

After recording, return to:

MONTANA TRUST INDENTURE

THIS TRUST INDENTURE, made this ___ day of _____, 2017 between the CITY OF MISSOULA, a municipal corporation organized and existing under the laws of the State of Montana (“Grantor” or “City”) with principal offices at 435 Ryman Street, Missoula, Montana 59802, as Grantor, _____, with principal offices at _____, as Trustee, and the MONTANA BOARD OF INVESTMENTS with principal offices at 2401 Colonial Drive, 3rd floor Helena, Montana 59601, as Beneficiary,

WITNESSETH:

That Grantor hereby irrevocably grants, bargains, sells, conveys and warrants to Trustee in Trust, nevertheless, with power of sale that certain real property, which is Three and 51/100 (3.51) acres of land, more or less, situated in the County of Missoula, State of Montana, particularly described as follows, but in all cases, and notwithstanding any other provision of this Trust Indenture, excluding the CD Improvements (defined below), to-wit:

Lot 1 of Consumer Direct Addition, a two-lot subdivision located in the NW ¼ of Section 8, Township 13 North, Range 19 West, P.M.M., City of Missoula, Missoula County, Montana, according to the official recorded plat thereof.

Together with: (1) All buildings, fixtures and improvements thereon, other than and not including the CD Improvements described herein below, and all water rights, rights-of-way, tenements, hereditaments, privileges and appurtenances thereunto belonging, now owned or hereafter acquired, however evidenced, used or enjoyed with said premises or belonging to the same; (2) All right, title and interest hereafter acquired in or to any of said premises, hereby also releasing, relinquishing and waiving all exemptions, rights of dower and homestead, in or to said premises, vested or inchoate; (3) Other than the CD Improvements, as described herein below, which are specifically excluded from this Trust Indenture, all facilities, equipment and fixtures now or hereafter installed upon or within said premises, used or proper or necessary to constitute the said premises a habitable, usable or operating unit--all of said property (other than the CD

Improvements, as described herein below) being designated and deemed for the purposes of this instrument a part of the realty and premises; and (4) All of the rents, issues and profits of said premises, subject, however, to the right, power and authority hereinafter conferred upon Beneficiary to collect and apply such rents, issues and profits, including without limitation all rents and other sums payable under that certain Ground Lease Agreement With Option To Purchase dated as of _____, 2017, by and between Grantor, as Landlord, and Consumer Direct Grant Creek Campus, LLC, as Tenant (the "Lease");

Notwithstanding any other provision herein, the grant of this instrument specifically excludes the commercial office building, and any internal building fixtures and improvements constructed or to be constructed on the premises, the bike storage structure of approximately 660 square feet located adjacent to the building, and the chiller, generator, and playground equipment located on the property (the "CD Improvements"), which are and shall remain the personal property of Consumer Direct Grant Creek Campus, LLC a Montana limited liability company, or its successors or assigns. Further notwithstanding any other provision herein, this Trust Indenture, and the rights granted hereunder, shall in all cases be subject to and subordinate to that certain Landlord Consent to Assignment, for the benefit of Bank of Montana, as relating to the Lease (the "Landlord Consent to Assignment"), and shall have such priority as provided in that certain Master Subordination Agreement, executed concurrently herewith, in relation to the security interests and rights of Bank of Montana (with such documents creating the security interests and the rights of Bank of Montana as relating to such security interests being referred to herein as the "Bank of Montana Security Interests"). Provided still further, and notwithstanding any other provision herein, the rights of Bank of Montana under, and the recording of, the Landlord Consent to Assignment and the Bank of Montana Security Interests shall not constitute a default under this Trust Indenture or any documents related or connected thereto.

