

LOAN AGREEMENT

BETWEEN

**CITY OF SAN ANTONIO, TEXAS
EMPOWERMENT ZONE DEVELOPMENT CORPORATION**
(as the Issuer)

AND

ALAMO NATIONAL BUILDING DEVELOPMENT, LP
(as the Borrower)

RELATING TO

**\$21,900,000
CITY OF SAN ANTONIO, TEXAS
EMPOWERMENT ZONE DEVELOPMENT CORPORATION
CONTRACT REVENUE EMPOWERMENT ZONE REFUNDING BONDS
(DRURY SOUTHWEST HOTEL PROJECT), SERIES 2013A**

and

**\$18,000,000
CITY OF SAN ANTONIO, TEXAS
EMPOWERMENT ZONE DEVELOPMENT CORPORATION
CONTRACT REVENUE EMPOWERMENT ZONE REFUNDING BONDS
(DRURY SOUTHWEST HOTEL PROJECT), SERIES 2013B**

Dated as of November 1, 2013

The rights, title and interest of the City of San Antonio, Texas Empowerment Zone Development Corporation (the "*Issuer*") in this Loan Agreement (with certain exceptions) have been pledged and assigned to U.S. Bank National Association, as trustee (the "*Trustee*") under an Indenture of Trust, dated as of November 1, 2013, between the Issuer and the Trustee.

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LOAN AGREEMENT

This **LOAN AGREEMENT** (this "*Loan Agreement*"), dated as of November 1, 2013, between the **CITY OF SAN ANTONIO, TEXAS EMPOWERMENT ZONE DEVELOPMENT CORPORATION**, a nonprofit local government corporation duly organized and validly existing under the laws of the State of Texas (the "*Issuer*"), and **ALAMO NATIONAL BUILDING DEVELOPMENT, LP**, a Missouri limited partnership (the "*Borrower*") composed of **ALAMO NATIONAL BUILDING MANAGEMENT, LP**, a Missouri limited partnership, as the general partner, and **ALAMO NATIONAL BUILDING TENANT, LLC**, a Missouri limited liability company, as a limited partner;

WITNESSETH:

GENERAL RECITALS AND FINDINGS

WHEREAS, the Issuer is a nonprofit local government corporation created and existing under the laws of the State of Texas, including particularly Subchapter D of Chapter 431, Texas Transportation Code (the "*Act*"), to act on behalf of the City of San Antonio, Texas (the "*City*") for the purpose of "*aiding and acting on behalf of the City to accomplish certain governmental purposes of the City, to wit: the administration of various federal tax incentives relating to the Empowerment Zone designated within the City, including but not limited to the issuance of empowerment zone facility bonds on behalf of qualified businesses within the Empowerment Zone, at the request of the City Council of the City*"; and

WHEREAS, pursuant to law, particularly Section 99 of the Charter of the City, the City is authorized to issue revenue bonds for certain specific purposes enumerated therein and for "*any other lawful public purpose, provided such bonds shall never be a debt of the City and shall be a charge upon and payable solely from the designated sources, properties or interest acquired and the income therefrom*"; and

WHEREAS, state law recognizes that economic development by municipalities is a "public purpose" as evidenced by, among other laws, the provisions of (i) Article III, Section 52-a of the Texas Constitution which provides that the "*development and diversification of the economy of the state, [and] the elimination of unemployment or underemployment in the state*" is a "public purpose", and (ii) Chapter 380, Texas Local Government Code, which was enacted by the Texas Legislature in 1987 to implement the authority granted in Article III, Section 52-a of the Texas Constitution by authorizing municipalities to "*establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality.*"

WHEREAS, a portion of the City was previously designated pursuant to Section 1391(h) of the Internal Revenue Code of 1986, as amended (the "*Code*") by the U.S. Department of Housing and Urban Development as a *Round III Urban Empowerment Zone* (the "*Empowerment Zone*"), which, among other areas, included the downtown area of the City; and

WHEREAS, among other federal tax incentives available to provide a catalyst for private investment and promote economic development within the Empowerment Zone, the City was authorized to issue up to \$230,000,000 in principal amount of bonds (the "**City's Empowerment Zone Bond Capacity**") and loan the proceeds thereof to a private entity to provide an "enterprise zone facility" which consists of "qualified zone property" the principal user of which is an "enterprise zone business" (as such terms are defined in Sections 1394, 1397D and 1397C, respectively, of the Code) in the Empowerment Zone, the interest on which is excludable from federal income taxation ("**Empowerment Zone Bonds**"); and

WHEREAS, on April 15, 2004, pursuant to Ordinance No. 99089, the City Council of the City created the City of San Antonio Empowerment Zone Governance Board (the "**EZ Governance Board**") to advise and assist the City Council and the City staff in leveraging the Empowerment Zone incentive tools to achieve maximum economic benefits, including evaluating and ranking projects eligible for financing with Empowerment Zone Bonds and the prioritizing and allocation of bonding capacity among eligible projects; and

WHEREAS, **ALAMO NATIONAL BUILDING DEVELOPMENT PARTNERSHIP, L.P.** (the "**Ground Lessor**"), a Texas limited partnership composed of **ALAMO NATIONAL MANAGEMENT, LLC**, a Texas limited liability company, as the general partner, and **DRURY SOUTHWEST ALAMO DEVELOPMENT**, a Delaware limited partnership, as limited partner, acquired the Alamo National Bank Building and related parking facilities (located on the west side of St. Mary's Street between Commerce Street and Market Street in the City's downtown area), and renovated and redeveloped such property into a new hotel which includes approximately 367 guest rooms and related hotel amenities and parking facilities and improvements along the Riverwalk (referred to herein, and further described in Exhibit A attached hereto, as the "**Project**"); and

WHEREAS, as set forth in Exhibit A attached hereto, the term "Project" shall not include any costs or work related to the construction or renovation, furnishing and equipping of meeting rooms, restaurants, and the parking facilities associated with such hotel; and

WHEREAS, the Project is located within the Empowerment Zone, and the Borrower has represented to the City and the Issuer that the Borrower and the Project will satisfy the requirements of an "enterprise zone facility" as set forth in Section 1394(b) of the Code, which include the requirements of an "enterprise zone business" as set forth in Section 1397B of the Code, as modified by Section 1394 of the Code (including but not limited to the requirement that during each year of the term that the Bonds are outstanding, at least 35% of the employees of the enterprise zone business, including the Project, will be residents of the Empowerment Zone) and "qualified zone property" as set forth in Section 1397D of the Code, as modified by Section 1394 of the Code; and

WHEREAS, on June 24, 2004, the EZ Governance Board adopted a resolution approving the Project for financing with tax-exempt Empowerment Zone Bonds and recommended that the Issuer, acting on the City's behalf, issue up to \$40,000,000 of tax-exempt Empowerment Zone Bonds to finance a portion of the Project and that the City Council of the City designate and reserve up to

\$40,000,000 of the City's Empowerment Zone Bond Capacity to finance all or a portion of the Project with tax-exempt Empowerment Zone Bonds; and

WHEREAS, following the recommendation of the EZ Governance Board, on June 24, 2004, the City Council of the City adopted a resolution allocating up to \$40,000,000 of the City's Empowerment Zone Bond Capacity to finance the Project with tax-exempt Empowerment Zone Bonds; and

WHEREAS, the renovation and development of the Project was financed, in part, from proceeds of (i) \$21,900,000 in principal amount of bonds previously issued by the Issuer entitled **CITY OF SAN ANTONIO, TEXAS EMPOWERMENT ZONE DEVELOPMENT CORPORATION CONTRACT REVENUE EMPOWERMENT ZONE BONDS (DRURY SOUTHWEST HOTEL PROJECT), SERIES 2005** (the "**Series 2005 Bonds**") and other funds and loans obtained at the time of issuance of the Series 2005 Bonds by the Borrower or related entities, and (ii) \$18,000,000 in principal amount of bonds previously issued by the Issuer entitled **CITY OF SAN ANTONIO, TEXAS EMPOWERMENT ZONE DEVELOPMENT CORPORATION CONTRACT REVENUE EMPOWERMENT ZONE BONDS (DRURY SOUTHWEST HOTEL PROJECT), SERIES 2007** (the "**Series 2007 Bonds**") and other funds and loans obtained at the time of issuance of the Series 2007 Bonds by the Borrower or related entities; and

WHEREAS, the Series 2005 Bonds were issued pursuant to the terms of an Indenture of Trust, dated as of October 1, 2005, between the Issuer and U.S. Bank National Association, as trustee thereunder (the "**Series 2005 Indenture**"), and the proceeds of the Series 2005 Bonds were loaned by the Issuer to the Borrower pursuant to the terms of a Loan Agreement, dated as of October 1, 2005, between the Issuer and the Borrower (the "**Series 2005 Loan Agreement**"); and

WHEREAS, similarly, the Series 2007 Bonds were issued pursuant to the terms of an Indenture of Trust, dated as of November 1, 2007, between the Issuer and U.S. Bank National Association, as trustee thereunder (the "**Series 2007 Indenture**"), and the proceeds of the Series 2007 Bonds were loaned by the Issuer to the Borrower pursuant to the terms of a Loan Agreement, dated as of November 1, 2007, between the Issuer and the Borrower (the "**Series 2007 Loan Agreement**"); and

WHEREAS, pursuant to Article X of the Series 2005 Indenture and the Series 2007 Indenture, the Series 2005 Bonds and the Series 2007 Bonds, while bearing interest at a "Term Interest Rate" shall be considered defeased, discharged, and no longer outstanding upon deposit with the Trustee, in trust, at or before maturity or the redemption date thereof, money or securities in the necessary amount (as provided in Section 10.03 thereof) to pay or redeem [with "Available Moneys" when a "Letter of Credit" (as defined therein) is then in effect] all Series 2005 Bonds and Series 2007 Bonds, respectively, that are outstanding; and

WHEREAS, the Borrower has requested the Issuer to issue two new series of revenue bonds (defined herein as the "**Series 2013A Bonds**" and the "**Series 2013B Bonds**") for the purpose of providing funds sufficient, together with a contribution from the Borrower, to refund and defease all outstanding Series 2005 Bonds and Series 2007 Bonds; and

WHEREAS, on November 7, 2013, the Board of Directors of the Issuer duly adopted a *Resolution Authorizing the Issuance of \$39,900,000 in Aggregate Principal Amount of City of San Antonio, Texas Empowerment Zone Development Corporation Contract Revenue Empowerment Zone Refunding Bonds (Drury Southwest Hotel Project), Series 2013A and Series 2013B; Approving and Authorizing the Execution of an Indenture of Trust, a Loan Agreement, and a Bond Purchase Agreement; and Approving All Other Matters in Connection Therewith* (together with any amendment or supplement to such resolution as authorized therein, hereinafter called the "**Bond Resolution**"); and

