



Terry E. Rubald  
Deputy Executive Director  
Nevada Department of Taxation  
1550 College Parkway, Ste. 115  
Carson City, Nevada 89706-7937

Re: Elko Convention and Visitors Authority Conference Center

Dear Mr. Rubald,

We are in receipt of your request for information pertaining to the recent leasing of a new conference center for the Elko Convention and Visitors Authority, Elko, Nevada. The facility as developed, is a 28,894 sq. ft. conference center built on property leased by the Elko Convention and Visitors Authority to the James Megellas Foundation (JMF). JMF is a non-profit foundation recognized by the Internal Revenue Service as a 501(C)3 corporation, whose charitable mission is to provide educational services to under-served communities and to "lessen the burden of government". For the purposes of the Elko Convention and Visitors Authority conference center, JMF formed a drop down company in Nevada identified as JMF-ECVA 2015, LLC. This designation is used to identify the specific project on JMF's account records, as each JMF project requires separate reporting and an audit reportable to the JMF Lender/Trustee on that project. The Elko Convention and Visitors Authority does not have any ownership or control over JMF-ECVA 2015, LLC.

**To address the questions raised:**

1. The approach to developing the facility is a "**Lease-Leaseback**" structure, not an MTO or Lease Installment Purchase Agreement. In fulfilling its mission to "Lessen the Burden of Government", JMF utilizes a Lease-Leaseback structure intended to provide needed community facilities that are privately funded and developed, eliminating financial liability to the governmental entity. This is tantamount to the leasing of an office building. The non-profit foundation, JMF obtains a ground lease and assumes financial responsibility for the financing, construction, and debt service of the facility. Any default in the debt service payments is solely a responsibility of JMF, the non-profit

foundation. Upon completion of construction and the removal of any construction risk or liability, the Foundation leases the facility back to the governmental entity. Upon expiration of the ground lease term, the Foundation is required to remove the improvements and return the property to its original condition.

**Key provisions, among others, in the documents:**

**Section 9.5 of the Ground Lease - Ownership of Buildings and Improvements.** During the Term, title to all buildings and improvements placed or constructed on the Land by Tenant pursuant to this Lease shall be vested in Tenant (including its successors and permitted assigns). Upon the expiration of the Facilities Use Agreement, Tenant shall have an obligation to remove all improvements and return the property to its existing condition unless otherwise instructed by the Landlord. In the event that the Landlord elects to have Tenant leave the improvements, Tenant shall request transfer of title pursuant to a written request to Landlord. Note: Any transfer is without consideration by the tenant.

**Section 3.36 of the Facilities Use Agreement -** The Parties acknowledge and agree that the Use Fees payable under this Agreement by the Elko Convention and Visitors Authority shall constitute currently budgeted expenditures of the Elko Convention and Visitors Authority from its general fund. No provision of this Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of the Elko Convention and Visitors Authority within the meaning of any limitation arising under any Legal Requirements, or as creating a lien on any class or source of the Elko Convention and Visitors Authority funding.

**Note:** Facility Use Agreement paragraph 2.5 “Effect of Cancellation or Termination. Cancelling or terminating this Agreement pursuant to any of the provisions of this ARTICLE II shall terminate all of ECVA’s unaccrued obligations under this Agreement, and shall terminate ECVA’s right to possession under this Agreement, but all other provisions of the Agreement, including all obligations of ECVA accrued before such cancellation or termination, shall continue until fully performed or satisfied.” Without ownership of the improvements or liability for debt, the lease should be categorized as an Operating Lease and not a Capital Lease.

2. By resolution of the Elko Convention and Visitors Authority Board of Directors, authorized the execution of all agreements necessary to effectuate the Lease-Leaseback structure of the Conference Center. In reference to NRS 350.087, this statute requires that the structure of the agreement be a financing transaction. As a privately, not by the Elko Convention and Visitors Authority, funded facility, non-recourse to the Elko Convention and Visitors Authority, NRS 350.087 was determined to be non-applicable to this transaction. Therefore the approval of the resolution reverts falls back to the Elko Convention and Visitors Authority’s policy of a majority vote.

3. Legal counsel determined that NRS 350.014 is not applicable, as the Elko Convention and Visitors Authority has no liability for the debt. In the event of failure to make lease payments, the Elko Convention and Visitors Authority is obligated to surrender the premises at which time the Foundation will seek a new tenant. Please refer to the Ground Lease and Facilities Use Agreement.

Sincerely,



Don Newman  
Executive Director  
Elko Convention and Visitors Authority

Attachments:  
Ground Lease  
Facility Use Agreement

**FACILITIES USE AGREEMENT**  
**for**  
**Elko Convention and Visitors Authority New Event**  
**Center**

by and between

**JMF-ECVA 2015, LLC, Grantor**

and

**ELKO CONVENTION AND VISITORS AUTHORITY, Grantee**

Dated as of the 1st day of March, 2015

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The interest of JMF-ECVA 2015, LLC in this Facilities Use Agreement will be collaterally assigned to Western Alliance Bank.

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## FACILITIES USE AGREEMENT

This FACILITIES USE AGREEMENT FOR ELKO CONVENTION AND VISITORS AUTHORITY NEW EVENT CENTER (this “**Agreement**”) dated as of March 1, 2015 (the “**Effective Date**”), is by and among JMF-ECVA 2015, LLC, a Nevada limited liability company (the “**Borrower**”), whose sole member is The James Megellas Foundation, Inc., an Arizona nonprofit corporation (the “**Sole Member**”), and ELKO CONVENTION AND VISITORS AUTHORITY, a body corporate and politic, and a municipal corporation of the State of Nevada (the “**ECVA**”).

### RECITALS

WHEREAS, (a) ECVA and JMF-ECVA 2015, LLC, a Nevada limited liability company, whose sole member is The James Megellas Foundation, Inc., an Arizona nonprofit corporation (the “**Borrower**”) entered into a Memorandum of Understanding dated as of August 1, 2014 (the “**Memorandum of Understanding**”); and (b) ECVA and GFDS ECVA 1, LLC, a Nevada limited liability company (“**Developer**”) entered into a Consulting and Predevelopment Agreement dated as of October 21, 2014 (the “**Consulting and Predevelopment Agreement**”), pursuant to which documents the Borrower and the Developer have committed to ECVA to perform the development and management services described therein.

WHEREAS, the first phase (the “**Facilities**”) of ECVA’s multi-phase program for the development and management of convention facilities includes a new convention center building consisting of approximately 28,834 square feet of building improvements to be constructed on approximately 151,154 square feet of land in the City of Elko, Nevada.

WHEREAS, on August 1, 2014, the Developer and the Borrower entered into the Project Development Agreement pursuant to which the Borrower agreed, among other terms, covenants, and conditions, to serve as the owner of the improvements and facilities comprising the Facilities.

WHEREAS, on the Effective Date, the Borrower and ECVA have entered into a Ground Lease (defined herein) for Elko Convention and Visitors Authority New Event Center pursuant to which, as an element of the Facilities, ECVA has let to the Borrower, and the Borrower has leased from ECVA, that certain parcel of land consisting of approximately 151,154 square feet, more particularly described on the Attachment 1.1 attached to and made a part of this Agreement, which Land is located at 724 Moren Way, Elko County, State of Nevada.

WHEREAS, the Borrower has requested the Issuer (as hereinafter defined) to issue revenue bonds for the purposes of the following (altogether, the “**Series 2015 Project**”): (i) financing and/or refinancing the acquisition, construction, improvement, operation and/or equipping of land and buildings to be used as a public convention center, among other purposes, including the elements of the Facilities; (ii) paying capitalized interest on the Bonds; and (iii) paying certain issuance expenses.

WHEREAS, pursuant to the Constitution of the State of Arizona, and under Title 35, Chapter 5, Arizona Revised Statutes (as amended, the “**Act**”), in furtherance of its purposes under the Act, the Issuer has, on or before the Effective Date, issued the Bonds, the proceeds of which shall be loaned to the Borrower to finance and/or refinance the costs of the Series 2015 Project.

WHEREAS, the Bonds are issued pursuant to the Financing Agreement, and the proceeds of the Bonds will be loaned to the Borrower pursuant to certain Loan Documents.

WHEREAS, the Bonds will be payable according to the terms of the Loan Documents (as defined in the Financing Agreement), all of which shall be assigned to (or entered into with) the Bank (as hereinafter defined), and from facilities use payments made by ECVA under this Agreement.

WHEREAS, ECVA hereby declares its current need for all elements of the Facilities (including, without limitation, the Premises), and further determines and declares its expectation that the Premises will adequately serve the needs for which such Premises are being acquired throughout the Term.

WHEREAS, the Borrower intends to lease to ECVA all elements of the Facilities (including, without limitation, the Premises) for the Permitted Use (as hereinafter defined) according to the terms, conditions, and covenants of this Agreement.

WHEREAS, in exchange for ECVA's full and timely performance according to this Agreement, the Borrower shall deliver, and ECVA will receive the benefit of, (i) development, design, and construction services required to deliver the Facilities, (ii) the right to use all elements of the Facilities during the Term according to the terms, conditions, and covenants of this Agreement and of other pertinent agreements, and (iii) the residual value remaining, after the expiration or earlier termination of the Ground Lease (as hereinafter defined), of the Buildings (as hereinafter defined) comprising the Facilities, which Buildings have building life expectancies materially exceeding the duration of the Term.

## ARTICLE I Premises

1.1 Ownership of Premises. Borrower is the lessee, pursuant to the Ground Lease, of the parcel(s) of land described on the Attachment 1.1 attached to and made a part of this Agreement (the "**Land**"), which Land located at 724 Moren Way, in Elko County, Nevada.

1.2 Description of Premises. The "**Premises**" shall consist of the Land, together with the sanitary sewer and storm drain easements granted in favor of the Land (as set forth in the Parcel Map recorded as Document No. 695804 in the Elko County Official Records), all buildings and other capital improvements now or hereafter located on the Land (the "**Buildings**"), and all other affixed and unaffixed improvements located therein and thereon, except only for ECVA's Removable Property. In consideration of ECVA's payment of the Base Use Fee and Additional Use Fee (each as defined below) and ECVA's performance of the covenants hereinafter set forth, Borrower hereby lets to ECVA and ECVA, having determined that receiving such demise is in the best interests of ECVA, hereby leases from Borrower said Premises.

1.3 Defined Terms.

"**AAA**" has the meaning set forth in Section 6.14.

"**Additional Use Fee**" has the meaning set forth in Section 3.2.

"**Administrative Fee**" shall have the meaning set forth in Section 3.2.2(c).

"**Agreement**" means this Facilities Use Agreement.

"**Alterations**" has the meaning set forth in Section 9.1.

"**As-Built Documents**" has the meaning set forth in Section 6.7.

"**Bank**" means Western Alliance Bank or any successor holder of the Bonds.

"**Base Use Fee**" has the meaning set forth in Section 3.1.

**“Bonds”** shall mean The Industrial Development Authority of the City of Phoenix, Arizona Revenue Bonds (JMF-ECVA Convention Center Expansion Project), Series 2015 issued in the principal amount of \$9,000,000 pursuant to the Financing Agreement.

**“Bond Interest Rate”** has the meaning set forth in Section 3.4.

**“Borrower”** means JMF-ECVA 2015, LLC, a Nevada limited liability company, whose sole member is The James Megellas Foundation, Inc., an Arizona nonprofit corporation.

**“Borrower Affiliate”** means any person or entity which Controls, is Controlled by, or is under common Control with Borrower.

**“Borrower Party”** means Borrower and any Borrower Affiliate, and their respective officers, directors, shareholders, constituent partners, members, managers, principals, employees, staff, consultants, contractors, agents and professional advisors.

**“Borrower’s Work”** has the meaning set forth in Section 6.1.

**“Buildings”** has the meaning set forth in Section 1.2.

**“Building Systems”** has the meaning set forth in Section 11.1.1.

**“Business Days”** shall mean every calendar day Monday through Friday, inclusive, but excluding legal holidays of the United States of America and of the State of Nevada.

**“Cash Flow Available for Debt Service”** means the sum of consolidated net revenues, rent expenses, depreciation expenses, amortization expenses and interest expenses.

**“Commencement Date”** has the meaning set forth in Section 2.1.1.

**“Commencement Date Certificate”** has the meaning set forth in Section 2.2.

**“Consulting and Predevelopment Agreement”** has the meaning set forth in the Recitals.

**“Control”** means the full power and legal authority to direct and control the business, operations, decisions and actions of the subject person or entity.

**“Dangerous Condition”** has the meaning set forth in Section 4.2.1.

**“Deed of Trust”** means the Leasehold Deed of Trust, Security Agreement, Assignment of Rents and Leases, and Fixture Filing dated as of March 1, 2015 and entered into from Borrower, as trustor, to First American Title Insurance Company, as trustee, for the benefit of the Bank.

**“Developer”** means GFDS ECVA 1, LLC, a Nevada limited liability company.

**“Development Budget”** means the budget developed and agreed by the Parties, in writing, as provided in Section 6.5.

**“Development Costs”** means all hard and soft costs (including the reasonable cost of Borrower’s travel in connection with Borrower’s efforts under ARTICLE VI) expended toward the Borrower’s Work, but not unspent contingency funds.

**“ECVA”** means Elko Convention and Visitors Authority, a body corporate and politic, and a municipal corporation of the State of Nevada.

**“ECVA Affiliate”** means any person or entity which Controls, is Controlled by, or is under common Control with ECVA.

**“ECVA Delay”** has the meaning set forth in Section 6.6.

**“ECVA Party”** means ECVA and any ECVA Affiliate, and their respective officers, directors, shareholders, constituent partners, members or principals, employees, staff, students, parents, consultants, contractors, agents and professional advisors.

**“ECVA’s Removable Property”** has the meaning set forth in Section 6.12.

**“ECVA’s Tax Payment”** has the meaning set forth in Section 5.1.

**“Effective Date”** means March 1, 2015.

**“Environmental Laws”** has the meaning set forth in the Financing Agreement.

**“Event of Default”** has the meaning set forth in Section 21.1.

**“Expiration Date”** has the meaning set forth in Section 2.1.3.

**“Facilities”** has the meaning set forth in the Recitals.

**“Financing Agreement”** shall mean the Financing Agreement dated as of March 1, 2015 and entered into among the Issuer, the Bank and the Borrower.

**“First Adjustment Notice”** has the meaning set forth in Section 3.4.1.

**“Fixed Charge Coverage Ratio”** means the Cash Flow Available for Debt Service divided by the Sum of Fixed Charges (as determined by line 11 of the Compliance Certificate set forth at Attachment 7.9).

**“Ground Lease”** means the Ground Lease for the Land, entered into between ECVA, as landlord, and the Borrower, as tenant, and dated of even date herewith.

**“Hazardous Materials”** means any material, substance, act, or failure to act that is regulated from time to time by any Environmental Laws. **“Hazardous Materials”** includes any and all material or substances that are defined as “hazardous waste,” “extremely hazardous waste,” or a “hazardous material” pursuant to Legal Requirements.

**“Impositions”** has the meaning set forth in Section 5.2.

**“Insurance Requirements”** means the insurance coverages required to be maintained by ECVA pursuant to Section 8.2, and all requirements of the insurers issuing the policies containing such coverages.

**“Interest Rate”** has the meaning set forth in Section 3.3.2.

**“Internal Revenue Code”** shall mean the Internal Revenue Code of 1986, as amended.

**“Issuer”** shall mean The Industrial Development Authority of the City of Phoenix, Arizona.

**“Issuer Fees”** has the meaning set forth in Section 3.2.2(b).

**“Land”** has the meaning set forth in Section 1.1.

**“Late Fee”** means 10% of any payment due to the Issuer hereunder or pursuant to the Financing Agreement that is received by the Issuer more than fifteen (15) calendar days following the date it is due.

**“Lease Year”** shall mean (i) the period beginning on the Effective Date and ending on the February 28, 2016, and (ii) every period of March 1st through February 28th thereafter occurring during the Term.

**“Legal Requirements”** means all present and future statutes, laws, codes, regulations, ordinances, orders, rules, bylaws, administrative guidelines, requirements, directives and actions of

any federal, state or local governmental or quasi-governmental authority, and other legal requirements of whatever kind or nature that are applicable to the Premises.

**“Loan”** has the meaning set forth in the Financing Agreement.

**“Loan Documents”** shall mean all of the following: (i) the Financing Agreement; (ii) the Deed of Trust; and (iii) the Revenue Pledge.

**“Material Alterations”** has the meaning set forth in Section 9.1.2.

**“Maturity Date”** has the meaning set forth in Section 3.4.2.

**“Memorandum of Understanding”** has the meaning set forth in the Recitals.

**“Mortgage”** and **“Mortgages”** have the meaning set forth in Section 14.1.

**“OFAC”** has the meaning set forth in Section 29.7.

**“Operating and Compliance Agreement”** means the Operating and Compliance Agreement dated as of March 1, 2015, by and between the Borrower and EFDS Management Services Nevada, LLC, a Nevada limited liability company.

**“Outstanding”** has the meaning set forth in the Financing Agreement.

**“Party”** shall mean either the Borrower Party or ECVA Party, as the pertinent reference may indicate.

**“Parties”** shall mean both the Borrower Party and ECVA Party.

**“Permitted Alterations”** has the meaning set forth in Section 9.1.1.

**“Permitted Use”** has the meaning set forth in Section 4.1.1.

**“Person”** shall mean any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, governmental authority or other entity.

**“Plans and Specifications”** has the meaning set forth in Section 6.1.

**“Premises”** has the meaning set forth in Section 1.2.

**“Private Business Use”** has the meaning set forth in Section 7.7.

**“Prohibited Person”** has the meaning set forth in Section 29.7.

**“Project Development Agreement”** means the Project Development Agreement dated as of August 1, 2014 by and between the Borrower and Developer.

**“Punchlist Items”** means (i) minor details of construction, mechanical adjustment or any other similar matter, the non-completion of which will not interfere with ECVA’s use and occupancy of the Premises for the Permitted Uses and (ii) items which, in accordance with good construction practice, must be performed after Substantial Completion of ECVA’s Improvements.

**“Refinancing”** has the meaning set forth in Section 3.4.2.

**“Revenue Pledge”** means the revenue pledge by EVCA in favor of Bank contained in Section 3.6 as credit enhancement for the Loan.

**“Second Adjustment Notice”** has the meaning set forth in Section 3.4.2.

**“Series 2015 Project”** has the meaning set forth in the Recitals.

“**Specially Designated National and Blocked Person**” has the meaning set forth in Section 29.7.

“**Substantial Completion**” and “**Substantially Complete**” have the meanings set forth in Section 6.4.

“**Substantially Damaged**” has the meaning set forth in Section 18.1.1.

“**Successor**” has the meaning set forth in Section 14.2.

“**Superior Agreement**” has the meaning set forth in Section 14.1.

“**Superior Lessor**” has the meaning set forth in Section 14.1.

“**Superior Mortgage**” has the meaning set forth in Section 14.1.

“**Superior Mortgagee**” has the meaning set forth in Section 14.1.

“**Target Commencement Date**” has the meaning set forth in Section 6.3.

“**Tax Agreement**” shall mean the Tax Certificate as to Arbitrage and the Provisions of Section 103 and 141-150 of the Internal Revenue Code of 1986, dated as of the date on which the Bonds are issued, and entered into by and among the Borrower, ECVA, and the Issuer.

“**Term**” has the meaning set forth in Section 2.1.1.

“**Unavoidable Delay**” has the meaning set forth in Section 29.5.

“**Use Fee**” has the meaning set forth in Section 3.2.

“**Use Fee Commencement Date**” has the meaning set forth in Section 2.1.1.

## ARTICLE II

### Term

#### 2.1 Term.

2.1.1 The term of this Agreement (the “**Term**”) shall be twenty-five (25) years, commencing on the date that the Borrower’s Work is Substantially Complete in accordance with Section 6.4 (the “**Commencement Date**”), and expiring (unless earlier terminated according to the terms of this Agreement or the Loan Documents) on March 4, 2041; provided, however, that the Term shall automatically terminate as of the first date on which no Bonds remain Outstanding. The “**Use Fee Commencement Date**” of this Agreement shall be January 1, 2016.

#### 2.1.2 Reserved.

2.1.3 The “**Expiration Date**” shall mean (i) the last day of the Term, or (ii) such earlier date upon which the Term shall expire or be canceled or terminated pursuant to any of the conditions or covenants of this Agreement or pursuant to any Legal Requirements.

2.2 Commencement Date Certificate. ECVA shall, upon the request of the Borrower, execute, acknowledge and deliver to the Borrower an instrument in the form of the “**Commencement Date Certificate**” attached hereto as Attachment 2.2 and otherwise in form reasonably satisfactory to Borrower confirming the Commencement Date, the Use Fee Commencement Date, the Expiration Date, the Base Use Fee, and such other items as the Borrower may reasonably request; *provided*, that ECVA’s failure to execute, acknowledge and deliver such an

instrument shall not affect the validity of the Commencement Date, the Use Fee Commencement Date, the Expiration Date, any Use Fees, or such other items as set forth in such Commencement Date Certificate.

2.3 Reserved.

2.4 Reserved.

2.5 Effect of Cancellation or Termination. Cancelling or terminating this Agreement pursuant to any of the provisions of this ARTICLE II shall terminate all of ECVA's unaccrued obligations under this Agreement, and shall terminate ECVA's right to possession under this Agreement, but all other provisions of this Agreement, including all obligations of ECVA accrued before such cancellation or termination, shall continue until fully performed or satisfied.

### ARTICLE III

#### Use Fees

3.1 Base Use Fee. Payments of use fee (the "**Base Use Fee**") shall be paid by ECVA to the Borrower (i) on or before March 27, 2015 and (ii) in monthly installments due and payable on the first day of each month beginning on the Use Fee Commencement Date and continuing thereafter throughout the remainder of the Term, in the amounts indicated on Attachment 3.1 attached to and made a part of this Agreement, subject to adjustment pursuant to Section 3.4 and Section 3.5, if applicable. If required under any of the Loan Documents, the Borrower shall deliver written notice to ECVA (with a copy to the Bank) directing that one or more specific portion(s), or all, of the Base Use Fee be paid by ECVA (including, without limitation, an amount equal to the Administrative Fee), throughout the Term or during any specified segment(s) thereof, to one or more persons or entities other than the Borrower (including, without limitation, to the Bank). Upon the Borrower's delivering any written notice so directing, ECVA shall immediately begin, and thereafter continue (as directed by such notice), to pay the specified portion(s), or all, of the Base Use Fee as directed. Furthermore, the Parties agree that the portion of the Base Use Fee paid to or retained by the Borrower for fees, expenses, and overhead with respect to any Lease Year shall not, consistent with the Sole Member's status under Section 501(c) of the Internal Revenue Code, exceed \$10,000.00.

3.2 Additional Use Fee.

3.2.1 The Base Use Fee shall be absolutely net to the Borrower, except as expressly provided otherwise in this Agreement, so that all impositions, insurance premiums, utility charges, maintenance, repair and replacement expenses, payments or charges under covenants, conditions and restrictions now or hereafter of record, all expenses relating to compliance with Legal Requirements, all capital replacements, all Issuer Fees, all costs and expenses incurred by the Borrower under Section 9.1.3, any Management Fee (as defined in the Operating and Compliance Agreement) payable by the Borrower pursuant to the Operating and Compliance Agreement, and all other costs, fees, charges, expenses, reimbursements and obligations of every kind and nature whatsoever relating to the Premises which may arise or become due to the Borrower or third parties during the Term or by reason of events occurring during the Term of this Agreement shall be paid or discharged by ECVA, at ECVA's sole cost and expense, subject to Section 11.1.1 (all charges payable by ECVA other than Base Use Fee, however denoted, are hereinafter collectively referred to as "**Additional Use Fee**"). The Base Use Fee and Additional Use Fee are sometimes hereinafter collectively referred to as "**Use Fee**" or "**Use Fees**."

3.2.2 Together with, and in addition to, any payment of Use Fees or other sum(s) payable under this Agreement, ECVA shall pay to or on behalf of the Borrower, further as Additional Use Fee:

(a) as and when due and payable (if at all) to the pertinent governmental authority, a sum equal to the aggregate of any excise, sales, occupancy, franchise, privilege, use, or transaction privilege tax on, or of any similar tax now or in the future levied, assessed, or imposed by any governmental authority upon, the Borrower or the Premises as a result (and to the extent) of payments comprising Use Fees under this Agreement, or as a result of ECVA's use or occupancy of the Premises;

(b) not less than ten (10) Business Days before such sums may be due and payable to the Issuer, all of the following (collectively, the "**Issuer Fees**"): a sum equal to all out-of-pocket costs and expenses incurred by the Issuer in connection with the Bonds, the Financing Agreement, and any of the Borrower Documents (as defined in the Financing Agreement), including (without limitation) the reasonable fees and expenses of Issuer's counsel;

(c) on or before January 15, 2016 (in advance, for the calendar year 2016), and thereafter on or before January 15th of each succeeding Lease Year (in advance for each calendar year) in which there shall be Outstanding Bonds on January 1 of such Lease Year, an amount equal to the annual fee imposed by the Issuer for its administrative expenses (the "**Administrative Fee**"), which Administrative Fee shall be (i) on January 15, 2016, the sum of \$6,750.00, and (ii) thereafter, a fee imposed annually in an amount equal to seven and five-tenths (7.5) basis points (0.075%) of the aggregate principal amount of the Outstanding Bonds as of each succeeding January 1 during the Term, with a minimum of \$3,000.00 for each series of Bonds (Example: \$9,000,000.00 of Outstanding Bonds would equal an Administrative Fee of \$6,750.00);

(d) promptly upon the Borrower's delivering notice to ECVA of the same, any Late Fees of the Issuer as may have been paid by the Borrower or are owed by the Borrower;

(e) promptly upon the Borrower's delivering notice to ECVA together with an invoice documenting the same, a rebate analyst fee equal to the amount paid by the Borrower to the Rebate Analyst (as such term is defined in the Financing Agreement);

(f) promptly upon the Borrower's delivering notice to ECVA together with an invoice documenting the same, a refinancing fee equal to the refinancing costs incurred by the Borrower in connection with the Refinancing (as hereinafter defined);

(g) promptly upon the Borrower's delivering notice to ECVA together with an invoice documenting the same, any Management Fee (as defined in the Operating and Compliance Agreement) payable by Borrower to EFDS Management Services Nevada, LLC pursuant to the Operating and Compliance Agreement.

Any amounts paid to the Borrower under Section 5.6(c) of the Financing Agreement as a refund of excess payments shall promptly be refunded to ECVA.

### 3.3 Payment of Use Fees.

3.3.1 ECVA covenants and agrees to pay the Base Use Fee and Additional Use Fee promptly when due, without notice or demand therefor, and without any abatement, deduction or set off for any reason whatsoever unless expressly provided in this Agreement.

3.3.2 In addition to any other remedies the Borrower may have under this Agreement, if any Use Fee (other than the Issuer Fees) payable hereunder to the Borrower is not paid within five (5) Business Days after the due date therefor, ECVA shall pay to Borrower an administrative fee equal to five percent (5%) of the overdue payment and, in addition, such overdue payment shall bear interest at the rate of ten percent (10%) per annum (the “**Interest Rate**”) from the due date thereof until paid, and the amount of such interest shall be Additional Use Fee.

3.3.3 If the Expiration Date occurs on a day other than the first day of a calendar month, the Base Use Fee and all Additional Use Fees for the partial calendar month in which the Expiration Date occurs shall be prorated and the Base Use Fee for the partial calendar month in which the Expiration Date occurs shall be paid on the Expiration Date.

3.3.4 No payment by ECVA or receipt or acceptance by the Borrower of a lesser amount than the Base Use Fee or Additional Use Fee then due shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and the Borrower may accept such check or payment without prejudice to the Borrower’s right to recover the balance or pursue any other remedy in this Agreement or at law provided.

#### 3.3.5 Reserved.

3.3.6 The Parties acknowledge and agree that the Use Fees payable under this Agreement by ECVA shall constitute currently budgeted expenditures of ECVA from its general fund. No provision of this Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of ECVA within the meaning of any limitation arising under any Legal Requirements, or as creating a lien on any class or source of ECVA funding.

3.4 Adjustment of Base Use Fee Based on Bond Interest Rate. The Borrower and ECVA acknowledge that the Base Use Fee set forth above has been determined, in part, by the interest rate set forth in the Financing Agreement (the “**Bond Interest Rate**”) and that the Bond Interest Rate may adjust during the Term as set forth below.

3.4.1 Pursuant to the Financing Agreement, the Bond Interest Rate shall adjust on the first anniversary of the Use Fee Commencement Date. Accordingly, on or before the first anniversary of the Use Fee Commencement Date, the Borrower shall provide written notice to ECVA of the adjustment in the Bond Interest Rate (the “**First Adjustment Notice**”), which notice shall contain a revised schedule of Base Use Fee. The revised schedule of Base Use Fee shall be determined by increasing or decreasing the Base Use Fee set forth in Section 3.1 above in direct proportion to the increase or decrease in the gross payments owing under the Financing Agreement as a result of the adjustment in the Bond Interest Rate. Upon receipt by ECVA of the First Adjustment Notice, Attachment 3.1 to this Agreement shall automatically, and without further action by ECVA or the Borrower, be deleted and replaced with the revised schedule of Base Use Fee attached to the First Adjustment Notice.

3.4.2 The Borrower and ECVA acknowledge that the Loan matures on March 4, 2026 (the “**Maturity Date**”). The Borrower shall exercise reasonable efforts to secure a binding written commitment for, and to complete, a refinancing of the Loan on terms acceptable to ECVA prior to the Maturity Date (the “**Refinancing**”). If ECVA does not approve the terms of the Refinancing, or if the Borrower is unable to secure a refinancing on any terms, then ECVA shall be in default under this Agreement and the Borrower shall have the right to accelerate all Base Use Fees as set forth in Section 21.2. If the Borrower timely secures the Refinancing, then the Bond Interest Rate will be adjusted based on the Refinancing, which will require a further adjustment to the Base Use Fee. Accordingly, if the Borrower secures the Refinancing, then, prior to the Maturity Date, the Borrower shall provide written notice to ECVA of the adjustment in the Bond Interest Rate (the “**Second Adjustment Notice**”), which notice shall contain a revised schedule of Base Use Fee. The revised schedule of Base Use Fee shall be determined by increasing or decreasing the Base Use Fee set forth in Section 3.1 above in direct proportion to the increase or decrease in the gross payments owed after such adjustments in the Bond Interest Rate under the Refinancing. Upon receipt by ECVA of the Second Adjustment Notice, Attachment 3.1 to this Agreement shall automatically, and without further action by ECVA or the Borrower, be deleted and replaced with the revised schedule of Base Use Fee attached to the Second Adjustment Notice.

