

**UNITED STATES OF AMERICA
STATE OF MONTANA**

CITY OF MISSOULA

PUBLIC IMPROVEMENTS USE FEE NOTE

CONSUMER DIRECT GRANT CREEK CAMPUS, LLC

Note number 724-9992

\$1,999,920.00..... **Missoula, Montana**
[REDACTED], 2017

FOR VALUE RECEIVED, the undersigned, **CITY OF MISSOULA (“CITY”)**, a municipal corporation organized and existing under the laws of the State of Montana (together with any successors to its functions, and hereinafter referred to as the “Maker”), does hereby promise to pay to the order of the **MONTANA BOARD OF INVESTMENTS (“MBOI”)**, its successors or assigns (MBOI together with any successors or assigns hereunder, shall hereafter be referred to as the “Holder”), at its offices at 2401 Colonial Drive 3rd floor, Helena, Montana 59601, Attention: Infrastructure Loan Department, or at such other place, either within or without the State of Montana, as the Holder hereof may from time to time designate in writing, solely from the source and in the manner herein provided, the principal sum of One Million Nine Hundred Ninety-Nine Thousand Nine Hundred Twenty and no/100 Dollars (**\$1,999,920.00**) with interest on the unpaid principal amount at the rate set forth in paragraph 2 hereof, in legal tender of the United States of America, in accordance with the terms hereinafter set forth. All interest shall be computed on the basis of a year of 365 days (366 days during leap years).

1. All capitalized terms used but not otherwise defined herein shall have the meanings assigned thereto in that certain Loan Agreement of even date herewith (the “Loan Agreement”), between Maker and MBOI, unless the context clearly requires otherwise. As used herein, the following terms have the following meanings:

“CONSUMER DIRECT” means **CONSUMER DIRECT GRANT CREEK CAMPUS, LLC**, a Montana limited liability company, or its permitted successors and assigns under the Public Improvements Use Fee Agreement.

“Final Maturity Date” means [REDACTED], the date when the entire unpaid principal amount of this Note, together with all unpaid accrued interest thereon, and all other indebtedness due hereunder, shall be payable.

2. The outstanding balance of principal, together with interest thereon and all other sums due under this Note or under the Loan Agreement, shall be payable as follows:

- (a) Interest shall accrue on the unpaid principal balance of this Note from and after the date of this Note to and including the date of payment of this Note in full at

the Applicable Interest Rate. The “Applicable Interest Rate” shall mean and refer to an annual interest rate derived by taking an Initial Interest Rate of five and seven tenths percent (5.70%) per annum (the “Initial Interest Rate”) and subtracting therefrom, if applicable, a job credit interest rate reduction of five one hundredths per cent (.05%) multiplied by the number of qualifying jobs created from and after loan disbursement and certified periodically, as provided in the Loan Agreement and Public Improvements Use Fee Agreement, up to a maximum interest rate reduction of two hundred and fifty basis points (2.50%) (the “Job Credit Interest Rate Reduction”), all in accordance with this Note, Section 8 of the Loan Agreement and as permitted by Mont. Code Ann. § 17-6-318. The Applicable Interest Rate shall initially be five and seven tenths percent (5.70%) per annum until such time as CONSUMER DIRECT submits evidence of the creation of qualifying jobs pursuant to Section 8 of the Loan Agreement. Under no circumstances shall the Applicable Interest Rate be less than three and two tenths percent (3.20%) per annum nor more than five and seven tenths percent (5.70%) per annum. Upon any such decrease to the Applicable Interest Rate, the outstanding principal amount of the Loan shall be re-amortized over the remaining term of this Note and a revised Amortization Schedule shall be prepared and attached hereto, and a copy of such Amortization Schedule shall be provided to Maker.