WHEREAS, the Bond Resolution authorized the issuance of (i) \$21,900,000 in principal amount of **CITY OF SAN ANTONIO, TEXAS EMPOWERMENT ZONE DEVELOPMENT CORPORATION CONTRACT REVENUE EMPOWERMENT ZONE REFUNDING BONDS (DRURY SOUTHWEST HOTEL PROJECT), SERIES 2013A** (hereinafter called the "**Series 2013A Bonds**") for the purpose of making a loan to the Borrower to refund the outstanding Series 2005 Bonds and to pay costs of issuance, and (ii) \$18,000,000 in principal amount of **CITY OF SAN ANTONIO, TEXAS EMPOWERMENT ZONE DEVELOPMENT CORPORATION CONTRACT REVENUE EMPOWERMENT ZONE REFUNDING BONDS (DRURY SOUTHWEST HOTEL PROJECT), SERIES 2013B** (hereinafter called the "**Series 2013B Bonds**") for the purpose of making a loan to the Borrower to refund the outstanding Series 2007 Bonds and to pay costs of issuance; and

WHEREAS, the Series 2013A Bonds and the Series 2013B Bonds are referred to collectively herein as the "**Bonds**"; and

WHEREAS, the Bonds will be issued pursuant to the terms of an *Indenture of Trust* between the Issuer and U.S. Bank National Association, as Trustee (the "**Trustee**"), dated November 1, 2013, together with any amendments and supplements thereto (the "**Indenture**"); and

WHEREAS, the Ground Lessor has leased the site on which the Project is located to the Borrower for an initial term of 50 years pursuant to a "Ground Lease" between the Ground Lessor and the Borrower, and the Borrower has completed the renovation and redevelopment the Project; and

WHEREAS, the Project is operated on behalf of the Borrower by Drury Hotels Company, LLC (the "**Operator**"), a Nevada limited liability company, pursuant to a "Hotel Management Agreement" between the Borrower and the Operator; and

WHEREAS, the City previously determined that the construction and operation of the Project will promote economic development and will stimulate business and commercial activity in the City and within the Empowerment Zone; and

WHEREAS, in lieu of the City issuing revenue bonds to finance the Project as permitted by Chapter 99 of the City Charter, the City requested the Issuer to issue the Series 2005 Bonds and the Series 2007 Bonds on behalf of the City, and in so doing the Issuer aided and acted on behalf of the

City to accomplish the public purpose of enhancing economic development in the City and the governmental purpose of issuing revenue bonds to finance a portion of the Project as permitted by Section 431.101(a), Texas Transportation Code; and

WHEREAS, similarly, in lieu of the City issuing revenue bonds to refinance the Project, the City has requested the Issuer to issue the Series 2013A Bonds and the Series 2013B Bonds on behalf of the City in order to refinance the Project at the request of the Borrower by refunding the outstanding Series 2005 Bonds and Series 2007 Bonds, and in so doing the Issuer will aid and act on behalf of the City to accomplish the public purpose of enhancing economic development in the City and the governmental purpose of issuing revenue bonds to refinance a portion of the Project as permitted by Section 431.101(a), Texas Transportation Code; and

WHEREAS, proceeds of the Bonds will be loaned to the Borrower pursuant to the terms of this Loan Agreement, and the Borrower has agreed to make Loan Payments as provided hereunder; and

WHEREAS, the City Council of the City has approved this Loan Agreement pursuant to a written resolution approved on November 7, 2013; and

WHEREAS, this Loan Agreement is authorized and executed pursuant to applicable laws, including the Act; and

WHEREAS, the Issuer and the Borrower have taken all action and have complied with all provisions of law with respect to the execution, delivery and performance of this Loan Agreement and the due authorization of the consummation of the transactions contemplated hereby, and this Loan Agreement has been duly executed and delivered by, and constitutes a valid and legally binding agreement of, the Issuer and the Borrower, enforceable against the respective parties in accordance with its terms.

NOW, THEREFORE, for and in consideration of the premises and the material covenants hereinafter contained, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby formally covenant, agree and bind themselves as follows:

END OF RECITALS

ARTICLE I

DEFINITIONS

Section 1.1. Definition of Terms. Unless the context otherwise requires, the terms used in this Loan Agreement shall have the meanings specified in Section 1.01 of the Indenture, as originally executed or as it may from time to time be supplemented or amended as provided therein.

Section 1.2. Number and Gender. The singular form of any word used herein, including the terms defined in Section 1.01 of the Indenture, shall include the plural, and vice versa. The use herein of a word of any gender shall include all genders.

Section 1.3. Articles, Sections, Etc. Unless otherwise specified, references to Articles, Sections and other subdivisions of this Loan Agreement are to the designated Articles, Sections and other subdivisions of this Loan Agreement as amended from time to time. The words "hereof," "herein," "hereunder" and words of similar import refer to this Loan Agreement as a whole. The headings or titles of the several articles and sections, and the table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of the provisions hereof.

END OF ARTICLE I

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE ISSUER AND THE BORROWER

Section 2.1. Representations of the Issuer. The Issuer makes the following representations as the basis for its undertakings herein contained:

(a) The Issuer is a nonprofit local government corporation organized and existing under the laws of the State, particularly the Act. This Issuer has all requisite power and authority under the Act (i) to adopt the Bond Resolution, (ii) to issue the Bonds, (iii) to enter into, and perform its obligations under, this Loan Agreement and the Indenture.

(b) The Issuer is a duly constituted authority and public instrumentality of the City, a political subdivision of the State of Texas, within the meaning of the Regulations and the rulings of the Internal Revenue Service prescribed and promulgated pursuant to Section 103 of the Code, and the Issuer is functioning and acting solely on behalf of the City.

(c) There are no actions, suits, proceedings, inquiries or investigations pending or to the knowledge of the Issuer threatened, against or affecting the Issuer in any court or before any governmental authority or arbitration board or tribunal, which involve the possibility of materially and adversely affecting the transactions contemplated by this Loan Agreement or the Indenture or which, in any way, would adversely affect the validity or enforceability of the Bonds, the Indenture or this Loan Agreement or the ability of the Issuer to perform its obligations under the Indenture or this Loan Agreement.

(d) The adoption of the Bond Resolution, the issuance and sale of the Bonds and the execution and delivery by the Issuer of this Loan Agreement and the Indenture, and the compliance by the Issuer with all of the provisions of each thereof and of the Bonds (i) are within the powers and authority of the Issuer, (ii) have been done in full compliance with the provisions of the Act, are legal and will not conflict with or constitute on the part of the Issuer a violation of or a breach of or default under, or result in the creation of any lien, charge or encumbrance upon any property of the Issuer (other than as contemplated by this Loan Agreement and the Indenture) under the provisions of, any charter instrument, by-law, indenture, mortgage, deed of trust, note agreement or other agreement or instrument to which the Issuer is a party or by which the Issuer is bound, or any license, judgment, decree, law, statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over the Issuer or any of its activities or properties, and (iii) have been authorized by all necessary action on the part of the Issuer.

(e) Neither the nature of the Issuer nor any of its activities or properties, nor any relationship between the Issuer and any other person, nor any circumstance in connection with the offer, issue, sale or delivery of any of the Bonds is such as to require the consent, approval or authorization of, or the filing, registration or qualification with, any governmental authority on the

part of the Issuer in connection with the execution, delivery and performance of this Loan Agreement and the Indenture or the offer, issue, sale or delivery of the Bonds, other than those already obtained as of the date of issue of the Bonds; provided, however, no representation is made herein as to compliance with the securities or "blue sky" laws of any jurisdiction.

(f) No event has occurred and no condition exists with respect to the Issuer which would constitute an "Event of Default" under this Loan Agreement or under the Indenture or which, with the lapse of time or with the giving of notice or both, would become an "Event of Default" under this Loan Agreement or under the Indenture.

(g) Neither this Loan Agreement nor the security for the Bonds has been pledged or hypothecated in any manner or for any purpose other than as provided in the Indenture as security for the payment of the Bonds.

(h) Notwithstanding anything herein contained to the contrary, any obligation the Issuer may hereby incur for the payment of money shall not constitute an indebtedness of the State, the City, or of any other political subdivision of the State within the meaning of any state constitutional provision or statutory limitation or within the meaning of Section 99 of the City's Charter and shall not give rise to a pecuniary liability of the State, the City, or any other political subdivision of the State, or constitute a charge against the general credit or taxing power of the State or a political subdivision thereof or general funds or assets of the Issuer (including funds relating to other Issuer loans or activities), but shall be limited obligations of the Issuer payable solely from (i) the security for the Bonds, (ii) revenues derived from the sale of the Bonds, and (iii) amounts on deposit from time to time under the Indenture, subject to the provisions of this Loan Agreement and the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein and therein.

Section 2.2. General Representations and Warranties of the Borrower. The Borrower represents and warrants to the Issuer that, as of the date of execution of this Loan Agreement and as of the date of delivery of the Bonds to the initial purchasers thereof (such representations and warranties to remain operative and in full force and effect regardless of any investigations by or on behalf of the Issuer or the results thereof):

(a) The Borrower is a limited partnership duly organized, valid existing and in good standing under the laws of the State of Missouri, is duly authorized to transact business and is in good standing under the laws of the State, has full legal right, power and authority to enter into this Loan Agreement, the Tax Agreement and the Tax Letter of Representation and to carry out and consummate all transactions contemplated hereby and thereby and by proper corporate action has duly authorized the execution, delivery and performance of this Loan Agreement, the Tax Agreement and the Tax Letter of Representation.

(b) The officers of the Borrower executing this Loan Agreement, the Tax Agreement and the Tax Letter of Representation are duly and properly in office and fully authorized to execute the same.

(c) This Loan Agreement, the Tax Agreement and the Tax Letter of Representation have been duly authorized, executed and delivered by the Borrower.

(d) This Loan Agreement, the Tax Agreement and the Tax Letter of Representation constitute the legal, valid and binding agreements of the Borrower enforceable against the Borrower in accordance with their terms except as enforcement may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally, by the application of equitable principles regardless of whether enforcement is sought in a proceeding at law or in equity, and by public policy.

(e) The execution and delivery of this Loan Agreement, the Tax Agreement and the Tax Letter of Representation, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under its organizational documents or, to the best knowledge of the Borrower, any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any lien, charge or encumbrance upon any of the property or assets of the Borrower, which conflict, violation, breach, default, lien, charge or encumbrance might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Loan Agreement, the Tax Agreement and the Tax Letter of Representation, or the financial condition, assets, properties or operations of the Borrower.

(f) No consent or approval of any trustee or holder of any indebtedness of the Borrower, and, to the best knowledge of the Borrower, no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority (except that no representation or warranty is made with respect to any state securities or "blue sky" laws) is necessary in connection with the execution and delivery of this Loan Agreement, the Tax Agreement or the Tax Letter of Representation by the Borrower or the consummation by the Borrower of any transaction herein or therein contemplated, or the fulfillment of or compliance with the terms and conditions hereof and thereof by the Borrower, except as have been obtained or made and as are in full force and effect.

