

***DRAFT 12-11-2012***

LOAN AGREEMENT  
between  
CITY OF MISSOULA, MONTANA  
and  
YWCA OF MISSOULA

Dated December 28, 2012

The City of Missoula, Montana has assigned and pledged its interest in this Loan Agreement to : First Security Bank of Missoula, Division of Glacier Bank.

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(For convenience only; not a part of this Loan Agreement)

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THIS LOAN AGREEMENT, dated the 28th day of December, 2012, is made by and between the CITY OF MISSOULA, MONTANA, a municipal corporation and political subdivision existing under the Constitution and laws of the State of Montana (hereinafter, together with any successor, referred to as the "City"), and the YWCA OF MISSOULA, a Montana nonprofit corporation (hereinafter, together with any permitted successor or assign hereunder, referred to as the "Borrower").

W I T N E S S E T H:

WHEREAS, pursuant to the Montana Code Annotated, Title 90, Chapter 5, Part 1 (as the same may from time to time be amended or supplemented, hereinafter referred to as the "Act"), the City is authorized and empowered to issue and sell revenue bonds or notes to finance, in whole or in part, the cost of acquiring or improving any project, defined to include any building or other improvement and any other real or personal properties deemed necessary in connection therein, which shall be suitable for use for commercial, manufacturing, agricultural or industrial enterprises; recreation or tourist facilities; local, state and federal governmental facilities; multifamily housing, hospitals, long-term care facilities or medical facilities; higher education facilities; electric energy generation facilities; family services provider facilities; and to enter into a loan agreement with any person in such manner that payments required thereby to be made by such person shall be fixed, and revised from time to time as necessary, so as to produce income and revenue sufficient to provide for the prompt payment of principal of and interest on such revenue bonds or notes when due; and

WHEREAS, pursuant to the Act, the City has authorized and approved the Project (as hereinafter defined) consisting of financing and refinancing the design and construction of the Broadway Secret Seconds building owned and operated by the Borrower and related improvements at 1136 West Broadway, in Missoula, Montana; and

WHEREAS, the City has determined that its Industrial Development Revenue Note (YWCA Project), Series 2012, in the maximum aggregate principal amount of \$920,400 (the "Note") should be issued, sold and delivered to First Security Bank of Missoula, Division of Glacier Bank (the "Lender"), to provide funds for a loan to be made to the Borrower to be used, with other available funds of the Borrower, to pay a portion of the Costs of the Project (as hereinafter defined); and

WHEREAS, simultaneously with the execution and delivery of this Loan Agreement, the Borrower, as grantor, will execute and deliver a Combination Trust Indenture, Security Agreement and Fixture Filing Statement, dated as of the date hereof (as hereinafter defined), to the Trustee (as hereinafter defined), for the benefit of the Lender, pursuant to which the Borrower will grant, among other things, a trust indenture lien on and security interest in the Facilities (as hereinafter defined), to secure the full and prompt payment of the principal of, premium, if any, and interest on the Note; and

WHEREAS, the City has determined the financing of such Project to be in the public interest and has authorized the execution of all documents necessary to secure the financing of the Project.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto DO HEREBY AGREE as follows:

## ARTICLE 1

### DEFINITIONS AND RULES OF INTERPRETATION

Section 1.01. Definitions. In this Loan Agreement the following terms have the following respective meanings unless the context hereof clearly requires otherwise:

Acquisition and Construction Costs: all direct capital costs authorized by the Act and the Code paid to design and construct the Project, including, but not limited to, site development and construction, reconstruction and renovation costs and all costs of labor, material and services paid or incurred by the Borrower, but not including overhead expenses of the Borrower.

Act: Montana Code Annotated, Title 90, Chapter 5, Part 1, and all amendments thereto.

Agreement: this Loan Agreement, as may be amended or supplemented from time to time in accordance with the terms hereof.

Amortization Date: October 28, 2013.

Assignment: the Assignment of Loan Agreement, of even date herewith, from the City in favor of the Lender.

Bond Counsel: an attorney or firm of attorneys experienced in matters relating to tax-exempt finance, designated by the Borrower and acceptable to the Lender.

Borrower: YWCA of Missoula, a Montana nonprofit corporation, and any successor and assign which may assume its obligations in accordance with the provisions of this Agreement and the Trust Indenture.

Borrower Certificate: a written certificate or statement from the Borrower duly executed by an officer of the Borrower, including the Executive Director or Treasurer of the Borrower.

Borrower Tax Certificate: the Certificate of the Borrower dated as of the date hereof pursuant to which the Borrower makes certain tax representations to the City.

Business Day: any day other than a Saturday or Sunday or other day on which commercial banks in the city in which the principal office of the Lender is located are not open for business.

Code: the Internal Revenue Code of 1986, as amended.

Commitment Letter: the commitment letter of the Lender to the Borrower, dated September 27, 2012, as may be amended from time to time, pursuant to which the Lender agrees to purchase the Note on certain terms and conditions.

Completion Date: September 28, 2013, or such later date as may be agreed to in writing by the Borrower and the Lender.

Costs of the Project: the total of all Acquisition and Construction Costs, refinanced amounts, and Loan and Carrying Charges.

Counsel: an attorney designated by or acceptable to the Lender and which may include Bond Counsel.

Date of Taxability: that date, as specified in the determination, ruling or decision referred to under the definition of “Determination of Taxability” herein, that the interest payable on the Note becomes includable in the gross income of a Holder of the Note for federal income tax purposes.

Default: any event which is, or after notice or lapse of time or both would be, an Event of Default.

Determination of Taxability: the issuance of a statutory notice of deficiency by the Internal Revenue Service, a ruling of the national office of the Internal Revenue Service or a final decision of a court of competent jurisdiction which holds in effect that the interest payable on the Note is includable in the gross income of the Holder for federal income tax purposes, if the period, if any, for contest or appeal of such action, ruling or decision by the Borrower or the Holder has expired without any such contest or appeal having been properly instituted by the Borrower or the Holder.

Disbursing Agreement: the Disbursing Agreement, of even date herewith, among the Lender, the Borrower, and the City, as the same may be amended from time to time in accordance with its terms.

Event of Default: any of the events referred to as such in Article 6 hereof.

Existing Facilities: the existing facilities comprising the Borrower’s Broadway Secret Seconds store located at 1136 West Broadway, in Missoula, Montana.

Facilities: the Land, the New Facility, the Existing Facilities, the Fixtures and the Improvements, as such may at any time exist.

Financing Statements: UCC-1 Financing Statements acceptable to the Lender covering this Loan Agreement, the Trust Indenture and the Assignment to be recorded in the county or filed in the state offices designated by the Lender.

Fixtures: the meaning given such term in the Trust Indenture.

Holder: the person or persons in whose name or names the Note or Notes are registered in the Note Register.

Improvements: any alteration, addition or extension of the Facilities as such may at any time exist, and any other structures or building or product of construction efforts hereafter constructed or installed on the Land.

Land: the real estate, the interest in real estate and other rights, licenses and permits with respect to real estate described in Exhibit B attached hereto and on which the Project is located.

Lender: First Security Bank of Missoula, Division of Glacier Bank, or its successors and assigns.

Loan: the loan by the City to the Borrower of the proceeds of the Note.

Loan and Carrying Charges: all commitment and loan fees payable to the Lender, brokerage fees, interest charges, premiums, service fees, late fees, accounting charges, attorneys' fees and disbursements (including attorneys for the City and the Borrower, and the fees and disbursements of Bond Counsel), escrow fees, inspection fees, recording fees, real estate taxes, special assessments, insurance premiums and utility charges incurred by the Borrower in the acquisition and installation of the Project until its completion and in the issuance of the Note.

Loan Documents: collectively, this Agreement, the Assignment, the Note, the Disbursing Agreement and the Trust Indenture.

Loan Repayments: the payments required to be made by the Borrower pursuant to Section 3.02 hereof.

Maturity Date: September 28, 2028.

Net Proceeds: with respect to any insurance payment or condemnation award, the amount remaining therefrom after payment of all expenses (including attorneys' fees and any extraordinary fees or expenses of the Borrower, the Lender, the Trustee and the City) incurred in the collection thereof.

New Facility: the building to be constructed and remodeled on the Land with a portion of the proceeds of the Loan for the purpose of housing the Borrower's Broadway Secret Seconds Store.

Note: the Industrial Development Revenue Note) (YWCA Project), Series 2012, of even date herewith, in the maximum aggregate principal amount of \$920,400, to be issued by the City pursuant to the Note Resolution.

Note Register: the register maintained by the City pursuant to the Note Resolution.

Note Resolution: the resolution of the governing body of the City adopted December 17, 2012, pursuant to which the Note is to be issued.

Opinion of Counsel: a written opinion of Counsel.

Payment Date: a date on which payment of principal or interest or both is due under the Note.

Permitted Encumbrances: the meaning given such term in the Trust Indenture.

Principal Balance: as of the date of determination, the aggregate original principal amount of the Note less the aggregate amount of installments thereon theretofore paid that are attributable to payment of principal.

Project: designing and constructing the New Facility and related improvements.

Taxable Rate: the meaning given such term in Section 3.02 hereof.

Tax-Exempt Rate: the meaning given such term in Section 3.02 hereof.