3.5 Adjustment of Base Use Fee Upon Substantial Completion of Borrower’s Work. The Borrower and ECVA acknowledge that one factor in determining the fair use value for the Premises under this Agreement is the total Development Costs, and that the Base Use Fee set forth above has been determined, in part, using the Development Budget. Accordingly, on or before the sixtieth (60th) Business Day after the Use Fee Commencement Date, the Borrower shall notify ECVA of the actual Development Costs, and if the actual Development Costs increase from the Development Budget by reason of change orders requested by ECVA, the Borrower shall provide ECVA with an amendment to this Agreement setting forth a revised schedule of Base Use Fee, which shall be determined by increasing the Base Use Fee set forth in Section 3.1 above during the Term by such amounts as may be reasonably required, as determined by the Borrower in good faith, to reflect adjustments to the Development Budget incurred in connection with any change orders requested by ECVA. Once so determined, the Parties shall execute an amendment to this Agreement setting forth a revised schedule of Base Use Fee.

3.6 Security for Payment of Fees. As security for the payment of the Base Use Fee and any Additional Use Fee, ECVA hereby pledges to the Borrower and the Bank, and grants to the Borrower and the Bank, a security interest in and to its gross revenues, including revenues derived from the use of the Premises or other income-producing properties and general fund revenues. In the event of a failure on the part of the ECVA to pay any portion of the Base Use Fee and Additional Use Fee due at any time or from time to time, the Borrower may apply to a court of competent jurisdiction for the appointment of a receiver to collect such revenues and taxes until such time as the deficiency is satisfied.

#### ARTICLE IV Use and Conduct of Business in Premises

##### 4.1 Use.

4.1.1 ECVA shall use and occupy the Premises for the operation of a conference and convention center, and for associated supporting activities consistent with all Legal

Requirements (the “**Permitted Use**”), and for no other purpose whatsoever without the prior written consent of the Borrower.

4.1.2 ECVA acknowledges the following: (i) that it has reviewed all zoning ordinances, land use restrictions, and similar limitations affecting the Premises, as well as all agreements entered into under the same; (ii) that all such ordinances, restrictions, limitations and agreements constitute Legal Requirements with which ECVA shall comply according to the terms of this Agreement; and (iii) that ECVA’s failure or inability at any time to comply with such ordinances, restrictions, limitations and agreements shall not give rise to any right in ECVA to terminate this Agreement. Furthermore, if any governmental license, certificate, approval, or permit, shall be required for the proper and lawful conduct of the Permitted Use in the Premises or any part thereof pursuant to any Legal Requirement, ECVA, at its sole cost and expense, shall diligently and duly procure and thereafter maintain such licenses, certificates, approvals, and permits during the Term hereof, and ECVA shall submit such licenses, certificates, approvals, and permits (and all applications therefor) to the Borrower for inspection promptly upon request. The Borrower agrees to cooperate with ECVA, at no cost, expense or liability to the Borrower, in connection with ECVA procuring all such licenses certificates, approvals, and permits. ECVA shall at all times during the Term hereof comply with the terms and conditions of each such license, certificate, approval, and permit. If ECVA fails, for any or no reason whatsoever, to obtain any or all licenses, certificates, approvals, or permits necessary for the operation of ECVA’s business at the Premises as required by this Agreement, such failure shall not affect, reduce or diminish ECVA’s obligations under this Agreement.

4.1.3 ECVA may not use or permit the use of the Premises or any part thereof in any way which would violate (i) the Certificate of Occupancy for the Premises or the Buildings, (ii) the Governmental Approvals, or (iii) any Legal Requirements, and ECVA may not suffer or permit the Premises or any part thereof to be used in any manner or anything to be done therein or anything to be brought into or kept therein which would in any way impair the proper and efficient heating, cleaning or other servicing of the Buildings or the Premises. Neither shall ECVA commit or suffer to be committed any waste at the Premises.

#### 4.2 Hazardous Materials.

4.2.1 ECVA represents, warrants and covenants that during the Term of the Agreement it (i) shall be and remain in full compliance with all Environmental Laws, and (ii) shall not use nor cause to be used nor store any Hazardous Materials within the Premises or dispose of any Hazardous Materials at or from the Premises in a manner that violates applicable Legal Requirements and Insurance Requirements governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials. In addition, ECVA shall notify the Borrower, within twenty-four (24) hours of obtaining knowledge thereof, of any release of Hazardous Materials on the Premises. Upon request by the Borrower, ECVA shall submit to the Borrower annual reports regarding ECVA’s use, storage, and disposal of the Hazardous Materials, such reports to include information regarding continued Hazardous Materials inspections, personal interviews, and federal, state and local agency listings. In addition, ECVA shall execute affidavits, representations and the like from time to time at the Borrower’s reasonable request concerning ECVA’s best knowledge and belief regarding the presence or absence of Hazardous Materials on the Premises. ECVA shall keep the Premises free from mold, mildew, asbestos, lead based paint and any and all other bacteria, fungi, substances and materials in quantities or concentrations that have been found to be harmful to the health or safety of any occupants of the Premises (any of the same being a

“**Dangerous Condition**”). If ECVA becomes aware of any Dangerous Condition coming into existence after the Commencement Date of the Term, ECVA shall immediately notify the Borrower of such and shall initiate and thereafter diligently prosecute to completion all actions necessary pursuant to Legal Requirements to investigate, assess, respond to, remove, abate, contain, encapsulate, sample, clean up, monitor or remediate such Dangerous Condition. All of the foregoing work shall be performed at ECVA’s sole cost and expense, in a first-class, workmanlike manner and in compliance with all requirements of Legal Requirements. ECVA shall provide the Borrower advance notice of any activities to be undertaken by ECVA pursuant to this paragraph, and shall keep the Borrower apprised of the progress and results of same.

4.2.2 ECVA shall, in accordance with all Legal Requirements and to Borrower’s reasonable satisfaction remove any and all Hazardous Materials placed in the Premises by ECVA or by its agents, invitees, employees or its contractors, and ECVA shall be responsible for all costs including, but not limited to, those resulting from monitoring, clean-up or compliance in accordance with all Legal Requirements incurred with respect to any Hazardous Materials placed in the Premises during installation of ECVA’s Removable Property and after the Commencement Date, and shall be responsible for all such costs incurred with respect to any Hazardous Materials placed in, on or under the Premises by ECVA or its agents, invitees, employees or contractors. ECVA shall indemnify and hold the Borrower and each other Borrower Party harmless from and against any and all costs, claims, suits, causes of action, losses, injuries or damage, including without limitation, personal injury damage (including death) as well as damage to property as well as any and all sums paid for settlement of claims, reasonable attorney’s fees, consultant and expert fees arising during the Term as a result of a breach of this ARTICLE IV or resulting from the presence or removal of Hazardous Materials from the Premises.

## ARTICLE V Impositions

5.1 Obligation to Pay Impositions. From and after the Effective Date through and including the Expiration Date, ECVA shall pay one hundred percent (100%) of all Impositions (“**ECVA’s Tax Payment**”) during the Term of the Agreement as Additional Use Fee directly to the applicable taxing authority at least five (5) Business Days before the date such taxes are due and payable. The Borrower shall pay all Impositions attributable to any period before the Use Fee Commencement Date and after the expiration or termination of the Agreement. The Borrower shall give notice to ECVA of all Impositions payable by ECVA hereunder of which the Borrower at any time has knowledge within ten (10) Business Days after receipt of notice thereof.

5.2 Impositions Defined. The term “**Impositions**” shall mean all real estate taxes and assessments, government levies, municipal taxes, county taxes and assessments (whether general or special, ordinary or extraordinary, unforeseen or foreseen), gross receipts taxes, and excise, sales, occupancy, franchise, privilege, use, and transaction privilege taxes on, and any similar tax now or in the future levied, assessed, or imposed by any governmental authority upon, the Borrower or the Premises as a result (and to the extent) of payments comprising Use Fees and incurred in the use, occupancy, ownership, operation, leasing or possession of the Premises, which are or may be assessed, levied or imposed, less any credit or abatement applicable thereto, including all credits or discounts allowed for early payments, whether or not such early payment is actually made. Except as specifically provided under Section 3.2.2, Impositions shall not include: (i) any municipal, state or federal net income or excess profits taxes assessed against Borrower, or any municipal, state or

federal capital levy, estate, capital gain, succession, inheritance or transfer taxes of Borrower, or corporation franchise taxes imposed upon Borrower or any owner of the fee of the Premises (except that any gross receipts tax and any excise, sales, occupancy, franchise, privilege, use, and transaction privilege tax shall be considered Impositions); (ii) any correction of or supplement to any tax or assessment for any period before the Commencement Date; (iii) penalties incurred as a result of Borrower's negligence, inability or unwillingness to make real estate tax payments or to file any tax or informational returns when due (unless such penalties result from ECVA's failure to make timely payment of Impositions); or (iv) water and sewer fees and utility charges required to be paid by ECVA pursuant to any other provisions of this Agreement. In the event of a special assessment for any public or private improvement, the life of which extends beyond the Term, the assessment for such improvement, and ECVA's Tax Payment, shall only include the amortized portion over the life of the improvement, and ECVA's Tax Payment shall only include the amortized portion of such assessment for each Lease Year during the Term. ECVA agrees to pay any Impositions sufficiently in advance to achieve any available discounts or other savings. All assessments which may be paid in installments shall be paid by ECVA in the maximum number of installments permitted by Legal Requirements and not included in Impositions except in the year in which the assessment is actually paid on a case (non-accrual) basis.

5.3 Apportionment for Partial Year. The Borrower and ECVA shall adjust pro rata the Impositions for and with respect to any portion of the Term which does not include an entire fiscal tax year.

5.4 Right to Seek Exemption. If ECVA is an entity that qualifies for property tax exemption under controlling Legal Requirements, ECVA, at ECVA's sole cost and expense, may institute any necessary action to apply for and obtain any exemption from Impositions for which ECVA is eligible as a result of ECVA's status as an exempt organization. Within a reasonable time after demand therefor, the Borrower shall execute and deliver to ECVA any documents and other information required to enable ECVA to obtain such exemption. The Borrower agrees to cooperate with ECVA, at no cost, expense or liability to the Borrower, to execute any documents required to be executed by the owner of the Premises for ECVA to obtain such tax exemption credits, refunds or abatements.

5.5 Right to Contest. ECVA shall have the right, at ECVA's sole cost and expense, to contest the validity or amount of the assessed valuation or Impositions for any real estate fiscal tax year, by appropriate proceedings in the name of the Borrower or ECVA, or both, provided that the Premises are not by reason of such contest placed in jeopardy of any tax or similar foreclosure proceeding. Within a reasonable time after demand therefor, the Borrower shall execute and deliver to ECVA any documents and other information reasonably required to enable ECVA to prosecute any such proceeding, and the Borrower shall use commercially reasonable efforts to provide ECVA, in time to permit ECVA to undertake such contest, with all pertinent data required therefor. Any credit, refund or abatement of Impositions relating to any period subsequent to the Use Fee Commencement Date and before the expiration or earlier termination of this Agreement shall belong to and be paid to ECVA. ECVA shall indemnify and hold the Borrower and all Borrower Parties harmless from any against all loss, cost liability or expense arising from or in any way related to ECVA's contest of Impositions.

5.6 Personal Property Taxes. ECVA shall be liable for and shall pay, at least ten (10) Business Days before delinquency, all taxes levied against ECVA's equipment, furniture, fixtures and any other personal property located in or about the Premises. If any such taxes on ECVA's

equipment, furniture, fixtures and any other personal property are levied against the Borrower or the Borrower's property, or if the assessed value of the Borrower's property is increased by the inclusion therein of a value placed upon such equipment, furniture, fixtures or any other personal property of ECVA, and if the Borrower pays the taxes based upon such increased assessment, which the Borrower shall have the right to do regardless of the validity thereof (but under protest only if requested by ECVA), then ECVA shall, within twenty (20) Business Days after receiving notice thereof, pay to the Borrower (as Additional Use Fee) an amount equal to the taxes so levied against the Borrower or the proportion of such taxes resulting from such increase in the assessment, as the case may be.

ARTICLE VI  
**Borrower's Work; Delivery of Possession;  
Commencement Date; ECVA's Installations**

6.1 Borrower's Work. Borrower shall, at Borrower's sole expense, receive conveyance of the Ground Lease and commence and exercise its reasonable efforts to cause to be completed the improvements generally described as Facilities in the Consulting and Predevelopment Agreement and the Memorandum of Understanding, and more particularly shown in the plans and specifications identified on Attachment 6.1 annexed hereto (collectively, the "**Plans and Specifications**"), subject only to change orders requested by ECVA and approved by the Parties. The acquisition of the Ground Lease and the construction and completion of the improvements described in the Plans and Specifications are collectively referred to herein as "**Borrower's Work**".

6.2 Reserved.

6.3 Construction of the Borrower's Work. The Borrower's Work shall be undertaken (i) in a good and workmanlike manner substantially in accordance with the Plans and Specifications (subject only to change orders requested by ECVA and approved by the Parties), (ii) in compliance with all Legal Requirements and Insurance Requirements, (iii) in compliance with all covenants, conditions and restrictions encumbering the Premises, and (iv) such that no building, structure or improvement shall encroach upon or under the property of any other person or entity. Furthermore, the Borrower's Work shall include making available at the Premises such utility services (including, without limitation, water, sewer, electricity, natural gas and telephone service) as are required by ECVA and are readily available at or near the boundary of the Premises. The Borrower shall use commercially reasonable efforts to achieve Substantial Completion of Borrower's Work on or before November 20, 2015 (the "**Target Commencement Date**"). If, by reason of any change order(s) requested by ECVA, the Borrower cannot deliver possession of the Premises to ECVA and achieve Substantial Completion on or before the Target Commencement Date, the Borrower shall not be subject to any liability therefor. Moreover, failure by the Borrower to deliver possession of the Premises to ECVA, or to achieve Substantial Completion, on or before the Target Commencement Date shall not affect the validity of this Agreement or the obligations of ECVA to pay Use Fees under this Agreement, nor extend the Term; provided that, in such case, ECVA shall not be obligated to perform any obligation of ECVA under the terms of this Agreement *other than* payment of the Use Fees required hereunder, except as may be specifically provided in this Agreement, until the Use Fee Commencement Date.

6.4 Substantial Completion of Borrower's Work. "**Substantial Completion**" of the Borrower's Work shall be deemed to have occurred and the Borrower's Work shall be deemed "**Substantially Complete**" when (i) all governmental inspections required for the Borrower's Work

have been successfully completed and temporary or permanent Certificates of Occupancy (or its equivalent) and other municipal permits or approvals for the Premises have been obtained, in each case if and to the extent required for ECVA to occupy and use the Premises for the Permitted Use, and (ii) the Borrower's Work is completed in all material respects in accordance with the Plans and Specifications (except for any Punchlist Items) so that ECVA can commence beneficial use and occupancy of the Premises as intended. The Borrower shall exercise commercially reasonable efforts to complete the Punchlist Items as soon as conditions reasonably permit, and ECVA shall afford the Borrower access to the Premises for such purposes. Within ten (10) Business Days after Substantial Completion, the Borrower and ECVA shall conduct a walkthrough of the Premises and jointly prepare a list of Punchlist Items. Without limitation of the foregoing, if any of the Borrower's Work is delayed in order to accommodate the installation of furniture and equipment by ECVA including, without limitation, ECVA's Removable Property or by any other ECVA Delay, then the Borrower's Work shall be deemed Substantially Complete on the date on which it would have occurred but for such accommodation or other ECVA Delay. ECVA shall give the Borrower notice, not later than two (2) calendar months after the Commencement Date of any respects in which the Borrower has not completed the Punchlist Items in accordance with the terms of this Agreement.

6.5 Development Budget. The Borrower and ECVA have approved a budget for the Development Costs (the "**Development Budget**"), a copy of which is attached hereto as Schedule 6.5. The aggregate amount of the Development Budget is currently \$12,000,000.00. In no event may the Borrower be required to incur costs (including, without limitation, hard and soft costs) associated or in connection with change orders to the Borrower's Work that are requested by ECVA and that would cause the Development Costs to exceed the Development Budget. If at any point it becomes apparent that the Borrower's Work will, by reason of any change order requested by ECVA, cause the Development Costs to exceed the Development Budget, the Borrower and ECVA shall meet, consult and negotiate with each other in good faith about reducing the scope of the Borrower's Work so that the Development Costs will not exceed the Development Budget, and in so doing shall attempt to reach a just and equitable solution satisfactory to both Parties. If, however, the Parties do not reach such solution within a period of ten (10) Business Days after the Borrower delivers its notice of actual Development Costs then, (i) upon written notice to arbitrate by either Party delivered to the other within five (5) Business Days after the end of the ten (10) Business-Day negotiating period, all such disagreements and disputes shall be finally settled according to the dispute resolution provisions set forth in Section 6.14 of this Agreement, or (ii) if neither Party timely delivers the requisite notice to arbitrate within such five (5) Business Days, then the Borrower's notice to ECVA of actual Development Costs shall be conclusive.

6.6 ECVA Delay. If the Substantial Completion of the Borrower's Work shall be delayed as the result of (i) any request by ECVA that the Borrower delay the commencement or completion of the Borrower's Work for any reason; (ii) any change in any of the Plans and Specifications requested by ECVA; (iii) any change in scope pursuant to Section 6.5 above; (iv) any interference by ECVA (including, without limitation, any delay associated with ECVA's early access pursuant to the Premises pursuant to Section 6.9 or otherwise) with the Borrower's Work; (v) any other act or omission of ECVA or its officers, agents, employees or contractors; or (vi) any reasonably necessary displacement of any of the Borrower's Work from its place in the Borrower's construction schedule resulting from any of the causes for delay referred to in this Section 6.6 and the fitting of such Borrower's Work back into such schedule (each a "**ECVA Delay**"); then the Substantial Completion of the Borrower's Work, as determined pursuant to Section 6.4, shall be deemed to have occurred on the date it would have otherwise occurred absent ECVA Delay. If a delay in Substantial Completion of the Borrower's Work under Section 6.4 shall occur as a result of

an Unavoidable Delay, and such Unavoidable Delays would not have occurred but for a ECVA Delay, such Unavoidable Delay shall also constitute ECVA Delay.

6.7 As-Built Documents. The Borrower shall (or shall cause the Borrower's contractor or other agent to) maintain a record of the drawings, specifications, addenda, change orders, change directives and other modifications, and marked currently to record field changes and selections made during construction (the "**As-Built Documents**").

6.8 Possession of Premises. The entry by ECVA for the purpose of inspection or installation of ECVA's Removable Property shall not be considered occupancy for purposes of this Agreement and shall not trigger ECVA's obligation to pay Use Fees under this Agreement.

6.9 ECVA's Installations. Before the Commencement Date, the Borrower shall reasonably cooperate with ECVA, at no cost to the Borrower, to facilitate ECVA's installation of ECVA's Removable Property. The following shall be conditions of ECVA's right to enter the Premises as provided herein before the Commencement Date: (i) that such entry shall not interfere with construction of the Borrower's Work; and (ii) that any such entry shall be subject to such rules and regulations as the Borrower may reasonably promulgate and ECVA shall fully cooperate with the Borrower.

6.10 ECVA's Insurance for ECVA's Removable Property. ECVA shall secure and maintain (or cause its contractor(s) to secure and maintain), at its own expense, the following insurance coverage in full force and effect with respect to the Premises at all times during the design, construction and installation of ECVA's Removable Property and shall require any and all contractor(s) and all subcontractors to maintain the same at all times during the design, construction and installation of ECVA's Removable Property:

6.10.1 Property insurance written on an "all risk" builders risk or equivalent policy form for the full replacement cost of ECVA's Removable Property and with deductibles not in excess of commercially reasonable amounts.

6.10.2 Commercial General Liability insurance on an occurrence basis with a combined limit for bodily injury, personal injury and property damage and products and completed operations of at least \$1,000,000 per occurrence. The limit may be provided through a combination of primary and umbrella/excess liability policies. Limits shall apply on a per project basis. The policy shall include the Borrower, the Bank, and the Issuer as additional insureds.

6.10.3 Worker's Compensation insurance to the extent, and in the amounts, required by applicable Legal Requirements covering ECVA and its employees, as well as employer's liability insurance in the amount of \$1,000,000 per accident, \$1,000,000 per illness (per employee), and \$1,000,000 per illness (aggregate). If borrowed employees are used (including employees from a temporary employment agency) to perform services, ECVA shall require the primary employer to provide an alternate employer endorsement showing ECVA in the schedule as the alternate employer.

6.10.4 Commercial Automobile Liability insurance on all owned, hired or non-owned vehicles used in connection with ECVA and/or its contractors or subcontractors' operations in the amount of \$1,000,000 combined single limit for bodily injury and property damage. The coverages must extend to employees, agents, and volunteers of ECVA and/or its contractors and

subcontractors who use personal vehicles within the course and scope of their employment or service.

6.11 ECVA's Indemnity for ECVA's Installations. ECVA shall indemnify and hold harmless the Borrower and all other Borrower Parties from and against all claims, damages, losses and expenses, including reasonable attorneys' fees, arising out of or resulting from the installation of ECVA's Removable Property, to the extent caused by any act or omission of ECVA or ECVA's contractor(s), any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, and which involves bodily injury, sickness, disease or death, or injury to or destruction of property, including the loss of use resulting therefrom. In any and all claims against the Borrower or any other Borrower Party, by any ECVA Party, the indemnification obligation under this Section 6.11 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for ECVA or such ECVA Party under workers' compensation acts, disability benefit acts or other employee benefit acts.

6.12 ECVA's Removable Property. All articles of personal property and all business and trade fixtures, machinery, workstations, equipment, furniture and other property and equipment installed or placed by ECVA in the Premises (whether affixed or unaffixed to the Premises), owned and used by ECVA for the Permitted Use ("**ECVA's Removable Property**") shall remain the property of ECVA and may be removed by ECVA at any time on or before the date of expiration of this Agreement in accordance with the provisions of ARTICLE X of this Agreement; *provided* that ECVA shall restore any damage caused by permitted removal of ECVA's Removable Property.

6.13 Disclaimer of Warranties. None of the Borrower, the Bank, or the Issuer makes any warranty or representation, whether express or implied, as to the value, design, condition, merchantability or fitness (whether for use or for a particular purpose) of the Borrower's Work, nor—except only as expressly otherwise provided in this Agreement—any other representation or warranty with respect to the Premises. ACCORDINGLY, ECVA HEREBY RELEASES THE BORROWER AND ALL OTHER BORROWER PARTIES (excepting from the latter, for purposes of this Section 6.13 only, and for purposes of ECVA's pursuing contractual warranties assigned to ECVA only, the Borrower's contractors and subcontractors performing Borrower's Work) FROM ALL LIABILITIES FOR ANY, DAMAGE OR INJURY, REGARDLESS OF THE CAUSE THEREOF, RELATED TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS (WHETHER FOR USE OR FOR A PARTICULAR PURPOSE) OF THE BORROWER'S WORK. Accordingly, without limiting the foregoing, neither ECVA nor any ECVA Party shall have any claim, right or defense against Borrower or any Borrower Party (excepting from the latter, for purposes of this Section 6.13 only, and for purposes of ECVA's pursuing contractual warranties assigned to ECVA only, the Borrower's contractors and subcontractors performing Borrower's Work) with respect to, in connection with or arising out of the value, design, condition, merchantability or fitness (whether for use or for a particular purpose) of the Borrower's Work. The Borrower shall, as required under Section 11.1.2, assign to ECVA, upon Substantial Completion, and to the extent permitted without the consent of the warranting parties, all contractual warranties provided with respect to any constituent element of the Premises.

6.14 Dispute Resolution. If the Borrower and ECVA shall disagree with respect to any matter covered in this ARTICLE VI, and the Parties are unable to reach agreement thereon within five (5) Business Days, such dispute may be submitted by either Party to arbitration for expedited proceedings under the Fast Track Procedures provisions (currently, Rules F-1 through F-13) of the Arbitration Rules of the Construction Industry of the American Arbitration Association (the "AAA"),

with both Parties agreeing to waive the \$75,000 qualification in such rules. In any case where the Parties utilize such expedited arbitration: (i) the Parties may not object if the arbitrator so appointed is on the list submitted by the AAA and is not objected to in accordance with Rule F-4 (except that any objection shall be made within five (5) Business Days from transmission of the list), (ii) the Notice of Hearing shall be given at least ten (10) Business Days in advance of the hearing, (iii) the first hearing shall be held within ten (10) Business Days after the appointment of the arbitrator, and (iv) each Party in such arbitration shall pay its own attorneys' fees and other costs of such arbitration and the losing Party shall pay the costs charged by the AAA and/or the arbitrator. Judgment upon any award rendered in any arbitration held pursuant to this Section 6.14 may be entered in any court having jurisdiction, and in connection therewith, the arbitrators shall be bound by the provisions of this Agreement, and shall not add to, subtract from or otherwise modify such provisions. Prior written notice of application by either Party for arbitration shall be given to the other at least ten (10) Business Days before filing of any demand for arbitration hereunder. Any award of an arbitrator rendered hereunder shall be subject to confirmation and entry of judgment thereon in any court of competent jurisdiction in Nevada, and the Parties hereby consent to the jurisdiction of such court. In connection with the foregoing, it is expressly understood and agreed that the Parties shall continue to perform their respective obligations under this Agreement during any such arbitration proceeding hereunder (with any adjustments or reallocations to be made on account of such continued performance as determined by the arbitrator in his or her award). Disputes and disagreements as to whether either or both of the Issuer and the Bank are party shall be resolved as set forth in the Financing Agreement.

## ARTICLE VII

### **Compliance with Legal Requirements; Reporting Requirements and Covenants**

7.1 Borrower's Compliance with Legal Requirements; Reporting Requirements and Covenants. As of the Commencement Date, the Borrower shall deliver the Premises to ECVA with the Premises and the Borrower's Work (to the extent then completed) in compliance in all material respects with all of the following, as applicable to the Premises: building restrictions and regulations; zoning laws; ordinances, resolutions and regulations of the municipality in which the Land lies; existing orders of all boards, bureaus, commissions, and bodies of any municipal, county, state, or federal authority now or hereafter having jurisdiction over the Premises; and the terms, covenants, and conditions of the Loan Documents.

7.2 Notices. ECVA shall give prompt written notice to the Borrower and the Bank of any notice it receives of the violation of (i) any Legal Requirement with respect to the Premises or the use or occupancy thereof or (ii) any term, covenant, or condition of the Loan Documents.

7.3 ECVA's Compliance with Legal Requirements. ECVA shall throughout the Term of this Agreement, at ECVA's sole cost and expense, promptly comply or cause compliance with or remove or cure any violation of any and all of the following, as applicable to the Premises, whether or not such compliance requires work which is structural or non-structural, ordinary or extraordinary, foreseen or unforeseen, unless due to the Borrower's breach of its obligations hereunder: building restrictions and regulations; zoning laws; ordinances, resolutions and regulations of the municipality in which the Land lies; existing orders of all boards, bureaus, commissions, and bodies of any municipal, county, state, or federal authority now or hereafter having jurisdiction over the Premises; as well as any violation of any term, covenant, or condition of any Loan Documents (to the extent

that cure may be permitted thereunder, and subject in any event to the provisions of Section 3.1.1). Without limiting the generality of the foregoing, it is specifically agreed that ECVA shall comply with all Legal Requirements and Insurance Requirements that require the installation, modification, addition, change, alteration, repair, replacement or maintenance of any fire-rated partition, gas, smoke, or fire or smoke detectors or heat sensors or alarm or any sprinkler, fire extinguishers or other system to extinguish fires. However, ECVA need not comply with any such Legal Requirements so long as ECVA shall be contesting the validity thereof, or the applicability thereof to the Premises, in accordance with Section 7.4.

**7.4 Contest of Legal Requirements.** ECVA, at its expense, after notice to the Borrower, may initiate a contest, by appropriate proceedings prosecuted diligently and in good faith, the validity, or applicability to the Premises, of any Legal Requirement; *provided* that (i) the Borrower shall not be subject to criminal penalty or to prosecution for a crime, or any other fine or charge, nor shall the Premises or the Buildings, or any part thereof, be subject to being condemned or vacated, nor shall the Buildings or the Premises, or any part thereof, be subjected to any lien or encumbrance, by reason of non-compliance or otherwise by reason of such contest; (ii) before the commencement of such contest, ECVA shall furnish to the Borrower security in amount, form and substance satisfactory to the Borrower and shall indemnify the Borrower against the cost thereof and against all liability for damages, interest, penalties and expenses (including reasonable attorneys' fees and expenses), resulting from or incurred in connection with such contest or non-compliance; (iii) such noncompliance or contest shall not prevent the Borrower from obtaining any permits, certificates of occupancy, licenses, amendments or renewals thereof in connection with the operation of or alterations to the Buildings; and (iv) ECVA shall keep the Borrower advised as to the status of such proceedings. ECVA shall indemnify and hold harmless the Borrower, all Borrower Parties, the Bank, the Issuer, and all Issuer Indemnified Parties (as defined in the Financing Agreement) for, from and against all loss, cost, liability and expense arising from or in any way related to ECVA's initiating a contest of any Legal Requirement.

**7.5 Compliance with Loan Documents; Refinancing.** ECVA understands that the Premises have been or shall be financed with the proceeds of the Bonds, and thus are subject to all terms, covenants, and conditions of the Loan Documents. Accordingly, ECVA shall during the Term, (i) comply with the Loan Documents, and, to the extent applicable, the Tax Agreement, (ii) comply with all covenants set forth in Section 7.8, Section 7.9, and Section 7.10 of this Agreement, (iii) keep in place a Revenue Pledge reasonably satisfactory to the Issuer and Bank, (iv) at ECVA's sole cost and expense, fully cooperate with the Borrower, the Issuer, and the Bank to the full extent reasonably necessary to assure timely compliance with all requirements of the Loan Documents and the Tax Agreement, and (v) fully cooperate with the Borrower, the Issuer and the Bank to the full extent reasonably necessary to secure the Refinancing prior to the Maturity Date. Without in any way limiting ECVA's obligation hereunder, ECVA's duty hereunder shall include undertaking such actions, disclosures, and deliveries as may be necessary to permit timely delivery of any annual compliance certificate required by the Financing Agreement or hereby.