(g) There is no litigation or proceeding pending, or to the knowledge of the Borrower threatened, against the Borrower which could adversely affect the validity of this Loan Agreement or the Tax Agreement or the ability of the Borrower to comply with its obligations under this Loan Agreement or the Tax Agreement. The Borrower, to the best of its knowledge, is not in default (and no event has occurred and is continuing which with the giving of notice or the passage of time or both could constitute a default) with respect to any order or decree of any court or any order, regulation or demand of any governmental authority, which default might have consequences that would materially and adversely affect

the consummation of the transactions contemplated by this Loan Agreement, the Tax Agreement and the Tax Letter of Representation. All material tax returns (federal, state and local) required to be filed by or on behalf of the Borrower have been filed, and all taxes shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by the Borrower in good faith, have been paid or adequate reserves have been made for the payment thereof.

(h) No written information, exhibit or report furnished to the Issuer by the Borrower in connection with the negotiation of this Loan Agreement contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(i) All material statements of facts or other information furnished by the Borrower to the Issuer and Bond Counsel in connection with Bond Counsel's opinion relating to the Bonds, including particularly the Tax Letter of Representation, were true and correct in all material respects when made and nothing has come to the Borrower's attention that would change the truth or correctness of such statements of facts or other information furnished to Bond Counsel.

END OF ARTICLE II

ARTICLE III

ISSUANCE OF THE BONDS; APPLICATION OF PROCEEDS

Section 3.1. Agreement to Issue Bonds; Application of Bond Proceeds. (a) To provide funds to refinance the Project by providing funds to refund and redeem the outstanding Series 2005 Bonds and Series 2007 Bonds, the Issuer agrees that it will issue under the Indenture, sell and cause to be delivered to the purchasers thereof, the Bonds. The Issuer will thereupon apply the proceeds received from the sale of the Bonds as provided in the Indenture.

(b) The Borrower has completed the acquisition, construction and installation of the Project having the general description as set forth in Exhibit A hereto. The Borrower shall not make any changes to the Project or to the operation thereof which would impair the exemption from federal income taxation of the interest on the Bonds. In particular, the Borrower agrees to comply with all requirements set forth in the Tax Agreement and the Tax Letter of Representation.

(c) In the event that the Borrower desires to alter or change any part of the Project, and such alteration or change substantially alters the purpose and description of the Project as described in Exhibit A hereto, the Issuer may consent (which consent shall not be unreasonably withheld) to such changes in its discretion and, if it shall so consent, will instruct the Trustee to consent to such amendment or supplement to Exhibit A as shall be required to reflect such alteration or change to the Project upon receipt of:

- (i) a certificate of the Authorized Representative of the Borrower describing in detail the proposed changes and stating that they will not have the effect of disqualifying the Project as facilities that may be financed pursuant to the Act;
- (ii) a copy of the proposed form of amended or supplemented Exhibit A hereto;
and
- (iii) an Approving Opinion relating to such proposed changes.

Section 3.2. Disbursements from the Costs of Issuance Fund. The Borrower will authorize and direct the Trustee in writing, upon compliance with Section 2.12 of the Indenture, to disburse the moneys in the Costs of Issuance Fund to or on behalf of the Borrower only for Costs of Issuance. Each of the payments referred to in this Section 3.2 shall be made upon receipt by the Trustee of a written requisition in the form prescribed by Section 2.12 of the Indenture, signed by the Authorized Representative of the Borrower. The Borrower agrees that all authorizations and directions it makes with respect to any disbursements from the Costs of Issuance Fund shall comply with the requirements of the Tax Letter of Representation.

Section 3.3. Reserved as a Placeholder.

Section 3.4. Investment of Moneys in Funds. Any moneys in any fund or account held by the Trustee shall, at the written direction of the Authorized Representative of the Borrower, be invested or reinvested by the Trustee as provided in the Indenture. The Issuer hereby authorizes the Borrower to give such investment directions. Such investments shall be held by the Trustee and shall be deemed at all times a part of the fund or account from which such investments were made, and the interest accruing thereon, and any profit or loss realized therefrom, shall be credited or charged to such fund or account. The Borrower acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Borrower the right to receive brokerage confirmations of security transactions from the Trustee as they occur, the Borrower specifically waives receipt of such confirmations to the extent permitted by law. The Borrower hereby agrees that it is responsible for insuring that the investment of moneys in the Rebate Fund at its direction comply with the provisions of the Tax Agreement and the Tax Letter of Representation.

Section 3.5. No Warranty by Issuer. THE BORROWER RECOGNIZES THAT NEITHER THE ISSUER NOR THE CITY HAS MADE AN INSPECTION OF THE PROJECT OR OF ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, AND NEITHER THE ISSUER NOR THE CITY MAKES ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED OR OTHERWISE, WITH RESPECT TO THE SAME OR THE LOCATION, USE, DESCRIPTION, DESIGN, MERCHANTABILITY, FITNESS FOR USE FOR ANY PARTICULAR PURPOSE, CONDITION OR DURABILITY THEREOF, OR AS TO THE ISSUER'S OR THE BORROWER'S TITLE THERETO OR OWNERSHIP THEREOF OR OTHERWISE, IT BEING AGREED THAT ALL RISKS INCIDENT THERETO ARE TO BE BORNE BY THE BORROWER. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER PATENT OR LATENT, NEITHER THE ISSUER NOR THE CITY SHALL HAVE ANY RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO. THE PROVISIONS OF THIS SECTION HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES OR REPRESENTATIONS BY THE ISSUER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE OF THE STATE OR ANOTHER LAW NOW OR HEREAFTER IN EFFECT OR OTHERWISE.

Section 3.6. Title. The Issuer shall have no right, title, or interest in and to the Project. The Issuer shall not be responsible or liable in any manner for any claims, losses, damages, penalties, costs, taxes, or fines with respect to the acquisition, construction, equipping, furnishing, installation, operation, maintenance, or ownership of the Project.

Section 3.7. Issuer's Limited Liability. It is recognized that the Issuer's only source of funds with which to carry out its commitments under this Loan Agreement will be from the proceeds from the sale of the Bonds or from any available income or earnings derived therefrom, or from any funds which otherwise might be made available by the Borrower, including funds made available from a Credit Facility, if any; and it is expressly agreed that neither the Issuer nor the City shall have

any financial liability, obligation, or responsibility with respect to this Loan Agreement or the Project except to the extent of funds available from such sources.

END OF ARTICLE III

ARTICLE IV

LOAN OF PROCEEDS; REPAYMENT PROVISION

Section 4.1. Loan of Bond Proceeds; Issuance of Bonds. The Issuer covenants and agrees, upon the terms and conditions in this Loan Agreement, to make a loan to the Borrower from the proceeds of the Bonds for the purpose of refinancing the Project. The Issuer further covenants and agrees that it shall take all actions within its authority to keep this Loan Agreement in effect in accordance with its terms. Pursuant to said covenants and agreements, the Issuer will issue the Bonds upon the terms and conditions contained in this Loan Agreement and the Indenture and will cause the Bond proceeds to be applied as provided in Section 2.11 of the Indenture.

Section 4.2. Loan Payments and Payment of Other Amounts. (a) On each Bond Payment Date (as hereinafter defined), until the principal of, premium, if any, and interest on, the Bonds shall have been fully paid or provision for such payment shall have been made as provided in the Indenture, the Borrower covenants and agrees to pay to the Trustee as a repayment on the loan made to the Borrower from Bond proceeds pursuant to Section 4.1 hereof, a sum equal to the amount payable on such Bond Payment Date as principal of, and premium, if any, and interest on, the Bonds as provided in the Indenture. Each such payment is hereby designated as a "Loan Payment," and collectively such payments are hereby designated as "Loan Payments." Loan Payments shall be made in federal funds or other funds immediately available at the Corporate Trust Office of the Trustee. The term "Bond Payment Date" as used in this Section 4.2(a) shall mean any date upon which any such amounts payable with respect to the Bonds shall become due, whether upon redemption, acceleration, maturity or otherwise.

Each payment made pursuant to this Section 4.2(a) shall at all times be sufficient to pay the total amount of interest and principal (whether at maturity or upon redemption or acceleration) and premium, if any, becoming due and payable on the Bonds on each Bond Payment Date; provided that any amount held by the Trustee in the Bond Fund on any due date for a Loan Payment hereunder shall be credited against the Loan Payment due on such date, to the extent available for such purpose; and provided further that, subject to the provisions of this paragraph, if at any time the amounts held by the Trustee in the Bond Fund and available for such purpose are sufficient to pay all of the principal of and interest and premium, if any, on the Bonds as such payments become due, the Borrower shall be relieved of any obligation to make any further payments under the provisions of this Section. Notwithstanding the foregoing, if on any date the amount held by the Trustee in the Bond Fund is insufficient to make any required payments of principal of (whether at maturity or upon redemption or acceleration) and interest and premium, if any, on, the Bonds as such payments become due, the Borrower shall forthwith pay such deficiency as a Loan Payment hereunder.

The obligation of the Borrower to make any payment required by this Section 4.2(a) shall be deemed to have been satisfied to the extent of any corresponding payment made by a Credit Facility Provider to the Trustee pursuant to a Credit Facility then in effect with respect to the Bonds.

(b) The Borrower further covenants that it will make any payments required to be made pursuant to Sections 3.09(c)(2) of the Indenture at the applicable Purchase Price thereof by 2:30 p.m. (New York City time) in federal or other immediately available funds on the Purchase Date; provided, however the obligation to make such payments shall have been deemed satisfied to the extent that such Purchase Price shall have been paid from remarketing proceeds described in Section 3.09(d)(1) of the Indenture or from a draw under a Liquidity Facility as described in Section 3.09(d)(2) of the Indenture.

(c) The Borrower also agrees to pay (i) the reasonable annual fees of the Trustee and the Tender Agent, if any, for their ordinary services rendered as trustee or tender agent, respectively, and their reasonable ordinary expenses incurred under the Indenture, as and when the same become due, (ii) the reasonable fees, charges and expenses (including reasonable legal fees and expenses) of the Trustee, as bond registrar and paying agent, and the reasonable fees of any other Paying Agent on the Bonds as provided in the Indenture, (iii) the reasonable fees, charges and expenses of the Trustee for the necessary extraordinary services rendered by it and extraordinary expenses incurred by it under the Indenture (including any expenses in connection with any redemption of the Bonds), and (iv) any additional amounts required by Section 8.06 of the Indenture, as and when the same become due. All such fees and expenses are to be paid directly to the Trustee, Tender Agent, if any, and any other Paying Agent for its own account as and when such fees and expenses become due and payable. The Trustee's compensation shall not be limited by any provision of law regarding the compensation of a Trustee of an express trust.