Term: the duration of this Agreement (except as otherwise provided specifically herein for particular provisions hereof), which shall be from the date hereof until the Maturity Date or, if a default is then continuing hereunder, until such default has been remedied, unless this Agreement is sooner terminated in accordance with its terms.

Trust Indenture: the Combination Trust Indenture, Security Agreement and Fixture Filing Statement of even date herewith, by Borrower, as grantor, for the benefit of Lender, as beneficiary, and with the Trustee, granting a security interest in, among other things, property described in Exhibit B, as the same may be amended or supplemented from time to time in accordance with the terms thereof.

Trustee: Stewart Title of Missoula County, Inc., a Montana corporation, or any successor trustee appointed, qualified and acting as such under this Trust Indenture.

Section 1.02. Exhibits. Attached to and by reference made a part of this Loan Agreement is Exhibit A, the form of the Note, Exhibit B, the legal description of the Land, Exhibit C, the Agreement to Provide Insurance, and Exhibit D, the Compliance Agreement.

### Section 1.03. Rules of Interpretation.

(1) This Agreement shall be interpreted in accordance with and governed by the laws of the State of Montana without giving effect to the conflicts-of-law principles thereof.

(2) The words “herein,” “hereof” and “hereunder” and the words of similar import, without reference to any particular section or subdivision, refer to this Agreement as a whole rather than to any particular section or subdivision hereof.

(3) References in this instrument to any particular article, section or subdivision hereof are to be designated article, section or subdivision of this instrument as originally executed.

(4) Any terms not defined herein but defined in the Loan Documents (other than this Agreement) shall have the same meaning herein unless the context hereof clearly requires otherwise.



(5) The Table of Contents and titles of articles and sections herein are for convenience only and are not a part of this Agreement.

(6) Unless the context hereof clearly requires otherwise, the singular shall include the plural and vice versa and the masculine shall include the feminine and vice versa.

(7) Unless the context hereof clearly requires otherwise, “or” is not intended to be exclusive, but is intended to permit one or more or all of the alternatives conjoined.

(8) To the extent that provisions in this Agreement are inconsistent with provisions of the Note, the provisions of the Note shall be deemed controlling.

## ARTICLE 2

### REPRESENTATIONS

Section 2.01. Representations by the City. The City makes the following representations:

(1) The City is a municipal corporation and political subdivision duly organized and validly existing under the Constitution and laws of the State of Montana and is authorized to issue the Note in accordance with the Act.

(2) In authorizing the financing of all or a portion of the Costs of the Project by the issuance and sale of the Note to the Lender, the City’s purpose is, and in its judgment the effect thereof will be, to promote the general welfare of the City, to provide family services facilities, to aid in economic development, to stimulate economic activity within the City and to further the purposes and policies of the Act.

(3) The financing of the Project; the issuance and sale of the Note; the execution and delivery of this Agreement, the Assignment, the Disbursing Agreement and the Note; the performance of all covenants and agreements of the City contained in this Agreement, the Assignment, the Disbursing Agreement and the Note; and the performance of all other acts and things required under the Constitution and laws of the State of Montana of the City to make this Agreement, the Assignment, the Disbursing Agreement and the Note valid and binding special, limited obligations of the City in accordance with their terms are authorized by the Act and have been duly authorized by the Note Resolution of the governing body of the City adopted at a meeting thereof duly called and held on December 17, 2012 by the affirmative vote of not less than a majority of its members. The City Council of the City conducted a public hearing on the financing the Project through the issuance of the Note on November 19, 2012, which was duly called, noticed and held and at which all interested persons were afforded the opportunity to be heard, and the City Council of the City by resolution determined the Project and the issuance of the Note to be in the public interest.

(4) There is not pending or, to the best knowledge of the undersigned officers of the City, threatened any suit, action or proceeding against or affecting the City before or by any court, arbitrator, administrative agency or other governmental authority which materially and adversely affects the validity, as to the City, of any of the transactions contemplated hereby or

under the Note, the Assignment or the Disbursing Agreement or the ability of the City to perform its obligations hereunder, under the Note, the Assignment or the Disbursing Agreement or as contemplated hereby or thereby.

(5) To finance a portion of the Costs of the Project, as presently estimated, the City has duly authorized its Note in the maximum aggregate principal amount of \$920,400, to be issued upon the terms and provisions set forth in the Note Resolution, and the Note in the hands of the Holder thereof is and will be a valid special, limited obligation of the City according to the provisions thereof and of the Note Resolution.

(6) The issuance of the Note and the execution and delivery of this Agreement, the Assignment and the Disbursing Agreement and any other agreements contemplated thereby and hereby to which the City is a party, will not conflict with, or constitute on the part of the City a breach of, or a default under, any existing (i) law, (ii) any other legislative act, constitution or other proceeding establishing or relating to the establishment of the City or its affairs or its resolutions or (iii) any other agreement, indenture, mortgage, deed of trust, lease or instrument to which the City is a party or by which it is bound.

(7) This Agreement, the Note, the Assignment and the Disbursing Agreement have been duly authorized, executed and delivered by the City.

Section 2.02. Representations and Warranties by the Borrower. The Borrower makes the following representations and warranties:

(1) The Borrower is a nonprofit corporation duly incorporated, validly existing and in good standing under the laws of the State of Montana, with full right, authority and legal capacity to execute and deliver, and to consummate the transactions contemplated in this Agreement, the Trust Indenture and the Disbursing Agreement. This Agreement, the Trust Indenture and the Disbursing Agreement have been duly and validly authorized, executed and delivered by the Borrower and are valid and binding obligations of the Borrower enforceable in accordance with their terms.

(2) The Borrower is an organization described in Section 501(c)(3) of the Code and exempt from taxation under Section 501(a) of the Code and is not a private foundation as defined in Section 509(a) of the Code. The Borrower has received a determination letter from the Internal Revenue Service acknowledging the foregoing status and the facts and circumstances represented to the Internal Revenue Service as the basis for such letter continue substantially to exist and the letter or determination has not been modified, amended or revoked. The Borrower will not engage in any trade or business which is an unrelated trade or business determined by applying Section 513(c) of the Code to such an extent as to jeopardize the status of the Borrower as an organization described in Section 501(c)(3) of the Code and exempt from taxation under Section 501(a) thereof or to adversely affect the exclusion of interest on the Note from federal income taxation. The trade or business to be carried on by the Borrower on the Land is not and will not be an unrelated trade or business of the Borrower determined by applying Section 513(c) of the Code.

(3) The execution and delivery of this Agreement, the Trust Indenture and the Disbursing Agreement and the consummation of the transactions contemplated hereby and thereby, and the fulfillment of the terms and conditions hereof and thereof do not and will not conflict with or result in a breach of any of the terms or conditions of any deed of trust, indenture, loan agreement, agreement or instrument to which the Borrower is now a party or to which any property of the Borrower is subject, and is not and will not constitute a default under any of the foregoing, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Borrower contrary to the terms of any instrument or agreement to which the Borrower is a party or by which it is bound, or violate any provision of the articles of incorporation or bylaws of the Borrower, as amended to the date hereof.

(4) The issuance and sale of the Note and the execution of this Agreement, the Assignment and the Disbursing Agreement by the City have been a substantial inducement to the Borrower to undertake the acquisition and installation of the Project within the boundaries of the City, and the Project is suitable for use as an education facility.

(5) The proceeds of the Note, together with any other funds to be contributed or anticipated to be contributed to the Project by the Borrower, will be sufficient in the estimation of the Borrower to pay the Costs of the Project. The proceeds of the sale of the Note will be used only for the payment of Costs of the Project.

(6) The Borrower does not rely on any warranty of the City, either express or implied, that the Project will be suitable to the needs of the Borrower and recognizes that under the Act the City is not authorized to expend any funds thereon, other than the proceeds of the Note.

(7) To the best information and belief of the Borrower, no public officer of the City who is authorized to take part in any manner in making this Agreement or any contract contemplated hereby has a personal interest in or has personally and financially benefited or will so benefit from the Project or this Agreement, the Assignment or the Disbursing Agreement or any such contract.

(8) There is not pending or, to the best knowledge of the Borrower, threatened any suit, action or proceeding against or affecting the Borrower before or by any court, arbitrator, administrative agency or other governmental authority which materially and adversely affects the validity, as to the Borrower, of any of the transactions contemplated under this Agreement, the Disbursing Agreement, the Trust Indenture or the ability of the Borrower to perform its obligations hereunder or thereunder or as contemplated hereby or thereby.

(9) The Land, as proposed to be improved by the Project and proposed to be used by the Borrower meets, to the best knowledge of the Borrower, on the date hereof, all material requirements of law, including requirements of any federal, state, county, city or other governmental authority having jurisdiction over the Borrower, the Project or its construction, use and operation. The Borrower has obtained all necessary approvals and licenses, permits and franchises from federal, state, county, municipal or other governmental authority having jurisdiction over the Project to acquire and construct the Project and to enter into, execute and perform its obligations under this Agreement.

(10) The Borrower will cause the Project to be constructed in accordance with the provisions of this Agreement, the Trust Indenture and the Disbursing Agreement.

(11) The Borrower will cause the Project to be constructed in accordance with the requirements of M.C.A. Section 90-5-114, including requirements regarding preference of Montana labor and state prevailing wages.

(12) The Borrower has good fee simple title to the Land, subject to the Permitted Encumbrances.