**7.6 Restrictions on Nongovernmental Use.** ECVA hereby covenants as follows: (i) that no portion of the proceeds of the Bonds will be used directly or indirectly in a trade or business carried on by any person other than a governmental unit (such trade or business use being known as a "**Private Business Use**"); (ii) that a portion of the payments under this Agreement used to pay principal or interest on the Bonds will not directly or indirectly (a) be secured by any interest in property used or to be used for a Private Business Use, or payments in respect of property used or to be used for a Private Business Use or (b) be derived from payments in respect of property or

borrowed money used or to be used for a Private Business Use; (iii) that ECVA will not lease or otherwise permit others to use any portion of the Premises, whether pursuant to a sublease, management contract or, otherwise, if the property to be leased or otherwise used, when aggregated with other financed property then subject to sublease or other such use, represents more than five percent (5%) of the proceeds of the Bonds, unless prior to such sublease or other permitted use ECVA obtains an opinion of bond counsel to the effect that the proposed sublease or other permitted use will not adversely affect the validity or tax-exempt status of the Bonds; and (iv) that ECVA will not take any action that would cause more than five percent (5%) of the proceeds of the Bonds to be loaned, directly or indirectly, in whole or in part, to any other person.

**7.7 Restrictions on Management.** ECVA further covenants that ECVA's use of the Premises shall not involve any use or management of the Premises by any third parties except only such use or management as may be (i) required or permitted by this Agreement or (ii) undertaken with the written consent of the Borrower; provided, however, that such use or management shall conform with (A) the requirements of Revenue Procedure 97-13 and (B) applicable regulations of the United States Department of the Treasury.

**7.8 Fixed Charge Coverage Ratio.** ECVA further covenants that, at the end of each fiscal year prior to the Maturity Date, commencing with the fiscal year ending June 30, 2016, ECVA's Fixed Charge Coverage Ratio will equal or exceed 1.25 to 1.00. ECVA will certify its compliance with such covenant in each annual compliance certificate provided pursuant to Section 7.9 hereof.

**7.9 Reporting Requirements.** ECVA agrees to provide to the Borrower and the Bank (a) within forty-five (45) days following the end of each successive fiscal quarter of ECVA, commencing with the quarter ending on March 31, 2015, financial statements (consisting of at least a statement of revenues and expenses and a balance sheet) of ECVA for such fiscal quarter and (b) within one-hundred eighty (180) days following the end of each successive fiscal year of ECVA, commencing with the fiscal year ending June 30, 2015, financial reports of ECVA for such fiscal year, consisting of (i) basic financial statements and notes thereto, (ii) supplementary information, (iii) management's discussion and analysis, (iv) an unqualified report of a certified public accountant or firm of such accounts confirming that such financial statements have been prepared in accordance with generally accepted accounting principles consistently applied and accurately depict the financial condition and results of operations of ECVA at the dates and for the periods specified, (v) a compliance section and (vi) auditor's comments. Commencing with the fiscal year ending June 30, 2016, ECVA shall also provide to the Borrower and the Bank, within thirty (30) days following the end of each successive fiscal year, an annual compliance certificate in substantially the form attached hereto as Attachment 7.9 signed by the Executive Director, Comptroller or other executive officer of ECVA approved by the Bank substantially to the effect that an examination of ECVA's performance and activities during such fiscal year has been performed by such officer and ECVA has complied with all of its covenants and obligations pursuant to the Ground Lease and the Facilities Use Agreement during such fiscal year (or, if not, stating in detail the nature and current status of any such non-compliance).

**7.10 Limitations on Additional Indebtedness and Liens.** ECVA will not (i) incur any additional long-term indebtedness in excess of \$50,000 individually or \$250,000 in the aggregate outstanding at any one time, (ii) enter into any capital lease having an aggregate liability in excess of \$50,000 individually or \$250,000 in the aggregate outstanding at any one time, (iii) enter into any operating lease which is not terminable on thirty (30) days' notice or less, or (iv) create or grant any lien on or security interest in any of the Land, the Buildings, the Premises or ECVA's Removable

Property, without in any such case either: (a) the prior written consent of the Bank, which shall not be unreasonably withheld, or (b) ECVA's provision to the Bank of an officer's certificate indicating that ECVA's Fixed Charge Coverage Ratio for the preceding Fiscal Year (as defined in the Financing Agreement) for which audited financial statements have been received by the Bank, after adjustment for the proposed additional indebtedness, would equal or exceed 1.50 to 1.00.

## ARTICLE VIII Indemnity and Insurance

8.1 Indemnification. Except to the extent resulting from any willfully wrongful act or omission of the Borrower or of any Borrower Party (excepting from the definition of "Borrower Party," for purposes of this Section 8.1 only, and for purposes of ECVA's pursuing contractual warranties assigned to ECVA only, the Borrower's contractors and subcontractors performing Borrower's Work), ECVA shall indemnify, defend, save and hold harmless the Borrower and all other Borrower Parties and the Bank for, from, and against any and all demands, claims, causes of action, fines, penalties, damages, losses, liabilities (including, but not limited to, strict liability), judgments, and expenses (including, without limitation, reasonable attorneys' fees and expenses, filing and other court costs) incurred in connection with or arising from any of the following: (a) the use, condition, operation or occupancy of the Premises by ECVA or any ECVA Party, including, but not limited to, the presence of any Dangerous Condition; (b) any activity, work, or thing done, or permitted or suffered by or through ECVA or any ECVA Party in or about the Premises; (c) any acts, omissions, or negligence of ECVA or any ECVA Party; (d) any claim of any students, staff, employees or other invitees of ECVA or any ECVA Party, including claims alleging breach or violation of such person's civil or legal rights; (e) any breach, violation, or nonperformance by ECVA or any ECVA Party, of any term, covenant, or provision of this Agreement or any Legal Requirement; (f) any injury or damage to the person, property or business of ECVA or any ECVA Party, or any other person entering upon the Premises under the express or implied invitation of ECVA; (g) any accident, injury to or death of persons or loss or damage to any item of property occurring at the Premises resulting from any act or omission of ECVA or any ECVA Party; (h) any liability arising under or in connection with Sections 8.2 and 8.20 of the Financing Agreement; and (i) any Liabilities (as defined in the Financing Agreement) arising under or in connection with the Financing Agreement, to the extent relating to any of ECVA's proceedings, representations, and inducements thereunder. If any action or proceeding is brought against the Borrower, any Borrower Party or the Bank by reason of any such indemnified claim as set forth above, ECVA, upon notice from the Borrower or the Bank, will defend the claim at ECVA's sole cost and expense with counsel reasonably satisfactory to the Borrower or the Bank, as the case may be. If the Borrower or the Bank reasonably determines that the interests of the Borrower or such Borrower Party or the Bank and the interests of ECVA in any such action or proceeding are not substantially the same and that ECVA's counsel cannot adequately represent the interests of the Borrower or such Borrower Party or the Bank, as the case may be, with respect to such indemnified claim as set forth above, the Borrower, or the Bank, as the case may be, shall have the right to hire separate counsel in any such action or proceeding and the costs and expenses thereof, including all reasonable attorneys' fees and expenses, shall be paid for by ECVA. The Borrower shall indemnify, defend and hold harmless ECVA for, from, and against all losses, claims, expenses (including reasonable attorneys' fees), liabilities, lawsuits, injuries, and damages of whatever nature occurring at the Premises as a direct result of the willfully wrongful act or omission of the Borrower or any Borrower Party. The foregoing indemnities shall survive the expiration or earlier termination of this Agreement.

## 8.2 ECVA's Insurance.

8.2.1 ECVA covenants and agrees that from and after the Commencement Date and during the Term of this Agreement and thereafter so long as ECVA is in occupancy of any part of the Premises or such longer period as specified herein, ECVA shall carry and maintain, at ECVA's sole cost and expense, the following types of insurance, naming the Borrower, the Developer, the Bank, and the Issuer as additional insured(s) or loss payee(s), as applicable, in the amounts specified and in the forms hereinafter provided:

(a) Property Insurance. From and after the Commencement Date, ECVA shall obtain and maintain property insurance on an "All Risk" basis and for such other insurable hazards as, under good insurance practices, are insured against for other property and buildings similar to the Premises in nature, use, location, height, and type of construction. Such policy shall include all standard perils including wind. The amount of such insurance shall be not less than one hundred percent (100%) of the replacement cost without depreciation of the Premises. Such insurance policy shall not be subject to any form of coinsurance. Such insurance shall cover increased cost of construction due to the enforcement of building codes as well as loss of income. During the period of any construction, repair, renovation, restoration or replacement of improvements comprising the Premises, excepting therefrom, the initial construction, which ECVA does not have any legal right to insure, and occurring after the Commencement Date, ECVA shall obtain and maintain, prior to commencement of such construction, repair, renovation, restoration or replacement of improvements, at ECVA's expense (including, without limitation, deductibles), a completed value "All Risk" Builder's Risk Insurance policy for the full replacement cost of the Premises (including upgrades and any leasehold improvements but excluding ECVA's Removable Property and Alterations made by ECVA). The policy is to be written on a non-reporting basis, and in an amount not less than the total value of the Premises (less the value of such uninsurable items as land, site preparation, grading, paving, and parking lots). Such policy may not contain a permission to occupy limitation. The policy shall not be subject to any form of coinsurance. The policy must not contain any "Protective Safeguard" endorsements limiting coverage. Coverage shall be provided against the standard perils. Such policy shall include coverage for mechanical breakdown and testing, collapse, expediting expenses, demolition and increased cost of construction (for renovation and/or additions to existing structures), water damage, and permission for partial occupancy.

(b) Commercial General Liability. ECVA shall obtain and maintain Commercial General Liability and Umbrella Liability insurance on the broadest forms available for similar risks, written on an "occurrence policy form," or its reasonable equivalent, against all claims for bodily injury, disease or death, property damage, personal injury, facilities operations, products and completed operations, consultants and independent contractors and contractual liability in an amount of \$10,000,000 arising out of any one occurrence and \$10,000,000 in the annual aggregate. Such insurance may be provided under a primary and an umbrella policy or policies. If liability coverage for the Premises is included under any blanket policy written on an aggregate form, then the annual aggregate limit of insurance applying solely to the Premises must not be less than \$10,000,000. The policy must include as insureds ECVA's employees, volunteers and directors. The policy shall be endorsed to include, as additional insureds and/or loss payees (as appropriate), on a primary and non-contributory basis, the Borrower, its managers, members, directors, officers, employees, agents, affiliates, successors and assigns, the Bank, and the Issuer.

(c) Worker's Compensation / Employer's Liability. ECVA shall obtain and maintain Worker's Compensation insurance to the extent required and in the amounts required by

applicable Legal Requirements covering ECVA and its employees, as well as employer's liability insurance for both bodily injury for accident in the amount of \$2,000,000 per accident and for bodily injury by disease in the amount of \$2,000,000 per employee. If ECVA uses borrowed employees (including employees from a temporary employment agency) to perform services, it shall require the primary employer to provide an alternate employer endorsement showing ECVA in the schedule as the alternate employer.

(d) Commercial Automobile Liability Insurance. ECVA shall obtain and maintain Commercial Automobile Liability insurance on all owned, hired or non-owned vehicles used in connection with ECVA's operations in the amount of \$10,000,000 combined single limit for bodily injury and property damage. The coverages must extend to employees, agents, and volunteers of ECVA who utilize personal vehicles within the course and scope of their employment or service.

(e) Crime / Employee Theft. ECVA shall obtain and keep in force a Crime / Employee Theft insurance policy covering its employees, volunteers and the acts of any third party vendor or contractor that otherwise might have the opportunity to misappropriate ECVA's property or funds shall be included in the primary insurance coverage.

(f) Personal Property Insurance. ECVA shall obtain and maintain insurance coverage on all of ECVA's Removable Property. Such insurance shall be full replacement cost coverage with a deductible not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by ECVA for the repair or replacement of ECVA's Removable Property. ECVA shall provide Borrower with written evidence that such insurance is in force no later than three (3) Business Days before the Commencement Date.

(g) Other. In addition, ECVA shall obtain and maintain the following coverages:

(i) Directors' and Officers' Insurance shall be included in the primary insurance coverage; and

(ii) Any other commercially reasonable insurance types or amounts that the Borrower or the Bank requires.

8.2.2 Blanket Policies. ECVA may maintain any of its required insurance coverages under blanket policies of insurance covering said Premises and other facilities of ECVA, or companies affiliated with ECVA, provided that any such policy shall in all other respects comply with the requirements of this Agreement.

8.2.3 ECVA's Policies and/or Certificates of Insurance. Each policy may not have more than a \$25,000 deductible or retention for any occurrence, except for mandatory deductibles or retentions where required under local regulations, or when required by insurers for specific catastrophic perils. ECVA shall obtain, before the expiration date of each such policy, original policies (or renewals or extensions of the insurance afforded thereby), certified duplicates thereof or certificates thereof (together with copies of endorsements for each additional insured) acceptable to the Borrower and the Bank. The above mentioned policies, and proof of payment of all premiums therefor, are to be provided to Borrower at least five (5) Business Days before the Commencement Date and at least annually thereafter or as requested by the Borrower and the Bank. Each such policy shall provide that Borrower and the Bank be given written notice at least five (5) Business Days before the expiration, material alteration, cancellation or non-renewal of any policies, and that any

loss otherwise payable to them thereunder shall be paid notwithstanding any act or negligence on their part or that of ECVA which might, absent such provision, result in a forfeiture of all or part of such insurance payment. If ECVA fails to furnish said notice or policies as provided in this Agreement, and at the times herein provided, Borrower may obtain such insurance and the premiums on such insurance shall be deemed to be Additional Use Fee to be paid to the Borrower upon demand. ECVA shall be responsible for the cost of any and all premiums on all such insurance to be carried by ECVA. Final insurance policies shall be delivered to the following:

GFDS ECVA 1, LLC  
11811 N Tatum Boulevard  
Suite 3031  
Phoenix, Arizona 85028  
Attention: Mr. Gary Aller  
Facsimile: (602) 953-7737  
Email: [gary@gfdslc.com](mailto:gary@gfdslc.com)

8.3 Reserved.

8.4 Waiver of Subrogation. Notwithstanding anything to the contrary contained elsewhere in this Agreement, neither the Borrower nor ECVA shall be liable to the other Party or to any insurance company insuring the other Party, by way of subrogated rights or otherwise, for any loss or damage caused by fire or any other hazard or peril covered by fire or extended coverage or all risk insurance or required to be covered by the insurance coverages under this Agreement except as otherwise specifically provided herein, or any resulting loss of income, even though such loss or damage may have been occasioned by the negligence of such Party, its agents or employees.

8.5 ECVA's Risk; Borrower Not Responsible for Acts of Others. ECVA agrees to use and occupy the Premises at ECVA's own risk. The Borrower shall not be liable to ECVA or any other ECVA Party for any damage, injury, loss, compensation, or claim (including, but not limited to, claims for the interruption of or loss to ECVA's business) based on, arising out of or resulting from any cause whatsoever, including, but not limited to, repairs or construction to any portion of the Premises. Nor shall the Borrower be liable to ECVA or any other ECVA Party for any fire, robbery, theft, mysterious disappearance and/or any other crime or casualty, or any leakage in any part or portion of the Premises, or from water, rain or snow that may leak into, or flow from any part of the Premises, or from drains, pipes or plumbing fixtures at the Premises, or from the roof, street, subsurface or from any other place, or from the breakage, leakage, obstruction, or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning, or lighting fixtures of the Premises. Notwithstanding the foregoing, however, Borrower shall in no event be exonerated from any liability to ECVA or any other ECVA Party, for any injury, loss, damage or liability to the extent such exonerated is prohibited by Legal Requirements. Any goods, property or personal effects stored or placed in or about the Premises shall be at the sole risk and hazard of ECVA, and neither the Borrower nor any Borrower Party nor Borrower's insurers shall in any manner be held responsible therefor, and in no event shall the Borrower, or any other Borrower Party (excepting from the latter, for purposes of this Section 8.5 only, and for purposes of ECVA's pursuing contractual warranties assigned to ECVA only, the Borrower's contractors and subcontractors performing Borrower's Work), have any liability to ECVA or any ECVA Party based on any loss with respect to or interruption in the operation of ECVA's business. The provisions of this Section 8.5 shall be applicable from and after the Commencement Date of this Agreement and until the end of the Term of this Agreement, and during such further period as ECVA may use or be in occupancy of any part

of the Premises. The Borrower shall not be responsible or liable to ECVA, or any ECVA Party for any loss or damage to persons or property resulting from the negligence, acts or omissions of persons occupying space adjoining or adjacent to the Premises, or connected to the Premises, or occupying any other part of the Buildings, or of any of their respective agents, employees, contractors, invitees or customers, including, without limitation, caused by breaking or falling of electrical cables and wires, or the breaking, bursting, stoppage or leakage of water, gas, sewer or steam pipes.

## ARTICLE IX Alterations

9.1 Alterations. Except as hereinafter provided, after completion of the Borrower's Work in accordance with the Plans and Specifications, ECVA shall make no additions, installations, improvements, replacements and/or alterations in or to the Premises (hereinafter "**Alterations**") without the prior written consent of the Borrower, which shall not be unreasonably withheld or delayed. If the Borrower fails to respond to a request for approval within five (5) Business Days of ECVA's request, then ECVA's written request shall be deemed disapproved by the Borrower.

9.1.1 Notwithstanding the provision above, ECVA shall have the right to make from time to time, at its expense, non-structural Alterations to the interior of the Premises without obtaining the Borrower's consent ("**Permitted Alterations**"); *provided however*, that such Alterations are not Material Alterations, and provided further that ECVA notifies the Borrower of the intended Alterations to the interior of the Premises in reasonable detail, together with an estimate of the cost thereof, at least ten (10) Business Days before its commencement of such Permitted Alterations. All Alterations made by or for ECVA shall be done in a good and workmanlike manner and diligently prosecuted to completion, in compliance with applicable Legal Requirements.

9.1.2 Alterations that (i) cost in excess of \$25,000 or (ii) are not in compliance with Legal Requirements or Insurance Requirements, or (iii) in the Borrower's sole judgment, affect the Building Systems, the structural integrity of the Buildings or any part thereof, or the exterior of the Buildings or other structures at the Premises shall be deemed "**Material Alterations**" and shall not be performed without the prior written consent of the Borrower, which consent shall be granted or withheld in Borrower's sole and absolute discretion.

9.1.3 If the Borrower requires ECVA to remove a Material Alteration at the expiration of the Agreement, the Borrower shall notify ECVA of this election simultaneously with Borrower's grant of approval of such Material Alteration. All Alterations, additions and improvements to the Premises (including fixtures and equipment) made by or for ECVA shall be done in a good and workmanlike manner and diligently prosecuted to completion, in compliance with applicable Legal Requirements and Insurance Requirements. Furthermore, any Alterations in or to the mechanical, electrical, plumbing, sanitary, heating, air conditioning, ventilation, life safety or other systems of the Buildings, or to or affecting the roof or any other structural part of the Buildings, shall (subject to Legal Requirements) be performed only by contractor(s) engaged by the Borrower, the reasonable cost and expense of which shall be paid by ECVA as Additional Use Fee.

9.2 Review and Approval Solely for Borrower's Benefit. ECVA agrees that any review or approval by the Borrower of ECVA's Alteration plans is solely for Borrower's benefit, and without any representation or warranty whatsoever by the Borrower to ECVA with respect to the adequacy, correctness or efficiency thereof or otherwise.

9.3 ECVA's Obligation to Furnish Documents to Borrower. ECVA, at its expense, shall obtain (and furnish true and complete copies to the Borrower of) all necessary governmental permits and certificates for the performance of Alterations and for final approval thereof upon completion, and shall cause Alterations to be performed in compliance therewith, with all Legal Requirements and Insurance Requirements, and with the plans and specifications submitted to, and approved by the Borrower pursuant to Section 9.1. Alterations shall be performed in such manner as not to impose any additional expense upon the Borrower in the construction, maintenance, repair or operation of the Buildings, and if any such additional expense shall be incurred by the Borrower as a result of ECVA's performance of Alterations, ECVA shall pay such additional expense upon demand as Additional Use Fee. Throughout the performance of Alterations, ECVA, at its expense, shall carry, or cause to be carried, worker's compensation insurance in statutory limits, employer's liability insurance, disability benefits insurance, property insurance, builder's risk insurance and general liability insurance, with completed operation endorsement, for any occurrence in or about the Premises, and covering contractors, subcontractors and materialmen to be employed by ECVA, under which the Borrower and the Bank shall be named as additional insured, in such limits as the Borrower and the Bank may reasonably require, with insurers reasonably satisfactory to the Borrower and the Bank. ECVA shall furnish the Borrower and the Bank with reasonably satisfactory evidence that such insurance is in effect at or before the commencement of Alterations and, on request, at reasonable intervals thereafter during the continuance of Alterations.

9.4 Notice of Violations. ECVA, at its expense, and with diligence and dispatch, shall procure the cancellation or discharge of all notices of violation arising from or otherwise connected with Alterations, or any other work, labor, services or materials done for or supplied to ECVA, or any ECVA Parties which shall be issued by any public authority having or asserting jurisdiction. However, nothing herein contained shall prevent ECVA from contesting, in good faith and at its own expense, any notice of violation; *provided* neither the Borrower nor the Premises is adversely affected thereby.

9.5 "As-Built" Drawings. ECVA shall promptly upon the completion of a Material Alteration deliver to the Borrower final "as-built" drawings certified by ECVA's architect of any Alterations ECVA has performed or caused to be performed in the Premises, and upon the Borrower's request ECVA shall furnish updated drawings and specifications, if any, for Alterations in progress.

9.6 Liens. ECVA shall cause all contractors performing, and suppliers supplying materials for, Alterations to be paid in full, so that the Premises and the Buildings shall at all times be free of liens for labor and materials supplied or claimed to have been supplied. In addition, the Borrower shall have the right at all times to post and maintain upon the Premises such notices as may be necessary or desirable to keep the Premises and the Borrower free of lien from any mechanic, laborer, materialman, supplier or vendor.

9.6.1 Any mechanic's lien filed against the Premises for work claimed to have been done for, or for materials claimed to have been furnished to, ECVA shall be discharged by ECVA within fifteen (15) Business Days after such filing, by payment, filing of the bond required by Legal Requirements or otherwise, and ECVA shall provide satisfactory proof of such discharge to the Borrower. In default thereof, the Borrower may, upon ten (10) Business Days prior notice to ECVA, discharge any such mechanic's lien, by bond or payment, or otherwise, and the cost thereof shall be paid by ECVA to the Borrower within ten (10) Business Days after demand. Notice is hereby given that the Borrower shall not be liable for any labor or materials furnished or to be furnished to ECVA

upon credit, and that no mechanic's lien or other lien for any such labor or materials shall attach to or affect the reversion or other estate or interest of the Borrower in and to the Premises. ECVA shall indemnify and hold the Borrower, all other Borrower Parties and the Bank harmless for, from, and against any and all expenses, liens, claims, liabilities and damages based on or arising, directly or indirectly, by reason of the making of any alterations, additions or improvements by or on behalf of ECVA to the Premises under this Section, which obligation shall survive the expiration or termination of this Agreement.

ECVA's Removable Property shall be fully paid for by ECVA in cash and shall not be subject to conditional bills of sale, security interests, chattel mortgages or other title retention agreements.

9.7 Insurance. The insurance requirements of Section 6.10 and the indemnification provisions of Section 6.11 shall apply to any Alterations carried out by ECVA hereunder.

9.8 Removal of Rubbish. ECVA, at its sole cost and expense, shall remove and dispose (in accordance with all Legal Requirements and Rules and Regulations) all rubbish arising from ECVA's Alterations.

## ARTICLE X Borrower's and ECVA's Removable Property

10.1 Borrower's Property. Other than ECVA's Removable Property, or as otherwise set forth in Section 9.1.3, all fixtures, equipment, improvements and appurtenances attached to or built into the Premises at the commencement of or during the Term, including the Borrower's Work, whether or not by or at the expense of ECVA, shall be and remain a part of the Premises, shall, upon the expiration or sooner termination of this Agreement, be deemed the property of the Borrower and may not be removed by ECVA.

10.2 ECVA's Removable Property. All of ECVA's Removable Property shall be and shall remain the property of ECVA and may be removed by ECVA at any time during the Term; *provided*, that if any of ECVA's Removable Property is removed, ECVA shall repair or pay the cost of repairing any damage to the Premises or to the Buildings resulting from the installation and/or removal thereof.

10.3 Timing of Removal of ECVA's Removable Property. On or before the Expiration Date (or earlier termination of this Agreement, as the case may be), ECVA, at its expense, shall remove from the Premises all of ECVA's Removable Property (except such items thereof as Borrower shall have expressly permitted to remain, which property shall become the property of Borrower), and ECVA shall repair any damage to the Premises or the Buildings resulting from removal of ECVA's Removable Property.

10.4 Abandoned Property. Any other items of ECVA's Removable Property which shall remain in the Premises after the Expiration Date, or within ten (10) Business Days following an earlier termination of this Agreement, may at the option of the Borrower be deemed abandoned, and in such case such items may either be retained by the Borrower as its property or disposed of by the Borrower, without accountability, in such manner as Borrower shall determine, at ECVA's expense.

## ARTICLE XI Repairs and Maintenance

### 11.1 ECVA's Obligations.

11.1.1 Except only for completion of Borrower's Work, ECVA shall, at its expense, throughout the Term, maintain in good order, condition and repair all of the Premises (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to ECVA, and whether or not the need for such repairs occurs as a result of ECVA's use, any prior use, or the elements or the age of such portion of the Premises), including, but not limited to, all mechanical, electrical, plumbing, life safety (including sprinkler systems), heating, ventilation, and air conditioning systems of the Buildings (the "**Building Systems**"), boilers, pressure vessels, fixtures, walls (interior and exterior), ceilings, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, or adjacent to the Premises. ECVA shall also keep the roof and roof drainage clean and free of debris. ECVA, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices. ECVA's obligations under this Section 11.1 shall also include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. ECVA shall, during the Term, keep the exterior appearance of the improvements at the Premises in a first class condition (including, e.g., graffiti removal) consistent with the exterior appearance of other similar facilities of comparable age and size in the vicinity and ECVA shall surrender the Premises, at the end of the Term, in such condition, reasonable wear and tear excepted; provided, however, that ECVA has engaged in good maintenance and preventative maintenance practices and ECVA shall be obligated to replace worn out items. ECVA shall be responsible for the cost of repairs which may be made necessary by reason of damage to the Buildings caused by any act or neglect of ECVA or any ECVA Party (including any damage by fire or other casualty arising therefrom). All of such repairs and replacements shall be of good quality sufficient for the proper maintenance and operation of the Premises, and shall be constructed and installed in compliance with Legal Requirements and Insurance Requirements.

11.1.2 Upon Substantial Completion, the Borrower shall assign to ECVA, to the extent permitted without the consent of the warranting parties, all contractual warranties provided with respect to any constituent element of the Premises. ECVA may not, in the course of any repair, maintenance or construction, invalidate any of the warranties for the Premises, including, but not limited to those that relate to the roof, the stormwater management system, the elevator, and the sprinkler systems.

11.1.3 ECVA may not permit the accumulation of waste or refuse matter, nor permit anything to be done upon the Premises that would invalidate or prevent the procurement of any insurance policies or governmental permits, licenses or approvals that may at any time be required pursuant to the provisions hereof. ECVA may not place a load upon any floor in the Premises exceeding the floor load per square foot of area which such floor was designed to carry and which is allowed by Legal Requirements. Borrower reserves the right to prescribe the weight and position of all business machines and mechanical equipment, including safes, which shall be placed so as to distribute the weight.

11.1.4 If repairs, maintenance or other work is required to be made by ECVA pursuant to the terms of this Agreement, and ECVA fails to commence the repairs and/or other

obligations and diligently prosecute such repairs and/or obligations to completion, upon not less than ten (10) Business Days' prior written notice (except that no notice shall be required in the event of an emergency), the Borrower may make or cause such repairs to be made or such obligations to be performed (but shall not be required to do so), and all costs incurred by the Borrower in connection therewith shall be paid by ECVA to the Borrower on demand and shall be Additional Use Fee. The Borrower shall not be responsible to ECVA for any loss or damage whatsoever that may accrue to ECVA by reason of the Borrower's making such repairs.

11.1.5 ECVA alone shall be responsible for security measures at the Premises. ECVA acknowledges that the Borrower has not undertaken any duty whatsoever to provide security for the Premises and, accordingly, the Borrower is not responsible for the security of same or the protection of ECVA's property or ECVA's employees, invitees, or contractors from any cause whatsoever, including but not limited to criminal and/or terrorist acts. To the extent ECVA determines that such security or protection services are advisable or necessary, ECVA shall arrange for and pay the costs of providing same. The Borrower shall have no responsibility to prevent, and shall not be liable to ECVA for losses due to theft, burglary or other criminal activity, or for damages or injuries to persons or property resulting from persons gaining access to the Premises, and ECVA hereby releases the Borrower and all other Borrower Parties from all liabilities for such losses, damages or injury, regardless of the cause thereof.

11.2 Borrower's Liability. The Borrower shall not, in any event, be responsible to ECVA for any condition in the Premises or the Buildings caused by any act or neglect of ECVA or any ECVA Party. Nor shall the Borrower be responsible to make any improvements or repairs to the Buildings other than as expressly provided in this Agreement.

11.3 Interruption. The Borrower shall have no liability to ECVA, nor shall ECVA's covenants and obligations under this Agreement be reduced or abated in any manner whatsoever, by reason of any inconvenience, annoyance, interruption or injury arising from the Borrower's making any repairs, replacements or changes which the Borrower is required or permitted by this Agreement, or required by applicable Legal Requirements or Insurance Requirements, to make in or to the fixtures, equipment or appurtenances of the Buildings or the Premises. The Borrower shall not be responsible in any manner for any suspension, interruption or curtailment of any services or utilities to the Premises, regardless of the cause thereof, and no such suspension, interruption or curtailment shall give rise to any claim for abatement of any Use Fee or other compensation to ECVA from the Borrower, nor shall ECVA claim any direct, indirect or consequential damages or constructive eviction on account thereof, nor shall this Agreement or any obligation of ECVA be affected thereby. ECVA hereby expressly waives any and all rights of Use Fee abatement or other remedies on account of any untenantability, and ECVA's sole right and remedy shall be as set forth in Section 21.5 of this Agreement.