(d) The Borrower shall pay, or cause to be paid, all of the reasonable and applicable Administrative Fees and Expenses of the Issuer, the City, the Trustee, the Paying Agent, the Registrar, the Tender Agent, and the Remarketing Agent (in each case, to the extent, in the amounts and as otherwise agreed to between the Borrower and such other party), such payments to be made directly to each such entity.

(e) The Borrower also agrees to pay the reasonable fees, charges and expenses of the Remarketing Agent as provided in the Remarketing Agreement. The Issuer shall have no obligation whatsoever with respect to the payment of fees, charges and expenses of the Remarketing Agent.

(f) The Borrower hereby covenants and agrees to make the determinations and to pay any deficiency in the Rebate Fund, at the times and as described in Section 4.07 of the Indenture. In any event, if the amount of cash held in the Rebate Fund shall be insufficient to permit Trustee to make payment to the United States of any amount due under Section 148(f)(2) of the Code, the Borrower forthwith shall pay the amount of such insufficiency on such date to Trustee in immediately available funds. The obligations of the Borrower under this Section 4.2(f) are direct obligations of the Borrower, acting under the authorization of, and on behalf of, the Issuer and the Issuer shall have no further obligation or duty with respect to the Rebate Fund.

Section 4.3. Unconditional Obligation. The obligations of the Borrower to make the Loan Payments, the Purchase Price Payments and the other payments required by Section 4.2 hereof and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional, irrespective of any defense or any rights of set-off, recoupment or counterclaim it might otherwise have against the Issuer, and during the term of this Loan Agreement, the Borrower shall pay all payments required to be made on account of this Loan Agreement (which payments shall be net of any other obligations of the Borrower) as prescribed in Section 4.2 and all other payments required hereunder, free of any deductions and without abatement, diminution or set-off. Until such time as the principal of, premium, if any, and interest on, the Bonds shall have been fully paid, or provision for the payment thereof shall have been made as required by the Indenture, the Borrower (i) will not suspend or discontinue any payments provided for in Section 4.2; (ii) will perform and observe all of its other covenants contained in this Loan Agreement; and (iii) except as provided in Article VIII hereof, will not terminate this Loan Agreement for any cause, including, without limitation, the occurrence of any act or circumstances that may constitute failure of consideration, destruction of or damage to all or a portion of those facilities or equipment comprising the Project, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either of these, or any failure of the Issuer or the Trustee to perform or observe any covenant, whether express or implied, or any duty, liability or obligation arising out of or connected with this Loan Agreement or the Indenture, except to the extent permitted by this Loan Agreement.

By execution and delivery of this Loan Agreement, the Borrower hereby approves the Bond Resolution and the Indenture. It is hereby agreed that the foregoing approval of the Bond Resolution and the Indenture constitutes the acknowledgment and agreement of the Borrower that the Bonds, when issued, sold, and delivered as provided in the Bond Resolution and the Indenture, will be issued in accordance with and in compliance with this Loan Agreement, notwithstanding any other provisions of this Loan Agreement or any other contract or agreement to the contrary. Any Bondholder is entitled to rely fully and unconditionally on the foregoing approval. Notwithstanding any provisions of this Loan Agreement or any other contract or agreement to the contrary, the Borrower's approval of the Bond Resolution and the Indenture shall be the Borrower's agreement that all covenants and provisions in this Loan Agreement and the Indenture affecting the Borrower shall, upon the delivery of the Bonds and the Indenture, become unconditional, valid, and binding covenants and obligations of the Borrower so long as the Bonds and the interest thereon are outstanding and unpaid. Particularly, the obligation of the Borrower to make, promptly when due, all Loan Payments specified in this Loan Agreement and the Indenture shall be absolute and unconditional, and said obligation may be enforced as provided in this Loan Agreement and the Indenture.

Section 4.4. Assignment of Issuer's Rights. As security for the payment of the Bonds, the Issuer will under the Indenture assign to the Trustee the Issuer's rights under this Loan Agreement, including the right to receive Loan Payments hereunder (except for Unassigned Issuer Rights). The Issuer hereby directs the Borrower to make the Loan Payments required hereunder directly to the Trustee for deposit as contemplated by the Indenture. The Issuer hereby directs the Borrower to make the Purchase Price Payments required hereunder directly to the Trustee or the

Tender Agent as contemplated by the Indenture. The Borrower hereby consents to such assignment and agrees to make payments directly to the Trustee or the Tender Agent, as the case may be, without defense or set-off by reason of any dispute between the Borrower and the Issuer or the Trustee.

Section 4.5. Amounts Remaining in Funds. It is agreed by the parties hereto that after payment in full of (i) the Bonds, or after provision for such payment shall have been made as provided in the Indenture, (ii) the fees, charges and expenses of the Issuer, the Trustee, the Tender Agent and the Paying Agent in accordance with the Indenture, and (iii) all other amounts required to be paid under this Loan Agreement and the Indenture, any amounts remaining in any fund held by the Trustee under the Indenture (excepting the Rebate Fund) shall be paid as provided in Section 10.01 of the Indenture. Notwithstanding any other provision of this Loan Agreement or the Indenture, under no circumstances shall proceeds of a draw on a Credit Facility, a Liquidity Facility, or remarketing proceeds be paid to the Issuer or the Borrower, except as provided in Section 3.09(d)(3) of the Indenture.

END OF ARTICLE IV

ARTICLE V

SPECIAL COVENANTS AND AGREEMENTS

Section 5.1. Right of Access to the Project. The Borrower agrees that during the term of this Loan Agreement the Issuer, the Trustee and the duly authorized agents of either of them shall have the right (but not any duty or obligation) at all reasonable times during normal business hours to enter upon each site where any part of the Project is located and to examine and inspect the Project; provided that reasonable notice shall be given to the Borrower at least five (5) Business Days prior to such examination or inspection, and such inspection shall not disturb the Borrower's normal business operations.

Section 5.2. The Borrower's Maintenance of Its Existence. The Borrower covenants and agrees that during the term of this Loan Agreement it will maintain its qualification to do business as a limited partnership in the State, will maintain its existence as a limited partnership in good standing in the State of Missouri, will not dissolve, sell or otherwise dispose of all or substantially all of its property, assets and licenses and will not combine or consolidate with or merge into another entity so that the Borrower is not the resulting or surviving entity (any such sale, disposition, combination or merger shall be referred to hereafter as a "transaction"); provided that the Borrower may enter into such transaction, if (i) the surviving or resulting transferee, person or entity, as the case may be, assumes and agrees in writing to pay and perform all of the obligations of the Borrower hereunder and under the Tax Letter of Representation, (ii) the surviving or resulting transferee, person or entity, as the case may be, qualifies to do business in the State and remains so qualified continuously during the term hereof and (iii) the Borrower shall deliver to the Trustee prior to the consummation of the transaction an Approving Opinion.

If a merger, consolidation, sale or other transfer is effected, as provided in this Section, all provisions of this Section shall continue in full force and effect and no further merger, consolidation, sale or transfer shall be effected except in accordance with the provisions of this Section.

Section 5.3. Records and Financial Statements of Borrower. The Borrower covenants and agrees at all times to keep, or cause to be kept, proper books of record and account, prepared in accordance with generally accepted accounting principles, in which materially complete and accurate entries shall be made of all transactions of or in relation to the business, properties and operations of the Borrower relating to the Project. Such books of record and account shall be available for inspection by the Issuer or the Trustee during normal business hours and under reasonable circumstances.

Section 5.4. Insurance. The Borrower agrees to insure or cause to be insured the Project during the term of this Loan Agreement for such amounts and for such occurrences as are customary for similar facilities of the Borrower within the State, by means of policies issued by reputable insurance companies qualified to do business in the State or through "self insurance" in accordance with the ordinary course of business of the Borrower and the Borrower shall pay or cause to be paid all costs of such insurance.

Section 5.5. Maintenance and Repairs; Taxes; Utility and Other Charges. The Borrower agrees to maintain or caused to be maintained the Project during the term of this Loan Agreement (i) in as reasonably safe condition as its operations shall permit and (ii) in good repair and in good operating condition, ordinary wear and tear excepted, making, or causing to be made, from time to time all necessary repairs thereto and renewals and replacements thereof.

The Borrower agrees to pay or cause to be paid during the term of this Loan Agreement all taxes and governmental charges lawfully assessed or levied upon the Project or any part thereof, including any taxes levied against any portion of the Project which, if not paid, will become a charge on the receipts from the Project prior to or on a parity with the charge thereon and the pledge or assignment thereof to be created therefrom or under this Loan Agreement, all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of any portion of the Project and all assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Project, provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Borrower shall be obligated to pay only such installments as are required to be paid during the term of this Loan Agreement. The Borrower has not and will not maintain that it is entitled, by virtue of the Project being financed under the Act, to any additional exemption from ad valorem taxes on the Project or sales and use taxes on personal property acquired in connection with the Project. Except as provided by the preceding sentence, the Borrower may, at the Borrower's expense and in the Borrower's name, in good faith, contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during that period of such contest and any appeal therefrom unless by such nonpayment the Project or any part thereof will be subject to loss or forfeiture.

Section 5.6. Qualification in State. The Borrower agrees that throughout the term of this Loan Agreement it, or any successor or assignee as permitted by Section 5.2, will be qualified to do business in the State.

Section 5.7. Tax Covenants. It is the intention of the Borrower and the Issuer that the interest on the Bonds be excludable from the gross income of the holders thereof for federal income tax purposes, except for any Bond for any period that such Bond is owned by a person who is a "substantial user" of the proceeds or the Project or a "related person" within the meaning of Section 147(a) of the Code. To that end, the Borrower and the Issuer (to the extent reasonably within the control of the Issuer) covenant with each other, and with the Trustee for the benefit of the Bondholders, to refrain from any action which would adversely affect, and to take such action to assure, the treatment of the Bonds as obligations described in Section 103(a) of the Code, the interest on which is not includable in the "gross income" of the holder (other than the income of a "substantial user" of the Project or a "related person" within the meaning of Section 147(a) of the Code) for purposes of federal income taxation. Furthermore, the Borrower hereby covenants as follows:

- (a) to take such action to assure that the Bonds are "empowerment zone facility bonds," as defined in Sections 1394(a) and (f)(3) of the Code, at least 95 percent of the net

proceeds of which are used to provide an "enterprise zone facility" within the meaning of Section 1394(b) of the Code;

(b) to comply with the terms and conditions of the Tax Agreement between the Borrower and the Issuer, executed in connection with the Bonds, including, without limiting the generality of any other covenant contained herein, --

(i) assuring that at all times required by the Code and the Regulations, including the Testing Period (within the meaning of Section 1394(b)(3)(C)(ii) of the Code) and Compliance Period (within the meaning of Section 1.1394-1(b) and (c) of the Treasury Regulations) after the Startup Period (within the meaning of Section 1394(b)(3)(C)(i) of the Code) that at least 35 percent (35%) of the employees of the Project, as the Borrower's "enterprise zone business" within the meaning of Section 1394(b)(3) of the Code, are residents of the Empowerment Zone, and