(13) The design and plan of the Project comprise the design and construction of a family services provider facility as contemplated by the Act.

(14) With the exception of certain rights identified in the Assignment, the Borrower acknowledges that (a) the City is assigning all of its right, title and interest in and to this Agreement to the Lender simultaneously herewith, including the right to Loan Repayments, (b) the Borrower's debt and obligations under this Agreement and the Note will be secured by, among other things, the Trust Indenture, and (c) the Lender shall be entitled to undertake such rights and remedies as are accorded to the City under this Agreement.

Section 2.03. Holder May Rely on Representations. The City and the Borrower agree that the representations and warranties contained in this Article 2 are for the use and benefit of the Holder, and the Holder shall be entitled to rely thereon.

### ARTICLE 3

#### THE LOAN

Section 3.01. Amount and Source of Loan. The City agrees to lend to the Borrower, upon the terms and conditions specified in the Note, the Note Resolution, this Agreement and the Disbursing Agreement, the proceeds received from the issuance and sale of the Note to the Lender. The Loan shall be deemed to include any discount or commission paid to or retained by the Lender from the proceeds of the Note. The form and terms of the Note as attached hereto as Exhibit A are approved by the Borrower and the City.

Section 3.02. Repayment of Loan. The Borrower agrees to pay in lawful money in the United States as Loan Repayments on each Payment Date (or on the next Business Day if a Payment Date is not a Business Day) an amount equal to the interest and principal payable on the Note on said Payment Date. In any event, the Loan Repayments shall at all times be sufficient to pay all principal of and interest on the Note as such principal and interest become due, upon a Determination of Taxability, at maturity, upon prepayment, acceleration or otherwise. Loan Repayments shall also be sufficient to pay all premiums or penalties and costs or expenses arising under the Note. The obligation of the Borrower to repay the Loan hereunder shall commence as of the date of the Note.

In the event that the interest on the Note becomes includable in gross income for purposes of federal income taxation pursuant to a Determination of Taxability, the rate of interest then payable under the Note shall automatically be increased from and after the Date of

Taxability, to an annual rate equal to the Taxable Rate specified in the Note (the "Taxable Rate"). The Borrower shall, upon demand by the Holder to the City and the Borrower, immediately pay to the Holder and to each prior Holder since the Date of Taxability, on behalf of the City, an amount equal to the amount by which the interest at the Taxable Rate from the Date of Taxability to the date of payment exceeds the amount of interest paid to the Holder and any such prior Holder at the Tax-Exempt Rate specified in the Note (the "Tax-Exempt Rate") during said period, and all penalties and interest payable by such Holders as a result of such change in taxable status. Thereafter, interest on the Loan and the Note shall accrue at the Taxable Rate and shall be payable to the Holder for the account of the City on the Payment Dates specified in the Note. The obligations of the Borrower under this paragraph shall survive payment of Loan Repayments sufficient to pay the Note in full and the discharge of the other obligations of the Borrower hereunder.

The City and through it the Holder shall permit the Borrower to contest, litigate or appeal any notice, ruling or decision that would with the lapse of time constitute a Determination of Taxability, at the Borrower's sole expense; provided that any such contest, litigation or appeal is, in the reasonable opinion of the Holder, being undertaken and carried forward in good faith, diligently and with reasonable dispatch. The expenses of any contest or appeal of such a notice, ruling or decision shall be paid by the party initiating the contest and neither the Borrower nor the Holder shall be required to contest or appeal any such notice, ruling or decision. In the event that any such contest, litigation or appeal is undertaken, interest on the Loan at the Taxable Rate from the Date of Taxability (assuming the occurrence of a Determination of Taxability) shall, nevertheless, be payable by the Borrower and the amount that represents the difference between the Taxable Rate and the Tax-Exempt Rate shall be held by the Holder in escrow in an interest-bearing account, bearing interest at a yield not exceeding the yield on the Note pending the final disposition of such contest, litigation or appeal. In the event the contest is resolved in favor of the Holder and the Borrower, and no Determination of Taxability occurs, the funds held in such escrow account shall be returned to the Borrower. If the contest is resolved against the Holder and the Borrower and a Determination of Taxability occurs, the amount on deposit in the escrow account shall be applied to the additional payments then due under the Note and this Section 3.02, with any excess returned to the Borrower; provided that in any event the Borrower shall indemnify the Holder and each prior Holder from and against any and all penalties, interest or other liabilities which they may incur on account of any such contest, litigation or appeal; provided, however, that the Borrower has instigated the contest, litigation or appeal.

Loan Repayments shall be applied first to interest due on the outstanding Principal Balance of the Loan, then prepayment premium and thereafter in reduction of said Principal Balance. Interest shall be calculated on the assumption that each year contains 365 days.

Each payment by the Borrower under this Section 3.02 shall be made directly to the Holder at its principal office for the account of the City or such other place or places as the Holder may designate for the account of the City.

Section 3.03. Prepayment. The Note is subject to prepayment, in whole or in part, at the option of the Borrower on each Payment Date, upon at least 30 days prior written notice to the Holder, such notice specifying all the necessary details of the proposed prepayment. Any partial prepayment shall be applied in inverse order of principal installments payable thereunder and no

partial prepayment shall postpone, defer or reduce the amount of monthly installments otherwise payable thereunder. If the Note is prepaid, in whole or in part, from proceeds of a loan obtained from other than the Lender or its successors that results in such loan being held by a bank or financial institution or lender other than the Lender or its successors, a prepayment premium shall be due and owing to the Holder in accordance with the Prepayment Prices (expressed as percentages of the principal amount of the Note so redeemed) set forth below, together with the entire principal amount redeemed and interest accrued on the principal amount redeemed to the date fixed for prepayment.

Prepayment Dates Inclusive	Prepayment Price
December 28, 2012 to December 27, 2013	105%
December 28, 2013 to December 27, 2014	104%
December 28, 2014 to December 27, 2015	103%
December 28, 2015 to December 27, 2016	102%
December 28, 2016 to December 27, 2017	101%
December 28, 2017 and thereafter	100%

If the Facilities are destroyed or damaged or all or any portion of the Facilities have been taken pursuant to the exercise of the power of eminent domain and the Net Proceeds of any insurance claim or condemnation award are applied by the Holder to the payment of the Note pursuant to the terms of Article Five of the Trust Indenture, such proceeds shall be applied in prepayment of all or a portion of the Loan, as provided in this Section 3.03, but without prepayment premium.

Section 3.04. Additional Payments. The Borrower agrees to pay the following amounts to the following persons:

(1) to the Lender, when due, all reasonable expenses of the Lender incurred in enforcing or exercising its rights under the Loan Documents and all reasonable expenses of the Lender required to be paid by the Borrower under this Agreement and the Commitment Letter; and

(2) to the City, all reasonable expenses incurred by the City in relation to the Project and the issuance and sale of the Note which are not otherwise required to be paid by the Borrower under the terms of this Agreement and the other Loan Documents, including all permit and license fees required under regulations or codes of the City, the Facilities and costs of enforcing or exercising its rights under the Loan Documents; and

(3) to the City and the Lender, all reasonable out-of-pocket expenses incurred by the City and the Lender in connection with this financing, this Agreement and the other Loan Documents, as well as all costs related to the repayment of the Note and any costs of outside or special counsel.

In the event the Borrower should fail to make any of the payments required by this Section 3.04, the item in default shall continue as an obligation of the Borrower until the amount

in default shall have been fully paid, and the Borrower will pay the same with interest thereon at the Taxable Rate specified in the Note, as determined as of the date of the default, until paid, or at such higher rate as the Borrower may consent to in writing; provided that, with the exception of the fees of the Lender, interest shall not accrue on such obligation until written notice has been given to the Borrower that such payment is due.

Section 3.05. Borrower's Obligations Unconditional. All payments required of the Borrower hereunder shall be paid without notice or demand and without setoff, counterclaim, abatement, deduction or defense. The Borrower will not suspend or discontinue any Loan Repayments and will perform and observe all of its other agreements in this Agreement and the other Loan Documents and, except as expressly permitted in this Agreement or the other Loan Documents, will not terminate this Agreement or the other Loan Documents for any cause, including but not limited to any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Facilities, eviction by paramount title, commercial frustration of purpose, bankruptcy or insolvency of the City or the Lender, the occurrence of a Determination of Taxability, change in the tax or other laws or administrative rulings or actions of the United States of America or of the State of Montana or any political subdivision thereof, or failure of the City to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Agreement or the other Loan Documents.

Section 3.06. Borrower's Remedies. Nothing contained in this Article 3 shall be construed to release the City from the performance of any of its agreements in this Agreement, and if the City should fail to perform any such agreement, the Borrower may, subject to the limitations of the Act and Section 7.06 hereof, institute such action against the City as the Borrower may deem necessary to compel performance, so long as such action shall not violate the Borrower's agreements in Section 3.04 hereof.

Section 3.07. Disbursement of Note Proceeds. The proceeds from the sale of the Note will be disbursed to the Borrower in accordance with the Disbursing Agreement.

Section 3.08. Payment of Costs of the Project by Borrower. The Borrower agrees that it will provide promptly any and all sums of money required to pay all Costs of the Project, to the extent not paid or eligible for payment from proceeds of the Note. It is expressly understood and agreed that the Borrower will cause the Project to be completed whether or not the proceeds of the Note are sufficient to pay all Costs of the Project. In addition to the foregoing, Borrower shall contribute such sums of money to the Project as the Lender shall reasonably require.