## ARTICLE XII Utilities

12.1 Procurement and Payment of Utilities. ECVA shall be responsible to procure the supply of any and all utilities necessary for ECVA's use and occupation of the Premises and, subject to the performance of the Borrower's Work and the Borrower's express obligations under ARTICLE XI, the Borrower will have absolutely no responsibility or obligation to provide any utility or other service to the Premises. ECVA shall contract for, in its own name, and shall pay all taxes, assessments, charges/deposits, fees and bills for utilities including, without limitation, charges for

water, gas, oil, sanitary and storm sewer, electricity, steam, telephone service, trash collection, internet access, cable television or satellite service, and all other utilities that may be charged against any occupant or user of the Improvements during the Term. ECVA shall at all times maintain that amount of heat necessary to ensure against the freezing of water lines. ECVA shall indemnify, defend, save and hold the Borrower harmless for, from, and against any and all claims, liability or damages, including, but not limited to, claims based upon ECVA's failure to pay any fees or other charges for utility services supplied to the Premises, or damages to the utility systems and the Premises, that may result from ECVA's failure to maintain sufficient heat in the Premises. All charges for utilities or services at the Premises before the Use Fee Commencement Date and after the expiration or earlier termination of the Agreement shall be payable by Borrower.

12.2 Capacity. ECVA shall use best efforts such that its use of electric current shall not exceed the capacity of the then existing feeders to the Buildings or the risers or wiring installations serving the Premises. Any additional electrical capacity and any risers, feeders or other equipment or service proper or necessary to supply ECVA's electrical requirements, shall, upon written request of ECVA, be installed by Borrower at the expense of ECVA, if in the Borrower's reasonable judgment any additional capacity required is then available in the Buildings, the installations are necessary and will not cause permanent damage or injury to the Buildings or the Premises, or cause or create a dangerous or hazardous condition, or entail excessive or unreasonable alterations, repairs or expense.

12.3 Interruption. The Borrower shall not be liable to ECVA for any loss, damage or expense which ECVA may sustain or incur if (i) the supply of electricity or other service or utility to the Premises is temporarily interrupted, or (ii) the quantity or character of the electric service is changed or is no longer available or suitable for ECVA's requirements.

### ARTICLE XIII Borrower's Services

13.1 Borrower's Obligation. Upon the completion of the Borrower's Work, the Borrower shall have no obligation to furnish to the Premises any cleaning services, electric energy, water, heat, air-conditioning, ventilation, gas or any other service or utility. ECVA shall obtain heat, air-conditioning, ventilation, gas and any other services or utilities required by ECVA at ECVA's sole cost and expense and in compliance with the applicable provisions of (i) all Legal Requirements and Insurance Requirements, (ii) the rules and regulations of any public utility or other company furnishing such service or utility, and (iii) this Agreement.

13.2 Triple Net Obligation. It is understood and agreed by the Parties that this Agreement is considered and intended to be a "triple net" obligation, providing and yielding to the Borrower (and to third parties, as applicable), after the Use Fee Commencement Date, payment of all Use Fees as and when due hereunder absolutely free and net of all expenses, costs and charges allocable to the Term which are in any manner associated with the ownership, operation, use, management, repair, maintenance, and insurance of the Premises, and ECVA hereby agrees to be absolutely responsible for all costs, expenses, taxes and charges relating to its use and occupancy of the Premises during the period of its use and occupancy, unless otherwise provided herein.

13.3 Borrower's Rights of Access. After reasonable notice (except in emergencies when no such notice shall be required), which may be by telephone or e-mail, the Borrower, its agents and representatives, shall have the right (without any obligation so to do) to enter the Premises (i) to inspect the same, (ii) to exercise such rights as may be permitted hereunder, (iii) to make repairs or

alterations to the Premises, (iv) to make repairs or perform other obligations if ECVA fails to do so as required hereunder (but the Borrower shall have no duty whatsoever to make any such inspections, repairs, alterations, additions or improvements except as otherwise expressly provided in this Agreement), (v) to deal with emergencies, (vi) to post such notices as may be permitted under Section 9.6, (vii) to exhibit the Premises to prospective Districts during the twenty four (24) months preceding expiration of the Term and at any reasonable time during the Term to show the Premises to prospective purchasers, lessors and mortgagees, or (viii) for any other purpose as the Borrower may deem necessary or desirable; provided, however, the Borrower shall use reasonable efforts not to materially interfere with ECVA's use of or access to the Premises and the Borrower shall be accompanied by a designated representative of ECVA if and to the extent ECVA makes such representative available during such entry period. ECVA shall not be entitled to any abatement of Use Fee or other charges nor shall Borrower be deemed guilty of an eviction, actual or constructive, or any violation of ECVA's quiet enjoyment of the Premises on account of the Borrower's access to the Premises pursuant to the provisions of this Section 13.3 or any other provision of this Agreement or applicable Legal Requirements.

#### ARTICLE XIV Subordination

14.1 Subordination of Facilities Use Agreement. Subject to the terms of this ARTICLE XIV, this Agreement, and all rights of ECVA hereunder, are and shall be subject and subordinate to the following (individually, a "**Mortgage**" and collectively, the "**Mortgages**"), whether or not such Mortgage(s) shall also cover other lands and/or buildings and/or leases, and to each and every advance made or hereafter to be made under such Mortgages, and to all renewals, extensions, modifications, and replacements of such Mortgages, and all consolidations of such Mortgages: (i) the Ground Lease; (ii) the Deed of Trust; and (iii) any other mortgage(s), deed(s) of trust, security interest(s), indenture(s) and similar encumbrance(s) to which ECVA may consent (which consent shall not be unreasonably withheld, conditioned, or delayed) and which may now or hereafter affect the Premises. This Section shall be self operative and no further instrument of subordination shall be required. Nonetheless, in the case of all Superior Mortgages entered into by Borrower after the Effective Date, which shall require the Bank's prior written consent, the Borrower shall use reasonable efforts to cause the holder of any Superior Mortgage to join with the Borrower and ECVA in a subordination, non-disturbance and attornment agreement which, for all purposes, shall govern the subordination of this Agreement to a Superior Mortgage, and the relative rights and obligations of ECVA and the Mortgagee with respect to this Agreement, on such Superior Mortgagee's standard form, incorporating the comments and revisions of ECVA acceptable to Superior Mortgagee in its reasonable discretion. In confirmation of such subordination, ECVA shall promptly execute, acknowledge and deliver any instrument that the Borrower, the lessor under any such lease or the holder of any such Mortgage or any of their respective successors in interest may reasonably request to evidence such subordination. The Ground Lease, and any other ground lease to which this Agreement is, at the time referred to, subject and subordinate, is herein called "**Superior Agreement**" and the lessor of a Superior Agreement or its successor in interest at the time referred to, is herein called "**Superior Lessor**"; and the Deed of Trust, and any other Mortgage to which this Agreement is, at the time referred to, subject and subordinate, is herein called "**Superior Mortgage**" and the holder of a Superior Mortgage, or its successor in interest at the time referred to, is herein called "**Superior Mortgagee**."

14.2 Attornment. If any Superior Lessor or Superior Mortgagee or the nominee or designee of any Superior Lessor or Superior Mortgagee shall succeed to the rights of the Borrower under this Agreement, whether through possession or foreclosure action or delivery of a new lease or deed, or otherwise, then at the request of such party so succeeding to Borrower's rights (herein called "Successor"), ECVA shall attorn to and recognize such Successor as ECVA's lessor under this Agreement and shall promptly execute and deliver any instrument that such Successor may reasonably request to evidence such attornment. Upon such attornment, this Agreement shall continue in full force and effect as a direct lease between the Successor and ECVA upon all of the terms, conditions and covenants as are set forth in this Agreement, except that the Successor (unless formerly the Borrower under this Agreement or its nominee or designee) shall not be (i) liable in any way to ECVA for any act or omission, neglect or default on the part of the Borrower under this Agreement or for any claim against Borrower arising before the date on which the successor succeeded to the Borrower's interest, (ii) responsible for any monies owing by or on deposit with the Borrower to the credit of ECVA, (iii) subject to any counterclaim, offset or setoff which theretofore accrued to ECVA against the Borrower, excluding express offset rights of ECVA set forth in this Agreement, (iv) bound by any modification of this Agreement subsequent to such Superior Agreement or Mortgage, or by any previous prepayment of Base Use Fee for more than one (1) month, which was not approved in writing by the Superior Lessor or the Superior Mortgagee thereto, (v) liable to ECVA beyond the Successor's interest in the Premises and the Use Fees, income, receipts, revenues, issues and profits issuing from such Premises, (vi) responsible for the performance of any work to be done by the Borrower under this Agreement to render the Premises ready for occupancy by ECVA, (vii) bound by any amendment or modification of such lease made without its written consent, or (viii) required to remove any person occupying the Premises or any part thereof, except if such person claims by, through or under the Successor.

14.3 Notice to Mortgagee. After receiving notice from the Borrower of any holder of a Mortgage which includes the Premises, no notice from ECVA to Borrower alleging any default by the Borrower shall be effective unless and until a copy of the same is given to such holder (provided ECVA shall have been furnished with the name and address of such holder), and the curing of any of Borrower's defaults by such holder shall be treated as performance by the Borrower.

## ARTICLE XV Occupancy

Subject to the terms and conditions of this Agreement and subject to the rights of any Superior Mortgagee or Superior Lessor, upon payment of the Base Use Fee and Additional Use Fee, and upon observing, keeping and performing all of the other terms and conditions of this Agreement on ECVA's part to be observed, kept and performed, ECVA shall lawfully, peaceably and quietly enjoy the Premises during the Term. The foregoing terms are in lieu of any other covenant, express or implied.

## ARTICLE XVI Assignment, Subletting and Mortgaging

16.1 Restriction on Transfer. Except as otherwise permitted in this ARTICLE XVI, ECVA covenants and agrees that neither this Agreement nor the term and estate hereby granted, nor any interest herein or therein, may be assigned, mortgaged, pledged, encumbered or otherwise transferred, whether voluntarily, involuntarily, directly or indirectly, by operation of law or

otherwise, and that neither the Premises nor any part thereof may be encumbered in any manner by reason of any act or omission on the part of ECVA, or used or occupied or permitted to be used or occupied, by anyone other than ECVA, or for any use or purpose other than the Permitted Use, or be sublet in whole or in part, or be offered or advertised for assignment or subletting by ECVA or any person acting on behalf of ECVA, without, in each case, (i) the prior written consents of the Borrower and the Bank, which consents, except as otherwise expressly provided in this Agreement, may be withheld by the Borrower or the Bank in its sole and absolute discretion, and (ii) an opinion of Bond Counsel (as defined in the Financing Agreement) to the effect that such transfer will not adversely affect the tax-exempt status of the Bonds. If this Agreement is assigned, or if the Premises or any part thereof is sublet or occupied by anyone other than ECVA, whether or not in violation of the terms and conditions of the Agreement, the Borrower may, at any time and from time to time, collect the Use Fees and other charges from the assignee, sublessee or occupant, and apply the net amount collected to the Use Fees and other charges herein reserved, but no such assignment, subletting, occupancy, collection or modification of any provisions of this Agreement shall be deemed a waiver of the provisions of this ARTICLE XVI, or an acceptance of the assignee, sublessee or occupant as an occupant of the Premises, or release of ECVA from the further performance of covenants on the part of ECVA to be performed hereunder. Notwithstanding anything to the contrary in this Section 16.1, ECVA shall have the right to grant concessions and licenses for events in the ordinary course of ECVA's business without obtaining the prior written consent of the Borrower.

16.1.1 If the Borrower and the Bank consent to any proposed assignment or subletting, or decline to give their consent to any proposed assignment or subletting, ECVA shall indemnify, defend and hold harmless each of them against and from any and all loss, liability, damages, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) resulting from any claims that may be made against either of them by the proposed assignee or sublessee or by any brokers or other persons claiming a commission or similar compensation in connection with the proposed assignment or subletting.

16.1.2 Notwithstanding anything to the contrary contained in this Section 16.1, the Borrower at its option, and with the prior written consent of the Bank, shall have the right to cancel this Agreement (with the same force and effect as if the entire Term had expired by lapse of time) by written notice given to ECVA at any time within twenty (20) Business Days of ECVA's request with respect to an assignment of this Agreement or subletting of all or substantially all of the Premises, and if the Borrower elects to cancel this Agreement, the Term shall fully cease and expire on a date selected by the Borrower in its notice of cancellation (which date shall not be less than ten (10) nor more than forty (40) Business Days after the date of such cancellation notice).

16.1.3 In no event shall ECVA be entitled to make, nor shall ECVA make, any claim, and ECVA hereby waives any claim, for money damages, nor shall ECVA claim any money damages by way of set-off, counterclaim or defense, based upon any claim or assertion by ECVA that the Borrower has unreasonably withheld or unreasonably delayed any consent or approval to a proposed assignment or subletting as provided for above, but ECVA's sole remedy shall be an action or proceeding to enforce any such provisions, or for specific performance, injunction or declaratory judgment.

16.2 Continuing Liability of ECVA. In no event shall any assignment or subletting release ECVA or any guarantor from its obligations under this Agreement, or constitute consent to any further assignment or subletting. Any consent to a particular assignment, subletting or occupancy or

other act for which consent is required under Section 16.1 shall not in any way diminish the prohibition stated in Section 16.1 as to any further such assignment, subletting or occupancy or other act or the continuing liability of the original named ECVA. No assignment or subletting hereunder shall relieve ECVA from its obligations under this Agreement, and ECVA shall remain fully and primarily liable for all such obligations.

## ARTICLE XVII **Reserved**

## ARTICLE XVIII **Damage or Destruction**

18.1 Fire or Other Damage. ECVA must give the Borrower immediate notice in case the Premises are damaged by fire or other casualty.

18.1.1 If the Premises are Substantially Damaged by fire or other casualty (the term “**Substantially Damaged**” meaning damage of such a character that (i) the Premises are rendered unusable for the Permitted Use and (ii) the same cannot, in the ordinary course, reasonably be expected to be repaired within two hundred (200) Business Days from the time that repair work would commence, as determined by a contractor mutually satisfactory to the Parties), then ECVA or Borrower shall have the right to terminate this Agreement by giving notice of such election within forty-five (45) Business Days after the occurrence of such casualty, which termination shall be effective as of the end of the Lease Year during which such casualty occurred; provided, however, that ECVA alone shall, at its sole cost and expense, stabilize and secure the Premises between the date of the pertinent casualty and the effective termination date at the end of the Lease Year during which such casualty occurred.

18.1.2 If this Agreement is terminated pursuant to Section 18.1.1, the Term shall be over on the specified cancellation date with the same force and effect as if such date were the date originally established as the expiration date hereof. ECVA shall have no obligation to pay Use Fees after the termination date of the Agreement and all Use Fees shall be prorated to the date of such termination. ECVA will look only to its own insurance as required by this Agreement, whether or not obtained, to recover any damages or losses suffered as a result, including but not limited to early termination of the Agreement, loss of business, damage to ECVA’s Removable Property. ECVA releases Borrower from liability and waives right of recovery against the Borrower for all losses or damages resulting from the casualty to the extent that it would have been compensated by insurance required to be carried by ECVA under this Agreement. The proceeds of insurance carried pursuant to ARTICLE VIII (“**Insurance Proceeds**”) shall be used to pay all sums then due and owing, and to satisfy any other outstanding obligations, under the Loan Documents, and any excess Insurance Proceeds shall be paid to ECVA without claim by the Borrower, provided however, that, notwithstanding the foregoing, ECVA shall retain the proceeds of all insurance maintained by ECVA and allocable specifically to ECVA’s Removable Property, without claim by the Borrower.

18.1.3 If this Agreement is not terminated pursuant to Section 18.1.1, then the Insurance Proceeds shall be used to pay for the repair and restoration work performed pursuant to the terms hereof. If the total cost of restoring the Premises, as provided in this Article, is less than the amount of the Insurance Proceeds applicable to such restoration work, then, subject to the terms of

the Loan Documents, the balance of the Insurance Proceeds shall be paid to the Party responsible for maintaining such insurance upon delivery of final waivers of lien and such other documentation as may be reasonably requested by the other Party in order to confirm that such restoration work has been completed in substantial accordance with the terms hereof. If the total cost of restoring the Premises, as provided in this Article, shall exceed the amount of Insurance Proceeds available for such restoration (as determined by a contractor mutually satisfactory to the Parties), then ECVA may (but shall not be required to) provide its own funds to supplement such Insurance Proceeds, as necessary to restore the Premises. If ECVA shall not provide such funds, however, within twenty (20) Business Days after the pertinent determination by the contractor selected by the Parties, then the Borrower may elect to terminate this Agreement by giving notice of such election at any time within forty (40) Business Days thereafter, which termination shall be effective as of the date of such notice.

18.2 Damage without Termination. If the Premises are damaged by fire or other casualty under this ARTICLE XVIII but either (i) are not Substantially Damaged or (ii) are Substantially Damaged but this Agreement is not terminated pursuant to Section 18.1.1, then the Borrower shall thereafter promptly restore the Premises (excluding ECVA's Removable Property and any Alterations performed by or on behalf of ECVA) to substantially the condition they were in immediately prior to such casualty; provided, however, that the Borrower's obligation shall be limited to the amount of Insurance Proceeds available therefor, and that the Borrower shall not be obligated to commence restoration until the Borrower has received the Insurance Proceeds and ECVA has paid the applicable deductible to the Borrower. After any such damage or destruction, ECVA shall cooperate with the Borrower by removing from the Premises, within a reasonable period of time after the pertinent casualty, so much (including, if need be, all) of ECVA's Removable Property as may reasonably be necessary to permit the restoration required under this Section 19.2.

18.3 Restoration Near End of Term. If the Premises are damaged or destroyed to such an extent as to render them untenable within twenty-four (24) months of the expiration of the Term, then, the Borrower shall have the right to terminate this Agreement by giving written notice to ECVA within twenty (20) Business Days after the date of the casualty, which termination shall be effective as of the end of the Lease Year during which such casualty occurred; provided, however, that ECVA alone shall, at its sole cost and expense, stabilize and secure the Premises between the date of the pertinent casualty and the effective termination date at the end of the Lease Year during which such casualty occurred.

## ARTICLE XIX Eminent Domain

19.1 Condemnation. If the entire Premises are taken or condemned by a legal authority, then the Term and ECVA's rights shall end, and this Agreement shall terminate (subject to any provisions that by their express terms survive such termination) as of the date the authority takes title to the Premises. Effective upon such termination, ECVA must deliver to the Borrower all Use Fees then due.

19.2 Partial Condemnation/Continuation of Facilities Use Agreement. If less than the entire Premises is taken or condemned by a legal authority, the obligations of the Parties under this Agreement shall be unaffected unless the effect of the taking or condemnation is to render the Premises unsuitable for the Permitted Use. If the Premises are not rendered unsuitable for the Permitted Use, then from and after the date of delivery of possession to the condemning authority, a

just and proportionate part of the Base Use Fee, according to the extent and nature of such taking, shall abate for the remainder of the term of this Agreement, and the proceeds of such condemnation, after deduction of the reasonable costs, expenses (including costs of experts) and attorneys' fees incurred in collection thereof ("**Condemnation Proceeds**"), shall be used to repay all or a portion of the sums then owing under the Loan Documents, and any excess Condemnation Proceeds shall be equitably allocated between the Parties based upon the nature and extent of the property rights so taken. The Premises shall be deemed "unsuitable for the Permitted Use" if the state or condition of the Premises has been so affected by the taking or condemnation that, in the good faith judgment of ECVA, reasonably exercised, the Premises cannot be operated on a commercially practicable basis as a convention center. If a taking or condemnation renders the Premises unsuitable for the Permitted Use, ECVA may terminate the Agreement as of the date of the taking, or as of the date of loss of occupancy of the condemned portion (if the date for vacating the Premises is different from the date of taking), or within twenty (20) Business Days following either the date of taking or the date of loss of occupancy of the condemned portion. If all or any part of the Premises is temporarily condemned for a period of six (6) months or less, the Parties shall be relieved from their obligations under the Agreement only to the extent performance is rendered impracticable or impossible and ECVA shall remain obligated to pay Use Fees and other charges due under the Agreement to Borrower for the period of such temporary taking. In the event of such a temporary taking, the entire amount of compensation payable for the temporary taking, whether paid by the condemning authority as damages, Use Fee or otherwise, shall be payable to ECVA, subject to ECVA having paid to the Borrower all Use Fees and other charges payable under the Agreement for the period of such temporary taking.

19.3 Condemnation Award. In the event of a taking or condemnation which results in a termination of this Agreement either under Section 19.1 or Section 19.2, the Condemnation Proceeds shall be used to pay all sums then due and owing, and to satisfy any other outstanding obligations, under the Loan Documents, and any excess Condemnation Proceeds shall be equitably allocated between the Parties based upon the nature and extent of the property rights so taken. The Borrower and ECVA shall cooperate and join together in making all claims for damages, bringing any suit or action, appealing from any award or judgment, and settling and compromising all such claims, suits or actions, except for those claims which are prosecuted as part of an action for a separate award (*e.g.* a ECVA's claim for "special damages") and, except for those claims for separate awards, neither Party shall make or enter into such settlement or compromise without first obtaining the prior consent of the other thereto in writing, which consent shall not be unreasonably withheld, delayed or conditioned, and each party shall cooperate with the other in the prosecution of such claims, suits or actions, giving each other reasonable notice of the time and place of any negotiations for settlement or compromise. No pleading shall be filed in any suit or action without the consent of the other in writing, which consent shall not be unreasonably withheld, delayed or conditioned.

## ARTICLE XX

### **Surrender**

20.1 Condition of Premises. On the Expiration Date, or upon any earlier termination of this Agreement, or upon any reentry by the Borrower upon the Premises pursuant to Section 21.2, ECVA shall quit and surrender the Premises, together with all Alterations which may have been made or installed in, on or to the Premises before or during the Term of this Agreement, to the Borrower free and clear of ECVA's Removable Property, all occupants, sublessees and licensees, and "broom-clean" and in good order, condition and repair and as ECVA is obligated to maintain the

same under this Agreement, excepting only (i) ordinary wear and use (subject to ECVA's compliance with Section 11.1) and (ii) those instances of damage by fire or other casualty for which, under other provisions of this Agreement, ECVA has no responsibility of repair or restoration. ECVA shall remove all of ECVA's Removable Property and, to the extent specified by the Borrower, all Alterations made by or on behalf of ECVA; and shall repair any damages to the Premises or the Buildings caused by such removal.

20.2 Acceptance by Borrower. No act or thing done by the Borrower or its agents shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid unless in writing and signed by the Borrower.

## ARTICLE XXI

### **Default By ECVA; Borrower Remedies; Default by Borrower**

21.1 Default by ECVA. The following occurrences are each an "**Event of Default**":

(a) ECVA fails to duly pay when due any installment of Base Use Fee or any payment of Additional Use Fee, and such failure continues for five (5) Business Days after the Borrower or the Bank delivers to ECVA written notice or demand for the same;

(b) ECVA fails to pay when due any Additional Use Fee to a third party and such failure continues for five (5) Business Days after such third party delivers to ECVA written notice or demand for the same;

(c) This Agreement or ECVA's interest herein is taken upon execution or by other process of law directed against ECVA, or is taken upon or subjected to any attachments by any creditor of ECVA or claimant against ECVA and the attachment is not discharged within ten (10) Business Days after its levy;

(d) ECVA files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or is dissolved, or makes an assignment for the benefit of creditors;

(e) Involuntary proceedings under any bankruptcy laws or insolvency act or for the dissolution of ECVA are instituted against ECVA, or a receiver or purchaser is appointed for all or substantially all of ECVA's Removable Property and assets, and the proceeding is not dismissed or the receivership or trusteeship is not vacated within thirty (30) Business Days after institution or appointment;

(f) ECVA fails to perform or comply with any of the other agreements, terms, covenants, or conditions of this Agreement or the Related Agreement, and such failure continues for a period of twenty (20) Business Days after the Borrower delivers notice of such failure to ECVA, or if such failure is of such a nature that ECVA cannot reasonably remedy the same within such twenty (20) Business Day period, ECVA shall fail to commence promptly to remedy the same and to diligently and continuously prosecute such remedy to completion;

(g) ECVA fails to continuously occupy the Premises for the Permitted Use, and such vacancy continues for three (3) or more months (excluding, however, vacancy due to fire or other casualty);

- (h) ECVA defaults under the Revenue Pledge; or
- (i) The Refinancing is not secured prior to the Maturity Date.

21.2 Remedies Upon Event of Default. If any one or more Events of Default set forth above occurs, then the Borrower may, at the Borrower's election, terminate this Agreement, effective as of the last day of the then-current Lease Year, and, on the pertinent termination date, ECVA's right to possess the Premises shall cease and the Agreement shall be terminated as if the date fixed in the notice were the end of the term of this Agreement; provided that, if the Agreement is terminated pursuant to the provisions of this Section 21.2, ECVA shall be liable to the Borrower for, and shall immediately pay to the Borrower upon the pertinent Event of Default, an amount equal to the balance of all Use Fees yet unpaid that would have been due and payable by ECVA under this Agreement for the balance of the Lease Year during which the pertinent Event of Default occurred. Notwithstanding anything to the contrary herein, if an Event of Default occurs under Section 21.1(i) or due to the breach by ECVA of any covenant set forth in ARTICLE VII, then, in addition to the remedies set forth above, ECVA shall be liable to the Borrower for, and shall immediately pay to the Borrower upon the pertinent Event of Default, an amount equal to the balance of all Base Use Fees yet unpaid that would have been due and payable by ECVA under this Agreement for the balance of the Term.

21.3 Termination Upon Bankruptcy or Receivership. If any Event of Default set forth in Sections 21.1(d) or 21.1(e) above occurs, then, anything elsewhere in this Agreement to the contrary notwithstanding, this Agreement may be canceled by the Borrower by delivering a written notice to ECVA within a reasonable time after the happening of such event in which event neither ECVA nor any person claiming through or under ECVA, or by reason of any statute or order of court, shall thereafter be entitled to possession of the Premises but shall forthwith quit and surrender the Premises. In the event of the termination of this Agreement pursuant to this Section 21.3, the Borrower shall forthwith, notwithstanding any other provisions of this Agreement to the contrary, be entitled to recover from ECVA as and for liquidated damages in lieu of damages under Section 21.2, an amount equal to the difference between the Base Use Fee and Additional Use Fee reserved hereunder for the unexpired portion of the Term hereby granted and the fair reasonable use value of the Premises for the same period. In the computation of such damages the difference between any installment Use Fee becoming due hereunder after the date of termination and the fair and reasonable use value of the Premises for the period of which such installment was payable shall be discounted to the date of termination at the rate of four percent (4%) per annum. If the Premises or any part thereof be relet by Borrower for the unexpired term of this Agreement, or any part thereof, before presentation of proof of such liquidated damages to any court, commission or tribunal, the amount of the Base Use Fee and Additional Use Fee reserved upon such reletting shall be deemed to be the fair and reasonable value for the part or the whole of the Premises so relet during the term of the releasing. Nothing herein shall limit or prejudice the right of the Borrower to prove for and obtain as liquidated damages by reason of such termination, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater, equal to or less than the amount of the difference referred to above.

21.4 Remedies Cumulative; Enforcement Costs. No remedy in this Agreement or otherwise conferred upon or reserved to the Borrower shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute and every power and remedy

given by this Agreement to the Borrower may be exercised from time to time and as often as occasion may arise or as may be deemed expedient. No delay or omission of the Borrower to exercise any right, remedy or power arising from any default shall impair any such right, remedy or power or shall be construed to be a waiver of any such default. ECVA shall pay all reasonable costs and expenses (including, without limitation, attorneys' fees and expenses at both the trial and appellate levels) incurred by or on behalf of the Borrower in connection with the successful enforcement of any rights of the Borrower or obligations of ECVA hereunder, whether or not occasioned by an Event of Default.

21.5 Default by Borrower. The Borrower shall not in any event be in default under this Agreement unless the Borrower shall neglect or fail to perform any of its obligations hereunder and shall fail to remedy the same within twenty (20) Business Days after notice to the Borrower specifying such neglect or failure, or if such failure is of such a nature that the Borrower cannot reasonably remedy the same within such twenty (20) Business Day period, the Borrower shall fail to commence promptly (and in any event within such twenty (20) Business Day period) to remedy the same and to prosecute such remedy to completion with diligence and continuity. ECVA expressly and knowingly waives the right to terminate this Agreement on account of the Borrower's default under this Agreement. Except as otherwise expressly set forth elsewhere in this Agreement, ECVA's sole remedy on the Borrower's default is an action for damages or injunctive or declaratory relief.

## ARTICLE XXII

### No Waivers

22.1 Failure to Require Strict Performance. The failure of either Party to insist in any one or more instances upon the strict performance of any one or more of the obligations of this Agreement, or to exercise any election herein contained, shall not be construed as a waiver or relinquishment for the future of the performance of such one or more obligations of this Agreement or of the right to exercise such election, and such right to insist upon strict performance shall continue and remain in full force and effect with respect to any subsequent breach, act or omission. The receipt by the Borrower of Base Use Fee (or partial payments thereof) or Additional Use Fee (or partial payments thereof) with knowledge of breach by ECVA of any obligation of this Agreement shall not be deemed a waiver of such breach. Failure on the part of the Borrower or ECVA to complain of any action or non action on the part of the other, no matter how long the same may continue, shall never be a waiver by ECVA or the Borrower, respectively, of any of the other's rights hereunder. The consent or approval of the Borrower or ECVA to or of any action by the other requiring such consent or approval shall not be construed to waive or render unnecessary the Borrower's or ECVA's consent or approval to or of any subsequent similar act by the other.

22.2 Partial Payments. No payment by ECVA, or acceptance by the Borrower, of a lesser amount than shall be due from ECVA to the Borrower shall be treated otherwise than as a payment on account of the earliest installment of any payment due from ECVA under the provisions hereof. The acceptance by the Borrower of a check for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full, shall be given no effect, and the Borrower may accept such check without prejudice to any other rights or remedies which the Borrower may have against ECVA.