(ii) obtaining annually during the aforementioned Testing Period and Compliance Period from each such employee, a certification of residency to currently determine residency compliance with the foregoing;

(c) to refrain from taking any action that would result in the Bonds being "federally guaranteed" within the meaning of Section 149(b) of the Code;

(d) to refrain from using any portion of the proceeds of the Bonds, directly or indirectly, to acquire or to replace funds which were used, directly or indirectly, to acquire investment property (as defined in Section 148(b)(2) of the Code) which produces a materially higher yield over the term of the Bonds than the yield on the Bonds, other than investment property acquired with

(i) proceeds of the Bonds invested for a period of three years or less until such proceeds are used for the purpose of acquisition, construction, or improvement of the Project,

(ii) amounts invested in a bona fide debt service fund, within the meaning of Section 1.148-1(b) of the Regulations, and

(iii) amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed 10 percent of the proceeds of the Bonds and to the extent that at no time during any bond year will the aggregate amount so invested exceed 150 percent of debt service on the Bonds for such year;

(e) to otherwise restrict the use or investment of the proceeds of the Bonds or amounts treated as proceeds of the Bonds, as may be necessary, to satisfy the requirements of Section 148 of the Code (relating to arbitrage) and Section 149(d) of the Code (relating to advance refundings);

(f) to use no more than two percent of the proceeds received from the sale of the Bonds for the payment of Costs of Issuance (including underwriters' discount, if any);

(g) to use no portion of the proceeds of the Bonds to provide any airplane, sky-box or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises;

(h) to comply with the limitations imposed by Section 147(c) of the Code (relating to the limitation on the use of proceeds to acquire land) and Section 147(d) of the Code (relating to restrictions on the use of bond proceeds to acquire existing buildings, structures or other property);

(i) to pay to the United States of America (to the extent not paid by the Trustee pursuant to the Indenture) at least once during each five-year period (beginning on the date of delivery of the Bonds) an amount that is at least equal to 90 percent of the "Excess Earnings," within the meaning of Section 148(f) of the Code and to pay to the United States of America, not later than 60 days after the Bonds have been paid in full, 100 percent of the amount then required to be paid as a result of Excess Earnings under Section 148(f) of the Code, unless the Bonds qualify for the exception to rebate set forth in Section 148(f)(4)(B) of the Code or the Regulations thereunder; and

(j) to provide to the Trustee, at such time as required by the Trustee, all information required by the Trustee with respect to Nonpurpose Investments (as defined in Section 148 of the Code) not held in any fund under the Indenture.

For purposes of the foregoing (a) and (d), the term "proceeds" includes "disposition proceeds" as defined in the Treasury Regulations and, in the case of refunding bonds, transferred proceeds (if any) and proceeds of the refunded bonds expended prior to the date of issuance of the Bonds.

It is the understanding of the Issuer and the Borrower that the covenants contained herein are intended to assure compliance with the Code and any regulations or rulings promulgated by the United States Department of the Treasury pursuant thereto. In the event that regulations or rulings are hereafter promulgated which modify or expand provisions of the Code, as applicable to the Bonds, the Issuer and the Borrower will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of Bond Counsel delivered to the Issuer, the Borrower, and the Trustee, will not adversely affect the exclusion of interest on the Bonds from the gross income of the owners of the Bonds for federal income tax purposes under Section 103 of the Code. In the event that regulations or rulings are hereafter promulgated which impose additional requirements which are applicable to the Bonds, the Borrower agrees to comply with the additional requirements to the extent necessary, in the opinion of Bond Counsel delivered to the Issuer, the Borrower, the Trustee, and the Bank to preserve the exclusion of interest on the Bonds from the gross income of the owners of the Bonds for federal income tax purposes under Section 103

of the Code. In furtherance of such intention, the Issuer hereby authorizes and directs the President, the Vice President, Secretary, or Assistant Secretary to execute any documents, certificates or reports required by the Code and to make such elections, on behalf of the Issuer, which may be permitted by the Code as are consistent with the purpose for the issuance of the Bonds.

Section 5.8. Continuing Disclosure. While the Bonds are in the Index Rate Period, the Borrower is exempt from complying with the continuing disclosure requirements promulgated under Rule 15c2-12 of the Securities and Exchange Commission, as it may be amended from time to time hereafter ("**Rule 15c2-12**"). While the Bonds are bearing interest in any other Interest Rate Mode other than an Index Rate Period, the Borrower hereby covenants and agrees to comply with the continuing disclosure requirements under Rule 15c2-12, to the extent applicable to it, and to execute a "Continuing Disclosure Agreement" in the form prepared by Bond Counsel sufficient to enable a Remarketing Agent to comply with its obligations under Rule 15c2-12 when the Bonds are not in an Index Rate Period. Notwithstanding any other provision of this Loan Agreement, failure of the Borrower to comply with the requirements of Rule 15c2-12 and any Continuing Disclosure Agreement shall not be considered a Loan Default Event; however, the Trustee, at the written request of the Holders of at least 25% in aggregate principal amount of Outstanding Bonds, shall, but only to the extent indemnified to its satisfaction from and against any cost, liability or expense related thereto, including, without limitation, fees and expenses of its attorneys and advisors and additional fees and expenses of the Trustee or any Bondholder or beneficial owner of the Bonds, take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the Borrower to comply with its obligations pursuant to this Section and any Continuing Disclosure Agreement.

Section 5.9. Assignment by Borrower. The rights and obligations of the Borrower under this Loan Agreement may be assigned by the Borrower to any person in whole or in part, subject, however, to each of the following conditions:

(a) Unless waived by the Issuer, the Borrower shall notify the Issuer and the Trustee in writing of the identity of any assignee at least thirty (30) days prior to the effective date of such assignment.

(b) No assignment other than pursuant to Section 5.2 hereof shall relieve the Borrower from primary liability for any of its obligations hereunder and, in the event of any assignment not pursuant to Section 5.2 hereof, the Borrower shall continue to remain primarily liable for the payments specified in Section 4.2 hereof and for performance and observance of the other agreements on its part herein provided to be performed and observed by it.

(c) Any assignment from the Borrower other than pursuant to Section 5.2 hereof shall retain for the Borrower such rights and interests as will permit it to perform its obligations under this Loan Agreement, and any assignee from the Borrower thereunder shall assume in writing the obligations of the Borrower hereunder to the extent of the interest assigned.

(d) Within thirty (30) days after delivery thereof, the Borrower shall furnish or cause to be furnished to the Issuer and the Trustee a true and complete copy of each such assignment together with an instrument of assumption.

(e) The Borrower shall furnish to the Issuer and the Trustee an Approving Opinion with respect to such assignment.

Section 5.10. Cooperation in Filings and Other Matters. (a) The Borrower will, at its own expense, take all reasonably necessary action to maintain and preserve the lien and security interest of the Indenture so long as any principal installment of, redemption premium, if any, or interest on the Bonds remains unpaid.

(b) The Borrower will, forthwith after the execution and delivery of this Loan Agreement and the Indenture and thereafter from time to time, cause the Indenture (including any amendments thereof and supplements thereto) and any applicable financing statements in respect thereof to be filed, registered and recorded in such manner and in such places as may be required by law in order to publish notice of and fully to perfect and protect (i) the title of the Borrower to the Project and (ii) the lien and security interest granted to the Trustee to the rights of the Issuer assigned under the Indenture, and from time to time will perform or cause to be performed any other act as provided by law and will execute or cause to be executed any and all applicable continuation statements and further instruments necessary for such publication, perfection and protection. Except to the extent it is exempt therefrom, the Borrower will pay or cause to be paid all applicable filing, registration and recording fees incident to such filing, registration and recording, and all applicable expenses incident to the preparation, execution and acknowledgment of such instruments of further assurance, and all federal or state fees and other similar fees, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Loan Agreement, the Indenture and such instruments of further assurance. The Borrower shall furnish or cause to be furnished to the Trustee a true and complete copy of each such filing and instrument of further assurance.

(c) The Issuer shall have no responsibility for the preparation, filing or recording of any instrument, document or financing statement or for the maintenance of any security interest intended to be perfected thereby. The Issuer will execute such instruments as may be reasonably necessary in connection with such filing or recording.

Section 5.11. Maintained as a Placeholder.

Section 5.12. Compliance with Laws. The Borrower shall, throughout the term of this Loan Agreement and at no expense to the Issuer, promptly comply or cause compliance in all material respects with all applicable laws, ordinances, orders, rules, regulations and requirements of duly constituted public authorities which may be applicable to the Project or to the repair and alteration thereof, or to the use or manner of use of the Project or to the Borrower's operations with respect to the Project, including but not limited to the Americans with Disabilities Act, all federal, state and local environmental and health and safety laws, rules, regulations and orders applicable to or pertaining to the Project, the Federal Worker Adjustment and Retraining Notification Act and,

if applicable to the Project, the Prevailing Wage Act. Notwithstanding the foregoing, the Borrower shall have the right to contest or cause to be contested the legality or the applicability of any such law, ordinance, order, rule, regulation or requirement so long as, in the opinion of counsel satisfactory to the Trustee, the Credit Facility Provider, if any, the Liquidity Facility Provider, if any, and the Bank during any Index Rate Period, such contest shall not in any way materially adversely affect or impair the obligations of the Borrower hereunder or any right or interest of the Trustee the Credit Facility Provider, if any, the Liquidity Facility Provider, if any, or the Bank during any Index Rate Period, in, to and under the Indenture or this Loan Agreement.

Section 5.13. No Recourse. The obligations of the Issuer under this Loan Agreement are special, limited obligations of the Issuer, payable solely out of the revenues and income derived under this Loan Agreement and as otherwise provided under this Loan Agreement and the Indenture. The obligations of the Issuer hereunder shall not be deemed to constitute an indebtedness or an obligation of the Issuer, the City, the State or any political subdivision thereof within the meaning of any constitutional limitation or statutory provision, or a charge against the credit or general taxing powers, if any, of any of them. The Issuer has no taxing power. Neither the Issuer, the City, nor any member, director, officer, employee or agent of the Issuer or the City nor any person executing the Bonds shall be liable personally for the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds. No recourse shall be had for the payment of the principal of, redemption premium, if any, and interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement contained in the Indenture or this Loan Agreement or the *Continuing Covenant Agreement* between the Borrower and U.S. Bank National Association, as the initial purchaser of the Bonds, against any past, present or future member, officer, agent or employee of the Issuer or the City, or any incorporator, member, officer, employee, director or trustee of any successor corporation, as such, either directly or through the Issuer or any successor corporation or the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporator, member, officer, employee, director, agent or trustee as such is hereby expressly waived and released as a condition of and consideration for the execution of the Indenture or this Loan Agreement and the issuance of the Bonds.