For the Purpose of Securing: (1) Payment of the principal sum of One Million Nine Hundred Ninety-Nine Thousand Nine Hundred Twenty and no/100 Dollars (\$1,999,920) together with interest thereon, according to the terms of a promissory note, dated _____, 2017 (the "Note"), made by Grantor payable to the order of Beneficiary in installments, the last of which, unless sooner paid, will be due and payable on _____, 20___; (2) Payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof, together with interest thereon as herein provided; (3) Performance of each agreement of Grantor in the Loan Agreement, the Note, this Trust Indenture and any Related Document; and (4) any and all extensions, renewals, modifications, substitutions, or replacements of any and all of the foregoing.

DEFINITIONS: All capitalized terms used but not otherwise defined herein shall have the meanings assigned thereto in the Loan Agreement between Grantor and Beneficiary of even date herewith, unless the context clearly requires otherwise. As used in this Trust Indenture: (1) "Loan Agreement" shall mean that certain Loan Agreement of even date herewith by and between Grantor and Beneficiary; (2) "Related Documents" shall mean and include the Loan Agreement, Note, Public Improvements Use Fee Agreement, Assignment of Public Improvements Use Fee Agreement, Lease, Assignment of Lease, Consumer Direct Trust Indenture and Guaranties, as more specifically described and identified in the Loan Agreement;

and (3) “Consumer Direct” shall mean Consumer Direct Grant Creek Campus, LLC, a Montana limited liability company, and its successors.

WARRANTIES: Grantor represents and warrants to the Beneficiary, as follows:

(a) Grantor is the lawful owner of and has good and marketable title to the premises; Grantor has good right and lawful authority to grant, bargain, sell, convey, warrant, mortgage, assign and pledge the same as provided herein; and the premises are free and clear of all mortgages, liens, pledges, charges and encumbrances, excepting only real estate taxes and assessments not yet due. Grantor warrants and will defend the title to the premises against all claims and demands whatsoever not specifically excepted herein.

(b) There is no provision in any indenture, contract or agreement to which Grantor is a party or by which it is bound or in any order of any court or administrative agency to which Grantor is subject, which prohibits the execution and delivery by Grantor of this Trust Indenture, or of the Note, or the performance or observance by Grantor of any of the terms or conditions of this Trust Indenture or of the Note.

(c) The Loan Agreement, Note and this Trust Indenture have been validly executed and delivered and are valid and enforceable obligations of Grantor in accordance with their terms.

(d) There are no actions, suits, or proceedings pending or, to the knowledge of Grantor, threatened against Grantor, or the premises in any court or before any federal, state, municipal or other governmental agency, which, if decided adversely to Grantor would have a materially adverse effect upon the premises or upon Grantor or Grantor’s ability to perform its obligations hereunder, and the Grantor is not in default with respect to any order of any court or governmental agency.

(e) Grantor is not in default in the payment of the principal of or interest on any indebtedness for borrowed money and is not in default under any instrument or agreement under and subject to which any indebtedness for borrowed money has been issued, and no event has occurred under the provisions of any such instrument or agreement which with or without the lapse of time or the giving of notice, or both, constitutes or would constitute an event of default thereunder.

(f) The proceeds of the loan evidenced by the Note are not to be used primarily for personal, household, or family purposes, but are to be used primarily for business purposes.

TO PROTECT THE SECURITY OF THIS TRUST INDENTURE, AND FOR OTHER PURPOSES, GRANTOR AGREES:

1. To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete and restore promptly and in a good and workmanlike manner any building which may be constructed, damaged or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefore; to comply with all laws, covenants

and restrictions affecting said property; not to commit or permit waste thereof; not commit, suffer or permit any act upon said property in violation of the law; to do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

2. In accordance with and subject to the Lease, to provide, maintain and deliver to Beneficiary, insurance of such type or types and amounts as Beneficiary may require. Such insurance shall be carried in companies approved by the Beneficiary with loss payable clause in favor of and in form acceptable to Beneficiary. Subject to the terms of the Lease, in the event of loss, Grantor shall give immediate notice to Beneficiary, who may make proof of loss and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary instead of to Grantor and Beneficiary jointly, and the insurance proceeds, or any part thereof, may be applied by Beneficiary, at its option, to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged.