ARTICLE XXIII  
**Curing ECVA's Defaults**

23.1 Borrower's Right to Perform. If ECVA shall default in the performance of any of ECVA's obligations under this Agreement, the Borrower, without thereby waiving such default, may (but shall not be obligated to) perform the same for the account and at the expense of ECVA, without notice in a case of emergency, and in any other case only if such default continues after the expiration of any applicable grace periods.

23.2 Borrower's Costs. Bills for any reasonable, out-of-pocket expenses incurred by the Borrower in connection with any such performance by it for the account of ECVA, and bills for all costs, expenses and disbursements of every kind and nature whatsoever, including reasonable counsel fees and disbursements, involved in collecting or endeavoring to collect the Base Use Fee or Additional Use Fee, or any part thereof, or enforcing or endeavoring to enforce any rights against ECVA or ECVA's obligations hereunder, under or in connection with this Agreement or pursuant to Legal Requirements, including any such cost, expense and disbursement involved in instituting and prosecuting summary proceedings or in recovering possession of the Premises after default by ECVA or upon the expiration or sooner termination of this Agreement, and interest on all sums advanced by Borrower (at the Interest Rate or the maximum rate permitted by Legal Requirements, whichever is less) may be sent by the Borrower to ECVA monthly, or immediately, at its option, and such amounts shall be due and payable as Additional Use Fee in accordance with the terms of such bills.

ARTICLE XXIV  
**Brokerage**

The Borrower and ECVA each represents and acknowledges to the other that it has not dealt with any real estate broker in consummating this Agreement, and that no conversation or prior negotiations were had with any broker concerning the licensing of the Premises. The Borrower and ECVA each hereby holds the other harmless against any claim for brokerage commission(s) arising out of any dealings, conversations or negotiations had by either with any broker claiming to have dealt the indemnifying Party.

ARTICLE XXV  
**Notices**

Any notices under this Agreement must be in writing and must be sent by (i) personal delivery, (ii) by United States registered or certified mail (postage prepaid), (iii) by electronic mail or facsimile (with a copy sent the same day by one of the other prescribed methods of delivery) or (iv) by an independent overnight courier service, addressed to the addresses specified below or at such other place as a Party may designate to the other Parties by written notice given in accordance with this Section. Notices given by registered or certified mail are deemed effective three (3) Business Days after the Party sending the notice deposits the notice with the United States Post Office. Notices given by electronic mail or facsimile are deemed effective on the Business Day transmitted (or, if transmitted on a day that is not a Business Day, then on the next occurring Business Day). Notices delivered by overnight courier are deemed effective on the next Business Day after the day the Party delivering the notice timely deposits the notice with the courier for overnight (next day) delivery.

**If to Borrower:** JMF-ECVA 2015, LLC  
c/o The James Megellas Foundation, Inc.  
501 E Arizona Avenue  
Buckeye, Arizona 85236  
Attention: President  
Facsimile: ( ) -  
Email: meltoninbuckeye@gmail.com

**With Copies to:** GFDS ECVA NV 1, LLC  
11811 N Tatum Boulevard  
Suite 3031  
Phoenix, Arizona 85028  
Attention: Mr. Gary Aller  
Facsimile: (602) 953-7737  
Email: gary@efdslc.com

**And to:** Quarles & Brady LLP  
Two North Central Avenue  
Phoenix, Arizona 85004  
Attn: Michael J. Ostermeyer  
Facsimile: (414) 978-8956  
Email: michael.ostermeyer@quarles.com

**If to ECVA:** Elko Convention and Visitors Authority  
700 Moren Way  
Elko, Nevada 89801  
Attention: Don Newman  
Facsimile: (775) 738-2420  
Email: don@elkocva.com

**With Copy to:** Robert J. Wines, P.C.  
687 6th Street, #1  
Elko, NV89801  
Attention: Robert J. Wines  
Facsimile: (775) 753-9860  
Email: bobwines@citilink.net

**If to Issuer:** The Industrial Development Authority of the  
Calvin C. Goode Municipal Building City of Phoenix, Arizona  
251 W Washington Street  
9th Floor  
Phoenix, Arizona 85003  
Attention: Executive Director  
Facsimile: (602) 262-7304

**With Copy to:** Kutak Rock LLP  
8601 N. Scottsdale Road, Suite 300,  
Scottsdale, AZ 85253  
Phone: 480-429-4833  
Email: kelly.mcguire@kutakrock.com

Attention: Kelly A. McGuire, Esq.

**If to Bank:**

Alliance Bank of Arizona  
a division of Western Alliance Bank  
3033 W. Ray Road  
Chandler, AZ 85226  
Phone: 480-609-2912  
Email: vnapolitano@alliancebankofarizona.com  
Attention: Victor J. Napolitano, Senior Vice President

**With Copy to:**

Ballard Spahr LLP  
1 E. Washington Street, Suite 2300  
Phoenix, AZ 85004  
Phone: 602-798-5423  
Email: hicksw@ballardspahr.com  
Attention: William A. Hicks III, Esq.

Any notice by either Party hereto, whether required or permissible hereunder, may be given by such Party's then current attorney, which notice, when given by such attorney, shall be deemed equally as effective as if given by such Party directly.

**ARTICLE XXVI**  
**Estoppel Certificates**

Within ten (10) Business Days following any written request which Borrower may make from time to time, ECVA shall execute and deliver to the Borrower, the Bank, any mortgagee or prospective mortgagee, and any purchaser or prospective purchaser of the Premises, a sworn statement certifying: (i) the Commencement Date and the Use Fee Commencement Date; (ii) the fact that this Agreement is unmodified and in full force and effect (or, if there have been modifications to this Agreement, that this Agreement is in full force and effect, as modified, and stating the date and nature of such modifications); (iii) the date to which the Use Fees and other sums payable under this Agreement have been paid; (iv) the fact that there are no current defaults under this Agreement by either the Borrower or ECVA except as specified in ECVA's statement; and (v) such other matters as may be reasonably requested by the Borrower. The Borrower and ECVA intend that any statement delivered pursuant to this ARTICLE XXVI may be relied upon by any mortgagee, trustee, beneficiary or purchaser, and ECVA shall be liable for all loss, cost or expense resulting from the failure of any sale or funding of any loan caused by any material misstatement contained in such estoppel certificate. ECVA irrevocably agrees that if ECVA fails to execute and deliver such certificate within such ten (10) Business Day period, Borrower or the Borrower's beneficiary or agent may execute and deliver such certificate on ECVA's behalf, and that such certificate shall be fully binding on ECVA.

**ARTICLE XXVII**  
**Holdover**

If ECVA, with the Borrower's written consent, remains on or within the Premises after the Expiration Date, ECVA shall occupy the Premises at the Borrower's sufferance, and such holding

over shall not constitute an extension of this Agreement. During such holding over, ECVA shall pay the Use Fee and other charges at the highest monthly rate provided for herein and shall be subject to all conditions, provisions and obligations of this Agreement in effect on the last day of the Term. If ECVA remains on or within the Premises after the Expiration Date without the Borrower's written consent, ECVA's so doing shall be treated as a daily lease at a rate equal to the greater of (i) two (2) times the Base Use Fee then in effect or (ii) the fair market rental value plus Additional Use Fee and other additional charges herein provided (prorated on a daily basis) and shall otherwise be on the terms and conditions set forth in this Agreement as far as applicable. Without limiting the foregoing, ECVA shall also be responsible for, and indemnify and hold the Borrower harmless for, from, and against, all loss, cost and damage suffered by the Borrower (including without limitation loss of use or loss of a user) as a result of any such occupancy after the Expiration Date.

## ARTICLE XXVIII Representations and Warranties

28.1 ECVA. ECVA represents and warrants as follows:

28.1.1 There are no actions, suits or proceedings pending or, to the knowledge of ECVA, threatened against or affecting ECVA, at law or in equity or before any federal, state, municipal or governmental department, commission, board, bureau, agency or instrumentality which would impair ECVA's ability to perform its obligations under this Agreement;

28.1.2 This Agreement has been duly authorized, executed and delivered by ECVA and constitutes the legal, valid and binding obligation of ECVA; and

28.1.3 The consummation of the transactions hereby contemplated and the performance of this Agreement shall not result in any breach or violation of, or constitute a default under any lease, bank loan or credit agreement to which ECVA is a party.

28.2 Borrower. The Borrower represents and warrants as follows:

28.2.1 There are no actions, suits or proceedings pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower, at law or in equity or before any federal, state, municipal or governmental department, commission, board, bureau, agency or instrumentality which would impair the Borrower's ability to perform its obligations under this Agreement;

28.2.2 This Agreement has been duly authorized, executed and delivered by the Borrower and constitutes the legal, valid and binding obligation of the Borrower; and

28.2.3 The consummation of the transactions hereby contemplated and the performance of this Agreement shall not result in any breach or violation of, or constitute a default under any lease, bank loan or credit agreement to which the Borrower is a party.

## ARTICLE XXIX Miscellaneous Provisions

29.1 Liability of Borrower; Transfer of Borrower's Interest.

29.1.1 ECVA agrees to look solely to Borrower's equity interest in the Premises at the time of recovery for recovery of any judgment against Borrower, and agrees that neither the Borrower nor any successor of the Borrower shall be personally liable for any such judgment, or for the payment of any monetary obligation to ECVA. The provision contained in the foregoing sentence is not intended to, and shall not, limit any right that ECVA might otherwise have to obtain injunctive relief against the Borrower or any successor of the Borrower, or to take any action not involving the personal liability of the Borrower or any successor of Borrower to respond in monetary damages from the Borrower's assets other than the Borrower's equity interest in the Premises.

29.1.2 ECVA acknowledges that the Borrower has the right to transfer all or any portion of its interest in the Premises and in this Agreement. ECVA agrees that in the event of any such transfer, the Borrower shall automatically be released from all liability under this Agreement, and ECVA agrees to look solely to such transferee for the performance of Borrower's obligations hereunder accruing after the date of transfer. Such transferee shall be deemed to have fully assumed and be liable for all obligations of this Agreement to be performed by the Borrower, including the return of any balance of any Reserve Amount, and ECVA shall attorn to such transferee. ECVA further acknowledges that the Borrower may assign its interest in this Agreement to any lender as security. ECVA agrees that such an assignment shall not release Borrower from its obligations hereunder and that ECVA shall continue to look to the Borrower for the performance of its obligations hereunder unless and until the Bank succeeds to the Borrower's interest under this Agreement.

29.1.3 Notwithstanding any contrary provision herein, neither the Borrower nor any Borrower Party shall be liable to ECVA or any person claiming under ECVA under any circumstances for injury or damage to, or interference with, ECVA's business, including but not limited to, loss of profits, loss of Use Fees or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring, or for any indirect or consequential damages.

29.1.4 Any repairs or restoration required or permitted to be made by the Borrower under this Agreement may be made during normal business hours, and the Borrower shall have no liability for damages to ECVA for inconvenience, annoyance or interruption of business arising therefrom.

29.2 Recording. The Borrower and ECVA agree not to record this Facilities Use Agreement but will record a memorandum of same.

29.3 Reserved.

29.4 When Agreement Becomes Binding; Entire Agreement. The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or option for, the Premises, and this document shall become effective and binding only upon the execution and delivery hereof by both the Borrower and ECVA. All negotiations, considerations, representations and understandings between the Borrower and ECVA are incorporated herein and this Agreement expressly supersedes any proposals or other written documents relating hereto. The entire agreement between the Parties respecting the Agreement of the Premises and all matters covered or mentioned in the Agreement is contained in this Agreement, which expressly incorporates all of the following:

- Attachment 1.1: Legal Description of the Premises
- Attachment 2.2: Commencement Date Certificate
- Attachment 3.1: Base Use Fee Schedule
- Attachment 6.1: Plans and Specifications
- Schedule 6.5: Development Budget
- Attachment 7.9: Form of Compliance Certificate

This Agreement may not be altered, changed or amended except by an instrument in writing signed by both Parties. This Agreement may be modified or altered only by written agreement between the Borrower and ECVA, and no act or omission of any employee or agent of Borrower shall alter, change or modify any of the provisions hereof.

29.5 Unavoidable Delay. Except as expressly provided in this Agreement, if the Borrower or ECVA is delayed or prevented from performing any of its respective obligations because of strikes, lockouts, labor troubles, inability to procure materials, failure of power, governmental restrictions, litigation which results in an injunction prohibiting or otherwise delaying the continuity of such construction or other acts, or other reasons not within the reasonable control of the Party delayed in performing such obligation (each an “**Unavoidable Delay**”), then the period of such delays shall be deemed added to the time herein provided for the performance of any such obligation and the defaulting Party shall not be liable for losses or damages caused by such delays; *provided, however*, that this Section shall not affect ECVA’s obligation to pay Use Fees or any obligation of the Borrower or ECVA that can be satisfied by the payment of money. An extension of time for any Unavoidable Delay shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause.

29.6 Consent. If ECVA shall request the Borrower’s consent and Borrower shall fail or refuse to give such consent, ECVA shall not be entitled to any damages for any withholding by Borrower of its consent, it being intended that ECVA’s sole remedy shall be an action for specific performance or injunction, and such remedy shall be available only in those cases where the Borrower has expressly agreed in writing not to unreasonably withhold its consent or where as a matter of law the Borrower may not unreasonably withhold its consent. Furthermore, whenever ECVA requests the Borrower’s consent or approval (whether or not provided for herein), ECVA shall pay to the Borrower, on demand, as an Additional Use Fee, any reasonable expenses incurred by the Borrower (including without limitation reasonable attorneys’ fees and costs, if any) in connection therewith.

29.7 PATRIOT Act. As an inducement to the Borrower to enter into this Agreement, ECVA hereby represents and warrants that: (i) ECVA is not, nor is it owned or controlled directly or indirectly by, any person, group, entity or nation named on any list issued by the Office of Foreign Assets Control of the United States Department of the Treasury (“**OFAC**”) pursuant to Executive Order 13224 or any similar list or any law, order, rule or regulation or any Executive Order of the President of the United States as a terrorist, “**Specially Designated National and Blocked Person**” or other banned or blocked person (any such person, group, entity or nation being hereinafter referred to as a “**Prohibited Person**”); (ii) ECVA is not (nor is it owned, controlled, directly or indirectly, by any person, group, entity or nation which is) acting directly or indirectly for or on behalf of any Prohibited Person; and (iii) from and after the effective date of the above-referenced Executive Order, ECVA (and any person, group, or entity which ECVA controls, directly or indirectly) has not knowingly conducted and may not knowingly conduct business, nor has or may ECVA knowingly engage in any transaction or dealing with any Prohibited Person in violation of the U.S. PATRIOT

Act or any OFAC rule or regulation, including without limitation any assignment of this Agreement or any subletting of all or any portion of the Premises or the making or receiving of any contribution of funds, goods or services to or for the benefit of a Prohibited Person in violation of the U.S. PATRIOT Act or any OFAC rule or regulation. In connection with the foregoing, it is expressly understood and agreed that (x) any breach by ECVA of the foregoing representations and warranties shall be deemed an immediate Event of Default by ECVA under Section 21.1 of this Agreement (without the benefit of notice or grace) and shall be covered by the indemnity provisions of Section 8.1, and (y) the representations and warranties contained in this subsection shall be continuing in nature and shall survive the expiration or earlier termination of this Agreement.

29.8 No Partnership. The relationship of the Parties is that of lessor and lessee, and no partnership, joint venture or participation is hereby created.

29.9 Excavation. If an excavation shall be made upon land adjacent to or under the Buildings, or shall be authorized to be made, ECVA shall afford to the person causing or authorized to cause such excavation, license to enter the Premises for the purpose of performing such work as said person shall deem necessary or desirable to preserve and protect the Buildings from injury or damage or to support the same by proper foundations, without any claim for damages or liability against Borrower and without reducing or otherwise affecting ECVA's obligations under this Agreement.

29.10 Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada. If any provisions of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected but rather shall be enforced to the extent permitted by Legal Requirements. The captions, headings and titles in this Agreement are solely for convenience of reference and shall not affect its interpretation. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the Party causing this Agreement to be drafted. Each covenant, agreement, obligation or other provision of this Agreement on ECVA's part to be performed, shall be deemed and construed as a separate and independent covenant of ECVA, not dependent on any other provision of this Agreement. All terms and words used in this Agreement, shall be deemed to include any other number and any other gender as the context may require. Any suit or cause of action to which the Issuer or the Bank may be made a party shall be brought in compliance with the provisions of Section 12.1 of the Financing Agreement.

29.11 Waiver of Jury Trial. ECVA hereby voluntarily and knowingly waives trial by jury, to the extent permitted by Legal Requirements, in any action, proceeding, or counterclaim by either Party against the other Party on any matters whatsoever arising out of or in any way connected with this Agreement, the relationship of the Borrower and ECVA, ECVA's use or occupancy of the Premises, any emergency or statutory remedy, or any act or omission of any Party with respect to this Agreement or the Premises. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court without a jury.

29.12 Independent Covenants. This Agreement shall be construed as though the covenants herein (including, without limitation, ECVA's obligation to pay the Use Fees) between the Borrower and ECVA are independent and not dependent and ECVA hereby expressly waives the benefit of any statute to the contrary and agrees that if Borrower fails to perform its obligations set forth herein,

ECVA shall not be entitled to make any repairs or perform any acts hereunder at the Borrower's expense or to any setoff of the Use Fee or other amounts owing hereunder against the Borrower.

29.13 Successors and Assigns. Except as herein otherwise provided, the terms hereof shall be binding upon and shall inure to the benefit of the successors and assigns, respectively, of the Borrower and ECVA (except in the case of ECVA, however, only such assigns as may be permitted hereunder) and, if ECVA shall be an individual, upon and to his heirs, executors, administrators, successors and permitted assigns. Each term and each provision of this Agreement to be performed by ECVA shall be construed to be both a covenant and a condition. The reference contained to successors and assigns of ECVA is not intended to constitute a consent to assignment by ECVA.

29.14 Joint and Several Liability. If there is more than one (1) person or entity named as grantee hereunder, the obligations of grantee(s) hereunder shall be joint and several obligations of each of the grantees. In accordance with the terms of this Agreement, the Borrower may proceed against any or all grantees in the event of a default hereunder subject to any defenses as may be available to any grantee.

29.15 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original. Executed counterparts of this Agreement may be delivered electronically by facsimile or electronic mail, and such documents shall be effective as original executed instruments.

29.16 Jurisdiction. Subject to Section 12.1 of the Financing Agreement, the Borrower and ECVA hereby consent and submit irrevocably to the jurisdiction of the state and federal courts located in the State of Nevada with respect to the provisions of this Agreement.

*[Signatures begin on next page.]*

IN WITNESS WHEREOF, the Borrower and ECVA have duly executed this Agreement as of the day and year first above written.

ECVA:

ELKO CONVENTION AND VISITORS AUTHORITY,  
a body corporate and politic, and a municipal corporation of  
the State of Nevada

By: 

Name: Don Newman

Title: Executive Director

BORROWER:

JMF-ECVA 2015, LLC,  
a Nevada limited liability company

By: The James Megellas Foundation, Inc.

Its: Sole Member

By: 

Name:

MICHAEL MELTON

Title:

3/24/15

**ATTACHMENT 1.1**  
Legal Description of the Premises

A PORTION OF SECTION 11, TOWNSHIP 34 NORTH, RANGE 55 EAST, MOUNT DIABLO MERIDIAN, CITY OF ELKO, ELKO COUNTY, NEVADA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1 AS SHOWN BY PARCEL MAP #3227, THEREOF AS FILE NO. 695804, IN THE OFFICE OF THE COUNTY RECORDER OF ELKO COUNTY, NEVADA, AND AS AMENDED BY CERTIFICATE OF AMENDMENT RECORDED MARCH 18, 2015 AS DOCUMENT NO. 696066, OFFICIAL RECORDS.

**ATTACHMENT 2.2**  
**Commencement Date Certificate**

This Agreement, made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ between the JMF-ECVA 2015, LLC, a Nevada limited liability company (“**Borrower**”) and ELKO CONVENTION AND VISITORS AUTHORITY, a body corporate and politic, and a municipal corporation of the State of Nevada (“**ECVA**”).

**W I T N E S S E T H :**

**WHEREAS**, by a certain Facilities Use Agreement (hereinafter called “the **Agreement**”), dated as of March 1, 2015, Borrower leased to ECVA the Land and Buildings located at 724 Moren Way in the City of Elko, County of Elko, State of Nevada, and described on Attachment 1.1 of the Agreement (the “**Premises**”); and

**WHEREAS**, ECVA is now in possession of the Premises; and

**WHEREAS**, under the provisions of the Agreement, Borrower and ECVA agreed to execute, acknowledge and deliver to each other an agreement setting forth the Use Fee Commencement Date.

**NOW, THEREFORE**, Borrower and ECVA agree as follows:

1. The Effective Date of the Agreement was March 1, 2015.
2. The Use Fee Commencement Date of the Agreement was January 1, 2016.
3. The Expiration Date of the Term is March 4, 2041.
4. The Base Use Fee as of the date hereof is \$\_\_\_\_\_.
5. The Additional Use Fee payable to Borrower as of the date hereof is \$\_\_\_\_\_.
6. The Agreement is in full force and effect and has not been modified, supplemented or amended in any way.
7. That all terms and conditions to be performed by the Borrower and ECVA under the terms of the Agreement have been satisfied unless noted in an appendix to this Agreement; that as of the date hereof, there are no existing defenses or offsets against the Borrower or ECVA under the Agreement terms; and that no Use Fee has been paid in advance, except as may be provided for in the Agreement and the Use Fee has continued to be paid in accordance with said Agreement since the Use Fee Commencement Date.
8. ECVA is in occupancy of the Premises.

**IN WITNESS WHEREOF**, the Parties hereto have duly executed this Agreement on the day and year first above written.

**ECVA:**

**ELKO CONVENTION AND VISITORS  
AUTHORITY,**

a body corporate and politic, and a municipal corporation  
of the State of Nevada

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**BORROWER:**

**JMF-ECVA 2015, LLC,**

a Nevada limited liability company

By: The James Megellas Foundation, Inc.

Its: Sole Member

By: \_\_\_\_\_

Name:

Title:

**ATTACHMENT 3.1**  
**Base Use Fee Schedule**

[See attached]

| Period                                   | Base Use Fee    | Payment Schedule               |
|--|-----------------|--------------------------------|
| Facilities Use Agreement Payment         | \$ 3,000,000.00 | March 27, 2015 \$ 3,000,000.00 |
| Use Fee Commencement Date-March 31, 2016 | \$ 183,998.56   | January 1, 2016 \$ 42,616.90   |
|  |                 | February 1, 2016 \$ 47,127.22  |
|  |                 | March 1, 2016 \$ 47,127.22     |
|  |                 | April 1, 2016 \$ 47,127.22     |
| April 1, 2016-March 31, 2017             | \$ 565,526.64   | May 1, 2016 \$ 47,127.22       |
|  |                 | June 1, 2016 \$ 47,127.22      |
|  |                 | July 1, 2016 \$ 47,127.22      |
|  |                 | August 1, 2016 \$ 47,127.22    |
|  |                 | September 1, 2016 \$ 47,127.22 |
|  |                 | October 1, 2016 \$ 47,127.22   |
|  |                 | November 1, 2016 \$ 47,127.22  |
|  |                 | December 1, 2016 \$ 47,127.22  |
|  |                 | January 1, 2017 \$ 47,127.22   |
|  |                 | February 1, 2017 \$ 47,127.22  |
|  |                 | March 1, 2017 \$ 47,127.22     |
|  |                 | April 1, 2017 \$ 47,127.22     |
|  |                 | May 1, 2017 \$ 47,127.22       |
|  |                 | June 1, 2017 \$ 47,127.22      |
|  |                 | July 1, 2017 \$ 47,127.22      |
|  |                 | August 1, 2017 \$ 47,127.22    |
| April 1, 2017-March 31, 2018             | \$ 565,526.64   | September 1, 2017 \$ 47,127.22 |
|  |                 | October 1, 2017 \$ 47,127.22   |
|  |                 | November 1, 2017 \$ 47,127.22  |
|  |                 | December 1, 2017 \$ 47,127.22  |
|  |                 | January 1, 2018 \$ 47,127.22   |
|  |                 | February 1, 2018 \$ 47,127.22  |
|  |                 | March 1, 2018 \$ 47,127.22     |
|  |                 | April 1, 2018 \$ 47,127.22     |
|  |                 | May 1, 2018 \$ 47,127.22       |
|  |                 | June 1, 2018 \$ 47,127.22      |
|  |                 | July 1, 2018 \$ 47,127.22      |
|  |                 | August 1, 2018 \$ 47,127.22    |
| April 1, 2018-March 31, 2019             | \$ 565,526.64   | September 1, 2018 \$ 47,127.22 |
|  |                 | October 1, 2018 \$ 47,127.22   |
|  |                 | November 1, 2018 \$ 47,127.22  |
|  |                 | December 1, 2018 \$ 47,127.22  |
|  |                 | January 1, 2019 \$ 47,127.22   |
|  |                 | February 1, 2019 \$ 47,127.22  |
|  |                 | March 1, 2019 \$ 47,127.22     |
|  |                 | April 1, 2019 \$ 47,127.22     |

Note: The Base Use Fee does not include the  
Additional Use Fee (Para. 3.2)

| Period                       | Base Use Fee  | Payment Schedule               |
|------------------------------|---------------|--------------------------------|
| April 1, 2019-March 31, 2020 | \$ 565,526.64 | May 1, 2019 \$ 47,127.22       |
|                              |               | June 1, 2019 \$ 47,127.22      |
|                              |               | July 1, 2019 \$ 47,127.22      |
|                              |               | August 1, 2019 \$ 47,127.22    |
|                              |               | September 1, 2019 \$ 47,127.22 |
|                              |               | October 1, 2019 \$ 47,127.22   |
|                              |               | November 1, 2019 \$ 47,127.22  |
|                              |               | December 1, 2019 \$ 47,127.22  |
|                              |               | January 1, 2020 \$ 47,127.22   |
|                              |               | February 1, 2020 \$ 47,127.22  |
|                              |               | March 1, 2020 \$ 47,127.22     |
|                              |               | April 1, 2020 \$ 47,127.22     |
|                              |               | May 1, 2020 \$ 47,127.22       |
| April 1, 2020-March 31, 2021 | \$ 565,526.64 | June 1, 2020 \$ 47,127.22      |
|                              |               | July 1, 2020 \$ 47,127.22      |
|                              |               | August 1, 2020 \$ 47,127.22    |
|                              |               | September 1, 2020 \$ 47,127.22 |
|                              |               | October 1, 2020 \$ 47,127.22   |
|                              |               | November 1, 2020 \$ 47,127.22  |
|                              |               | December 1, 2020 \$ 47,127.22  |
|                              |               | January 1, 2021 \$ 47,127.22   |
|                              |               | February 1, 2021 \$ 47,127.22  |
|                              |               | March 1, 2021 \$ 47,127.22     |
|                              |               | April 1, 2021 \$ 47,127.22     |
|                              |               | May 1, 2021 \$ 47,127.22       |
|                              |               | June 1, 2021 \$ 47,127.22      |
| April 1, 2021-March 31, 2022 | \$ 565,526.64 | July 1, 2021 \$ 47,127.22      |
|                              |               | August 1, 2021 \$ 47,127.22    |
|                              |               | September 1, 2021 \$ 47,127.22 |
|                              |               | October 1, 2021 \$ 47,127.22   |
|                              |               | November 1, 2021 \$ 47,127.22  |
|                              |               | December 1, 2021 \$ 47,127.22  |
|                              |               | January 1, 2022 \$ 47,127.22   |
|                              |               | February 1, 2022 \$ 47,127.22  |
|                              |               | March 1, 2022 \$ 47,127.22     |
|                              |               | April 1, 2022 \$ 47,127.22     |

Note: The Base Use Fee does not include the Additional Use Fee (Para. 3.2)

| Period                       | Base Use Fee  | Payment Schedule               |
|------------------------------|---------------|--------------------------------|
| April 1, 2022-March 31, 2023 | \$ 565,526.64 | May 1, 2022 \$ 47,127.22       |
|                              |               | June 1, 2022 \$ 47,127.22      |
|                              |               | July 1, 2022 \$ 47,127.22      |
|                              |               | August 1, 2022 \$ 47,127.22    |
|                              |               | September 1, 2022 \$ 47,127.22 |
|                              |               | October 1, 2022 \$ 47,127.22   |
|                              |               | November 1, 2022 \$ 47,127.22  |
|                              |               | December 1, 2022 \$ 47,127.22  |
|                              |               | January 1, 2023 \$ 47,127.22   |
|                              |               | February 1, 2023 \$ 47,127.22  |
|                              |               | March 1, 2023 \$ 47,127.22     |
|                              |               | April 1, 2023 \$ 47,127.22     |
|                              |               | May 1, 2023 \$ 47,127.22       |
| April 1, 2023-March 31, 2024 | \$ 565,526.64 | June 1, 2023 \$ 47,127.22      |
|                              |               | July 1, 2023 \$ 47,127.22      |
|                              |               | August 1, 2023 \$ 47,127.22    |
|                              |               | September 1, 2023 \$ 47,127.22 |
|                              |               | October 1, 2023 \$ 47,127.22   |
|                              |               | November 1, 2023 \$ 47,127.22  |
|                              |               | December 1, 2023 \$ 47,127.22  |
|                              |               | January 1, 2024 \$ 47,127.22   |
|                              |               | February 1, 2024 \$ 47,127.22  |
|                              |               | March 1, 2024 \$ 47,127.22     |
|                              |               | April 1, 2024 \$ 47,127.22     |
|                              |               | May 1, 2024 \$ 47,127.22       |
|                              |               | June 1, 2024 \$ 47,127.22      |
|                              |               | July 1, 2024 \$ 47,127.22      |
| April 1, 2024-March 31, 2025 | \$ 565,526.64 | August 1, 2024 \$ 47,127.22    |
|                              |               | September 1, 2024 \$ 47,127.22 |
|                              |               | October 1, 2024 \$ 47,127.22   |
|                              |               | November 1, 2024 \$ 47,127.22  |
|                              |               | December 1, 2024 \$ 47,127.22  |
|                              |               | January 1, 2025 \$ 47,127.22   |
|                              |               | February 1, 2025 \$ 47,127.22  |
|                              |               | March 1, 2025 \$ 47,127.22     |
|                              |               | April 1, 2025 \$ 47,127.22     |