- (b) If, during the term of the Loan, CONSUMER DIRECT or its affiliates eliminates ten (10) or more qualifying jobs, MBOI may increase the Applicable Interest Rate commensurate with the number of qualifying jobs eliminated, if MBOI determines, in its sole discretion, that such increase is in the best interest of MBOI’s programs. Before any increase in the interest rate, MBOI shall give written notice to the CITY and to CONSUMER DIRECT as required in Section 8 of the Loan Agreement. If the Applicable Interest Rate is at any time adjusted to a rate greater than three and two tenths percent (3.20%) per annum, CONSUMER DIRECT may subsequently certify creation of additional qualifying jobs as provided in the Loan Agreement and MBOI shall reduce the Applicable Interest Rate accordingly. Such interest rate adjustments shall be effective on the first day of the month following MBOI’s receipt and approval of any subsequent semi-annual Job Credit Certification, or on the first day of the month following MBOI’s decision to increase the Applicable Interest Rate in response to CONSUMER DIRECT’s or its affiliates’ elimination of ten or more jobs, as the case may be. Upon any such increase to the Applicable Interest Rate, the outstanding principal amount of the Loan shall be re-amortized over the remaining term of this Note and a revised Amortization Schedule shall be prepared and attached hereto, and a copy of such Amortization Schedule shall be provided to Maker.
- (c) Principal and interest shall be payable commencing with payments of principal and interest on [REDACTED] and on the first day of each succeeding month (each a “Payment Date”) in an amount sufficient to amortize fully the principal balance of the Note, together with interest thereon at the Applicable

Interest Rate, by the Final Maturity Date specified herein, all as shown in the Amortization Schedule, attached hereto as Schedule A and by this reference made a part hereof or as may be revised and replaced from time to time as provided herein. The amortization of the outstanding principal of the Note may change from time to time depending on the authorized deferrals or other agreed modifications, or interest rate reductions or increases. After each deferral or other agreed modification, or interest rate reduction or increase, a new Amortization Schedule will be prepared by MBOI and shall replace and supersede the previous Amortization Schedule as Schedule A.

- (d) All interest hereon shall be computed on the basis of the actual number of days elapsed in a year of three hundred sixty-five days (366 days in leap years) as follows:

$(A / 365) \times B \times C = \text{Accrued Interest, where:}$

A = Interest Rate; B = Outstanding Principal, and C = Number of Days
Principal Outstanding

- (e) The entire unpaid principal amount hereof, together with all unpaid accrued interest thereon, and all other indebtedness due hereunder shall be due and payable on the Final Maturity Date.
- (f) The Maker or CONSUMER DIRECT may prepay and redeem this Note, without penalty or premium, in whole or in part, at the option of the Maker, on any one or more dates upon at least fifteen (15) days prior written notice to the Holder, or such shorter period of notice as may be acceptable to the Holder. In the event of a total prepayment or redemption, Maker shall pay the Holder an amount equal to the outstanding amount of principal and interest accrued thereon to the date of prepayment. In the event of any partial prepayment or redemption, the amount thereof shall be applied first to accrued interest on the Note and then to reduce the principal amount thereof. All prepayments or redemptions shall be applied on the principal in the inverse order of maturity, and shall not relieve Maker from paying the next succeeding installment or installments of principal and interest due hereunder in accordance with the Amortization Schedule until the Loan is fully paid and satisfied.
- (g) This Note contemplates a single advance not to exceed the total sum of One Million Nine Hundred Ninety-Nine Thousand Nine Hundred Twenty and no/100 Dollars (\$1,999,920.00) in accordance with Section 7 of the Loan Agreement. This Note does not represent a revolving credit of any nature or form whatsoever. The Maker expressly recognizes that payment of the amounts due hereunder shall not obligate MBOI to advance nor entitle the Maker to borrow or receive any additional moneys or sums under the terms of this Note.
- (h) In the event the Maker shall fail to make any payment of principal or interest when due as required by this Note, MBOI, at its option, may declare the entire

sum then remaining unpaid to be immediately due and payable without notice, and the unpaid amount shall continue as a special, limited obligation of the Maker until fully paid.

3. This Note is issued by the Maker pursuant to authority granted by Mont. Code Ann. §§ 17-6-309 and 17-6-316, as amended (the “Act”), which authorizes MBOI to make a loan to a local governmental entity for the purpose of financing infrastructure improvements to enhance economic development and create jobs in the basic sector of the economy, if the loan will result in the creation or expansion of a business estimated to employ at least fifteen people in new basic-sector jobs on a permanent, full-time basis and further authorizes such governmental entity to charge infrastructure use fees and to pledge such fees to the repayment of such loan. This Note is secured by the Trust Indentures, Assignment of Public Improvement Use Fee Agreement, Assignment of Lease and Guaranties (collectively, the “Security” or “Collateral”).