3. To deliver to, pay for and maintain with Beneficiary until the indebtedness secured hereby is paid in full, such evidence of title as Beneficiary may require, including abstracts of title or policies of title insurance and any extensions or renewals thereof or supplements thereto.

4. To pay or cause to be paid before delinquent all taxes and assessments, including interest and penalties, affecting said premises; to promptly pay and discharge, or cause to be paid or discharged all encumbrances, charges and liens on said property which at any time are, or appear to be, prior or superior hereto.

5. Except as otherwise expressly provided herein, to pay all costs, fees and expenses of this trust, including cost of search and evidence of title, advertising and recording expenses, documentary taxes and Trustee's and attorney's fees as allowed by law.

6. Should Grantor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, without obligation so to do and without notice to or demand upon Grantor and without releasing Grantor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes.

7. To pay immediately and without demand all sums expended hereunder by Beneficiary or Trustee, with interest from date of expenditure at the Applicable Interest Rate, as specified in the Note, until paid, and the payment thereof shall be secured hereby.

IT IS MUTUALLY AGREED THAT:

8. Without affecting the liability of any person, including Grantor, for the payment of any indebtedness secured hereby, or the lien of this Trust Indenture on the remainder of the property for the full amount of any indebtedness unpaid, Beneficiary and Trustee are respectively

empowered as follows:

Beneficiary may from time to time and without notice:

- (a) Release any person liable for payment of any of the indebtedness,
- (b) Extend the time or otherwise alter the terms of payment of any of the indebtedness,
- (c) Alter, substitute or release any property securing the indebtedness;

Trustee may, at any time and from time to time, upon the written request of Beneficiary:

- (a) Consent to the making of any map or plat of the property,
- (b) Join in granting any easement or creating any restriction thereon,
- (c) Join in any subordination or other agreement affecting this Trust Indenture or lien or charge thereof,
- (d) Reconvey, without warranty, all or any part of the property.

9. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Trust Indenture and said note to Trustee for cancellation and retention and upon payment by Beneficiary of its fees, Trustee shall reconvey to Grantor, without warranty, the property then held hereunder.

10. As additional security, Grantor hereby assigns to Beneficiary, during the continuance of these trusts, all rents, issues, royalties, and profits of the property affected by this Trust Indenture, including without limitation all rents and other sums payable under the Lease. Subject to the terms, conditions and provisions of the Related Documents, until Grantor shall default in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Grantor shall have the right to collect all such rents, issues, royalties, and profits earned prior to default as they become due and payable. If Grantor shall default as aforesaid, Grantor's right to collect any of such monies shall cease and Beneficiary shall have the right, with or without taking possession of the property affected hereby, to collect all rents, royalties, issues, and profits. Failure or discontinuance of Beneficiary at any time or from time to time to collect any such monies shall not in any manner affect the subsequent enforcement by Beneficiary of the right, power, and authority to collect the same. Except with respect to the Lease, nothing contained herein, nor the exercise of the right by Beneficiary to collect, shall be, or be construed to be, an affirmation by Beneficiary of any tenancy, lease or option, nor an assumption of liability under, nor subordination of the lien or charge of this Trust Indenture to any such tenancy, lease or option.

11. If without the written consent of Beneficiary all or any part of the premises or any interest therein is sold, conveyed, transferred or further mortgaged or encumbered, or if the rents of the premises or any part thereof are assigned other than as security for the Note, or if all or any part of the ownership interest in Grantor is transferred, assigned, or pledged, or if any person other than Grantor, Trustee or Beneficiary obtains any interest in or right to acquire the premises, without the prior written consent of Beneficiary, Beneficiary may, at Beneficiary's option, declare all indebtedness secured hereby immediately due and payable, in full. Beneficiary shall exercise such option to accelerate by mailing notice of acceleration to Grantor within sixty (60) days after Beneficiary has actual knowledge of one of the events mentioned above; such notice shall provide a period of not less than thirty (30) days from the date such notice is mailed within which Grantor may pay the sums declared due. Failure by Grantor to pay such sums within such time shall constitute a default hereunder. Consent as to any one transaction shall not be deemed to be a waiver of the right to require consent to future or successive transactions.