Note: The Base Use Fee does not include the Additional Use Fee (Para. 3.2)

| Period                       | Base Use Fee  | Payment Schedule               |
|------------------------------|---------------|--------------------------------|
| April 1, 2025-March 31, 2026 | \$ 565,526.64 | May 1, 2025 \$ 47,127.22       |
|                              |               | June 1, 2025 \$ 47,127.22      |
|                              |               | July 1, 2025 \$ 47,127.22      |
|                              |               | August 1, 2025 \$ 47,127.22    |
|                              |               | September 1, 2025 \$ 47,127.22 |
|                              |               | October 1, 2025 \$ 47,127.22   |
|                              |               | November 1, 2025 \$ 47,127.22  |
|                              |               | December 1, 2025 \$ 47,127.22  |
|                              |               | January 1, 2026 \$ 47,127.22   |
|                              |               | February 1, 2026 \$ 47,127.22  |
|                              |               | March 1, 2026 \$ 47,127.22     |
|                              |               | April 1, 2026 \$ 47,127.22     |
| April 1, 2026-March 31, 2027 | \$ 565,526.64 | May 1, 2026 \$ 47,127.22       |
|                              |               | June 1, 2026 \$ 47,127.22      |
|                              |               | July 1, 2026 \$ 47,127.22      |
|                              |               | August 1, 2026 \$ 47,127.22    |
|                              |               | September 1, 2026 \$ 47,127.22 |
|                              |               | October 1, 2026 \$ 47,127.22   |
|                              |               | November 1, 2026 \$ 47,127.22  |
|                              |               | December 1, 2026 \$ 47,127.22  |
|                              |               | January 1, 2027 \$ 47,127.22   |
|                              |               | February 1, 2027 \$ 47,127.22  |
|                              |               | March 1, 2027 \$ 47,127.22     |
|                              |               | April 1, 2027 \$ 47,127.22     |
| April 1, 2027-March 31, 2028 | \$ 565,526.64 | May 1, 2027 \$ 47,127.22       |
|                              |               | June 1, 2027 \$ 47,127.22      |
|                              |               | July 1, 2027 \$ 47,127.22      |
|                              |               | August 1, 2027 \$ 47,127.22    |
|                              |               | September 1, 2027 \$ 47,127.22 |
|                              |               | October 1, 2027 \$ 47,127.22   |
|                              |               | November 1, 2027 \$ 47,127.22  |
|                              |               | December 1, 2027 \$ 47,127.22  |
|                              |               | January 1, 2028 \$ 47,127.22   |
|                              |               | February 1, 2028 \$ 47,127.22  |
|                              |               | March 1, 2028 \$ 47,127.22     |
|                              |               | April 1, 2028 \$ 47,127.22     |

Note: The Base Use Fee does not include the Additional Use Fee (Para. 3.2)

| Period                       | Base Use Fee  | Payment Schedule               |
|------------------------------|---------------|--------------------------------|
| April 1, 2028-March 31, 2029 | \$ 565,526.64 | May 1, 2028 \$ 47,127.22       |
|                              |               | June 1, 2028 \$ 47,127.22      |
|                              |               | July 1, 2028 \$ 47,127.22      |
|                              |               | August 1, 2028 \$ 47,127.22    |
|                              |               | September 1, 2028 \$ 47,127.22 |
|                              |               | October 1, 2028 \$ 47,127.22   |
|                              |               | November 1, 2028 \$ 47,127.22  |
|                              |               | December 1, 2028 \$ 47,127.22  |
|                              |               | January 1, 2029 \$ 47,127.22   |
|                              |               | February 1, 2029 \$ 47,127.22  |
|                              |               | March 1, 2029 \$ 47,127.22     |
|                              |               | April 1, 2029 \$ 47,127.22     |
| April 1, 2029-March 31, 2030 | \$ 565,526.64 | May 1, 2029 \$ 47,127.22       |
|                              |               | June 1, 2029 \$ 47,127.22      |
|                              |               | July 1, 2029 \$ 47,127.22      |
|                              |               | August 1, 2029 \$ 47,127.22    |
|                              |               | September 1, 2029 \$ 47,127.22 |
|                              |               | October 1, 2029 \$ 47,127.22   |
|                              |               | November 1, 2029 \$ 47,127.22  |
|                              |               | December 1, 2029 \$ 47,127.22  |
|                              |               | January 1, 2030 \$ 47,127.22   |
|                              |               | February 1, 2030 \$ 47,127.22  |
|                              |               | March 1, 2030 \$ 47,127.22     |
|                              |               | April 1, 2030 \$ 47,127.22     |
| April 1, 2030-March 31, 2031 | \$ 565,526.64 | May 1, 2030 \$ 47,127.22       |
|                              |               | June 1, 2030 \$ 47,127.22      |
|                              |               | July 1, 2030 \$ 47,127.22      |
|                              |               | August 1, 2030 \$ 47,127.22    |
|                              |               | September 1, 2030 \$ 47,127.22 |
|                              |               | October 1, 2030 \$ 47,127.22   |
|                              |               | November 1, 2030 \$ 47,127.22  |
|                              |               | December 1, 2030 \$ 47,127.22  |
|                              |               | January 1, 2031 \$ 47,127.22   |
|                              |               | February 1, 2031 \$ 47,127.22  |
|                              |               | March 1, 2031 \$ 47,127.22     |
|                              |               | April 1, 2031 \$ 47,127.22     |

Note: The Base Use Fee does not include the Additional Use Fee (Para. 3.2)

| Period                       | Base Use Fee  | Payment Schedule               |
|------------------------------|---------------|--------------------------------|
| April 1, 2031-March 31, 2032 | \$ 565,526.64 | May 1, 2031 \$ 47,127.22       |
|                              |               | June 1, 2031 \$ 47,127.22      |
|                              |               | July 1, 2031 \$ 47,127.22      |
|                              |               | August 1, 2031 \$ 47,127.22    |
|                              |               | September 1, 2031 \$ 47,127.22 |
|                              |               | October 1, 2031 \$ 47,127.22   |
|                              |               | November 1, 2031 \$ 47,127.22  |
|                              |               | December 1, 2031 \$ 47,127.22  |
|                              |               | January 1, 2032 \$ 47,127.22   |
|                              |               | February 1, 2032 \$ 47,127.22  |
|                              |               | March 1, 2032 \$ 47,127.22     |
|                              |               | April 1, 2032 \$ 47,127.22     |
| April 1, 2032-March 31, 2033 | \$ 565,526.64 | May 1, 2032 \$ 47,127.22       |
|                              |               | June 1, 2032 \$ 47,127.22      |
|                              |               | July 1, 2032 \$ 47,127.22      |
|                              |               | August 1, 2032 \$ 47,127.22    |
|                              |               | September 1, 2032 \$ 47,127.22 |
|                              |               | October 1, 2032 \$ 47,127.22   |
|                              |               | November 1, 2032 \$ 47,127.22  |
|                              |               | December 1, 2032 \$ 47,127.22  |
|                              |               | January 1, 2033 \$ 47,127.22   |
|                              |               | February 1, 2033 \$ 47,127.22  |
|                              |               | March 1, 2033 \$ 47,127.22     |
|                              |               | April 1, 2033 \$ 47,127.22     |
| April 1, 2033-March 31, 2034 | \$ 565,526.64 | May 1, 2033 \$ 47,127.22       |
|                              |               | June 1, 2033 \$ 47,127.22      |
|                              |               | July 1, 2033 \$ 47,127.22      |
|                              |               | August 1, 2033 \$ 47,127.22    |
|                              |               | September 1, 2033 \$ 47,127.22 |
|                              |               | October 1, 2033 \$ 47,127.22   |
|                              |               | November 1, 2033 \$ 47,127.22  |
|                              |               | December 1, 2033 \$ 47,127.22  |
|                              |               | January 1, 2034 \$ 47,127.22   |
|                              |               | February 1, 2034 \$ 47,127.22  |
|                              |               | March 1, 2034 \$ 47,127.22     |
|                              |               | April 1, 2034 \$ 47,127.22     |

Note: The Base Use Fee does not include the Additional Use Fee (Para. 3.2)

| Period                       | Base Use Fee  | Payment Schedule               |
|------------------------------|---------------|--------------------------------|
| April 1, 2034-March 31, 2035 | \$ 565,526.64 | May 1, 2034 \$ 47,127.22       |
|                              |               | June 1, 2034 \$ 47,127.22      |
|                              |               | July 1, 2034 \$ 47,127.22      |
|                              |               | August 1, 2034 \$ 47,127.22    |
|                              |               | September 1, 2034 \$ 47,127.22 |
|                              |               | October 1, 2034 \$ 47,127.22   |
|                              |               | November 1, 2034 \$ 47,127.22  |
|                              |               | December 1, 2034 \$ 47,127.22  |
|                              |               | January 1, 2035 \$ 47,127.22   |
|                              |               | February 1, 2035 \$ 47,127.22  |
|                              |               | March 1, 2035 \$ 47,127.22     |
|                              |               | April 1, 2035 \$ 47,127.22     |
|                              |               | May 1, 2035 \$ 47,127.22       |
| April 1, 2035-March 31, 2036 | \$ 565,526.64 | June 1, 2035 \$ 47,127.22      |
|                              |               | July 1, 2035 \$ 47,127.22      |
|                              |               | August 1, 2035 \$ 47,127.22    |
|                              |               | September 1, 2035 \$ 47,127.22 |
|                              |               | October 1, 2035 \$ 47,127.22   |
|                              |               | November 1, 2035 \$ 47,127.22  |
|                              |               | December 1, 2035 \$ 47,127.22  |
|                              |               | January 1, 2036 \$ 47,127.22   |
|                              |               | February 1, 2036 \$ 47,127.22  |
|                              |               | March 1, 2036 \$ 47,127.22     |
|                              |               | April 1, 2036 \$ 47,127.22     |
|                              |               | May 1, 2036 \$ 47,127.22       |
|                              |               | June 1, 2036 \$ 47,127.22      |
|                              |               | July 1, 2036 \$ 47,127.22      |
| April 1, 2036-March 31, 2037 | \$ 565,526.64 | August 1, 2036 \$ 47,127.22    |
|                              |               | September 1, 2036 \$ 47,127.22 |
|                              |               | October 1, 2036 \$ 47,127.22   |
|                              |               | November 1, 2036 \$ 47,127.22  |
|                              |               | December 1, 2036 \$ 47,127.22  |
|                              |               | January 1, 2037 \$ 47,127.22   |
|                              |               | February 1, 2037 \$ 47,127.22  |
|                              |               | March 1, 2037 \$ 47,127.22     |
|                              |               | April 1, 2037 \$ 47,127.22     |

Note: The Base Use Fee does not include the Additional Use Fee (Para. 3.2)

| Period                       | Base Use Fee  | Payment Schedule               |
|------------------------------|---------------|--------------------------------|
| April 1, 2037-March 31, 2038 | \$ 565,526.64 | May 1, 2037 \$ 47,127.22       |
|                              |               | June 1, 2037 \$ 47,127.22      |
|                              |               | July 1, 2037 \$ 47,127.22      |
|                              |               | August 1, 2037 \$ 47,127.22    |
|                              |               | September 1, 2037 \$ 47,127.22 |
|                              |               | October 1, 2037 \$ 47,127.22   |
|                              |               | November 1, 2037 \$ 47,127.22  |
|                              |               | December 1, 2037 \$ 47,127.22  |
|                              |               | January 1, 2038 \$ 47,127.22   |
|                              |               | February 1, 2038 \$ 47,127.22  |
|                              |               | March 1, 2038 \$ 47,127.22     |
|                              |               | April 1, 2038 \$ 47,127.22     |
|                              |               | May 1, 2038 \$ 47,127.22       |
| April 1, 2038-March 31, 2039 | \$ 565,526.64 | June 1, 2038 \$ 47,127.22      |
|                              |               | July 1, 2038 \$ 47,127.22      |
|                              |               | August 1, 2038 \$ 47,127.22    |
|                              |               | September 1, 2038 \$ 47,127.22 |
|                              |               | October 1, 2038 \$ 47,127.22   |
|                              |               | November 1, 2038 \$ 47,127.22  |
|                              |               | December 1, 2038 \$ 47,127.22  |
|                              |               | January 1, 2039 \$ 47,127.22   |
|                              |               | February 1, 2039 \$ 47,127.22  |
|                              |               | March 1, 2039 \$ 47,127.22     |
|                              |               | April 1, 2039 \$ 47,127.22     |
|                              |               | May 1, 2039 \$ 47,127.22       |
|                              |               | June 1, 2039 \$ 47,127.22      |
|                              |               | July 1, 2039 \$ 47,127.22      |
| April 1, 2039-March 31, 2040 | \$ 565,526.64 | August 1, 2039 \$ 47,127.22    |
|                              |               | September 1, 2039 \$ 47,127.22 |
|                              |               | October 1, 2039 \$ 47,127.22   |
|                              |               | November 1, 2039 \$ 47,127.22  |
|                              |               | December 1, 2039 \$ 47,127.22  |
|                              |               | January 1, 2040 \$ 47,127.22   |
|                              |               | February 1, 2040 \$ 47,127.22  |
|                              |               | March 1, 2040 \$ 47,127.22     |
|                              |               | April 1, 2040 \$ 47,127.22     |

Note: The Base Use Fee does not include the Additional Use Fee (Para. 3.2)

| Period                       | Base Use Fee  | Payment Schedule               |
|------------------------------|---------------|--------------------------------|
| April 1, 2040-March 31, 2041 | \$ 471,272.20 | May 1, 2040 \$ 47,127.22       |
|                              |               | June 1, 2040 \$ 47,127.22      |
|                              |               | July 1, 2040 \$ 47,127.22      |
|                              |               | August 1, 2040 \$ 47,127.22    |
|                              |               | September 1, 2040 \$ 47,127.22 |
|                              |               | October 1, 2040 \$ 47,127.22   |
|                              |               | November 1, 2040 \$ 47,127.22  |
|                              |               | December 1, 2040 \$ 47,127.22  |
|                              |               | January 1, 2041 \$ 47,127.22   |
|                              |               | February 1, 2041 \$ 47,127.22  |
|                              |               | March 1, 2041 \$ -             |
|                              |               | April 1, 2041 \$ -             |

Note: The Base Use Fee does not include the  
Additional Use Fee (Para. 3.2)

**ATTACHMENT 6.1**  
Plans and Specifications

[See attached]

| Project Manual            |   |           |            |
|---------------------------|---|-----------|------------|
| Specification/<br>Drawing | Description                                   | Spec Date | Stamp Date |
| Division 01               | General Requirements                          |           |            |
| Division 02               | Existing Conditions/Site                      |           |            |
| Division 03               | Concrete                                      |           |            |
| 033000                    | Cast-In-Place Concrete                        | 23-Jan-15 | 23-Jan-15  |
| Division 04               | Masonry                                       |           |            |
| 042200                    | Concrete Unit Masonry                         | 23-Jan-15 | 23-Jan-15  |
| Division 05               | Metals  |           |            |
| 051200                    | Structural Steel Framing                      | 23-Jan-15 | 23-Jan-15  |
| 052100                    | Steel Joist Framing                           | 23-Jan-15 | 23-Jan-15  |
| 054000                    | Cold-Formed Metal Framing                     | 23-Jan-15 | 23-Jan-15  |
| 055000                    | Metal Fabrications                            | 23-Jan-15 | 23-Jan-15  |
| Division 06               | Wood, Plastics, and Composites                |           |            |
| 061000                    | Rough Carpentry                               | 23-Jan-15 | 23-Jan-15  |
| 061800                    | Sheathing                                     | 23-Jan-15 | 23-Jan-15  |
| 064116                    | Plastic-Laminate-Faced Architectural Cabinets | 23-Jan-15 | 23-Jan-15  |
| 066400                    | Plastic Paneling                              | 23-Jan-15 | 23-Jan-15  |
| Division 07               | Thermal and Moisture Protection               |           |            |
| 071113                    | Bituminous Dampproofing                       | 23-Jan-15 | 23-Jan-15  |
| 071326                    | Self-adhering Sheet Waterproofing             | 23-Jan-15 | 23-Jan-15  |
| 071900                    | Water Repellents                              | 23-Jan-15 | 23-Jan-15  |
| 072100                    | Thermal Insulation                            | 23-Jan-15 | 23-Jan-15  |
| 074213.53                 | Metal Soffit Panels                           | 23-Jan-15 | 23-Jan-15  |
| 075423                    | Thermoplastic Polyolefin (TPO) Roofing        | 23-Jan-15 | 23-Jan-15  |
| 076200                    | Sheet Metal Flashing & Trim                   | 23-Jan-15 | 23-Jan-15  |
| 078413                    | Penetration Firestopping                      | 23-Jan-15 | 23-Jan-15  |
| 079200                    | Joist Sealants                                | 23-Jan-15 | 23-Jan-15  |
| Division 08               | Openings                                      |           |            |
| 081113                    | Hollow Metal Doors & Frames                   | 23-Jan-15 | 23-Jan-15  |
| 081416                    | Flush Wood Doors                              | 23-Jan-15 | 23-Jan-15  |
| 083113                    | Access Doors & Frames                         | 23-Jan-15 | 23-Jan-15  |
| 083323                    | Overhead Ceiling Doors                        | 23-Jan-15 | 23-Jan-15  |
| 084113                    | Aluminum-Framed Entrances & Storefronts       | 23-Jan-15 | 23-Jan-15  |
| 087100                    | Door Hardware                                 | 23-Jan-15 | 23-Jan-15  |
| 088000                    | Glazing                                       | 23-Jan-15 | 23-Jan-15  |
| Division 09               | Finishes                                      |           |            |
| 092216                    | Non-Structural Metal Framing                  | 23-Jan-15 | 23-Jan-15  |
| 092400                    | Portland Cement Plastering                    | 23-Jan-15 | 23-Jan-15  |
| 092900                    | Gypsum Board                                  | 23-Jan-15 | 23-Jan-15  |
| 093013                    | Ceramic Tiling                                | 23-Jan-15 | 23-Jan-15  |
| 095113                    | Acoustical Panel Ceilings                     | 23-Jan-15 | 23-Jan-15  |
| 096513                    | Resilient Base & Accessories                  | 23-Jan-15 | 23-Jan-15  |
| 096813                    | Tile Carpeting                                | 23-Jan-15 | 23-Jan-15  |
| 098433                    | Sound-Absorbing Wall Units                    | 23-Jan-15 | 23-Jan-15  |
| 099113                    | Exterior Painting                             | 23-Jan-15 | 23-Jan-15  |
| 099123                    | Interior Painting                             | 23-Jan-15 | 23-Jan-15  |
| 099900                    | High Performance Coatings                     | 23-Jan-15 | 23-Jan-15  |
| Division 10               | Specialties                                   |           |            |
| 101419                    | Dimensional Letter Signage                    | 23-Jan-15 | 23-Jan-15  |
| 101423                    | Panel Signage                                 | 23-Jan-15 | 23-Jan-15  |
| 101426                    | Post & Panel / Pylon Signage                  | 23-Jan-15 | 23-Jan-15  |
| 102113.13                 | Metal Toilet Compartments                     | 23-Jan-15 | 23-Jan-15  |
| 102239                    | Folding Panel Partitions                      | 23-Jan-15 | 23-Jan-15  |
| 102801                    | Wall & Door Protection                        | 23-Jan-15 | 23-Jan-15  |
| 102800                    | Toilet, Bath, and Laundry Accessories         | 23-Jan-15 | 23-Jan-15  |
| 101423                    | Panel Signage                                 | 23-Jan-15 | 23-Jan-15  |
| 102400                    | Equipment Screens                             | 23-Jan-15 | 23-Jan-15  |
| 104400                    | Fire-Protection Specialties                   | 23-Jan-15 | 23-Jan-15  |
| 104413                    | Fire Protection Cabinets                      | 23-Jan-15 | 23-Jan-15  |
| 104416                    | Fire Extinguishers                            | 23-Jan-15 | 23-Jan-15  |
| Division 11               | Equipment                                     |           |            |
| Division 12               | Furnishings                                   |           |            |
| 122413                    | Roller Window Shades                          | 23-Jan-15 | 23-Jan-15  |
| 123623.13                 | Plastic-Laminate-Clad Countertops             | 23-Jan-15 | 23-Jan-15  |

| Specification/<br>Drawing | Description  | Spec Date | Stamp Date |
|---------------------------|--|-----------|------------|
| 123661                    | Simulated Stone Countertops                              | 23-Jan-15 | 23-Jan-15  |
| 124813                    | Entrance Floor Mats and Frames                           | 23-Jan-15 | 23-Jan-15  |
| 129300                    | Site Furnishings   | 23-Jan-15 | 23-Jan-15  |
| Division 13               | Special Construction                                     |           |            |
| Division 14               | Conveying Equipment                                      |           |            |
| Division 21               | Fire Suppression   |           |            |
| Division 22               | Plumbing   |           |            |
| 220503                    | Pipes & Tubes for Plumbing Piping & Equipment            | 23-Jan-15 | 23-Jan-15  |
| 220523                    | General-Duty Valves for Plumbing Piping                  | 23-Jan-15 | 23-Jan-15  |
| 220529                    | Hangers & Supports for Plumbing Piping & Equipment       | 23-Jan-15 | 23-Jan-15  |
| 220548                    | Vibration & Seismic Controls for Plumbing & Equipment    | 23-Jan-15 | 23-Jan-15  |
| 220553                    | Identification for Plumbing Piping & Equipment           | 23-Jan-15 | 23-Jan-15  |
| 220700                    | Plumbing Insulation                                      | 23-Jan-15 | 23-Jan-15  |
| 223400                    | Fuel-Fired Domestic Water Heaters                        | 23-Jan-15 | 23-Jan-15  |
| 224000                    | Plumbing Fixtures  | 23-Jan-15 | 23-Jan-15  |
| Division 23               | Heating, Ventilating, and Air Conditioning               |           |            |
| 230503                    | Pipes & Tubes for HVAC Piping & Equipment                | 23-Jan-15 | 23-Jan-15  |
| 230516                    | Expansion Fittings & Loops for HVAC Piping               | 23-Jan-15 | 23-Jan-15  |
| 230523                    | General-Duty valves for HVAC Piping                      | 23-Jan-15 | 23-Jan-15  |
| 230529                    | Hangers & Supports for HVAC Piping & Equipment           | 23-Jan-15 | 23-Jan-15  |
| 230548                    | Seismic Controls for HVAC Piping & Equipment             | 23-Jan-15 | 23-Jan-15  |
| 230553                    | Identification for HVAC Piping & Equipment               | 23-Jan-15 | 23-Jan-15  |
| 230583                    | Testing, Adjusting & Balancing for HVAC                  | 23-Jan-15 | 23-Jan-15  |
| 230700                    | HVAC Insulation  | 23-Jan-15 | 23-Jan-15  |
| 230800                    | Commissioning of HVAC                                    | 23-Jan-15 | 23-Jan-15  |
| 230923                    | Direct-Digital Control System for HVAC                   | 23-Jan-15 | 23-Jan-15  |
| 232116                    | Hydronic Piping Specialties                              | 23-Jan-15 | 23-Jan-15  |
| 232123                    | Hydronic Pumps   | 23-Jan-15 | 23-Jan-15  |
| 232300                    | Refrigerant Piping                                       | 23-Jan-15 | 23-Jan-15  |
| 232500                    | HVAC Water Treatment                                     | 23-Jan-15 | 23-Jan-15  |
| 233100                    | HVAC Ducts & Casings                                     | 23-Jan-15 | 23-Jan-15  |
| 233300                    | Air Duct Accessories                                     | 23-Jan-15 | 23-Jan-15  |
| 233400                    | HVAC Fans  | 23-Jan-15 | 23-Jan-15  |
| 233600                    | Air Terminal Units                                       | 23-Jan-15 | 23-Jan-15  |
| 233700                    | Air Outlets & Inlets                                     | 23-Jan-15 | 23-Jan-15  |
| 233100                    | Vents & Flues  | 23-Jan-15 | 23-Jan-15  |
| 235233                    | Copper Finned-Tube Boilers                               | 23-Jan-15 | 23-Jan-15  |
| 235500                    | Fuel-Fired Heaters                                       | 23-Jan-15 | 23-Jan-15  |
| 235700                    | Heat Exchangers for HVAC                                 | 23-Jan-15 | 23-Jan-15  |
| 238103                    | Packaged Rooftop Air Conditioning Units - Small Capacity | 23-Jan-15 | 23-Jan-15  |
| 238126                    | Split-System Air Conditioners                            | 23-Jan-15 | 23-Jan-15  |
| 238200                    | Convection Heating Units                                 | 23-Jan-15 | 23-Jan-15  |
| Division 25               | Integrated Automation                                    |           |            |
| Division 26               | Electrical   |           |            |
| 260100                    | Basic Electrical Requirements                            | 23-Jan-15 | 23-Jan-15  |
| 260519                    | Low-Voltage Electrical Power Conductors & Cables         | 23-Jan-15 | 23-Jan-15  |
| 260523                    | Control-Voltage Electrical Power Cables                  | 23-Jan-15 | 23-Jan-15  |
| 260526                    | Grounding & Bonding for Electrical Systems               | 23-Jan-15 | 23-Jan-15  |
| 260529                    | Hangers & Supports for Electrical Systems                | 23-Jan-15 | 23-Jan-15  |
| 260533                    | Raceway & Boxes for Electrical Systems                   | 23-Jan-15 | 23-Jan-15  |
| 260544                    | Sleeves & Sleeve Seals for Electrical Raceways & Cabling | 23-Jan-15 | 23-Jan-15  |
| 260548                    | Vibration & Seismic Control for Electrical Systems       | 23-Jan-15 | 23-Jan-15  |
| 260553                    | Identification for Electrical Systems                    | 23-Jan-15 | 23-Jan-15  |
| 260573                    | Overcurrent Protective Device Coordination Study         | 23-Jan-15 | 23-Jan-15  |
| 260923                    | Lighting Control Devices                                 | 23-Jan-15 | 23-Jan-15  |
| 260933                    | Central Dimming Controls                                 | 23-Jan-15 | 23-Jan-15  |
| 262200                    | Low-Voltage Transformers                                 | 23-Jan-15 | 23-Jan-15  |
| 262413                    | Switchboards   | 23-Jan-15 | 23-Jan-15  |
| 262416                    | Panelboards  | 23-Jan-15 | 23-Jan-15  |
| 262726                    | Wiring Devices   | 23-Jan-15 | 23-Jan-15  |
| 262813                    | Fuses  | 23-Jan-15 | 23-Jan-15  |
| 262816                    | Enclosed Switches  | 23-Jan-15 | 23-Jan-15  |
| 265100                    | Interior Lighting  | 23-Jan-15 | 23-Jan-15  |
| 265800                    | Exterior Lighting  | 23-Jan-15 | 23-Jan-15  |
| Division 27               | Communications   |           |            |

| Specification/<br>Drawing | Description                       | Spec Date    | Stamp Date |
|---------------------------|-----------------------------------|--------------|------------|
| Division 28               | Electronic Safety and Security    |              |            |
| Division 31               | Earthwork                         |              |            |
| 311000                    | Site Clearing                     | 23-Jan-15    | 23-Jan-15  |
| 312000                    | Earth Moving                      | 23-Jan-15    | 23-Jan-15  |
| Division 32               | Exterior Improvements             |              |            |
| 321216                    | Asphalt Paving                    | 23-Jan-15    | 23-Jan-15  |
| 321313                    | Concrete Paving                   | 23-Jan-15    | 23-Jan-15  |
| 321373                    | Concrete Paving Joint Sealants    | 23-Jan-15    | 23-Jan-15  |
| 321723                    | Pavement Markings                 | 23-Jan-15    | 23-Jan-15  |
| 321400                    | Unit Paving                       | 23-Jan-15    | 23-Jan-15  |
| 321413                    | Permeable Interlocking Pavers     | 23-Jan-15    | 23-Jan-15  |
| 328400                    | Landscape Irrigation              | 23-Jan-15    | 23-Jan-15  |
| 328200                    | Turf & Grasses                    | 23-Jan-15    | 23-Jan-15  |
| 329300                    | Plants                            | 23-Jan-15    | 23-Jan-15  |
| Division 33               | Utilities                         |              |            |
| 330500                    | Common Work Results for Utilities | 23-Jan-15    | 23-Jan-15  |
| 334100                    | Storm Utility Drainage Piping     | 23-Jan-15    | 23-Jan-15  |
| 334600                    | Subdrainage                       | 23-Jan-15    | 23-Jan-15  |
| Drawings                  |                                   |              |            |
| Specification/<br>Drawing | Description                       | Drawing Date | Stamp Date |
| D.0                       | Cover                             | 10-Dec-14    | 6-Feb-15   |
| C-1.00                    | Title Sheet                       | 23-Jan-15    | 27-Jan-15  |
| C-2.00                    | Demolition Plan                   | 23-Jan-15    | 27-Jan-15  |
| C-3.00                    | Horizontal Control Plan           | 23-Jan-15    | 27-Jan-15  |
| C-4.00                    | Grading Plan                      | 23-Jan-15    | 27-Jan-15  |
| C-5.00                    | Utility Plan                      | 23-Jan-15    | 27-Jan-15  |
| C-6.00                    | Parking & Paving Plan             | 23-Jan-15    | 27-Jan-15  |
| C-7.00                    | Erosion Control Plan              | 23-Jan-15    | 27-Jan-15  |
| C-8.00                    | Fire Apparatus / Fire Flow Plan   | 23-Jan-15    | 27-Jan-15  |
| C-9.00                    | Detail Sheet                      | 23-Jan-15    | 27-Jan-15  |
| C-10.00                   | Detail Sheet                      | 23-Jan-15    | 27-Jan-15  |
| C-11.00                   | Detail Sheet                      | 23-Jan-15    | 27-Jan-15  |
| C-12.00                   | Detail Sheet                      | 23-Jan-15    | 27-Jan-15  |
| L1.00                     | Landscape Material Plan           | 23-Jan-15    | 23-Jan-15  |
| L1.10                     | Landscape Plan                    | 23-Jan-15    | 23-Jan-15  |
| L1.50                     | Landscape Details                 | 23-Jan-15    | 23-Jan-15  |
| L1.51                     | Landscape Details                 | 23-Jan-15    | 23-Jan-15  |
| L2.00                     | Irrigation Plan                   | 23-Jan-15    | 23-Jan-15  |
| L2.50                     | Irrigation Details                | 23-Jan-15    | 23-Jan-15  |
| A0.1                      | Code Plans                        | 23-Jan-15    | 27-Jan-15  |
| A0.2                      | Code Plans                        | 23-Jan-15    | 27-Jan-15  |
| A1.0                      | Site Plan                         | 23-Jan-15    | 27-Jan-15  |
| A1.1                      | Site Details                      | 23-Jan-15    | 27-Jan-15  |
| A2.0                      | First Floor Plan                  | 23-Jan-15    | 27-Jan-15  |
| A2.1                      | Finish Plan                       | 23-Jan-15    | 27-Jan-15  |
| A2.2                      | Reflected Ceiling Plan            | 23-Jan-15    | 27-Jan-15  |
| A2.3                      | Roof Plan                         | 23-Jan-15    | 27-Jan-15  |
| A3.0                      | Door / Room Schedules             | 23-Jan-15    | 27-Jan-15  |
| A3.1                      | Frame Types                       | 23-Jan-15    | 27-Jan-15  |
| A3.2                      | Wall / Roof Assembly Types        | 23-Jan-15    | 27-Jan-15  |
| A4.0                      | Exterior Elevations               | 23-Jan-15    | 27-Jan-15  |
| A4.1                      | Building Sections                 | 23-Jan-15    | 27-Jan-15  |
| A5.0                      | Wall Sections                     | 23-Jan-15    | 27-Jan-15  |
| A5.1                      | Wall Sections                     | 23-Jan-15    | 27-Jan-15  |
| A6.0                      | Interior Elevations               | 23-Jan-15    | 27-Jan-15  |
| A6.1                      | Interior Elevations               | 23-Jan-15    | 27-Jan-15  |
| A6.2                      | Interior Elevations               | 23-Jan-15    | 27-Jan-15  |
| A7.0                      | Window & Door Details             | 23-Jan-15    | 27-Jan-15  |
| A7.1                      | Exterior Details                  | 23-Jan-15    | 27-Jan-15  |
| A8.0                      | Interior Details                  | 23-Jan-15    | 27-Jan-15  |
| A8.1                      | Interior Details                  | 23-Jan-15    | 27-Jan-15  |
| S0.01                     | Structural Cover Sheet            | 23-Jan-15    | 23-Jan-15  |

