation of the Lender to execute this Second Amendment shall be subject to receipt of the following in form and substance satisfactory to the Lender and its counsel:

(a) An opinion from Borrower's counsel that this Second Amendment constitutes the legal, valid and binding obligation of the Borrower and is enforceable in accordance with its terms under the laws of the State; and

(b) An opinion from Bond Counsel that the execution and delivery of this Second Amendment in accordance with the provisions of the Original Loan Agreement will not, in and of itself, result in the inclusion of interest on the Issuer Loan in gross income for purposes of federal income taxation; and

(c) Any additional operational, financial and regulatory compliance as the Lender may reasonably require.

Section 106. Fees and Expenses. All legal fees, disbursements and Lender out-of-pocket expenses will be for the Borrower's account and payable on the date hereof.

Section 107. Ratification of Original Loan Agreement and Second Amendment. Except as expressly amended and supplemented by this Second Amendment, the Original Loan Agreement is in all respects ratified and confirmed, and the Original Loan Agreement as so amended hereby shall be read, taken and construed with this Second Amendment as one and the same instrument.

Section 108. Applicable Law. This Second Amendment shall be governed in all respects, whether as to validity, construction, performance, or otherwise, by the Laws of the State and, if applicable, federal Law.

Section 101. Entire Agreement. This Second Amendment and all other instruments, documents and agreements executed and delivered in connection with this Second Amendment embody the final, entire agreement among the parties hereto and supersede any and all prior commitments, agreements, representations and understandings, whether written or oral, relating to this Second Amendment, and may not be contradicted or varied by evidence of prior, contemporaneous or subsequent oral agreements or discussions of the parties hereto.

Section 103. Severability. If any part of this Second Amendment is ruled invalid or unenforceable by a court of competent jurisdiction, the invalidity or unenforceability thereof shall not affect the remainder of this Second Amendment.

Section 104. Counterparts. This Second Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute one instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to be duly executed by their duly authorized officers, as of the date first written above.

CITY OF SAN ANTONIO, TEXAS EDUCATION FACILITIES CORPORATION

By: _____
Authorized Signatory

UNIVERSITY OF THE INCARNATE WORD

By: _____
Name: _____
Title: _____

DNT ASSET TRUST

By: _____
Authorized Officer

CERTIFICATE FOR RESOLUTION

THE STATE OF TEXAS §
COUNTIES OF BEXAR, COMAL AND MEDINA §
CITY OF SAN ANTONIO, TEXAS EDUCATION FACILITIES CORPORATION §

I, the undersigned Secretary of the **CITY OF SAN ANTONIO, TEXAS EDUCATION FACILITIES CORPORATION** (the "**Corporation**"), hereby certify as follows:

1. The Board of Directors of the Corporation (the "**Board of Directors**") convened in Special Meeting on March 21, 2019 (the "**Meeting**"), at the San Antonio City Hall, and the roll was called of the duly constituted officers and members of the Board of Directors, to wit:

Ron Nirenberg	President
Roberto C. Treviño	Director
Art A. Hall	Director
Rebecca J. Viagran	Director
Rey Saldaña	Director
Shirley Gonzales	Director
Greg Brockhouse	Director
Ana Sandoval	Director
Manny Peláez	Director
John Courage	Director
Clayton Perry	Director

and all of said officers and members of the Board of Directors were present, except the following absentees: _____, thus constituting a quorum. Whereupon, among other business, the following was transacted at the Meeting: a written Resolution No. **EFC 2019-03-21-0001R** (the "**Resolution**") entitled

RESOLUTION OF THE BOARD OF DIRECTORS OF THE CITY OF SAN ANTONIO, TEXAS EDUCATION FACILITIES CORPORATION APPROVING AND AUTHORIZING THE EXECUTION OF AN AMENDMENT TO A LOAN AGREEMENT BY AND AMONG THE CITY OF SAN ANTONIO, TEXAS EDUCATION FACILITIES CORPORATION, THE UNIVERSITY OF THE INCARNATE WORD, AND DNT ASSET TRUST (A DELAWARE BUSINESS TRUST AND WHOLLY OWNED SUBSIDIARY OF JPMORGAN CHASE BANK, N.A.) FOR THE PURPOSE OF MODIFYING THE PRINCIPAL REPAYMENT SCHEDULE AT THE REQUEST OF THE UNIVERSITY

was duly introduced for the consideration of the Board of Directors. It was then duly moved and seconded that the Resolution be adopted; and, after due discussion, said motion carrying with it the adoption of the Resolution, prevailed and carried by the following vote:

AYES: _____ NOES: _____ ABSTENTIONS: _____

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2. A true, full and correct copy of the Resolution adopted at the Meeting described in the above and foregoing paragraph is attached to and follows this Certificate; the Resolution has been duly recorded in the Board of Directors's minutes of the Meeting; the above and foregoing paragraph is a true, full and correct excerpt from the Board of Directors's minutes of the Meeting pertaining to the passage of the Resolution; the persons named in the above and foregoing paragraph are the duly chosen, qualified and acting officers and members of the Board of Directors as indicated therein; each of the officers and members of the Board of Directors was duly and sufficiently notified officially and personally, in advance, of the time, place and purpose of the Meeting, and that the Resolution would be introduced and considered for passage at the Meeting, and each of said officers and members consented, in advance, to the holding of the Meeting for such purpose; and the Meeting was open to the public and public notice of the time, place and purpose of the Meeting was given, all as required by Chapter 551, Texas Government Code.

SIGNED AND SEALED the 21st day of March, 2019.

(SEAL)

Secretary
City of San Antonio, Texas
Education Facilities Corporation