4. This Note is not a general obligation of the Maker, but is rather a special, limited obligation of the Maker and shall not be payable from or a charge upon any general funds of the Maker. This Note is payable by the Maker solely from the Public Improvements Use Fees imposed by the Maker on CONSUMER DIRECT under the Public Improvements Use Fee Agreement and pledged and assigned to the payment hereof. The Maker shall not be subject to any financial liability thereon. No Holder of this Note shall have the right to compel any exercise of the taxing power of the Maker to pay any amounts due under this Note, nor to enforce any payment hereunder against any property of the Maker except the revenues under the Security. Neither the Note, nor any of the agreements or obligations of the Maker contained herein or in the Loan Agreement shall be construed to constitute an indebtedness of the Maker within the meaning of any constitutional, statutory or charter provisions whatsoever, nor to constitute or give rise to a pecuniary liability or charge against the general credit or taxing power of the Maker. No failure of the Maker or any party to comply with any term, condition, covenant or agreement in the Note, the Public Improvements Use Fee, or the Loan Agreement shall subject the Maker to liability for any claim for damages, costs or other pecuniary or financial charge, and no execution on any claim, demand, cause of action or judgment shall be levied upon or collected from the general credit, general funds, or taxing powers of the Maker; provided, however, that nothing in this Section will be construed to prevent any action to specifically enforce Maker’s non-financial obligations or with respect to any Security.

5. The Holder shall not be deemed, by any act or omission, to have waived any rights or remedies hereunder unless such waiver is in writing and signed by the party against whom enforcement of the waiver is sought, and then only to the extent of the waiver specifically set forth in the writing. A waiver or forbearance with respect to one event shall not be deemed a waiver of any right or remedy as to subsequent events.

6. Except as otherwise provided herein or in the Loan Agreement, the Maker hereby waives presentment, demand for payment, notice of nonpayment, protest and notice of protest and specifically consents to and waives notice of any renewals or extensions of this Note, at or after the Final Maturity Date, whether made to or in favor of the Maker or any other person or persons; provided, however, that the foregoing shall not relieve Maker or MBOI, as assignee of

Maker, from giving any notices to CONSUMER DIRECT that may be required under the Public Improvements Use Fee Agreement.

7. This Note is authorized by and shall be governed by and construed in accordance with the laws of the State of Montana without giving effect to the conflicts of laws principles thereof. Jurisdiction and venue for any litigation or dispute arising from this Note shall be in the Montana state district court of the Fourth Judicial District in and for Missoula County.

8. Except as provided in the Loan Agreement with respect to revision and replacement of the Amortization Schedule, this Note may not be amended, modified or changed, except by a writing signed by the Holder and the Maker, and the written consent of CONSUMER DIRECT.

9. If any provision of this Note, or the application thereof to any person or circumstance, shall be deemed invalid or unenforceable to any extent, the remainder of such term and this Note, or the application of such term to persons or circumstances other than those to which it is deemed invalid or unenforceable, shall not be affected thereby, and the remainder of this Note shall be valid and enforceable to the fullest extent permitted by law.

10. The terms of this Note apply to, inure to the benefit of, and bind all parties hereto (including without limitation all makers, endorsers, guarantors and sureties hereof), their heirs, legatees, devisees, personal representatives, successors and assigns.

11. After the Final Maturity Date of this Note, or maturity by default in making payment as set forth in Sections 15 or 16 of the Loan Agreement, if this Note be placed in the hands of an attorney for collection, the Maker hereby agrees to pay all reasonable costs of collection, including reasonable attorney's fees and costs of suit.

[Signature page follows]

IN WITNESS WHEREOF, the Maker has caused this Note to be duly executed by its authorized officers as of the date first above written.

CITY OF MISSOULA

By: _____
Its: Mayor