## ARTICLE 4

### BORROWER'S COVENANTS

Section 4.01. Covenants for Benefit of Lender and City. Each of the terms and provisions of this Agreement and the other Loan Documents is a covenant for the use and benefit of the Lender and the City so long as any Principal Balance of the Note shall remain outstanding, but upon payment in full of the Note and of all fees and charges of the Lender and the City in accordance with this Agreement and the other Loan Documents, all references in this Agreement

and the other Loan Documents to the Note and the Lender shall be ineffective, and the Lender shall thereafter have no rights hereunder, save and except those that shall have theretofore vested or as otherwise provided in Sections 3.02, 3.04, 4.02, 4.06 and 4.15 hereof.

Section 4.02. Indemnity. The Borrower agrees to indemnify and hold harmless the City and the Lender, and each of their officers, employees and agents, against any and all losses, claims, damages or liability to which the City, the Lender or any of their officers, employees or agents may become subject in connection with the transactions contemplated by this Agreement and the other Loan Documents and to reimburse the City, the Lender and each of their officers, employees and agents for any out-of-pocket legal and other expenses (including reasonable counsel fees) incurred by the City, the Lender or any of their officers, employees and agents, and claims, damages or liability or in connection with defending any actions relating thereto, including, but without limitation and by way of example only, the following:

(A) any injury to or death of a person or damage to property in or upon the Facilities or growing out of or connected with the use, non-use, condition or occupancy of the Facilities or any part thereof;

(B) violation by the Borrower of any agreement or condition of this Agreement and the other Loan Documents or if any representation or covenant herein is untrue;

(C) violation by the Borrower of any contract, agreement, restriction or law or regulation (including, without limitation, environmental laws or regulations) relating to the Facilities or the Project;

(D) violation by the Borrower of any law, ordinance or regulation affecting the Facilities or the Project or the ownership, occupancy or use thereof (including, without limitation, environmental laws or regulations);

(E) any statement or information relating to the expenditure of the proceeds of the Note contained in the Borrower's Tax Certificate or similar document furnished by the Borrower to the City which, at the time made, is misleading, untrue or incorrect in any material respect; and

(F) violation of any state or federal securities laws in the issuance and sale of the Note.

The City and the Lender agree, at the request and expense of the Borrower, to cooperate in the making of any investigation in defense of any such claim, and upon request of the Borrower promptly to assert any or all of the rights and privileges and defenses identified in writing by the Borrower which may be available to the City or the Lender.

The provisions of this Section 4.02 shall survive the payment of the Note and the discharge of the other obligations of the Borrower hereunder.

Section 4.03. Financial Statements. The Borrower will keep proper books of record and account in which full, true and correct entries shall be made of all dealings or transactions of or in relation to the business and affairs of the Borrower, in accordance with generally accepted



accounting principles consistently applied, and will furnish to the Lender, the financial statements and documentation required pursuant to, and within the time periods specified in, the Compliance Agreement attached hereto as Exhibit D. The financial statements shall also be accompanied by a Borrower Certificate stating that the signers thereof have reviewed the activities of the Borrower during the last complete fiscal year and have determined that no Default has occurred, or if a Default has occurred describing such Default and its status.

Section 4.04. Continuing Existence. Throughout the Term of this Agreement, the Borrower shall not, directly or indirectly, consolidate or merge with or into (whether or not the Borrower is the surviving person) another person, dissolve or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions, to any person unless:

(A) the Borrower is the surviving person or the person formed by or surviving any such consolidation or merger (if other than the Borrower) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made is a corporation, partnership or limited liability company organized under the laws of the United States, any state thereof, the District of Columbia or any territory thereof, shall have a total unrestricted net assets of at least equal to that of the Borrower as of the date of such consolidation, merger or transfer, shall be duly qualified to do business in the State of Montana, and shall agree in writing to assume the obligations of the Borrower hereunder;

(B) at least 30 days before such transaction, the Borrower shall give the Lender and the City written notice of the proposed transaction;

(C) prior to such transaction, an opinion of Note Counsel shall be delivered to the City and the Lender stating that such transaction will not cause interest payable on the Note to become includible in the gross income of the Holder for federal income tax purposes;

(D) prior to such transaction, the surviving, resulting or transferee person, as the case may be, if other than the Borrower, shall deliver to the Lender an instrument assuming all of the obligations of the Borrower under this Agreement and the other Loan Documents;

(E) immediately after giving effect to such transaction, no Default shall have occurred and be continuing; and

(F) prior to such transaction, the Borrower shall have delivered to the City and the Lender an Opinion of Counsel stating that such transaction complies with this Agreement.

Section 4.05. Recording; Filing of Financing Statements. The Borrower agrees that it will, at its sole expense, file or cause to be filed any financing statements and continuation statements deemed necessary by Counsel to perfect and protect the security interest of the Lender in this Agreement and the payments to be made hereunder and in the Disbursing Agreement.

Section 4.06. Tax Covenants and Representations. In order to ensure that the interest on the Note shall at all times be excludable from gross income for federal income tax purposes, the Borrower specifically represents, warrants and covenants with the City, the Lender and all Holders from time to time of the Note:

(A) It will fulfill all conditions specified in Sections 103 and 141 through 150 of the Code and applicable Treasury Regulations as are necessary to maintain the tax-exempt status of the interest borne by the Note, including as set forth in the Borrower Tax Certificate.

(B) The Project will be owned by an organization described in Section 501(c)(3) of the Code.

(C) Less than five percent (5%) of the net proceeds of the Note will be used, in aggregate (i) by an organization described in Section 501(c)(3) of the Code in an activity that constitutes an unrelated trade or business, (ii) in a trade or business by a person other than an organization described in Section 501(c)(3) of the Code or a governmental unit (within the meaning of Section 141 of the Code), and (iii) to pay “issuance costs” of the Note within the meaning of Section 147(g) of the Code.

(D) No more than two percent (2%) of the proceeds of the Note will be applied to the payment of “issuance costs” of the Note within the meaning of Section 147(g) of the Code. All such costs in excess of this amount will be paid by the Borrower from its own funds or any other financing.

(C) The Borrower has not leased, sold, assigned, granted or conveyed and will not lease, sell, assign, grant or convey all or any portion of the Facilities acquired or refinanced in whole or in part by the Note or any interest therein to the United States or any agency or instrumentality thereof within the meaning of Section 149(b) of the Code.

(F) No portion of the Project or the proceeds of the Note will be used to provide any of the following facilities related or incidental thereto: any airplane, skybox or other private luxury box, facility used primarily for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(G) There are no outstanding obligations of a political subdivision other than the Note, the proceeds of which have been or will be used with respect to the Project.

(H) As of the date hereof, the Borrower is the only “principal user” of the Facilities and the Borrower will not permit any person to become a “principal user” of the Facilities if such action would cause the interest on the Note to become includable in gross income for federal income tax purposes in the hands of the Holder thereof.

(I) The average weighted maturity of the Note does not exceed 120% of the average reasonably expected economic life of the New Facility (not less than 25 years), determined, as of the date of issuance of the Note, in accordance with Section 147(b) of the Code.

(J) No obligations have been or will be issued under Section 141, 142, 143, 144 or 145 of the Code that are being sold at substantially the same time as the Note, pursuant to the same plan of financing and that are payable in whole or in part by the Borrower or otherwise have any common or pooled security for the payment of debt service thereon with the Note.

(K) The Borrower shall provide the City all information required to satisfy the informational requirements set forth in Section 149(e) of the Code, including the information necessary to complete IRS Form 8038.

(L) The Borrower will not use the proceeds of the Note in such a manner as to cause the Note to be an “arbitrage bond” within the meaning of Section 148 of the Code and applicable Treasury Regulations. To this end, the Borrower shall make the determinations and take the actions required by and otherwise comply with the Borrower’s Tax Certificate, on behalf of, and as agent for, the City, and shall rebate to the United States, the amounts, at the times, all in the manner and as required by Section 148(f)(6) of the Code and the regulations promulgated thereunder, as provided in the Borrower’s Tax Certificate.

(M) Not less than 95% of the capital expenditures financed with the net proceeds of the Note were or will be paid and incurred after August 5, 1997, and thus Section 145(b) of the Code is inapplicable to the Note.

(N) The Project does not include any property to be sold or any property to be affixed to or consumed in the production of property for sale.

(O) The Borrower will comply with and fulfill all other requirements and conditions of the Code and Treasury Regulations and rulings issued pursuant thereto relating to the operation and use of the Project and the use of proceeds of the Note to the end that interest on the Note shall at all times be excludable from gross income for federal income tax purposes.

The foregoing covenants shall remain in full force and effect notwithstanding the payment or discharge of the Note.

Section 4.07. Reports to Governmental Agencies. The Borrower will furnish to agencies of the State of Montana, such periodic reports or statements as they may reasonably require throughout the Term of this Agreement. The Borrower agrees to furnish such information and pay such fees as may be necessary to continue in effect, in its own name or the name of the City or in behalf of the Lender, the registration of the Note with the State of Montana and regulatory authorities of such other states as the Note has been or is being registered by the Lender thereof.

Section 4.08. Permits and Licenses. The Borrower will do all things necessary to obtain and renew or cause to be obtained and renewed from time to time, as necessary, all permits, licenses and other governmental approvals necessary for operation of the Facilities.