12. Upon any default by Grantor or Consumer Direct hereunder or under any of the Related Documents, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court (Grantor hereby consenting to the appointment of Beneficiary as such receiver), and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in its own name sue for or otherwise collect said rents, issues, and profits, including those past due and unpaid, and apply the same, less cost and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine.

13. The entering upon and taking possession of said property, the collection of such rents, issues, and profits, or the proceeds of fire or other insurance policies, or compensation or awards for any taking or damage of said property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

14. Time is of the essence hereof. Upon default by Grantor or Consumer Direct in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder or any Related Document, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In the event of such default, Beneficiary may execute or cause Trustee to execute a written notice of default and of election to cause such property to be sold to satisfy the obligations hereof, and Trustee or Beneficiary shall file such notice for record, in each county wherein said property or some part thereof is situated. Beneficiary shall also deposit with Trustee, the note and all documents evidencing expenditures secured hereby.

15. After the lapse of such time as may then be required by law following the recordation of said notice of default and of election to cause said property to be sold, and notice of default and notice of sale having been given as then required by law, Trustee, or its attorney, without demand on Grantor, shall sell said property on the date and at the time and place designated in

said notice of sale, either as a whole or in separate parcels, and in such order as it may determine (but subject to any statutory right of Grantor to direct the order in which such property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in cash in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause he deems expedient, postpone the sale for a period not exceeding fifteen (15) days by public proclamation by such person at the time and place fixed in the notice of sale, and no other notice of the postponed sale need be given. Trustee shall execute and deliver to the purchaser its deed conveying said property so sold, but without any covenant of warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person including Beneficiary (but excluding Trustee) may bid at the sale. After deducting all costs and expenses of exercising the power of sale and of the sale, including cost of search and evidence of title, advertising and recording expense, documentary taxes and Trustees' and attorney's fees, Trustee shall apply the proceeds of sale to payment of all amounts secured hereby and due hereunder, including all sums expended by the Trustee and Beneficiary, or either of them, with accrued interest thereon at the at the Applicable Interest Rate, as specified in the Note, from the date of expenditure thereof, and the surplus, if any, shall be deposited as provided by law with the County Clerk and Recorder of the county in which the sale took place.

16. Grantor agrees to surrender possession of the hereinabove described trust property to the purchaser at the aforesaid sale on the tenth (10th) day following said sale, but subject to any remaining rights, obligations and remedies under the Lease, in the event such possession has not previously been delivered by Grantor.

17. Each abstract of title, title insurance policy and all other evidences of title, and all hazard insurance policies placed or deposited with the Beneficiary shall be deemed an incident to the title to the trust property and upon foreclosure by exercise of power of sale, or otherwise, shall pass to the purchaser and the same are hereby pledged as additional security for payment of the indebtedness secured hereby.

18. Upon the occurrence of any default hereunder, Beneficiary shall have the option to declare all sums secured hereby immediately due and payable and foreclose this Trust Indenture in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including a reasonable attorney's fee in such amount as shall be fixed by the Court.

19. Except as may be otherwise provided herein, Grantor agrees to pay to Beneficiary or Trustee the costs and expenses, including a reasonable attorney's fee, incurred by either of them in instituting, prosecuting or defending any Court action in which Grantor does not prevail, if such action involves the interpretation hereof or performance hereunder by a party hereto or the breach of any provision hereof by a party hereto, including but not limited to an action to obtain possession of the above described property after exercise of the power of sale granted hereunder.