Section 5.14. Borrower Option to Designate Interest Rate Determination Methods. The Borrower is hereby granted the option to designate from time to time changes in interest rate determination methods in the manner and to the extent set forth in Section 2.02(g) of the Indenture. In the event the Borrower elects to exercise any such option, the Borrower agrees that it shall cause notices of changes in interest rate determination methods to be given to the Bank, during an Index Rate Period, the Remarketing Agent with respect to the affected Bonds, the Tender Agent, the Trustee, the Liquidity Facility Provider, if any, and the Credit Facility Provider, if any, with respect to the affected Bonds in accordance with Section 2.02(g)2 of the Indenture.

Section 5.15. Purchase of Bonds. (a) In consideration of the issuance of the Bonds by the Issuer, and for the benefit of the owners of the Bonds, the Borrower has agreed, and does hereby covenant, to cause the necessary arrangements to be made and to be thereafter continued whereby owners from time to time of the Bonds may deliver Bonds for purchase and whereby such Bonds

shall be so purchased. In furtherance of the foregoing covenant of the Borrower, the Issuer, at the direction of the Borrower, has set forth in Section 3.08 and Section 3.10 of the Indenture the terms and conditions relating to the delivery of Bonds by the registered holders thereof to the Remarketing Agent for purchase and has set forth in the Indenture the duties and responsibilities of the Remarketing Agent and the Tender Agent with respect to the purchase and remarketing of Bonds. The Borrower hereby authorizes and directs the Tender Agent and the Remarketing Agent to purchase, offer, sell, and deliver Bonds in accordance with the provisions of Article III of the Indenture, including but not limited to Sections 3.08, 3.09, 3.14 and 3.15 thereof.

Without limiting the generality of the foregoing covenant of the Borrower, the Borrower covenants, for the benefit of the owners of the Bonds, the Credit Facility Provider, if any, and the Liquidity Facility Provider, if any, to pay, or cause to be paid, to the Trustee such amounts as shall be necessary to enable the Trustee to pay the Purchase Price of the Bonds delivered to it for purchase or deemed delivered for purchase, all as more particularly described, at the direction of the Borrower, in the Indenture; provided, however, that the obligation of the Borrower to make, or cause to be made, any such payment hereunder shall be satisfied only, in order of priority, first by funds received by the Trustee from the remarketing of the Bonds by the Remarketing Agent, second, in the event sufficient funds are not available from such remarketing, from draws upon a Credit Facility or a Liquidity Facility, if any, and, then, from funds provided by the Borrower.

(b) The Issuer shall have no obligation or responsibility, financial or otherwise, with respect to the purchase of Bonds or the making or continuation of arrangements thereof other than as expressly set forth in subsection (a) of this Section, except that the Issuer shall generally cooperate with the Borrower and the Remarketing Agent as contemplated by the Indenture.

Section 5.16. Usury. Anything herein to the contrary notwithstanding, it is the intention of the parties hereto to conform strictly to the usury laws in force that are applicable to this transaction. Accordingly, all agreements among the parties hereto and beneficiaries hereof and their assigns or any of them, whether by reason of acceleration of amounts due hereunder or any part thereof or otherwise, shall the interest (including all sums that are deemed to be interest) contracted for, charged or received hereunder and/or with respect to the purchase of the Project exceed the maximum amount permissible under applicable law.

END OF ARTICLE VI

ARTICLE VI

[RESERVED]

ARTICLE VII

LOAN DEFAULT EVENTS AND REMEDIES

Section 7.1. Loan Default Events. Any one of the following which occurs and continues shall constitute a Loan Default Event:

(a) Failure of the Borrower to make any Loan Payment required by Section 4.2(a) hereof when due; or

(b) Failure of the Borrower to make any Purchase Price Payment required by Section 4.2(b) hereof when due; or

(c) Failure of the Borrower to observe and perform in any material respect any covenant, condition or agreement on its part required to be observed or performed by this Loan Agreement other than as provided in (a) or (b), which continues for a period of thirty (30) days after written notice by the Issuer or the Trustee delivered to the Borrower, the Bank during an Index Rate Period, the Credit Facility Provider, if any, and the Liquidity Facility Provider, if any, which notice shall specify such failure and request that it be remedied, unless the Issuer and the Trustee (and the Bank during an Index Rate Period) shall agree in writing to an extension of such time; provided, however, that if the failure stated in the notice cannot be corrected within such period, the Issuer and the Trustee (and the Bank during an Index Rate Period) will not unreasonably withhold their consent to an extension of such time if corrective action is instituted within such period and diligently pursued until the default is corrected; or

(d) The dissolution or liquidation of the Borrower or the filing by the Borrower of a voluntary petition in bankruptcy, or failure by the Borrower promptly to cause to be lifted any execution, garnishment or attachment of such consequence as will impair the Borrower's ability to carry on its obligations hereunder, or the commission by the Borrower of any act of bankruptcy, or adjudication of the Borrower as a bankrupt, or if a petition or answer proposing the adjudication of the Borrower as a bankrupt or its reorganization, arrangement or debt readjustment under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof, or if the Borrower shall admit in writing its inability to pay its debts generally as they become due, or a receiver, trustee or liquidator of the Borrower shall be appointed in any proceeding brought against the Borrower and shall not be discharged within ninety (90) days after such appointment or if the Borrower shall consent to or acquiesce in such appointment, or assignment by the Borrower for the benefit of its creditors, or the entry by the Borrower into an agreement of composition with its creditors, or a bankruptcy, insolvency or similar proceeding shall be otherwise initiated by or against the Borrower under any applicable bankruptcy, reorganization or analogous law as now or hereafter in effect and if initiated against the Borrower shall remain undismissed (subject to no further appeal) for a period of

ninety (90) days; provided, the term "dissolution or liquidation of the Borrower," as used in this subsection, shall not be construed to include the cessation of the existence of the Borrower resulting either from a merger or consolidation of the Borrower into or with another entity or a dissolution or liquidation of the Borrower following a transfer of all or substantially all of its assets as an entirety under the conditions permitting such actions contained in Section 5.2 hereof; or

- (e) The existence of an Event of Default under the Indenture.

With regard to any alleged default concerning which notice is given to the Borrower under the provisions of Section 6.01 of the Indenture, the Issuer hereby grants the Borrower full authority for the account of the Issuer to perform any covenant or obligation the non-performance of which is alleged in said notice to constitute a default in the name and stead of the Issuer with full power to do any and all things and acts to the same extent that the Issuer could do and perform any such things and acts and with power of substitution.

Section 7.2. Remedies on Default. Subject to Section 7.1 hereof, whenever any Loan Default Event shall have occurred and shall be continuing,

- (a) The Trustee, by written notice to the Issuer, the Borrower, the Bank (during an Index Rate Period), the Liquidity Facility Provider, if any, and the Credit Facility Provider, if any, shall declare the unpaid balance of the loan payable under Section 4.2(a) of this Loan Agreement to be due and payable immediately, if and only if, concurrently with or prior to such notice the unpaid principal amount of the Bonds shall have been declared to be due and payable under the Indenture. Upon any such declaration such amount shall become and shall be immediately due and payable as determined in accordance with Section 6.02 of the Indenture.

- (b) The Trustee may have access to and may inspect, examine and make copies of the books and records and any and all accounts, data and federal income tax and other tax returns of the Borrower.

- (c) The Issuer or the Trustee may take whatever action at law or in equity as may be necessary or desirable to collect the payments and other amounts then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Loan Agreement.

- (d) If applicable, the Trustee shall immediately draw upon any Credit Facility, if permitted by its terms and required by the terms of the Indenture, and apply the amount so drawn in accordance with the Indenture and may exercise any remedy available to it thereunder.

In case the Trustee or the Issuer shall have proceeded to enforce its rights under this Loan Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall

have been determined adversely to the Trustee or the Issuer, then, and in every such case, the Borrower, the Trustee and the Issuer shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Borrower, the Trustee and the Issuer shall continue as though no such action had been taken.

The Borrower covenants that, in case a Loan Default Event shall occur with respect to the payment of any Loan Payment payable under Section 4.2(a) hereof, then, upon demand of the Trustee, the Borrower will pay to the Trustee the whole amount that then shall have become due and payable under said Section, with interest on the amount then overdue at the Maximum Rate.

In the case the Borrower shall fail forthwith to pay such amounts upon such demand, the Trustee shall be entitled and empowered to institute any action or proceeding at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree, and may enforce any such judgment or final decree against the Borrower and collect in the manner provided by law the moneys adjudged or decreed to be payable.

In case proceedings shall be pending for the bankruptcy or for the reorganization of the Borrower under the federal bankruptcy laws or any other applicable law, or in case a receiver or trustee shall have been appointed for the property of the Borrower or in the case of any other similar judicial proceedings relative to the Borrower, or the creditors or property of the Borrower, then the Trustee shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount owing and unpaid pursuant to this Loan Agreement and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee allowed in such judicial proceedings relative to the Borrower, its creditors or its property, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute such amounts as provided in the Indenture after the deduction of its reasonable charges and expenses to the extent permitted by the Indenture. Any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized to make such payments to the Trustee, and to pay to the Trustee any amount due it for reasonable compensation and expenses, including reasonable expenses and fees of counsel incurred by it up to the date of such distribution.

In the event the Trustee incurs expenses or renders services in any proceedings which result from a Loan Default Event under Section 7.1(d) hereof, or from any default which, with the passage of time, would become such Loan Default Event, the expenses so incurred and compensation for services so rendered are intended to constitute expenses of administration under the Bankruptcy Code or equivalent law.

Section 7.3. Agreement to Pay Attorneys' Fees and Expenses. In the event the Borrower should default under any of the provisions of this Loan Agreement and the Issuer, the City, the Bank or the Trustee should employ attorneys or incur other expenses for the collection of the payments due under this Loan Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower herein contained, the Borrower agrees to pay to the Issuer, the City, the Bank and the Trustee, as the case may be, the reasonable fees of such

attorneys and such other expenses so incurred by the Issuer, the City, the Bank and or the Trustee, as the case may be.

Section 7.4. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Issuer or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Trustee 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 expressly required herein or by applicable law. Such rights and remedies as are given the Issuer hereunder shall also extend to the Trustee as the assignee of the Issuer.

Section 7.5. No Additional Waiver Implied by One Waiver. In the event any agreement or covenant contained in this Loan Agreement should be breached by the Borrower and thereafter waived by the Issuer or the Trustee, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

END OF ARTICLE VII

ARTICLE VIII

PREPAYMENT

Section 8.1. Redemption of Bonds with Prepayment Moneys. By virtue of the assignment of the rights of the Issuer under this Loan Agreement to the Trustee as is provided in Section 4.4 hereof, the Borrower agrees to and shall pay directly to the Trustee any amount permitted or required to be paid by it under this Article VIII. The Trustee shall use the moneys so paid to it by the Borrower to redeem the Bonds on the date set for such redemption pursuant to Section 8.5 hereof. The Issuer shall call Bonds for redemption as required by Article III of the Indenture or as requested by the Borrower pursuant to the Indenture or this Loan Agreement.