Section 4.09. Borrower's Obligations. The Borrower will keep, perform and observe each of its obligations, agreements and duties under this Agreement, the Disbursing Agreement, the Trust Indenture and the Commitment Letter.

Section 4.10. Approval of Note Terms. The Borrower has approved the terms and conditions of the Note.

Section 4.11. Maintenance. During the Term of this Agreement, the Borrower will keep the Facilities in good repair and operating condition and in as safe of a condition as its operations will reasonably permit, making all repairs thereto and renewals and replacements thereof which may be necessary for this purpose, in the reasonable judgment of the Borrower, so that the Facilities will remain suitable for use as a facility of the character described in and contemplated by this Agreement, or such other uses as are not inconsistent with the Act or the Code. The Borrower shall provide equipment, furnishings, supplies and other personal property required or necessary for the proper operation, repair and maintenance of the Facilities.

Section 4.12. Modifications. The Borrower may from time to time make any additions, modifications, substitutions, deletions or improvements to the Project that it may deem desirable for its purposes; provided that no addition, modification, substitution, deletion or improvement shall be made in such a manner or to such an extent as to affect adversely the exemption from federal income taxation of the interest on the Note.

Section 4.13. Taxes and Other Governmental Charges and Utility Charges; Liens.

(A) The Borrower will make promptly all payments due during the Term on taxes and special assessments lawfully levied upon or with respect to the Facilities, other charges lawfully made by any governmental body for public improvements that may be or become secured by a lien on the Facilities, and utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Facilities, including but not limited to taxes or governmental charges on any property of the Borrower brought in or upon the Land, sales and other excise taxes on products thereof, and any taxes levied upon or with respect to income or profits from the Facilities which, if not paid, would become a lien thereon prior to or on a parity with the pledge and assignment of such revenues and receipts made in this Trust Indenture. With respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, with or without interest, the Borrower shall be obligated to pay only such installments and interest as are required to be paid during the Term.

(B) The Borrower shall have the right to contest by legal proceedings, at its own expense and, if necessary, the validity or amount of any imposition of said real property taxes and assessments; provided that any unpaid amount shall also be placed in escrow with the City, together with the Borrower's reasonable estimate of penalties and interest thereon, pursuant to the foregoing provisions and disbursed by the Borrower either in accordance with the resolution of said legal proceedings or prior thereto if at any time the Facilities or any part thereof shall, in the City's reasonable opinion, be in danger of being forfeited or sold by reason of the nonpayment of taxes or assessments.

As provided in Montana Code Annotated, Section 90-5-110, the issuance of the Note shall not effect any determination regarding whether the Facilities are subject to taxation.

(C) The Borrower will not permit any mechanics' or other liens to be filed or established or to remain against the Facilities for labor or materials furnished in connection with any Improvements, repairs, renewals or replacements; provided that if the Borrower shall first notify the City of its intention so to do, it may in good faith contest any mechanics' or other liens filed or established and in such event may permit the items contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless the City shall notify the Borrower that, in the City's opinion, by nonpayment of any such item the lien of the Trust Indenture as to any part of the Facilities will be materially endangered or the Facilities or any part thereof will be subject to loss or forfeiture, in which event the Borrower shall promptly pay all such unpaid items and cause them to be satisfied and discharged, or shall apply for and obtain a release of the lien by proceeding in accordance with Montana Code Annotated, Section 71-3-516. The City will cooperate fully with the Borrower in any such contest; provided that the Borrower shall undertake to pay all costs and expenses incurred by the City and to indemnify the City and save it harmless against any risks, claims or liabilities arising out of such contest.

Section 4.14. Insurance. The Borrower shall procure and maintain (i) such insurance as is required under the Deed of Trust and the Agreement to Provide Insurance attached as Exhibit C hereto, and (ii) such additional insurance as is necessary to keep the Borrower and the Facilities insured against such other casualties and contingencies as the City may from time to time in writing require, all in such manner and for such amounts as may be reasonably satisfactory to the City.

Section 4.15. Hazardous Use and Materials. Except to the extent actually required in connection with the Facilities or their use, the Borrower shall not permit dangerous objects, materials, or products to be located in, on or under the Facilities. In no event may any Hazardous Materials be located or stored upon, generated from, transported to or from, disposed of or used in any portion of the Facilities, nor may any hazardous or dangerous use be made of the Facilities, and the Borrower shall keep the Facilities in a safe condition in full compliance with all safety, health and environmental statutes, ordinances and regulations. "Hazardous Materials" include without limitation, all gasoline and petroleum products, as well as any substance, material or waste which is or hereafter becomes regulated or classified as a hazardous substance, hazardous material, toxic substance or solid waste under the Comprehensive Environmental Response, compensation, and Liability Act of 1980, as amended, the Resource Conservation and Recovery Act of 1976, or the Hazardous Materials Transportation Act, or the regulations pertaining to such statutes, or any other statutes, laws and ordinances of the United States or of any state, county or municipality in which the Facilities are located. If the same hereafter exist on or within the Facilities, and whether or not presently known or discovered, the Borrower covenants to immediately cause the same to be collected, stored, treated and removed and the Facilities restored to the extent required by all then applicable federal, state and local regulations and to pay promptly all of the costs thereof. The Borrower shall give Lender prompt written notice of (a) any proceeding or inquiry by any governmental authority with respect to the

alleged presence of any Hazardous Material on, in or under the Facilities or the emission or migration thereof from or to any other Facilities, (b) all claims made or threatened by any other party against the Borrower or the Facilities relating to any alleged loss or injury resulting from any Hazardous Material, or (c) the Borrower's discovery or occurrence of any condition on or in the Facilities or any property adjoining or in the vicinity of the Facilities that could cause the Facilities to be subject to any federal, state or local statute, ordinance or regulation with respect to the proper disposal or cleanup of such materials. The City shall have the right to join and participate in, as a party if it so elects, any legal or administrative proceedings or actions initiated with respect to the Facilities in connection with any environmental law, and the Borrower agrees to pay the City's reasonable attorneys' fees and court costs in so doing.

4.16. Completion Date. The Borrower shall complete design and construction of the Project no later than the Completion Date.

## ARTICLE 5

### BORROWER'S OPTIONS

Section 5.01. Assignment. Subject to and except as provided in the Trust Indenture and in Section 4.04 hereof, the Borrower shall not sell, assign, transfer, convey or otherwise alienate any of its right, title and interest in the Facilities or any portion thereof, nor shall it assign any of its obligations under this Agreement to another person without the prior written approval of the Holder, and then only provided that: (a) such sale, assignment or conveyance shall not subject the interest payable on the Note to federal income taxation or cause the Note to be an "arbitrage bond" within the meaning of Section 148 of the Code and the Treasury Regulations promulgated thereunder and (b) any purchaser and assignee of the Facilities shall assume in writing all of the obligations of the Borrower under this Agreement and the other Loan Documents by instrument in form and substance satisfactory to the Holder and the City.

Section 5.02. Termination Upon Retirement of Note. At any time when no Principal Balance on the Note remains outstanding and no Default or Event of Default exists or is continuing, and arrangements satisfactory to the Lender and the City have been made for the discharge of all other accrued liabilities under this Agreement, this Agreement shall terminate, except as otherwise provided in Sections 3.02, 3.04, 4.02, 4.06 and 4.15 hereof.

## ARTICLE 6

### EVENTS OF DEFAULT AND REMEDIES

Section 6.01. Events of Default. Any one or more of the following events is an Event of Default under this Agreement:

(1) if the Borrower shall fail to make any payment of principal of, premium, if any, or interest on the Note on or before 10 days after the date that the payment is due;

(2) if the Borrower shall fail to observe and perform in any material respect any other covenant, condition or agreement on its part under this Agreement (other than the failure

that is subject to paragraph (1) hereof and except those under Section 4.06 hereof resulting in a Determination of Taxability) for a period of 30 days after written notice, specifying such default and requesting that it be remedied, is given to the Borrower by the City or the Lender;

(3) if the Borrower shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to any present or future federal bankruptcy act or under any similar federal or state law, or shall be adjudicated as a bankrupt or insolvent, or shall make an assignment for the benefit of creditors or shall admit in writing any inability to pay its debts generally as they become due, or file a petition or answer proposing the adjudication of the Borrower as a bankrupt or its reorganization 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 30 days after the filing thereof, or a receiver, trustee or liquidator of the Borrower or of all or substantially all of the assets of the Borrower or of the Facilities shall be appointed in any proceeding brought against the Borrower and shall not be discharged within 30 days after such appointment or if the Borrower shall consent to or acquiesce in such appointment, or if the estate or interest of the Borrower in the Facilities or any part thereof shall be levied upon or attached in any proceeding and such process shall not be vacated or discharged within 30 days after such levy or attachment, or the Borrower shall be dissolved or liquidated (except as provided in Section 4.04 hereof), or if the Facilities shall have been abandoned by the Borrower for a period of 15 days after written notice, specifying such default and requesting that it be remedied, is given to the Borrower by the City or the Lender.

(4) if the Borrower shall default or fail to perform any covenant, condition or agreement on its part to be performed under the Commitment Letter or a default occurs under the Loan Documents other than this Agreement; or

(5) if any representation or warranty made by the Borrower herein, or in any document or certificate furnished the City or the Lender in connection herewith or pursuant hereto, shall prove at any time to be in any material respect incorrect or misleading as of the date made.