| Specification/<br>Drawing | Description                       | Spec Date | Stamp Date |
|---------------------------|-----------------------------------|-----------|------------|
| S0.02                     | Structural Design Notes           | 23-Jan-15 | 23-Jan-15  |
| S0.03                     | Structural Design Notes           | 23-Jan-15 | 23-Jan-15  |
| S0.04                     | Structural Design Notes           | 23-Jan-15 | 23-Jan-15  |
| S1.01                     | Foundation Plan                   | 23-Jan-15 | 23-Jan-15  |
| S1.02                     | Roof Framing Plan                 | 23-Jan-15 | 23-Jan-15  |
| S2.01                     | Enlarged Plans                    | 23-Jan-15 | 23-Jan-15  |
| S4.01                     | Schedules                         | 23-Jan-15 | 23-Jan-15  |
| S4.02                     | Schedules - Masonry Plaster/Intel | 23-Jan-15 | 23-Jan-15  |
| S5.01                     | Foundation Typical Details        | 23-Jan-15 | 23-Jan-15  |
| S5.02                     | Concrete Typical Details          | 23-Jan-15 | 23-Jan-15  |
| S5.11                     | Masonry Typical Details           | 23-Jan-15 | 23-Jan-15  |
| S5.12                     | Masonry Typical Details           | 23-Jan-15 | 23-Jan-15  |
| S5.21                     | Structural Steel Typical Details  | 23-Jan-15 | 23-Jan-15  |
| S5.22                     | Structural Steel Typical Details  | 23-Jan-15 | 23-Jan-15  |
| S5.31                     | Light Gauge Typical Details       | 23-Jan-15 | 23-Jan-15  |
| S5.32                     | Light Gauge Typical Details       | 23-Jan-15 | 23-Jan-15  |
| S6.01                     | Foundation Details                | 23-Jan-15 | 23-Jan-15  |
| S7.01                     | Framing Details                   | 23-Jan-15 | 23-Jan-15  |
| S7.02                     | Framing Details                   | 23-Jan-15 | 23-Jan-15  |
| M0.1                      | Legend & Schedules                | 23-Jan-15 | 23-Jan-15  |
| M0.2                      | Mechanical Schedule               | 23-Jan-15 | 23-Jan-15  |
| M2.1                      | Mechanical Plan                   | 23-Jan-15 | 23-Jan-15  |
| M2.2                      | Mechanical Roof Plan              | 23-Jan-15 | 23-Jan-15  |
| M2.3                      | Mechanical Roof Plan              | 23-Jan-15 | 23-Jan-15  |
| M2.4                      | Mechanical Piping Plan            | 23-Jan-15 | 23-Jan-15  |
| M4.0                      | Mechanical Piping Diagram         | 23-Jan-15 | 23-Jan-15  |
| M5.0                      | Mechanical Controls               | 23-Jan-15 | 23-Jan-15  |
| M5.1                      | Mechanical Controls               | 23-Jan-15 | 23-Jan-15  |
| M5.2                      | Mechanical Controls               | 23-Jan-15 | 23-Jan-15  |
| M5.3                      | Mechanical Controls               | 23-Jan-15 | 23-Jan-15  |
| M5.4                      | Mechanical Controls               | 23-Jan-15 | 23-Jan-15  |
| M5.5                      | Mechanical Controls               | 23-Jan-15 | 23-Jan-15  |
| M6.0                      | Mechanical Details                | 23-Jan-15 | 23-Jan-15  |
| M6.1                      | Mechanical Details                | 23-Jan-15 | 23-Jan-15  |
| M6.2                      | Mechanical Details                | 23-Jan-15 | 23-Jan-15  |
| M6.3                      | Mechanical Details                | 23-Jan-15 | 23-Jan-15  |
| M6.4                      | Mechanical Details                | 23-Jan-15 | 23-Jan-15  |
| M6.5                      | Mechanical Details                | 23-Jan-15 | 23-Jan-15  |
| M6.6                      | Mechanical Details                | 23-Jan-15 | 23-Jan-15  |
| M6.7                      | Mechanical Details                | 23-Jan-15 | 23-Jan-15  |
| M6.8                      | Mechanical Details                | 23-Jan-15 | 23-Jan-15  |
| P0.1                      | Plumbing Legend, Schedule         | 23-Jan-15 | 23-Jan-15  |
| P2.1                      | Plumbing Plan                     | 23-Jan-15 | 23-Jan-15  |
| P2.2                      | Enlarged Plumbing Plans           | 23-Jan-15 | 23-Jan-15  |
| P2.3                      | Enlarged Plumbing Plans           | 23-Jan-15 | 23-Jan-15  |
| P2.4                      | Plumbing Roof Plan                | 23-Jan-15 | 23-Jan-15  |
| P6.0                      | Plumbing Details                  | 23-Jan-15 | 23-Jan-15  |
| E0.0                      | Electrical Cover Sheet            | 23-Jan-15 | 27-Jan-15  |
| E1.0                      | Site Electrical Plan              | 23-Jan-15 | 27-Jan-15  |
| E1.1                      | Site Details                      | 23-Jan-15 | 27-Jan-15  |
| E2.0L                     | Lighting Plan                     | 23-Jan-15 | 27-Jan-15  |
| E2.0M                     | Mechanical Power Plan             | 23-Jan-15 | 27-Jan-15  |
| E2.0P                     | Power Plan                        | 23-Jan-15 | 27-Jan-15  |
| E2.0S                     | Systems Plan                      | 23-Jan-15 | 27-Jan-15  |
| E2.1E                     | Enlarged Electrical Plans         | 23-Jan-15 | 27-Jan-15  |
| E2.2E                     | Roof Electrical Plan              | 23-Jan-15 | 27-Jan-15  |
| E3.0                      | Electrical Schedules              | 23-Jan-15 | 27-Jan-15  |
| E4.0                      | Electrical Details                | 23-Jan-15 | 27-Jan-15  |
| E5.0                      | One Line Diagram                  | 23-Jan-15 | 27-Jan-15  |

## ATTACHMENT 7.9

### Form of Compliance Certificate

#### FIXED CHARGE COVERAGE RATIO

ELKO CONVENTION AND VISITORS AUTHORITY to maintain minimum Fixed Charge Coverage Ratio of 1.25 to 1, measured annually at fiscal year-end.

|     |   |         |
|-----|---|---------|
| 1.  | Consolidated Net Profit (Changes in Net Position)                             | \$      |
| 2.  | Depreciation Expense (+)  | \$      |
| 3.  | Amortization Expense (+)  | \$      |
| 4.  | Interest Expense (+)  | \$      |
| 5.  | Rent Expense (+)  | \$      |
| 6.  | Cash Flow Available for Fixed Charges (No. 1 + No. 2 + No. 3 + No. 4 + No. 5) | \$      |
| 7.  | Interest Expense (+)  | \$      |
| 8.  | Rent Expense (+)  | \$      |
| 9.  | Scheduled Principal Payments on Long-term Debt (+)                            | \$      |
| 10. | Scheduled Payments on Capitalized Lease Obligations (+)                       | \$      |
| 11. | Sum of Fixed Charges (No. 7 + No. 8 + No. 9 + No. 10)                         | \$      |
| 12. | Fixed Charge Coverage Ratio (No. 6 / No. 11)                                  | #DIV/0! |

In accordance with the requirements of the Facilities Use Agreement for Elko Convention and Visitors Authority New Event Center by and between JMF-ECVA 2015, LLC ("Grantor"); and ELKO CONVENTION AND VISITORS AUTHORITY ("Grantee") dated as the 1<sup>st</sup> day of March, 2015; the undersigned certifies that no Event of Default has occurred and that Grantee is in compliance with all terms and conditions, unless otherwise disclosed, as of the below date. Further Grantee certifies that the information provided as of the fiscal period referenced above is true and correct and has been prepared in compliance with the requirements of the Facilities Use Agreement.

#### GRANTEE

\_\_\_\_\_  
Authorized Signer

\_\_\_\_\_  
Authorized Signer's Name and Title

\_\_\_\_\_  
Date

**SCHEDULE 6.5**

**Development Budget**

|                                     |                  |
|-------------------------------------|------------------|
| Lump Sum GMP Design Build Agreement | \$10,289,834     |
| Developer and Financing Costs       | \$1,342,772      |
| Contingency                         | <u>\$367,394</u> |
| Total                               | \$12,000,000     |

**FINANCING AGREEMENT**

**among**

**THE INDUSTRIAL DEVELOPMENT AUTHORITY  
OF THE CITY OF PHOENIX, ARIZONA**

**and**

**JMF-ECVA 2015, LLC**

**and**

**WESTERN ALLIANCE BANK**

**Relating to:**

**\$9,000,000**

**THE INDUSTRIAL DEVELOPMENT AUTHORITY  
OF THE CITY OF PHOENIX, ARIZONA  
REVENUE BONDS  
(JMF-ECVA CONVENTION CENTER EXPANSION PROJECT)  
SERIES 2015**

**Dated as of March 1, 2015**

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## FINANCING AGREEMENT

This **FINANCING AGREEMENT** is made and entered into as of the 1st day of March 1, 2015 (this “**Financing Agreement**”), among **THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF PHOENIX, ARIZONA** (the “**Authority**”), a nonprofit corporation designated as a political subdivision of the State of Arizona (the “**State**”), incorporated with the approval of the City of Phoenix, Arizona (the “**City**”), pursuant to the provisions of the Constitution of the State of Arizona and under Title 35, Chapter 5, Arizona Revised Statutes (the “**Act**”), **JMF-ECVA 2015, LLC**, a Nevada limited liability company (the “**Borrower**”), the sole member of which is The James Megellas Foundation, an Arizona nonprofit corporation, and **WESTERN ALLIANCE BANK**, an Arizona corporation (the “**Bank**”).

### WITNESSETH:

**WHEREAS**, the Authority exists under the Act; and

**WHEREAS**, pursuant to the Act, the Authority is authorized to make loans for the purpose of financing or refinancing the acquisition, construction, improvement or equipping of “projects” (as that term is defined in the Act), including facilities owned or operated by a nonprofit organization described in Section 501(c) of the Internal Revenue Code of 1986 (the “**Code**”), and is authorized to issue its bonds to provide funds for such financing or refinancing; and

**WHEREAS**, the Borrower is a Nevada limited liability company, the sole member of which is The James Megellas Foundation, Inc. (the “**Sole Member**”), an Arizona nonprofit corporation and organization designated as exempt from taxation under Section 501(c)(3) of the Code; and

**WHEREAS**, the Borrower now wishes (i) to finance and/or refinance the acquisition, construction, improvement, operation and/or equipping of land and buildings to be owned or operated by the Borrower, including a facility consisting of approximately 28,834 square feet (the “**Facility**”) to be constructed on approximately 3.47 acres of land located at 724 Moren Way, Elko, Nevada, which land (the “**Land**”) will be leased from the Elko Convention and Visitors Authority (“**ECVA**”) pursuant to a Ground Lease dated as of March 1, 2015 (the “**Ground Lease**”); (ii) to pay capitalized interest on the Bonds, if any; and (iii) to pay certain issuance expenses (collectively, the “**Project**”); and

**WHEREAS**, the Facility will be leased by the Borrower to ECVA pursuant to a Facilities Use Agreement dated as of March 1, 2015 (the “**Facilities Use Agreement**”); and

**WHEREAS**, the Authority deems it desirable and in keeping with its purposes under the Act to provide the funds therefor by the issuance and sale of \$9,000,000 The Industrial Development Authority of the City of Phoenix, Arizona Revenue Bonds (JMF-ECVA Convention Center Expansion Project), Series 2015 (the “**Bonds**”) and the loan of the proceeds thereof to the Borrower on the terms and conditions set forth in this Financing Agreement (the “**Loan**”); and

**WHEREAS**, the Bank has agreed to purchase the Bonds from the Authority on the terms and conditions set forth in this Financing Agreement; and

**WHEREAS**, the Bonds will be secured by, among other things, a Leasehold Deed of Trust, Security Agreement, Assignment of Rents and Leases, and Fixture Filing, dated as of March 1, 2015 (the “**Deed of Trust**”), and an Assignment of Development Agreement, dated as of March 1, 2015 (the “**Assignment of Development Agreement**”), each made by the Borrower, as trustor, to and for the benefit of the Bank, and which will be recorded in the real property records of Elko County, Nevada.

**NOW, THEREFORE**, in consideration of the respective provisions, covenants, conditions and agreements herein contained, it is hereby agreed as follows:

## **ARTICLE I**

### **DEFINITIONS; INTERPRETATION**

**Section 1.1. Definitions.** For the purpose hereof unless the context otherwise requires, the following words and phrases shall have the following meanings:

“**Act of Bankruptcy**” shall have occurred if:

(a) The Borrower shall file a voluntary petition in bankruptcy, or shall be adjudicated bankrupt or insolvent, or shall file any petition or agreement seeking any reorganization, incorporation, readjustment, liquidation or similar relief for itself under any present or future statutes, laws or regulations or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the Borrower or of all or any substantial part of its properties, or shall make any general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due; or

(b) A petition shall be filed against the Borrower seeking any reorganization, composition, readjustment, liquidation or similar relief under any present or future Law and shall remain undismissed or unstayed for an aggregate period of 60 days (whether or not consecutive), or if any trustee, receiver or liquidator of the Borrower or of all or any substantial part of its properties shall be appointed without the consent or acquiescence of the Borrower and such appointment shall remain undismissed or unstayed for an aggregate period of 60 days (whether or not consecutive).

“**Administrative Costs**” means the Authority’s Annual Administrative Fee and the Authority’s costs and expenses associated with the performance of its duties pursuant hereto, including but not limited to, travel expenses, filing fees, legal fees, post-closing costs, costs of collection, if applicable, and reasonable costs and expenses associated with any extraordinary services to be provided by the Authority pursuant hereto.

“**Annual Administrative Fee**” means, with respect to each series of Bonds issued pursuant to this Financing Agreement, (i) the annual fee for the Authority’s administrative expenses in an amount equal to 7.5 basis points (0.075%) of the aggregate principal amount of

each series of Bonds Outstanding as of each January 1, with a minimum of \$3,000 per series, to be paid to the Authority in advance, on or before each January 15, without demand, commencing January 15, 2016 as set forth herein, or such other amount as may be agreed to in writing by the Authority; provided, however, the Annual Administrative Fee due on or before January 15, 2016, shall be calculated on the entire principal amount of the Bonds (\$9,000,000), whether or not Outstanding on January 1, 2016 and (ii) the amount of any Late Fees, each to be paid to the Authority at the Remittance Address.

**“Assignment of Project Development Agreement”** means the Assignment and Security Agreement in and to the Rights Under Project Development Agreement dated as of March 1, 2015, pursuant to which the Borrower assigns to the Bank all of its rights and interests in the Project Development Agreement.

**“Authority”** means The Industrial Development Authority of the City of Phoenix, Arizona, and its successors.

**“Authority Documents”** means this Financing Agreement and the Tax Certificate.

**“Authority Indemnified Party”** or **“Authority Indemnified Parties”** means the Authority, its past, present, and future directors, officers, counsel, advisors, agents, employees, and Executive Director and the City, its past, present, and future members of the City Council, employees, and agents, individually and collectively.

**“Authority Representative”** means and includes each of the President, the Vice President, the Secretary or the Treasurer of the Authority, or such other person as the Authority may designate to act on its behalf by written certificate furnished to the Borrower and the Bank containing the specimen signature of such person and signed on behalf of the Authority by its President or Vice President.

**“Authority’s Unassigned Rights”** means (i) all rights of the Authority hereunder (a) to inspect books and records, (b) to give or receive notices, approvals, consents, requests or other communications, (c) to limitation of liability, indemnification of liability, and (d) payment or reimbursement of fees, costs or expenses, including the Closing Fee and the Annual Administrative Fee, (ii) indemnification from liability by the Borrower, and (iii) security for the Borrower’s indemnification obligation.

**“Authorized Denominations”** means (i) in connection with the delivery of the Bonds to the Bank, a single bond in the denomination of \$9,000,000 and (ii) thereafter for each successor bond purchaser, any denomination which at the time of transfer or exchange is equal to \$100,000 or any greater amount in increments of \$5,000.

**“Bank”** means Western Alliance Bank and its successors and assigns with respect hereto. The Bank is the initial purchaser of the Bonds.

**“Board”** means the Board of Directors of the Authority.

**“Bond Counsel”** means a firm of attorneys of national reputation experienced in the field of municipal bonds whose opinions are generally accepted by purchasers of municipal bonds,

and to the extent the Authority is to act or refrain from acting in reliance thereon, acceptable to the Authority.

**“Bond Documents”** means, collectively, this Financing Agreement, the Bonds, the Security Documents, the Facilities Use Agreement, the Ground Lease, the Tax Certificate and all other documents executed and delivered in connection with the authorization, issuance, sale and delivery of the Bonds.

**“Bond Fund”** means the Bond Fund created by the Borrower as identified by the Borrower’s internal accounting methods related to its Operating Account pursuant to Section 5.1 hereof.

**“Bond Resolution”** means the Authority’s resolution authorizing and approving the issuance of the Bonds.

**“Bondowner”** or **“Owner”** means the Person in whose name the Bond is registered.

**“Bondowner Representative”** means the Person designated as Bondowner Representative by a written appointment delivered to the Borrower and the Authority by a majority of Owners.

**“Borrower”** means JMF-ECVA 2015, LLC, a Nevada limited liability company, and its successors and assigns.

**“Borrower Documents”** means this Financing Agreement, the Facilities Use Agreement, the Ground Lease, the Security Documents, the Tax Certificate and each of the other agreements, certificates, contracts or instruments to be executed by the Borrower in connection with the issuance of the Bonds or the financing of the Project.

**“Borrower Representative”** means and any person at the time designated by the Sole Member to act on behalf of the Borrower by written certificate furnished to the Authority and the Bank, containing the specimen signature of such person and signed on behalf of the Borrower by the Sole Member’s President. Such certificate may designate an alternate or alternates who shall have the same authority, duties and powers as such Borrower Representative.

**“Business Day”** means any day of the year on which (i) banking business is transacted in Ohio, the state in which the Bank has its principal corporate office, or in the State of Arizona, and (ii) the New York Stock Exchange is not closed.

**“Calculated Payments”** means the monthly payments of interest only which would be due based on the principal amount of the Loan being prepaid on the Prepayment Date and assuming an interest rate per annum equal to the difference (if such difference is greater than zero) between the (1) applicable interest rate on the Bonds, and (2) the Yield Maintenance Treasury Rate.

**“Change in Law”** means (a) the adoption of any law, rule, regulation, or treaty (including any rules or regulations issued under or implementing any existing law) after the date of this Financing Agreement, (b) any change in any law, rule, regulation or treaty or in the

interpretation or application thereof by any Governmental Authority after the date of this Financing Agreement or (c) compliance by the Bank (or by any applicable lending office of the Bank) with any written request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Financing Agreement; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder, issued in connection therewith or in implementation thereof, and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States of America or foreign regulatory authorities, shall in each case be deemed to be a “Change in Law” regardless of the date enacted, adopted, issued or implemented.

“**City**” means the City of Phoenix, Arizona.

“**Closing Date**” means March 27, 2015.

“**Closing Fee**” means, with respect to each series of Bonds issued hereunder, the Authority’s closing fee in an amount equal to two basis points (0.02%) of the aggregate principal amount of each series of Bonds, with a minimum of \$1,000, payable on the Closing Date for each series of Bonds.

“**Code**” means the Internal Revenue Code of 1986, and the rulings and regulations (including temporary and proposed regulations) promulgated thereunder or applicable regulations promulgated under the Internal Revenue Code of 1954, as amended.

“**Construction Advance**” has the meaning set forth in the Construction Advance Addendum.

“**Construction Advance Addendum**” means that certain Construction Advance Addendum attached hereto as **Exhibit D** and incorporated by reference herein.

“**Deed of Trust**” means the Leasehold Deed of Trust, Security Agreement, Assignment of Rents and Leases, and Fixture Filing, dated as of March 1, 2015, and entered into by the Borrower, as the same may be amended or supplemented from time to time in accordance with the provisions of this Financing Agreement.

“**Default Interest Rate**” means a rate per annum equal to 10 percent (10.00%).

“**Default Prepayment**” means a prepayment of all or any portion of the principal amount of the Loan made concurrently with or after the occurrence of any Event of Default or an acceleration of the Debt and the Maturity Date under any circumstances, including, without limitation, a prepayment occurring in connection with a reinstatement of the Deed of Trust provided by statute under foreclosure proceedings or exercise of a power of sale, any statutory right of redemption exercised by the Borrower or any other party having a statutory right to redeem or prevent foreclosure, any sale in foreclosure, or under exercise of a power of sale or otherwise.

**“Determination of Taxability”** means, as a result of an Event of Taxability (i) a determination by the Commissioner or any District Director of the Internal Revenue Service, (ii) a private ruling or Technical Advice Memorandum concerning the Bonds issued by the National Office of the Internal Revenue Service in which the Bank and the Borrower were afforded the opportunity to participate, (iii) a determination by any court of competent jurisdiction, (iv) the enactment of legislation or (v) receipt by the Bank, the Authority or the Borrower of an opinion of Bond Counsel to the effect that the interest on the Bonds is includable in gross income for federal income tax purposes of any holder or any former holder of all or a portion of the Bonds, other than a holder who is a “substantial user” of the Project or a “related person” (as such terms are defined in Section 147(a) of the Code); provided, however, that no such Determination of Taxability under clause (i) or (iii) shall be deemed to have occurred if the Authority (at the sole expense of the Borrower), the Bank (at the sole expense of the Borrower) or the Borrower is contesting such determination, has elected to contest such determination in good faith and is proceeding with all applicable dispatch to prosecute such contest until the earliest of (a) a final determination from which no appeal may be taken with respect to such determination, (b) abandonment of such appeal by the Authority or the Borrower, as the case may be, or (c) one year from the date of initial determination.

**“Discount Rate”** means the rate which, when compounded monthly, is equivalent to the Yield Maintenance Treasury Rate, when compounded semi-annually.

**“Disbursement Request”** has the meaning set forth in the Construction Advance Addendum.

**“Environmental Requirements”** means all applicable federal, State of Nevada, regional or local laws, statutes, rules, regulations or ordinances, concerning public health, safety or the environment, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1976, 42 U.S.C. §§ 6901 *et seq.*, Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601, *et seq.* (“**CERCLA**”), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Solid and Hazardous Waste Amendments of 1984, 42 U.S.C. §§ 6901, *et seq.*, the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251, *et seq.*, the Toxic Substances Control Act of 1976, 15 U.S.C. §§ 2601, *et seq.*, the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §§ 11001, *et seq.*, the Clean Air Act of 1966, as amended, 42 U.S.C. §§ 7401, *et seq.*, the National Environmental Policy Act of 1975, 42 U.S.C. §§ 4321 *et seq.*, the Rivers and Harbors Act of 1899, 33 U.S.C. §§ 401 *et seq.*, the Endangered Species Act of 1973, as amended 16 U.S.C. §§ 1531, *et seq.*, the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651, *et seq.*, the Safe Drinking Water Act of 1974, as amended 42 U.S.C. §§ 300(f), *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1810 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.*, the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 9601 *et seq.*, the clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, the Clean Air Act, 42 U.S.C. §§ 7412 *et seq.* and all rules, regulations, policies and guidance documents promulgated or published thereunder, and any State of Nevada, regional, parish or local Law relating to public health, safety or the environment, as any such laws may be amended,

modified or supplemented and any regulations promulgated pursuant to any of the foregoing, including, without limitation those relating to:

- (a) releases, discharges, emissions or disposals to air, water, land or groundwater;
- (b) the withdrawal or use of groundwater;
- (c) the use, handling, or disposal of polychlorinated biphenyls (“PCBs”), asbestos or urea formaldehyde;
- (d) the transportation, treatment, storage, disposal, release or management of hazardous substances or materials (including, without limitation, petroleum, its derivatives, by-products or other hydrocarbons), and any other solid, liquid, or gaseous substance, exposure to which is prohibited, limited or regulated, or may or could pose a hazard to the health and safety of the occupants of the ECVA convention center facilities and/or expansion Facility or any property adjacent to or surrounding the ECVA convention center facilities and/or expansion Facility;
- (e) the exposure of persons to toxic, hazardous, or other controlled, prohibited or regulated substances;
- (f) any Regulated Chemical; and
- (g) any applicable federal, state, regional, county or local laws, statutes, rules, regulations, ordinances, decrees or orders relating to (i) releases, discharges, emissions or disposals into air, water, land or groundwater, (ii) the withdrawal or use of groundwater, (iii) the use, handling or disposal of polychlorinated biphenyls (PCBs), mercury, lead based paint, asbestos or urea formaldehyde, (iv) the treatment, storage, disposal or management of hazardous substances (including petroleum, its derivatives, by products or other hydrocarbons) and any other solid, liquid or gaseous substance, exposure to which is prohibited, limited or regulated or may or could pose a hazard to the health and safety of the occupants of the Property or the property adjacent to or surrounding the Property, (v) the exposure of persons to toxic, hazardous or other controlled, prohibited or regulated substances, or (vi) the transportation, storage, disposal, management or release of gaseous or liquid substances and any regulation, order, injunction, judgment, declaration, notice or demand issued thereunder.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, and the regulations thereunder, in each case as in effect from time to time. Section references to ERISA herein correspond to sections of ERISA as in effect at the Closing Date and any corresponding future sections of ERISA amendatory thereof, supplemental thereto or substituted therefor.

“Event of Default” means any one of those events set forth in Section 9.1 hereof.

**“Event of Taxability”** means the failure of the Authority or the Borrower to observe any covenant, agreement or representation herein, or the enactment of legislation, which failure or enactment results in a Determination of Taxability.

**“Expense Fund”** means the Expense Fund created by the Borrower as identified by the Borrower’s internal accounting methods related to its Operating Account pursuant to Section 5.1 hereof.

**“Facilities Use Agreement”** means the Facilities Use Agreement dated as of March 1, 2015, between ECVA, as grantee and the Borrower, as grantor, as amended or supplemented.

**“Fiscal Year”** means the Borrower’s fiscal year, which currently begins on July 1 and ends on June 30 of each calendar year.

**“Governmental Authority”** means any nation or government, any state, department, agency or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government, and any corporation or other entity owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing.

**“Government Obligations”** means direct obligations of, or obligations the full and timely payment of the principal and interest on which is unconditionally guaranteed by, the United States of America.

**“Ground Lease”** means the Ground Lease dated as of March 1, 2015, between ECVA, as landlord, and the Borrower, as tenant, as amended or supplemented.

**“Initial Administrative Fee”** means the initial fee for the administrative expenses of the Authority in an amount equal to 7.5 basis points (0.075%) of the aggregate principal of the Bonds on the Closing Date, with a minimum of \$3,000, such amount to be prorated from the Closing Date to January 1, 2016.

**“IRS”** means Internal Revenue Service or any successor thereto.

**“Late Fee”** means ten percent (10%) of any payment due to the Authority hereunder that is received by the Authority more than 15 calendar days following the date it is due.

**“Law”** means any treaty or any federal, regional, state and local law, statute, rule, ordinance, regulation, code, license, authorization, decision, injunction, interpretation, order or decree of any court or other Governmental Authority.

**“LIBOR”** means the London Interbank Offered Rate at which banks borrow unsecured funds from other banks in the London, England wholesale money market. LIBOR is calculated and published daily by Thomson Reuters on behalf of the British Banker's Association after 11:00 a.m. each banking day in London, England. If the 10 Year LIBOR Swap Rate ceases to exist, the Bank will select, and notify the Borrower of, an alternative index that measures similar rates over comparable time periods.

**“Lien”** means any lien, security interest or other charge or encumbrance of any kind, or any other type of preferential arrangement, including without limitation the lien or retained security title of a conditional vendor.

**“Loan”** means the outstanding principal balance of the Bonds drawn down pursuant to this Financing Agreement, the proceeds of which are loaned to the Borrower, together with all interest accrued and unpaid thereon and all other sums (including the Yield Maintenance Premium, if applicable) due to the Bank in respect of the thereof pursuant to this Agreement or any other Borrower Documents.

**“Loan to Value Ratio”** shall be the aggregate total amount of the Bonds outstanding divided by the market value of the Property (market value shall be determined on the basis of an appraisal of the Property in form and substance acceptable to the Bank).

**“Margin Stock”** has the meaning assigned to such term in Regulation U promulgated by the Board of Directors of the Federal Reserve System, as now and hereafter from time to time in effect.