Section 8.2. Options to Prepay Installments. The Borrower shall have the option to prepay the Loan Payments payable under Section 4.2(a) hereof by paying to the Trustee, for deposit in the Bond Fund, the amount set forth in Section 8.4 hereof and to cause all or any part of the Bonds to be redeemed at the times and at the prices set forth in Section 3.01(a), (b), (c), (d) and (g) of the Indenture if the conditions under said Section 3.01 are met and at the times and at the prices set forth in Section 3.01 of the Indenture.

Section 8.3. Mandatory Prepayment. The Borrower shall have and hereby accepts the obligation to prepay Loan Payments required by Section 4.2(a) by paying to the Trustee, for deposit in the Bond Fund, the amount set forth in Section 8.4 hereof, to be used to redeem all or a part of the Outstanding Bonds if mandatory redemption is required by Section 3.01(e) of the Indenture.

Section 8.4. Amount of Prepayment. In the case of a prepayment of the entire amount due hereunder pursuant to Section 8.2 or 8.3, the amount to be paid shall be a sum sufficient, together with other funds and the yield on any securities deposited with the Trustee and available for such purpose, to pay (1) the principal of all Bonds Outstanding on the redemption date specified in the notice of redemption, plus interest accrued and to accrue to but not including the redemption date of the Bonds, plus premium, if any, pursuant to the Indenture, (2) all reasonable and necessary fees and expenses of the Issuer, the Trustee, the Tender Agent and the Paying Agent accrued and to accrue through final payment of the Bonds and (3) all other liabilities of the Borrower accrued and to accrue under this Loan Agreement. In the case of a partial prepayment of the amount due hereunder pursuant to Section 8.2 or 8.3, the amount payable shall be a sum sufficient, together with other funds and the yield on any securities deposited with the Trustee and available for such purpose, to pay the principal amount of and premium, if any, and accrued interest on the Bonds to be redeemed, as provided in the Indenture, and to pay expenses of redemption of such Bonds.

Section 8.5. Notice of Prepayment. To exercise an option granted in or to perform an obligation required by this Article VIII, the Borrower shall give written notice at least fifteen (15) days (or such lesser number of days as may be acceptable to the Trustee) prior to the last day by which the Trustee is permitted to give notice of redemption pursuant to Section 3.03 of the Indenture, to the Issuer and the Trustee specifying the amount to be prepaid and the date upon which any prepayment will be made. If the Borrower fails to give such notice of a prepayment in

connection with a mandatory redemption under this Loan Agreement, such notice may be given by the Issuer, by the Trustee or by any Holder or Holders of 10% or more in aggregate principal amount of the Bonds Outstanding. The Issuer and the Trustee, at the request of the Borrower or any such Holder or Holders, shall forthwith take all steps necessary under the applicable provisions of the Indenture (except that the Issuer shall not be required to make payment of any money required for such redemption) to effect redemption of all or part of the Bonds then Outstanding, as the case may be, on the earliest practicable date thereafter on which such redemption may be made under applicable provisions of the Indenture.

END OF ARTICLE VIII

ARTICLE IX

NON-LIABILITY OF ISSUER AND CITY; EXPENSES; INDEMNIFICATION

Section 9.1. Non-liability of Issuer and City. Neither the Issuer nor the City shall be obligated to pay the principal of, or premium, if any, or interest on, or Purchase Price of, the Bonds, except from the sources herein provided. The Borrower hereby acknowledges that the Issuer's sole source of moneys to repay the Bonds will be provided by the payments made by the Borrower pursuant to this Loan Agreement, together with other Revenues, including investment income on certain funds and accounts held by the Trustee under the Indenture, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal and Purchase Price of, and premium, if any, and interest on the Bonds as the same shall become due (whether by maturity, redemption, acceleration or otherwise), then upon notice from the Trustee, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal, Purchase Price, premium or interest, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Trustee, the Borrower, the Issuer, the Bank (during an Index Rate Period), the Liquidity Facility Provider, if any, the Credit Facility Provider, if any, or any third party.

Notwithstanding any provision or obligation to the contrary hereinbefore set forth, no provision of this Loan Agreement shall be construed so as to give rise to a pecuniary liability of the Issuer or the City or to give rise to a charge upon the general credit of the Issuer or the City, the liability of the Issuer hereunder shall be limited to its interest in this Loan Agreement and all other related documents and the lien of any judgment shall be restricted thereto. In the performance of the agreements of the Issuer herein contained, any obligation it may incur for the payment of money shall not be a debt of the Issuer, nor shall the Issuer be liable on any obligation so incurred. The Issuer and the City do not assume general liability for the repayment of the Bonds or for the costs, fees, penalties, taxes, interest, commissions, charges, insurance or any other payments recited herein, and shall be obligated to pay the same only out of the amounts payable by the Borrower hereunder. The Issuer shall not be required to do any act whatsoever or exercise any diligence whatsoever to mitigate the damages to the Borrower if a default or Loan Default Event shall occur hereunder.

Section 9.2. Expenses. The Borrower covenants and agrees to pay and to indemnify the Issuer, the City and the Bank against all costs and charges, including reasonable and customary fees and out-of-pocket disbursements of attorneys, accountants, consultants and other experts, incurred in good faith in connection with this Loan Agreement, the Bonds, the Indenture, the Tax Agreement or the Tax Letter of Representation.

Section 9.3. Indemnification of the Issuer and the City.

(a) The Borrower releases the Issuer and the City and their officers, directors, employees and agents (collectively, the "*Indemnified Parties*") from, and the Indemnified Parties shall not be liable for, and the Borrower agrees to and shall protect, indemnify, defend and hold harmless the

Indemnified Parties from, any and all losses, costs, damages, expenses and liabilities of whatsoever nature (including, but not limited to, attorneys' fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments), directly or indirectly resulting from, arising out of, in connection with, or related to (i) the issuance, offering, sale, delivery and payment of the Bonds and the interest thereon or redemption or refunding of the Bonds; (ii) the provisions of the Bonds (including the interest rate thereon), the resolution of the Issuer authorizing the issuance of the Bonds, the Indenture, the Purchase Contract between the Issuer and the original purchaser of the Bonds, any official statement or other offering document relating to the Bonds, the Remarketing Agreement and the Tender Agent Agreement pertaining to the Bonds, the Tax Agreement and this Loan Agreement (collectively, the "**Bond Documents**"); and the obligations imposed on the Indemnified Parties under any of the Bond Documents; (iii) the design, construction, installation, operation, use, occupancy, maintenance or ownership of the Project; (iv) any written statements or representations made or given by the Borrower or any of its officers or employees to the Indemnified Parties, the Indemnified Parties' financial advisor, the Trustee or any underwriters or purchasers of any of the Bonds, with respect to the Indemnified Parties, the Borrower, the Project, the Project, the Bonds, the Bond Documents or the offer or issuance of the Bonds, including, but not limited to, statements or representations of facts, financial information or corporate affairs; (v) damage to property or the environment or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Project; (vi) any loss or damage incurred by the Issuer as a result of violation by the Borrower of the provisions of Section 5.7 of this Loan Agreement; (vii) any action required to be taken by the Issuer, or the Trustee on behalf of the Issuer, under the Bond Documents; and (viii) the Issuer giving any consent permitted to be given by the Issuer by the specific terms of the Bond Documents or the Issuer not giving any consent it is not required to give under the specific terms of the Bond Documents. The provisions of this Section shall remain and be in full force and effect even if any such liability, cost, expense, damage or loss or claim therefor by any person, directly or indirectly, results from, arises out of, or relates to, or is asserted to have resulted from, arisen out of, or been related to, in whole or in part, one or more negligent acts or omissions (but shall not apply to damages resulting from acts or omissions of an Indemnified Party that constitute willful misconduct or bad faith) of the Issuer or the City in connection with the matters set forth in clauses (i) through (viii).

(b) In case any action shall be brought against the Indemnified Parties in respect of which indemnity may be sought against the Borrower, the party seeking indemnification shall promptly, following its receiving actual notice thereof, notify the Borrower in writing, and the Borrower shall assume the defense thereof, including the employment of counsel reasonably satisfactory to the party indemnified and the payment of all expenses. Failure by any party seeking indemnification so to notify the Borrower shall not relieve the Borrower from any liability under this Section. The party seeking indemnification shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be paid by such party unless the employment of such counsel has been authorized by the Borrower or unless representation of the Borrower and such party by the same counsel would be inappropriate due to actual or potential conflicts of interest between them. The Borrower shall not be liable for any settlement of any such action without its consent, but if any such action is settled with the consent of the Borrower, or if there be a final non-appealable judgment for the plaintiff in any such action,

the Borrower agrees to indemnify and hold harmless the parties indemnified herein from and against any liability or loss by reason of such settlement or judgment.

The provisions of this Section shall not be personally applicable to any officer, agent or employee of the Borrower or to any person or persons who "control" the Borrower, and no officer, agent or employee of the Borrower or persons who control the Borrower shall be personally or individually liable for or subject to any indemnification to the Issuer provided in this Section.

(c) The obligations of the Borrower under this Section shall survive the termination of this Loan Agreement or the earlier resignation or removal of the parties indemnified hereunder and shall be deemed to extend to elected or appointed officials, officers, directors, commissioners, agents, servants and employees of the Indemnified Parties and the Trustee.

The provisions of this Section have not been put in bold as the provisions have been negotiated between the parties.

Section 9.4. Indemnification of the Trustee. (a) To the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Trustee, and its respective officers, governing members, directors, officials, employees, attorneys and agents (collectively, the "***Trustee Indemnified Parties***"), against any and all losses, damages, claims, actions, liabilities, costs and expenses of any conceivable nature, kind or character (including, without limitation, reasonable and customary attorneys' fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Trustee Indemnified Parties, or any of them, may become subject under or any statutory law (including federal or state securities laws) or at common law or otherwise, arising out of or based upon or in any way relating to:

(i) the Bonds, the Indenture, this Loan Agreement, the Tax Agreement or the Tax Letter of Representation or the execution or amendment hereof or thereof or in connection with transactions contemplated hereby or thereby, including the issuance, sale or resale of the Bonds;

(ii) any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the design, acquisition, or use of, the Project or any part thereof;

(iii) the defeasance and/or redemption, in whole or in part, of the Bonds;

(iv) any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact contained in any offering statement or disclosure or continuing disclosure document for the Bonds or any of the documents relating to the Bonds, or any omission or alleged omission from any offering statement or disclosure or continuing disclosure document for the Bonds of

any material fact necessary to be stated therein in order to make the statements made therein by the Borrower, in the light of the circumstances under which they were made, not misleading;

(v) any declaration of taxability of interest on the Bonds, or allegations (or regulatory inquiry) that interest on the Bonds is taxable, for federal tax purposes;

(vi) the Trustee's acceptance or administration of the trust of the Indenture, or the exercise or performance of any of its powers or duties thereunder or under any of the documents relating to the Bonds to which it is a party, other than the Trustee's ordinary and necessary administration of the Indenture;

except to the extent such damages are caused by the negligence, willful misconduct or bad faith of a Trustee Indemnified Party or by a failure of the trustee or its agent to comply with any provision hereof or of the Indenture. In the event that any action or proceeding is brought against any Trustee Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the Trustee Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel selected by the Trustee Indemnified Party and reasonably acceptable to the Borrower, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that the Trustee Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Each Trustee Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and participate in the investigation and defense thereof, and the Borrower shall pay the reasonable and customary fees and expenses of such separate counsel; provided, however, that such Trustee Indemnified Party may only employ separate counsel at the expense of the Borrower if in the judgment of an independent counsel selected by the Trustee Indemnified Party a conflict of interest exists by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel; provided, further, however, that in no case shall the Borrower be responsible for the fees and expenses of more than one separate counsel for all Trustee Indemnified Parties.