**Section 6.02. City's Remedies.** Whenever any Event of Default referred to in Section 6.01 shall have happened and be subsisting, any one or more of the following remedial steps may be taken by the City, or by the Lender, as its assignee:

(1) The City (or the Lender, as assignee) may, at its option, declare all Loan Repayments payable under Section 3.02 for the remainder of the Term (being an amount equal to that necessary to pay in full the Note, assuming acceleration of the Note, and to pay all other amounts due hereunder) to be immediately due and payable, whereupon the same shall become immediately due and payable by the Borrower and interest shall accrue thereon to the date of payment.

(2) The City (or the Lender, as assignee), with or without declaring all such Loan Repayments immediately due and payable, may take whatever action at law or in equity which may appear necessary or appropriate to collect the Loan Repayments then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement or the other Loan Documents, including, without

limitation, the rights of setoff, injunction and specific performance; provided that upon the occurrence of an Event of Default referred to in Section 6.01(3) hereof, all Loan Repayments shall be immediately due and payable by the Borrower and interest shall accrue thereon to the date of payment, all without any notice to or demand upon the Borrower.

(3) The City may exercise any remedies available to a secured party under the Montana Uniform Commercial Code.

Section 6.03. Disposition of Funds. Any amounts collected pursuant to action taken under Section 6.02 shall be applied as follows:

(a) First, to the payment of all costs and proper expenses (including reasonable attorneys' fees), liabilities incurred or advances made hereunder by the City or the Lender;

(b) Second, to the payment to the Lender, on behalf of the City, of the amount then owing or unpaid under this Agreement for principal of, premium, if any, or interest due on the Loan and, in case any such proceeds shall be insufficient to pay the whole amount so due, then first to interest due on the outstanding Principal Balance of the Loan, then prepayment premium and thereafter in reduction of said Principal Balance; and

(c) Third, to the payment of any excess to the Borrower, or to whomsoever may be lawfully entitled to receive the same.

Section 6.04. Manner of Exercise. No remedy herein conferred upon or reserved to the City (or the Lender, as assignee) 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 Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power 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 City, as opposed to the Lender under Section 6.10 hereof, to exercise any remedy reserved to it in this Article 6 (except those relating to rights of the City arising under Sections 3.03(2), 3.03(3), 4.02 and 6.06 hereof), it shall be necessary for the City to obtain the prior written consent of the Lender and to give such notice as may be herein expressly required. Any and all amounts received by the City or the Lender resulting from the exercise of any remedy hereunder shall after payment of attorneys' fees and all other costs and expenses incurred as a result of such exercise shall be applied as provided in Section 6.03 hereof.

Section 6.05. Receiver. Upon the occurrence of an Event of Default and commencement of judicial proceedings by the Lender to enforce any right under this Agreement, the Lender shall be entitled, as a matter of right as against the Borrower, without notice or demand and without regard to the adequacy of the security for the Note or the solvency of the Borrower, to the appointment of a receiver of the Facilities, and of the rents, issues, profits, revenues and other income thereof, but, notwithstanding the appointment of any receiver, the Lender shall be entitled to retain possession and control of, and to collect and receive the income



from cash, securities and other personal property held by, or required to be deposited with or pledged to, the Lender.

Section 6.06. Attorneys' Fees and Expenses. In the event the Borrower should default under any of the provisions of this Agreement and the City or the Lender should employ attorneys or incur other expenses for the collection of Loan Repayments or the enforcement of performance of any obligation or agreement on the part of the Borrower (including pursuant to Section 3.04 hereof), the Borrower will on demand and receipt of an accounting therefor pay to the City and the Lender the reasonable fees of such attorneys and such other expenses so incurred.

Section 6.07. Effect of Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 6.08. Waiver of Stay or Extension Laws. The Borrower covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim to take the benefit or advantage of, any stay or extension law hereafter in force, which may affect the covenants or the performance of this Agreement or the other Loan Documents; and the Borrower (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the City or the Lender, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 6.09. Late Fee. If any Loan Repayment required under this Agreement is not received by City on or before 10 days after the date that the payment is due, Borrower shall pay to City on demand a late charge in an amount equal to the lesser of (i) five percent (5%) of the overdue payment or (ii) \$50. Borrower and City agree that the late charge is intended to reimburse City for the additional expense included in processing delinquent payments and not as a penalty. The imposition or collection of a late charge is in addition to and not in lieu of any other rights or remedies City may have as a result of late payment.

Section 6.10. Lender's Exercise of the City's Remedies. Whenever any Event of Default shall have happened and be subsisting the Lender may, but shall not be obligated to, exercise any or all of the rights of the City under this Agreement, upon notice to the City.

## ARTICLE 7

### GENERAL

Section 7.01. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by certified or registered mail, postage prepaid, or by a nationally recognized overnight delivery service such as Federal Express that provides written confirmation of delivery, with proper address as indicated below. The City, the Borrower and the Lender may, by written notice given by each to the others, designate any other address or addresses to which notices, certificates or other communications to them shall be sent when required as contemplated by this Agreement. Until

otherwise provided by the respective parties, all notices, certificates and communications to each of them shall be addressed as follows:

To the City:	City of Missoula, Montana 435 Ryman Street Missoula, Montana 59802 Attention: Brentt Ramharter
To the Lender:	First Security Bank of Missoula 1704 Dearborn Avenue Missoula, Montana 59801 Attn: Andrew Larson
To the Borrower:	YWCA of Missoula 1130 W. Broadway Missoula, Montana 59802 Attn: Cindy Weese

Section 7.02. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the City and the Borrower and their respective successors and assigns (including the Lender).

Section 7.03. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 7.04. Amendments, Changes and Modifications. Except as otherwise provided in this Agreement or in the other Loan Documents, subsequent to the initial issuance of the Note and before this Agreement is satisfied and discharged in accordance with its terms, and the Note is fully paid, this Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the Lender.

Section 7.05. Execution Counterparts. This 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 7.06. Limitation of City's Liability. No representation, agreement or provision contained in this Agreement, the Assignment or the Disbursing Agreement nor any other agreement, covenant or undertaking by the City contained in any document executed by the City in connection with the Facilities or the Project or the issuance of the Note shall give rise to any pecuniary liability of the City or a charge against its general credit or taxing powers, or shall obligate the City financially in any way other than the payments to be made by the Borrower under this Agreement pledged to the Lender. No failure of the City to comply with any term, representation, condition, covenant or agreement herein shall subject the City to liability for any claim for damages, costs or other financial or pecuniary charge; and no execution of 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 City. Nothing herein shall preclude a proper party in

interest from seeking and obtaining specific performance against the City for any failure to comply with any term, condition, covenant or agreement herein; provided that no costs, expenses or other monetary relief shall be recoverable from the City except as may be payable from the payments to be made by the Borrower under this Agreement pledged to the Lender.

[Balance of page intentionally left blank]

IN WITNESS WHEREOF, the City has caused this Agreement to be executed in its name and on its behalf and its official seal to be hereunto affixed and attested by its duly authorized officers, and the Borrower has caused this Agreement to be executed in its name and on its behalf, all as of the date first above written.

CITY OF MISSOULA, MONTANA

By \_\_\_\_\_  
Mayor

(SEAL)

By \_\_\_\_\_  
Finance Director

Attest: \_\_\_\_\_  
City Clerk

(Signature Page to Loan Agreement)

YWCA OF MISSOULA

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: President

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Treasurer

(Signature Page to Loan Agreement)

STATE OF MONTANA     )

:ss.

COUNTY OF MISSOULA     )

On this \_\_\_\_\_ day of December, 2012, before me, the undersigned Notary Public, personally appeared John Engen and Brentt Ramharter who acknowledged themselves to be the Mayor and the Finance Director, respectively, of the City of Missoula and that they are officers authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the City by themselves as such officers.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public for the State of Montana,  
Residing at: \_\_\_\_\_, Montana  
My Commission expires: \_\_\_\_\_

(S E A L)

STATE OF MONTANA     )

:ss.