20. Notwithstanding anything to the contrary provided in this Trust Indenture, the Note and all other financial obligations and indebtedness secured hereby (collectively the “Indebtedness”) is not a general obligation of the Grantor, but is rather a special, limited obligation of the Grantor and shall not be payable from or a charge upon any general funds of the Grantor. The Indebtedness is payable solely from the Public Improvements Use Fees imposed by the Grantor on Consumer Direct under the Public Improvements Use Fee Agreement, pledged and assigned by the Grantor to the Beneficiary for the payment of the Indebtedness, and other security given to secure payment of the indebtedness, including without limitation the Trust Indenture given by Consumer Direct, as Grantor, and MBOI, as Beneficiary, of even date herewith, the Assignment of Public Improvements Use Fee Agreement, the Assignment of Lease, and the Guaranties. The Grantor shall not be subject to any pecuniary or financial liability on the Indebtedness. The Beneficiary shall not have the right to compel any exercise of the taxing power of the Grantor to pay any amounts due under this Trust Indenture, nor to enforce any payment hereunder against any property of the Grantor (other than the property subject to this Trust Indenture) except the revenues under the Public Improvements Use Fee or other Related Documents. Neither the Indebtedness, nor any of the agreements or obligations of the Grantor contained herein or in the Loan Agreement between the Grantor and the Beneficiary shall be construed to constitute an indebtedness of the Grantor 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 Grantor. No failure of the Grantor or any party to comply with any term, condition, covenant or agreement in this Trust Indenture, the Note, the Public Improvements Use Fee, or the Loan Agreement shall subject the Grantor 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 Grantor. Provided, however, that nothing contained in this Paragraph shall in any way reduce, limit or impair the obligations of Consumer Direct, the Guarantors or any person or entity other than Grantor under any Related Document.

21. This Trust Indenture shall apply to, inure to the benefit of and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term “Beneficiary” shall mean the owner and holder, including any pledgee, of the note secured hereby. In this Trust Indenture, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

22. Trustee accepts this Trust when this Trust Indenture, duly executed and acknowledged is made a public record as provided by law. Trustee is not obligated to notify any party hereto of a pending sale under any other trust indenture or of any action or proceeding in which Grantor, Beneficiary, or Trustee shall be a party, unless brought by Trustee.

23. This Trust Indenture is made within the State of Montana pursuant to the Small Tract Financing Act of Montana and is not made or taken in substitution for any mortgage in existence on the effective date of said Act.

24. Grantor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to him at the address hereinabove set forth.

[Signature Page Follows.]

IN WITNESS WHEREOF, the Grantor has hereunto set its hands the day and year first hereinabove written.

CITY OF MISSOULA

By:
Its:

STATE OF MONTANA)
 : ss.
COUNTY OF MISSOULA)

On this ____ day of _____, 2017, before me, the undersigned, a Notary Public for the State of Montana, personally appeared _____, known to me to be the _____ of the City of Missoula, a municipal corporation organized and existing under the laws of the State of Montana, and acknowledged to me that he executed the written instrument on behalf of said corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal on the day and year first-above written.

Notary Public for the State of Montana

(Notarial Seal/Stamp Above)

REQUEST FOR FULL RECONVEYANCE

TO: TRUSTEE _____, 20__

The undersigned is the legal owner and holder of the note and all other indebtedness secured by the within Trust Indenture. Said note, together with all other indebtedness secured by said Trust Indenture, has been fully paid and satisfied and you are hereby requested and directed on payment to you of any sums owing to you under the terms of said Trust Indenture, to cancel said note above mentioned and all other evidences of indebtedness secured by said Trust Indenture delivered to you herewith, together with said Trust Indenture, and to reconvey, without warranty, to the parties designated by the terms of this Trust Indenture, all the estate now held by you thereunder.

Mail reconveyance to _____