(b) The rights of any persons to indemnity hereunder and rights to payment of fees and reimbursement of expenses pursuant to Section 4.2(d), Section 5.10, Section 7.3, Section 9.2 and Section 9.4 shall survive the final payment or defeasance of the Bonds and in the case of the Trustee any resignation or removal. The provisions of this Section shall survive the termination of this Loan Agreement.

END OF ARTICLE IX

ARTICLE X

MISCELLANEOUS

Section 10.1. Notices. Any notice to or demand upon the Trustee may be served or presented by certified mail, postage prepaid, by facsimile (receipt confirmed) or delivered, and such demand may be made, at the Corporate Trust Office of the Trustee, which at the date of adoption of this Loan Agreement is located at the following address:

U.S. Bank National Association
EX-TX-DCRE
14241 Dallas Parkway, Suite 490
Dallas, Texas 75254
Attn: Corporate Trust Services
Facsimile: (972) 789-9605

or at such other address as may have been filed in writing by the Trustee with the other parties listed in this Section. Notices to the Trustee are effective only when actually received by the Trustee.

Any notice, request, complaint, demand, communication or other paper upon the Issuer, the Borrower, or the Bank (during and Index Rate Period) shall be deemed to have been sufficiently given or served for all purposes when the same are: (1) deposited in the United States mail and sent by first class mail, postage prepaid, or (2) sent by facsimile or delivered, addressed, as the case may be, as follows:

To the Issuer:

City of San Antonio, Texas Empowerment Zone Development Corporation
c/o City of San Antonio - Department of Economic Development
100 W. Houston Street, 19th Floor
San Antonio, Texas 78205
Attn: Executive Director
Facsimile: (210) 207-8151

with a copy to the Issuer's Secretary as follows:

Office of the City Clerk
City Hall, 2nd Floor
100 Military Plaza
San Antonio, Texas 78205
Facsimile: (210) 207-7032

To the Bank:

U.S. Bank National Association
10 N. Hanley Road
St. Louis, Missouri 63105
Attn: Howard Goldberg, Vice President
Facsimile: (314) 505-8140

and

U.S. Bank National Association
One California Street, Suite 350
San Francisco, California 94111
Attn: Ila Afsharipour, Director
Facsimile: (415) _____

with a copy to:

Sara E. Kotthoff
Thompson Coburn LLP
One US Bank Plaza, Suite 2700
St. Louis, Missouri 63101
Facsimile: (314) 552-7065

To the Borrower:

Alamo National Building Development, LP
101 S. Farrar
P.O. Box 1214
Cape Girardeau, MO 63702-1214
Attn: Herb Wedemeier
Facsimile: (573) 335-5125

with a copy to:

Linda Martinez
Bryan Cave LLP
One Metropolitan Square, Suite 3600
St. Louis, Missouri 63102
Facsimile: (314) 259-2020

or such other addresses as may have been filed in writing with the other parties listed in this Section.

Any notice, request, complaint, demand, communication or other paper upon the Liquidity Facility Provider, if any, or the Credit Facility Provider, if any, shall be deemed to have been sufficiently given or served for all purposes when the same are: (1) deposited in the United States mail and sent by first class mail, postage prepaid, or (2) sent by facsimile or delivered, addressed, as the case may be, as set forth in the applicable agreements pursuant to which a Liquidity Facility or Credit Facility is provided.

Section 10.2. Severability. If any provision of this Loan Agreement shall be held or deemed to be, or shall in fact be, illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative, or unenforceable to any extent whatever.

Section 10.3. Execution of Counterparts. This Loan Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 10.4. Amendments, Changes and Modifications. Except as otherwise provided in this Loan Agreement or the Indenture (including without limitation Section 11.17 of the Indenture), this Loan Agreement may not be effectively amended, changed, modified, altered or terminated except by the written agreement of the Issuer and the Borrower and with the written consent of the Liquidity Facility Provider, if any, the Credit Facility Provider, if any, the Bank (during an Index Rate Period), and the Trustee, if required, in accordance with Section 9.05 of the Indenture.

Section 10.5. Governing Law. THIS AGREEMENT SHALL BE GOVERNED EXCLUSIVELY BY AND CONSTRUED IN ACCORDANCE WITH THE APPLICABLE LAWS OF THE STATE OF TEXAS. VENUE FOR ANY ACTIONS BROUGHT HEREUNDER TO WHICH THE ISSUER IS A PARTY SHALL LIE IN BEXAR COUNTY, TEXAS.

Section 10.6. Authorized Representative. Whenever under the provisions of this Loan Agreement the approval of the Borrower is required or the Borrower is required to take some action at the request of the Issuer, such approval or such request shall be given on behalf of the Borrower by the Authorized Representative, and the Issuer, the Trustee and the Remarketing Agent shall be authorized to act on any such approval or request and neither party hereto shall have any complaint against the other or against the Trustee or the Remarketing Agent as a result of any such action taken.

Section 10.7. Term of the Loan Agreement. This Loan Agreement shall be in full force and effect from the date hereof and shall continue in effect until the payment in full of all principal of, premium, if any, and interest on the Bonds, or provision for the payment thereof shall have been made pursuant to Article X of the Indenture, all fees, charges and expenses of the Issuer, the Trustee, the Bond Registrar and the Remarketing Agent have been fully paid or provision made for such payment (the payment of which fees, charges, indemnities and expenses shall be evidence by a

written certification of the Borrower that it has fully paid all such fees, charges, indemnities and expenses) and all other amounts due hereunder have been duly paid or provision made for such payment. All representations, certifications and covenants by the Borrower as to the indemnification of various parties and the payment of fees and expenses of the Issuer as described in Sections 4.2(d), 5.10, 7.3, 9.2 and 9.3 hereof, and all matters affecting the tax-exempt status of the Bonds shall survive the termination of this Loan Agreement.

Section 10.8. Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Borrower and their respective successors and assigns; subject, however, to the limitations contained in Sections 5.2 and 5.9 hereof.

Section 10.9. Complete Agreement. The parties agree that the terms and conditions of this Loan Agreement supersede those of all previous agreements between the parties, and that this Loan Agreement, together with the documents referred to in this Loan Agreement, contains the entire agreement between the parties hereto.

Section 10.10. Business Days. If any payment is to be made hereunder or any action is to be taken hereunder on any date that is not a Business Day, such payment or action otherwise required to be made or taken on such date shall be made or taken on the immediately succeeding Business Day with the same force and effect as if made or taken on such scheduled date.

Section 10.11. Waiver of Personal Liability. No recourse shall be had for the payment of the principal or Purchase Price of, redemption premium, if any, and interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement contained in the Indenture, this Loan Agreement, or the *Continuing Covenant Agreement* between the Borrower and U.S. Bank National Association, as the initial purchaser of the Bonds, against any past, present or future incorporator, member, officer, employee, agent, director or trustee of the Issuer, or any incorporator, member, officer, employee, agent, director or trustee of any successor corporation, as such, either directly or through the Issuer or any successor corporation, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporator, member, officer, employee, director, agent or trustee as such is hereby expressly waived and released as a condition of and consideration for the execution of the Indenture or this Loan Agreement and the issuance of the Bonds.

Section 10.12. Indenture Provisions. The Indenture provisions concerning the Bonds and the other matters therein are an integral part of the terms and conditions of the loan made by the Issuer to the Borrower pursuant to this Loan Agreement, and the execution of this Loan Agreement shall constitute conclusive evidence of approval of the Indenture by the Borrower to the extent it relates to the Borrower. To the extent that the Indenture imposes a duty or obligation on the Borrower, the Borrower hereby agrees to carry out and perform such duties and obligations. To the extent that the Indenture permits the Borrower to take certain actions, the Issuer hereby agrees that the Borrower shall be entitled to take such actions.

Section 10.13. Rights of the Bank During an Index Rate Period; Bank as Third Party Beneficiary. At all times while the Bonds are in the Index Rate Period, (i) the Bank shall have all rights to notice and consent provided herein to a Credit Facility Provider or a Liquidity Facility Provider, if any, and (ii) the Bank shall have the right to direct the Trustee with respect to the Trustee exercising any waivers, consents, and remedies granted to the Trustee as set forth herein or in the Indenture, and (iii) the Bank shall be a third party beneficiary to this Loan Agreement.

Section 10.14. FINAL AGREEMENT OF THE PARTIES. THIS AGREEMENT CONSTITUTES A LOAN AGREEMENT FOR PURPOSES OF SECTION 26.02(a) OF THE TEXAS BUSINESS AND COMMERCE CODE, AND REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

END OF ARTICLE X

IN WITNESS WHEREOF, the Issuer has caused this Loan Agreement to be executed in its name by its duly authorized officers and its corporate seal to be hereunto affixed or printed hereon and the Borrower has caused this Loan Agreement to be executed in its name by a duly authorized officer, all as of the date first above written.

**CITY OF SAN ANTONIO, TEXAS EMPOWERMENT
ZONE DEVELOPMENT CORPORATION**

By _____
President

ATTEST:

By _____
Secretary

(SEAL)

ALAMO NATIONAL BUILDING DEVELOPMENT, LP

By: **ALAMO NATIONAL BUILDING MANAGEMENT, LP**, its
general partner

By: **DSW ALAMO MANAGEMENT, LLC**, its general partner

By: **DRURY SOUTHWEST, INC.**, its manager

By: _____
Name: Dennis J. Vollink
Title: President

EXHIBIT A

Description of Project

The Project consists of the renovation and redevelopment of the Alamo National Bank Building and related parking facilities (located on the west side of St. Mary's Street between Commerce Street and Market Street in the City's downtown area) into a new hotel which has been completed and consists of approximately 367 guest rooms and related hotel amenities and parking facilities and improvements along the Riverwalk; provided, however, the Project shall not include any work or costs related to the construction or renovation, furnishing and equipping of meeting rooms, restaurants, and the parking facilities, all of which were financed with funds other than proceeds of the Series 2005 Bonds and Series 2007 Bonds previously issued by the Issuer.