COUNTY OF MISSOULA    )

On this \_\_\_\_\_ day of December, 2012, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_ and \_\_\_\_\_ who acknowledged themselves to be the President and Treasurer, respectively, of the YWCA of Missoula, a Montana non-profit corporation, and that they are the officers authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of such corporation as such officers.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public for the State of Montana,  
Residing at: \_\_\_\_\_, Montana  
My Commission expires: \_\_\_\_\_

(S E A L)

EXHIBIT A  
FORM OF NOTE

UNITED STATES OF AMERICA  
STATE OF MONTANA  
COUNTY OF MISSOULA

**CITY OF MISSOULA**

Industrial Development Revenue Note  
(YWCA Project), Series 2012

No. R-1 \$920,400

<u>Interest Rate</u>	<u>Principal Amount</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>
Variable	\$920,400	September 28, 2028	December 28, 2012

**AS SET FORTH MORE PARTICULARLY BELOW, THIS NOTE IS NOT A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWERS OF THE CITY AND IT DOES NOT CONSTITUTE OR GIVE RISE TO PECUNIARY LIABILITY OF THE CITY.**

The CITY OF MISSOULA, MISSOULA COUNTY, MONTANA, a municipal corporation and political subdivision organized and existing under the laws of the State of Montana (the “City”), for value received, hereby promises to pay to First Security Bank of Missoula, Division of Glacier Bank (the “Holder”), or registered assigns, at its office in Missoula, Montana, or such other place as the Holder may designate in writing, solely from the source and in the manner hereinafter provided, the principal sum of Nine Hundred Twenty Thousand Four Hundred Dollars (\$920,400), or such lesser amount as shall be advanced and outstanding hereunder, with interest on the outstanding principal balance at a rate determined as hereinafter provided, subject to the terms and provisions of this Note. Principal, premium, if any, and interest shall be payable in any coin or currency which at the time of payment is legal tender for the payment of public and private debts in the United States of America. This Note is due and payable in the following amounts and at the following times:

(a) on January 28, 2013 and continuing on the 28th day of each calendar month thereafter prior to but excluding the calendar month containing the Amortization Date (defined below), interest only on the principal amount advanced and outstanding hereunder at the Initial Rate (defined below);

(b) on the Amortization Date and continuing on the 28th day of each calendar month thereafter to and including the Maturity Date set forth above, the amount necessary to amortize over a term beginning on the Amortization Date and through and including the Maturity Date, in equal monthly payments, the outstanding principal balance of this Note, together with interest hereon to accrue at the annual interest rate set forth below, shall be due and payable; provided that the amount of each monthly installment from and after the Amortization Date shall be calculated at the interest rate in effect on such date, so that there is due and payable an amount necessary to amortize, in equal monthly payments over the number of installments then remaining in the term ending on the Maturity Date, the then outstanding principal balance plus interest to accrue at the annual interest rate in effect and determined as set forth below; and



(c) the entire outstanding principal balance and interest, if not sooner paid, shall be paid in full on the Maturity Date.

The interest rates set forth in this paragraph are subject to adjustment upon a Determination of Taxability (defined below). The outstanding and unpaid principal balance of this Note bears interest from the Date of Original Issue set forth above to and including December 28, 2017 (such date, the “Initial Adjustment Date”), at the rate of 3.25% per annum (the “Initial Rate”). On December 28, 2017, December 28, 2022 and December 28, 2027 (each such date, a “Rate Adjustment Date”), the annual interest rate shall be adjusted to a rate equal to the greater of (i) 0.70 multiplied by the sum of (A) the FHLB Five Year Intermediate Term Rate (defined below) in effect on such Rate Adjustment Date and (B) 3.00%; and (ii) 3.25%; provided that, so long as there is no Determination of Taxability, the annual interest rate shall never be greater than 6.25%. As of each Rate Adjustment Date the Holder shall determine the interest rate effective on such Rate Adjustment Date and the amount of the monthly installments payable while such interest rate is in effect, and give the City and the Borrower (defined below) written notice of the interest rate and monthly payment so determined, and such interest rate and monthly installment amount shall be conclusive absent manifest error.

Based on the Initial Rate set forth above (and assuming the full principal amount of this Note is advanced hereunder) the first 60 payments of principal and interest under this note shall be \$6,4067.00, subject to the prepayment provisions set forth below.

Capitalized terms used herein but not otherwise defined shall have the meanings assigned to them in the Loan Agreement. As used herein, the following terms have the following meanings:

“Amortization Date” means September 28, 2013.

“Assignment” means the Assignment of Loan Agreement of even date herewith by and between the City and the Holder.

“Borrower” means YWCA of Missoula, a Montana nonprofit corporation, or any qualified successor or assign under the Loan Agreement.

“Business Day” means any day other than a Saturday or Sunday or other day on which commercial banks in the city in which the principal office of the Lender is located are not open for business.

“Date of Taxability” shall have the meaning ascribed to it in the Loan Agreement.

“Determination of Taxability” shall have the meaning ascribed to it in the Loan Agreement.

“Disbursing Agreement” means the Disbursing Agreement of even date herewith, among the City, Holder and Borrower, as the same may be amended or supplemented from time to time in accordance with the terms thereof.

“FHLB Five Year Intermediate Term Rate” means the annual rate of interest published by the Federal Home Loan Bank of Seattle, in its money rate tables, as the ‘Intermediate/Long-Term, Fixed-Rate Advance, Bullet: 5 Year’ or if more than one rate is published on any day, the highest of such published rates; provided, however, that if the Federal Home Loan Bank of Seattle ceases publication, Holder and Borrower will designate, in substitution of the Federal Home Loan Bank of Seattle, another publication, consistent with industry standards, as the source for the then prevailing interest rate.

“Loan Agreement” means the Loan Agreement, of even date herewith, between the City and the Borrower, as the same may be amended or supplemented from time to time in accordance with the terms thereof.

“Note” means this Limited Obligation Qualified 501(c)(3) Note) (YWCA Project), Series 2012, in the maximum aggregate principal amount of \$920,400.

“Payment Date” means a date on which a payment of principal or interest or both is due under this Note.

“Resolution” means the resolution, adopted by the City Council on December 17, 2012, pursuant to which this Note is issued.

“Tax Exempt Rate” means the Initial Rate as adjusted from and after each Rate Adjustment Date, absent any Determination of Taxability.

“Trust Indenture” means the Combination Trust Indenture, Security Agreement and Fixture Financing Statement among the Borrower, as grantor, the Lender, as beneficiary, and a suitable title insurance company, as trustee, including any amendments thereof or supplements thereto.

In the event that the interest on this Note shall become includable in gross income for purposes of federal income taxation pursuant to a Determination of Taxability, the interest rate specified above shall be increased, from the Date of Taxability, to an annual rate (as adjusted on each Rate Adjustment Date) equal to the greater of (i) the sum of (A) the FHLB Five Year Intermediate Term Rate (defined below) in effect on such Rate Adjustment Date and (B) 3.00%; and (ii) 5.00%; provided that the annual taxable interest rate shall never be greater than 8.00% (such rate, the “Taxable Rate”). The City shall, solely from payments required to be made by the Borrower, (a) immediately upon demand pay to the Holder and to each prior Holder since the Date of Taxability an amount equal to the amount by which the interest accrued at the Taxable Rate from the Date of Taxability to the date of payment exceeds the amount of interest actually accrued hereunder at the Tax-Exempt Rate and paid to the Holder and any such prior Holder during said period, and (b) thereafter pay to the Holder payments of principal and interest on subsequent Payment Dates in amounts computed at the Taxable Rate. Such obligation of the City shall survive the payment in full of the principal amount of this Note.

All payments of principal and interest shall be applied first to interest due on the outstanding principal amount hereof and thereafter in reduction of the principal amount hereof. Interest payments shall be computed on the basis of a 365-day year. If any Payment Date is not a Business Day, such payment shall be payable on the next succeeding Business Day.

This Note is subject to prepayment, in whole or in part, at the option of the Borrower on each Payment Date, upon at least 30 days prior written notice to the Holder, such notice specifying all the necessary details of the proposed prepayment. Any partial prepayment shall be applied in inverse order of principal installments payable hereunder and no partial prepayment shall postpone, defer or reduce the amount of monthly installments otherwise payable hereunder. If this Note is prepaid, in whole or in part, from the proceeds of a loan obtained from other than the Lender or its successors that results in such loan being held by a bank or financial institution or lender other than the Lender or its successors, a prepayment premium shall be due and owing to the Holder in accordance with the Prepayment Prices (expressed as percentages of the principal amount of this Note so redeemed) set forth below, together with the entire principal amount redeemed and interest accrued on the principal amount redeemed to the date fixed for prepayment.

Prepayment Dates Inclusive	Prepayment Price (% of outstanding principal amount of Note)
December 28, 2012 to December 27, 2013	105%
December 28, 2013 to December 27, 2014	104%
December 28, 2014 to December 27, 2015	103%
December 28, 2015 to December 27, 2016	102%
December 28, 2016 to December 27, 2017	101%
December 28, 2017 and thereafter	100%

If the Facilities (as defined in the Loan Agreement) are destroyed or damaged or all or any portion of the Facilities have been taken pursuant to the exercise of the power of eminent domain and the Net Proceeds of any insurance claim or condemnation award are applied by the Holder to the payment of this Note pursuant to the terms of Article Five of the Trust Indenture, such proceeds shall be applied in prepayment of all or a portion of the Loan, as provided in the immediately preceding paragraph, but without prepayment premium.

This Note constitutes an issue in the maximum authorized face amount of \$920,400. This Note is issued by the City pursuant to the authority granted by Montana Code Annotated, Title 90, Chapter 5, Part 1, as amended (the "Act"), for the purpose of defraying a portion of the costs of designing and constructing an addition to and remodeling the Secret Seconds thrift store, owned by the Borrower, at 1136 W. Broadway in the City and related improvements (the "Project"), refinancing existing outstanding debt of the Borrower and paying certain costs associated with the sale of the Notes, such funds to be loaned by the City to the Borrower pursuant to the Loan Agreement and advanced pursuant to the Disbursing Agreement, thereby assisting activities in the public interest and for the public welfare of the City and the State of Montana. This Note is secured by the Trust Indenture. The disbursement of proceeds of this Note is subject to the terms and conditions of the Loan Agreement and the Disbursing Agreement. All of the agreements, conditions, covenants, provisions, and stipulations contained in the Loan Agreement, Disbursing Agreement, Trust Indenture and resolutions of the City relating to this Note and the Project are hereby made a part hereof to the same extent and with the same force as if they were set forth fully herein.

This Note shall be registered and shall be transferable upon the books of the City at the office of the Finance Director, City of Missoula, Montana, by the Holder hereof in person or by its attorney duly authorized in writing, upon surrender hereof together with a written instrument of transfer satisfactory to the Finance Director, duly executed by the Holder or its duly authorized attorney. Upon such transfer, the Finance Director will note the date of registration and the name and address of the new Holder upon the books of the City and in the registration blank appearing below. Alternatively, the City will, at the request and expense of the Holder, issue a new Note or Notes in an aggregate principal amount equal to the unpaid principal balance of this Note, and of like tenor except as to number, principal amount and the number and amount of the installments payable hereunder, and registered in the name of the Holder or such transferee as may be designated by the Holder. The City may deem and treat the person in whose name this Note is last registered upon the books of the City with such registration also noted on this Note, as the absolute owner hereof, whether or not this Note is overdue, for the purpose of receiving payment of or on account of the principal balance, prepayment price, late charges or interest and for all other purposes, and all such payments so made to the Holder or upon its order shall be valid and effectual to

satisfy and discharge the liability upon this Note to the extent of the sum or sums so paid, and the City shall not be affected by any notice to the contrary.

Time is of the essence under this Note. Failure to make any payment under this Note within 10 days after the date on which such payment is due shall constitute an event of default under this Note (an "Event of Default"). An Event of Default shall also include any default under the Loan Agreement, Assignment, Trust Indenture, or Disbursing Agreement, or any other event that entitles the Holder to accelerate payment under the Loan Agreement, Trust Indenture, or Disbursing Agreement. Upon the occurrence of an Event of Default, the Holder may at its right and option (subject, however, to such notice as may be required under the Loan Agreement) enforce any right conferred upon Holder under this Note, the Loan Agreement, Assignment, Trust Indenture, or Disbursing Agreement and pursue any other right or remedy allowed by law or equity. Without limitation of the foregoing, upon the occurrence of an Event of Default, the Holder may at its right and option (subject, however, to such notice as may be required under the Loan Agreement) declare immediately due and payable the principal balance of this Note and interest accrued hereon, together with any reasonable attorneys' fees incurred by the Holder in collecting or enforcing payment hereof, whether suit be brought or not, and all other sums due hereunder or under the Loan Agreement, Assignment, Trust Indenture, or Disbursing Agreement, anything to the contrary herein or therein notwithstanding, and payment hereof and thereof may be enforced and recovered in whole or in part, at any time, by one or more of the remedies provided in this Note, the Loan Agreement, Trust Indenture or the Disbursing Agreement.

If any payment required under this Note is not received by Holder within 10 days after the date on which such payment is due, Borrower shall pay to Holder on demand a late charge in an amount equal to the lesser of (i) five percent (5%) of the overdue payment, or (ii) \$50. Borrower and Holder agree that the late charge is intended to reimburse Holder for the additional expense included in processing delinquent payments and not as a penalty. The imposition or collection of a late charge is in addition to and not in lieu of any other rights or remedies Holder may have as a result of late payment.

**THIS NOTE IS NOT A GENERAL OBLIGATION OF THE CITY, BUT RATHER A SPECIAL, LIMITED OBLIGATION OF THE CITY AND SHALL NOT BE PAYABLE FROM NOR CHARGED UPON ANY FUNDS OF THE CITY OTHER THAN PAYMENTS TO BE MADE BY THE BORROWER UNDER THE LOAN AGREEMENT PLEDGED TO THE PAYMENT HEREOF, NOR SHALL THE CITY BE SUBJECT TO ANY LIABILITY HEREON. NO HOLDER OF THIS NOTE SHALL EVER HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE CITY TO PAY THIS NOTE OR THE INTEREST OR ANY LATE CHARGES HEREON, NOR TO ENFORCE PAYMENT HEREOF AGAINST ANY PROPERTY OF THE CITY EXCEPT PAYMENTS TO BE MADE BY THE BORROWER UNDER THE LOAN AGREEMENT PLEDGED TO THE PAYMENT HEREOF. THIS NOTE SHALL NOT CONSTITUTE A CHARGE, LIEN, OR ENCUMBRANCE, LEGAL OR EQUITABLE, AGAINST THE GENERAL CREDIT OF THE CITY OR UPON ANY PROPERTY OF THE CITY, EXCEPT THE PAYMENTS TO BE MADE BY THE BORROWER UNDER THE LOAN AGREEMENT PLEDGED TO THE PAYMENT HEREOF. THIS NOTE, INCLUDING INTEREST, PREMIUM, IF ANY, AND LATE CHARGES, IF ANY, HEREON IS PAYABLE SOLELY FROM THE PAYMENTS TO BE MADE BY THE BORROWER UNDER THE LOAN AGREEMENT PLEDGED TO THE PAYMENT HEREOF. THIS NOTE SHALL NOT CONSTITUTE A DEBT OF THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION. NEITHER THE STATE OF MONTANA NOR ANY OTHER POLITICAL SUBDIVISION SHALL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, INTEREST OR LATE CHARGES ON THIS NOTE OR FOR THE PERFORMANCE OF ANY AGREEMENT OF ANY KIND WHATSOEVER THAT MAY BE UNDERTAKEN BY THE CITY. NEITHER THIS**

**NOTE NOR ANY OF THE AGREEMENTS OR OBLIGATIONS OF THE CITY CONTAINED HEREIN OR IN THE LOAN AGREEMENT, ASSIGNMENT OR DISBURSING AGREEMENT SHALL BE CONSTRUED TO CONSTITUTE AN INDEBTEDNESS OF THE CITY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISIONS WHATSOEVER, NOR TO CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OR BE A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWER OF THE CITY. NO FAILURE OF THE CITY OR ANY PARTY TO COMPLY WITH ANY TERM, CONDITION, COVENANT OR AGREEMENT IN THIS NOTE, THE LOAN AGREEMENT, THE ASSIGNMENT OR THE DISBURSING AGREEMENT SHALL SUBJECT THE CITY TO LIABILITY FOR ANY CLAIM FOR DAMAGES, COSTS OR OTHER FINANCIAL OR PECUNIARY 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 CITY.**

The Holder shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the Holder and then only to the extent specifically set forth in the writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event.

It is intended that this Note is made with reference to and shall be construed as a Montana contract and governed by the laws of the State of Montana, without giving effect to the conflicts-of-law principles thereof.

This Note may not be amended, modified or changed nor shall any waiver of any provision hereof be effective, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought. No material modification of the terms and conditions of this Note shall be effective without the written consent of the Lender.

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

The City has designated this Note as a "qualified tax-exempt obligation" pursuant to Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts and things required to exist, happen, and be performed precedent to or in the issuance of this Note do exist, have happened and have been performed in regular and due time, form and manner as required by law.

IN WITNESS WHEREOF, the City has caused this Note to be duly executed by its duly authorized officers and its official seal affixed all as of the 28 day of December, 2012.

CITY OF MISSOULA, MONTANA

By \_\_\_\_\_  
Mayor

By \_\_\_\_\_  
Finance Director

Attest: \_\_\_\_\_  
City Clerk

(SEAL)

## REGISTRATION AND TRANSFER

This Note shall be fully registered as to both principal and interest. No transfer of this Note shall be valid unless and until (1) the registered holder of this Note, or his duly authorized attorney or legal representative, executes the form of assignment appearing on this Note, and (2) the Finance Director, as Registrar, has duly noted the transfer on this Note and recorded the transfer on the Registrar's registration books. The City shall be entitled to deem and treat the person in whose name this Note is registered as absolute owner thereof for all purposes, notwithstanding any notice to the contrary. Payments on account of this Note shall be made only to the order of the registered holder thereof, and all such payments shall be valid and effectual to satisfy and discharge liability upon this Note to the extent of the sum or sums so paid.

## REGISTER

The ownership of the unpaid principal balance of this Note and the interest accruing thereon is registered on the books of the City of Missoula, Montana in the name of the registered holder appearing on the first page hereof or as last noted below:

<u>Date of Registration</u>	<u>Name and Address of Registered Holder</u>	<u>Signature of Finance Director</u>
December 28, 2012	First Security Bank of Missoula 1704 Dearborn Avenue Missoula, Montana 59801	_____

THE FOLLOWING ENTRIES ARE TO BE MADE ONLY BY THE  
REGISTRAR UPON REGISTRATION OF EACH TRANSFER

The Finance Director of the City, acting as Registrar, has transferred, on the books of the City, on the date last noted below, ownership of the principal amount of and the accrued interest on this Note to the new registered holder noted next to such date, except for amounts of principal and interest theretofore paid.

<u>Date of Transfer</u>	<u>Name of New Registered Holder</u>	<u>Signature of Registrar</u>
<hr/>	<hr/>	<hr/>
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## FORM OF ASSIGNMENT

For value received, this Note is hereby transferred and assigned by the undersigned holder, without recourse, to \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

By: \_\_\_\_\_  
(Authorized Signature)

For: \_\_\_\_\_  
(Holder)

EXHIBIT B

LEGAL DESCRIPTION OF LAND

EXHIBIT C

AGREEMENT TO PROVIDE INSURANCE

EXHIBIT D  
COMPLIANCE AGREEMENT