**“Material Adverse Effect”** means an event or occurrence which adversely affects in a material manner (a) the assets, liabilities, condition (financial or otherwise), business or operations of the Borrower or the Authority; (b) the ability of the Borrower or the Authority to carry out their respective businesses as of the date of this Financing Agreement or as proposed herein to be conducted or to meet or perform their respective obligations under this Financing Agreement or any of the other Bond Documents on a timely basis; (c) the validity or enforceability of this Financing Agreement or any other Bond Document; or (d) the rights or remedies of the Bondowners under this Financing Agreement or any other Bond Document.

**“Maturity Date”** means March 5, 2026, or the date prior to such date on which all the principal of the Bonds is paid to the Bondowner.

**“Maximum Interest Rate”** means an interest rate equal to the lesser of (i) the maximum rate of interest permitted by applicable Law and (ii) ten percent (10%) per annum.

**“Net Proceeds”** means, when used with respect to any insurance payment or condemnation award, the gross proceeds thereof less the expenses (including attorneys’ fees and trust administration fees) incurred in the collection of such gross proceeds.

**“Operating Account”** the Borrower’s operating account held at the Bank and identified as “JMF-ECVA 2015, LLC Operating Account” with Account number #8010910720.

**“Opinion of Counsel”** means a written opinion of an attorney or firm of attorneys acceptable to the Bondowner and, to the extent the Authority is to act or refrain from acting in reliance thereon, the Authority, and who (except as otherwise expressly provided herein) may be counsel for the Authority or the Borrower, provided that such attorney or firm of attorneys may not be an employee of the Borrower.

**“Outstanding”** when used with reference to the Bonds, means, as of any date of determination, all Bonds theretofore authenticated and delivered except:

(a) Bonds theretofore canceled by the Authority or delivered to the Authority for cancellation;

(b) Bonds in lieu of which other Bonds have been issued pursuant to the provisions hereof relating to Bonds destroyed, stolen or lost; and

(c) For purposes of any consent or other action to be taken hereunder by the Owner of a specified percentage in principal amount of Bonds, Bonds held by or for the account of the Authority, the Borrower, or any Person controlling, controlled by, or under common control with, any of them.

**“Patriot Act”** means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Title III of Pub. L. 107 56 (signed into law October 26, 2001).

**“Payment Date”** means the fifth (5<sup>th</sup>) day of each month (or, if such day is not a Business Day, the next succeeding Business Day), commencing May 5, 2015, the Maturity Date and any such earlier Redemption Date on which the amounts owed hereunder are paid or repaid in full.

**“Permitted Investments”** means (to the extent permitted by Law), subject to the written approval of the Bank:

(a) Government Obligations.

(b) Obligations of the following federal agencies so long as such obligations are backed by the full faith and credit of the United States of America:

- (i) U.S. Export-Import Bank,
- (ii) Rural Economic Community Development Administration,
- (iii) Federal Financing Bank,
- (iv) General Services Administration,
- (v) U.S. Maritime Administration,
- (vi) U.S. Department of Housing and Urban Development (PHAs),
- (vii) Small Business Administration,
- (viii) Government National Mortgage Associate (GNMA),
- (ix) Federal Housing Administration,
- (x) Farm Credit System Financial Assistance Corporation, and
- (xi) Department of the Interior.

(c) Direct Obligations of any of the following federal agencies which obligations are not fully guaranteed by the full faith and credit of the United States of America:

(i) Senior debt obligations rated in the highest long-term rating category by at least two nationally recognized rating agencies issued by the Federal National Mortgage Association (FNMA) or Federal Home Loan Mortgage Corporation (FHLMC),

(ii) Senior debt obligations of the Federal Home Loan Bank System,

(iii) Senior debt obligations of other government sponsored agencies.

(d) U.S. Dollar denominated deposit accounts, federal funds and bankers' acceptances with domestic commercial banks which either (i) have a rating on their short-term certificates of deposit on the date of purchase in the highest short-term rating category of at least two nationally recognized rating agencies, (ii) are insured at all times by the Federal Deposit Insurance Corporation, or (iii) are collateralized with direct obligations of the United States of America at 102% valued daily. All such certificates must mature no more than 360 days after the date of purchase. (Ratings on holding companies are not considered as the rating of the bank).

(e) Commercial paper which is rated at the time of purchase in the highest short-term rating category of at least two nationally recognized rating agencies and which matures not more than 270 days after the date of purchase.

(f) Investments in (1) money market funds subject to Securities and Exchange Commission (the "SEC") Rule 2a-7 and rated in the highest short-term rating category of at least two nationally recognized rating agencies and (2) public sector investment pools operated pursuant to SEC Rule 2a-7 in which the issuer's deposit shall not exceed 5% of the aggregate pool balance at any time and such pool is rated in one of the two highest short-term rating categories of at least two nationally recognized rating agencies, including, without limitation, any such fund to which the Bank or its affiliates provide services as an investment advisor or custodian.

(g) Pre-refunded municipal obligations defined as follows: any bonds, certificates or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice.

(h) which are rated based on an irrevocable escrow account or fund (the "escrow"), in the highest long-term rating category of at least two nationally recognized rating agencies; or (A) which are fully secured as to principal and interest by an escrow consisting only of cash or direct obligations of the United States of America, which escrow may be applied only to the payment of such principal of and interest on such bonds, certificates or other obligations on the maturity date or dates thereof pursuant to such irrevocable instructions, as appropriate, and (B) which escrow is sufficient, as

verified by a nationally recognized independent certified public accountant, to pay principal of and interest on the bonds, certificates or other obligations described in this paragraph on the maturity date or dates specified in the irrevocable instructions referred to above, as appropriate.

(i) General obligations of states with a short-term rating in one of the two highest rating categories and a long-term rating in one of the two highest rating categories or at least two nationally recognized rating agencies. In the event such obligations are variable rate obligations, the interest rate on such obligations must be reset not less frequently than annually. Any other investment, including but not limited to a guaranteed investment contract or forward delivery agreement with a financial institution or insurance company, approved by the Bank in writing.

For purposes of this definition of "Permitted Investments," the value of the above investments, other than cash, shall be determined as follows: "**Value**" shall be determined as of the end of each month and shall be calculated using such pricing services as may be available to the pricing agent's regular accounting system.

"**Permitted Liens**" means any of the following Liens securing any indebtedness of the Borrower and its assets, whether now owned or hereafter acquired:

(a) Those items set forth in Schedule B to the ALTA (2006) Extended Coverage Loan Policy of Title Insurance issued by First American Title Insurance Company with respect to the Deed of Trust, in form and substance and containing such endorsements as may be required by the Bank, dated as of the recording of the Deed of Trust, and the Liens created under this Financing Agreement;

(b) Liens of carriers, warehousemen, mechanics' and materialmen's incurred in the ordinary course of business for sums not yet due and payable or that are being contested in good faith and with due diligence in appropriate proceedings and for which bonds have been posted or other security acceptable to the Bank, provided such bonds or security to be in amounts sufficient to pay off the Liens during the pendency of any controversies relating to them;

(c) Liens incurred in the ordinary course of business in connection with worker's compensation, unemployment insurance or other forms of governmental insurance or employee benefits, or Liens to secure the performance of letters of credit, bids, tenders, statutory obligations, leases and contracts (other than for borrowed funds) (entered into in the ordinary course of business or to secure obligations on surety or appeal bonds;

(d) Purchase money Liens on equipment purchased or leased by Borrower;

(e) Liens for current taxes, assessments or other governmental charges that are not delinquent or remain payable without any penalty or that are being contested in good faith and with due diligence by appropriate proceedings; and

(f) Such other Liens, including, but not limited to, Liens subordinate to the Liens created hereby and pursuant to the Financing Agreement, as may be approved in writing by the Bank (or any successor as Owner of the Bonds).

**“Person”** shall include an individual, bank, association, unincorporated organization, corporation, partnership, joint venture, or government or agency or political subdivision thereof.

**“Personal Property”** means (a) all equipment, inventory, fixtures, materials and other personal property owned by the Borrower and used in connection with the Facility, excluding specifically “ECVA’s Removable Property” (as defined in the Facilities Use Agreement) and (b) all renewals thereof, including all securities, guaranties, warranties, indemnity agreements, insurance policies and other agreements pertaining to the same or the property described therein, together with whatever is receivable or received when any of the Personal Property or proceeds thereof are sold, collected, exchanged, or otherwise disposed of, whether such disposition is voluntary or involuntary, including without limitation, (c) all accounts, accounts receivable, contract rights, chattel paper, instruments, general intangibles and rights to payment of every kind now or at any time hereafter arising from any such sale, lease, collection, exchange or other disposition of any of the foregoing, (d) all rights to payment, including returned premiums, with respect to any insurance relating to any of the foregoing, and (e) all rights to payment with respect to any cause of action affecting or relating to any of the foregoing.

**“Prepayment Date”** means the date on which the Bonds/Loan will be prepaid in accordance with the provisions hereof.

**“Project”** has the meaning set forth in the Recitals hereto.

**“Project Fund”** means the Project Fund created by the Borrower as identified by the Borrower’s internal accounting methods related to its Operating Account pursuant to Section 5.1 hereof.

**“Property”** means, collectively, the Real Property and the Personal Property.

**“Real Property”** means the real estate, interest in real estate and other real property rights described in the Ground Lease, together with all real estate, interest in real estate and other real estate property rights made part of the Real Property in connection with the substitution of such real estate and other real property rights as may be permitted hereunder or under the Ground Lease or as a result of replacement of Property taken in condemnation, or otherwise.

**“Rebate Analyst”** means an independent certified public accountant, financial analyst or Bond Counsel, or any firm of the foregoing, or financial institution, experienced in making arbitrage and rebate calculations pursuant to Section 148(f) of the Code, selected and compensated by the Borrower to make the computations and give directions required under this Financing Agreement or the Tax Certificate.

**“Rebate Year”** means the period beginning on the date of the issuance of the Bonds and ending on February 28, 2016, and for all other Rebate Years, the one year period beginning on the day after the end of the preceding Rebate Year and ending the following February 28, unless the Borrower, the Authority, and the Bank are advised in writing by the Rebate Analyst that

another period is required by Law; provided, however, that the last Rebate Year for the Bonds shall end on the Maturity Date.

**“Record Date”** means with respect to each Payment Date (1) the close of business on the Business Day next preceding such Payment Date, or (2) such other special record date as may be designated as provided in the form of the Bonds.

**“Redemption Date”** is defined in Section 4.2 hereof.

**“Redemption Premium”** is defined in Section 4.2 hereof.

**“Regulated Chemical”** means any substance, the presence of which requires investigation, permitting, control or remediation under any federal, state or local statute, regulation, ordinance or order, including without limitation:

(a) any substance defined as “hazardous waste” under the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 *et seq.*;

(b) any substance defined as a “hazardous substance” under CERCLA;

(c) any substance defined as a “hazardous material” under the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1800 *et seq.*;

(d) any substance defined under any State of Nevada statute analogous to (a), (b) or (c), to the extent that said statute defines any term more expansively;

(e) asbestos;

(f) urea formaldehyde;

(g) polychlorinated biphenyls;

(h) petroleum or any distillate or fraction thereof;

(i) any hazardous or toxic substance designated pursuant to State of Nevada Law; and

(j) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Authority.

**“Regulation D”** means Regulation D of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor thereto or other regulation or official interpretation of said Board of Governors relating to reserve requirements applicable to member banks of the Federal Reserve System.

**“Remittance Address”** means for the payment of the amounts due and payable to the Authority hereunder or any other Bond Documents by wire transfer or account transaction pursuant to the wire instructions set forth on the Authority’s invoice provided to the Borrower on the Closing Date, or such other instructions designated by the Authority from time to time.

**“Reserve Requirement”** means the maximum aggregate reserve requirement (including all basic, supplemental, marginal and other reserves) which is imposed under Regulation D.

**“Revenues”** means, to the extent permitted by Law, all amounts paid by or on behalf of the Borrower for repayment of the Loan or deposit in the funds and accounts established pursuant hereto.

**“State”** means the State of Arizona.

**“Security Documents”** means the Deed of Trust, the Assignment of Project Development Agreement and this Financing Agreement.

**“Tax Certificate”** means the Tax Certificate as to Arbitrage and the Provisions of 103 and 141-150 of the Internal Revenue Code of 1986 between the Authority and the Borrower dated the Closing Date.

**“Taxable Rate”** is defined in Section 3.3.

**“Ten Year Swap Rate”** means the index rate posted daily by the Bank and, generally, is the “asked” rate for a ten (10) year swap where the floating leg of the swap references a 3-month LIBOR rate, calculated on a 360-day year. If the Bank ceases to post the 10 Year LIBOR Swap Rate (or any successor Bondowner fails to post the indexed rate), then, the 10 Year LIBOR Swap Rate quoted by the United States Board of Governors for the Federal Reserve System, Selected Interest Rates (Daily) H.15 shall be used to determine the applicable rate.

**“Treasury”** means the United States Department of Treasury.

**“UCC”** or **“Uniform Commercial Code”** means the Uniform Commercial Code as adopted and in effect in the State of Arizona.

**“Written Request”** means, in the case of the Authority, a request in writing signed by the Authority Representative, in the case of the Borrower, a request in writing signed by the Borrower Representative, in the case of the Bank, a request in writing signed by the authorized representative of the Bank.

**“Yield Maintenance Premium”** means an amount equal to the greater of (x) one percent (1%) of the principal amount of the Loan being prepaid on the Prepayment Date; or (y) the present value as of the Prepayment Date of the Calculated Payments from the Prepayment Date through the Maturity Date, determined by discounting such payments at the Discount Rate.

**“Yield Maintenance Treasury Rate”** means the yield calculated by the Bank by the linear interpolation of the yields, as reported by Federal Reserve Statistical Release H.15-Selected Interest Rates under the heading U.S. Government Securities/Treasury Constant Maturities for the week ending prior to the Prepayment Date, of U.S. Treasury Constant Maturities with maturity dates (one longer or one shorter) most nearly approximating the Maturity Date. In the event Release H.15 is no longer published, the Bank shall select a comparable publication to determine the Yield Maintenance Treasury Rate. In no event,

however, shall the Bank be required to reinvest any prepayment proceeds in U.S. Treasury obligations or otherwise.

### **Section 1.2. Interpretation.**

(a) Any reference herein to the Authority, the Board or any officer thereof shall include those succeeding to their functions, duties or responsibilities pursuant to or by operation of Law or who are lawfully performing their functions.

(b) Unless the context otherwise indicates, words importing the singular shall include the plural and vice versa and the use of the neuter, masculine or feminine gender is for convenience only and shall be deemed to mean and include the neuter, masculine or feminine gender.

(c) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

(d) Words importing the redemption of a Bond or the calling of a Bond for redemption do not mean or include the payment of a Bond at its stated maturity or the purchase of a Bond.

### **Section 1.3. All Bonds Equally and Ratably Secured; Limited Obligation of Bonds and Pledges Securing the Same.**

(a) All Bonds issued hereunder or on a *pari passu* basis with the Bonds and at any time Outstanding shall in all respects be equally and ratably secured hereby, without preference, priority, or distinction on account of the date or dates or the actual time or times of the issuance or maturity of the Bonds, so that all Bonds at any time issued and Outstanding hereunder shall have the same right, lien and preference hereunder and shall all be equally and ratably secured hereby.

(b) THE BONDS, PREMIUM, IF ANY, AND THE INTEREST THEREON ARE SPECIAL, LIMITED OBLIGATIONS OF THE AUTHORITY PAYABLE EXCLUSIVELY FROM AMOUNTS PAID BY THE BORROWER AND OTHER SECURITY PLEDGED TO THE PAYMENT OF THE BONDS UNDER THE BOND DOCUMENTS. THE BONDS DO NOT CONSTITUTE A DEBT OR A LOAN OF CREDIT OR A PLEDGE OF THE FULL FAITH AND CREDIT OR TAXING POWER OF THE AUTHORITY, THE CITY OR THE STATE, OR OF ANY POLITICAL SUBDIVISION THEREOF, WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL PROVISION OR STATUTORY LIMITATION AND SHALL NEVER CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF, THE AUTHORITY, THE STATE OR THE CITY. THE BONDS SHALL NOT CONSTITUTE, DIRECTLY OR INDIRECTLY, OR CONTINGENTLY OBLIGATE OR OTHERWISE CONSTITUTE A GENERAL OBLIGATION OF OR A CHARGE AGAINST THE GENERAL CREDIT OF THE AUTHORITY, BUT SHALL BE SPECIAL, LIMITED OBLIGATIONS OF THE AUTHORITY PAYABLE SOLELY

FROM THE SOURCES DESCRIBED HEREIN, BUT NOT OTHERWISE. THE AUTHORITY HAS NO TAXING POWER.

(c) NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR PREMIUM, IF ANY, OR INTEREST ON THE BONDS AGAINST ANY PAST, PRESENT, OR FUTURE OFFICER, DIRECTOR, EMPLOYEE, COUNSEL, ADVISOR, AGENT OR EXECUTIVE DIRECTOR OF THE AUTHORITY, OR OF ANY SUCCESSOR TO THE AUTHORITY, AS SUCH, EITHER DIRECTLY OR THROUGH THE AUTHORITY OR ANY SUCCESSOR TO THE AUTHORITY, UNDER ANY RULE OF LAW OR EQUITY, STATUTE, OR CONSTITUTION OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY OR OTHERWISE, AND ALL SUCH LIABILITY OF ANY SUCH OFFICERS, DIRECTORS, EMPLOYEES, COUNSEL, ADVISORS, AGENTS OR EXECUTIVE DIRECTOR, AS SUCH, IS HEREBY EXPRESSLY WAIVED AND RELEASED AS A CONDITION OF AND CONSIDERATION FOR THE EXECUTION AND ISSUANCE OF THE BONDS.

**Section 1.4. Obligation of the Borrower.** The Authority and the Bank acknowledge that the payment obligation of the Borrower under the Bonds shall be secured by a Lien (subject to Permitted Liens) on (i) all Real Property secured by the Deed of Trust, and (ii) all Personal Property now or hereafter owned by the Borrower.

## ARTICLE II

### REPRESENTATIONS, WARRANTIES AND COVENANTS

**Section 2.1. Representations of Authority.** The Authority makes the following representations as the basis for its covenants and agreements herein:

(a) It is a nonprofit corporation, existing under and by virtue of the Constitution of the State and the laws of the State and is designated by the Act as a political subdivision of the State.

(b) It has, by resolution of its Board, authorized the issuance, sale, and delivery of the Bonds.

(c) The Authority has found and hereby declares that the issuance of the Bonds to assist the financing and refinancing of the costs of the Project is in furtherance of the public purposes set forth in the Act.

(d) The Authority has duly authorized the execution, delivery, and performance on its part of the Bond Documents to which it is a party.

(e) To accomplish the foregoing, the Authority proposes to issue \$9,000,000 in aggregate principal amount of its Bonds immediately following the execution and delivery of this Financing Agreement, the date, denomination or denominations, interest rate or rates, maturity schedule, redemption provisions and other pertinent provisions with respect to the Bonds are set forth herein and in the form of the Bonds.

(f) The Authority makes no representation or warranty that the amount of the Loan will be adequate or sufficient to finance or refinance the costs of the Project or that the Project will be adequate or sufficient for the purposes of the Borrower.

(g) It has not pledged, assigned or granted and will not pledge, assign or grant any of its rights or interest in or under this Financing Agreement for any purpose other than as provided herein.

(h) There are no actions, suits or proceedings pending nor, to the knowledge of the Authority, are there any actions, suits or proceedings threatened in writing against or which would seek to restrain the Authority or any property of the Authority in any court or before any arbitrator of any kind or before or by any governmental or non-governmental body, which, in any case, may have a Material Adverse Effect or that would adversely affect the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

(i) The Authority covenants, represents, warrants and agrees as follows: (i) the Authority will not knowingly take or permit any action to be taken that would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds, and, if it should take or permit any such action, the Authority shall take all lawful actions within its power and control to rescind such action promptly upon having knowledge thereof; and (ii) the Authority will take such action or actions, including amending this Financing Agreement, as may be reasonably necessary in the opinion of Bond Counsel to comply fully with all applicable laws, policies, procedures or other official statements promulgated or, to the extent necessary in the opinion of Bond Counsel, proposed, by the United States Treasury or the Internal Revenue Service pertaining to obligations described in Section 103 of the Code.

(j) The Authority covenants and agrees that it has not taken or permitted to be taken any action which will cause the interest on the Bonds to become includable in gross income for federal income tax purposes. There are no other obligations of the Authority that have been, are being or will be (i) sold at substantially the same time, and (ii) sold pursuant to the same plan of financing for the Borrower, and (iii) reasonably expected to be paid from substantially the same source of funds as the Bonds.

(k) All of the representations and warranties of the Authority contained in the Tax Certificate are hereby reaffirmed and incorporated herein by reference.

**Section 2.2. Representations, Warranties and Covenants of the Borrower.** The Borrower represents, warrants and covenants that:

(a) It has been duly organized and is validly existing as a limited liability company under the laws of the State of Nevada, is qualified to do business and is doing business in and is in good corporate standing in the State of Nevada and in each other jurisdiction where its ownership or lease of property or conduct of its business requires such qualification, except in jurisdictions in which its failure to so qualify does not materially and adversely affect its financial condition and results of operations and it will

maintain, extend and renew its existence under the laws of the State of Nevada and its qualification to do business under the laws of the State of Nevada, and it will not do, suffer or permit any act or thing to be done whereby its right to transact its functions might or could be terminated or its activities restricted. It has full legal right, power and authority to enter into the Borrower Documents and to carry out and consummate all transactions contemplated thereby. Its Sole Member has, by proper action, duly authorized its entering into and performance of its obligations under, and the execution and delivery on its behalf of, the Borrower Documents and the issuance and terms of the Bonds.

(b) Its Sole Member is an organization described in Section 501(c)(3) of the Code and is exempt from federal income tax under Section 501(a) of the Code except for taxes imposed on unrelated business income (other than income related to the Property) pursuant to Section 511 of the Code and is an organization described in Section 170(b)(1)(A) of the Code and is not a “private foundation” as defined by Section 509(a) of the Code. The Sole Member has not received any notice from the Internal Revenue Service that its tax returns are being audited or its status as an organization described in Section 501(c)(3) of the Code is being investigated or challenged. The Sole Member is in continuing compliance with all requirements of such status. No portion of the Property shall be used in any “unrelated trade or business” of the Sole Member within the meaning of Section 513(a) of the Code.

(c) The execution and delivery of the Borrower Documents and the consummation of the transactions herein and therein contemplated, including, and subject to, the application of the proceeds of the Bonds as so contemplated, will not conflict with, or constitute a breach of, or default by it under its articles of organization, its operating agreement, any resolution of its board of directors in effect on the date hereof, or any statute, indenture, mortgage, deed of trust, lease, note, loan agreement, or other agreement or instrument to which it is a party or by which it or its properties are bound, and will not constitute a violation of any order, rule or regulation of any court or Governmental Authority having jurisdiction over it or any of its activities or properties which would have an adverse effect on its activities or properties.

(d) It is not in breach, default or violation of any statute, indenture, mortgage, deed of trust, note, loan agreement or other agreement or instrument which would allow the obligee or obligees thereof to take any action which would materially and adversely affect its performance under the Borrower Documents.

(e) There are no actions, suits or proceedings pending or, to its knowledge, threatened against or affecting it or its assets, properties or operations which, if determined adversely to it or its interests, would have an adverse effect upon its financial condition, assets, properties or operations, or upon the validity or enforceability of the Borrower Documents, except to the extent, if any, described in writing to the Bank, and it is not in default with respect to any order or decree of any court or any order, regulation or decree of any federal, state, municipal or other Governmental Authority, which default would have an adverse effect on its operations or its properties.

(f) No information, exhibit or report furnished to the Authority or to the Bank by the Borrower in connection with the transactions contemplated by the Borrower Documents nor any of its representations contained in the Borrower Documents contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. There are no facts that the Borrower has not disclosed to the Authority and the Bank in writing that materially and adversely affect or in the future may (so far as the Borrower can now reasonably foresee) materially and adversely affect the properties, business prospects, profits or condition (financial or otherwise) of the Borrower or the ability of the Borrower to perform its obligations under the Borrower Documents or any documents or transactions contemplated hereby or thereby.

(g) All Property financed or refinanced with Bond Proceeds is owned or leased by the Borrower. The Borrower has a good and marketable leasehold interest in the Property. None of the Property is subject to any Lien, except Permitted Liens and such other Liens, if any, created by this Financing Agreement or the other Bond Documents.

(h) As of the date of this Financing Agreement and so long as this Financing Agreement shall remain in force and effect, that the Borrower: (i) shall not perform any act or enter into any agreement which shall adversely affect the federal income tax status of the Borrower's Sole Member; (ii) shall not perform any act, enter into any agreement or use or permit the Property to be used in any manner (including any unrelated trade or business) which would adversely affect the tax treatment of the Bonds; (iii) shall not carry on or permit to be carried on with respect to the Property or permit the Property to be used in or for any trade or business the conduct of which is not substantially related to the exercise or performance by the Borrower of the purposes or functions constituting the basis for the Sole Member's exemption under Section 501 of the Code to the extent that such use of the Property would adversely affect the tax treatment of the Bonds; and (iv) will not do, suffer or permit any act or thing to be done whereby its right to transact its functions might or could be terminated or its activities restricted.

(i) The Borrower has the power to own, lease, construct, rehabilitate, equip and maintain the Property.

(j) The Project is comprised of financing or refinancing the Property and is a "project" within the provisions of the Act.

(k) The use of the Property complies with presently applicable zoning, development, pollution control, water conservation, environmental, and other laws, regulations, rules, and ordinances of any Governmental Authority where the Property is located.

(l) The Borrower has obtained or will cause to be obtained before they are required all necessary approvals of and licenses, permits, consents, and franchises from federal, state, county, municipal, or other Governmental Authorities having jurisdiction over the Property to acquire, construct, improve, equip, rehabilitate, and operate the

Property, as applicable, and to enter into, execute, and perform its obligations under this Financing Agreement and the other Borrower Documents.

(m) To the best of the Borrower's knowledge, none of the Authority Indemnified Parties has any significant or conflicting interest, financial, employment, or otherwise, in the Borrower, the Property or in any of the transactions contemplated under the Borrower Documents.

(n) The Borrower (i) understands the nature of the structure of the transactions related to the financing and refinancing of the Project; (ii) is familiar with all the provisions of the documents and instruments related to such financing to which the Borrower or the Authority is a party or which the Borrower is a beneficiary; (iii) understands the risk inherent in such transactions; and (iv) has not relied on the Authority for any guidance or expertise in analyzing the financial consequences of such financing transactions or otherwise relied on the Authority in any manner, except to issue the Bonds in order to loan the proceeds thereof to the Borrower.

(o) All representations of the Borrower contained herein or in any certificate or other instrument delivered by the Borrower pursuant to this Financing Agreement, or in connection with the transactions contemplated hereby, shall survive the execution and delivery thereof and the issuance, sale, and delivery of the Bonds as representations of facts existing as of the date of execution and delivery of the instrument containing such representation.

(p) The Borrower covenants and agrees to pay, when due, all costs, expenses and any Late Fees of the Authority incurred in connection with the Bonds and the Project, including, without limitation, each and all of the following:

(i) all indemnity payments and amounts, if any, owed to the Authority;

(ii) all Administrative Costs and any other expenses incurred by the Authority in connection with the Project, the Bonds, or any of the Borrower Documents, including, without limitation, its attorneys' fees and expenses and its advisors' fees and expenses; and

(iii) the Annual Administrative Fee.

(q) Upon the execution by the Borrower of the Deed of Trust and their subsequent recording, and filing of UCC-1 financing statements or amendments thereto, the Bank will have a valid first Lien in the leasehold interest in the Real Property and a valid security interest in the Personal Property each subject to no Liens, charges or encumbrances other than Permitted Liens and the Borrower will take all necessary actions including executing, acknowledging, authorizing, delivering and recording or filing such further instruments (including, without limitation, further Deed of Trust, security agreements, financing statements, continuation statements and assignments of rents and leases) to preserve such Lien and security interest.

(r) The Borrower shall not cause or permit any (a) change of the Borrower's chief executive office to a jurisdiction other than as represented herein, or (b) change the state of the Borrower's organization as it exists on the date of this Financing Agreement, or (c) change the Borrower's name as it exists on the date of this Financing Agreement, unless prior to the effective date of such change the Borrower shall have delivered to the Bank an Opinion of Counsel to the effect that all filings and other actions necessary under the Uniform Commercial Code and other applicable Law in order to preserve and protect such Lien and security interest following such name change have been made and taken.

(s) To the best of its knowledge, and after due inquiry consistent with good commercial and customary practice, the Property is free from contamination by Regulated Chemicals, including, but not limited to, friable asbestos, and there has not been thereon a release, discharge or emission, or a threat of release, discharge or emission, of any Regulated Chemical on, under, in, or about the Property, nor has any such Regulated Chemical migrated or threatened to migrate from other properties upon, about or beneath the Property.

(t) To the best of its knowledge, and after due inquiry consistent with good commercial and customary practice, neither the Borrower nor any previous owner, tenant, occupant or user of the Real Property, nor any other Person, has engaged in or permitted any operations or activities upon, or any use or occupancy of the Real Property, or any portion thereof, whether legal or illegal, accidental or intentional, for the purpose of or in any way involving the handling, manufacture, treatment, storage, use, generation, release, discharge, refining, dumping or disposal of any Regulated Chemical, on, under, in or about the Real Property, nor has any such party transported any Regulated Chemical to, from or across the Real Property.

(u) To the best of its knowledge, and after due inquiry consistent with good commercial and customary practice, no adjoining property has been used as a manufacturing, storage or disposal site for Regulated Chemicals nor is any other property adjoining the Real Property affected by a violation of Environmental Requirements.

(v) The Property is in compliance with all applicable Environmental Regulations and to the best of the Borrower's knowledge, and after due inquiry consistent with good commercial and customary practice, have at all times been in compliance with all applicable Environmental Requirements. The Borrower has all permits and licenses required to be issued under the Environmental Requirements and is in full compliance with the terms and conditions of such permits and licenses; such permits and licenses are in full force and effect; and no changes exist in the facts or circumstances reported or assumed in the application for or granting of such permits or licenses. The Borrower has not obtained and is not required to obtain any permits, licenses or similar authorizations to construct, occupy, operate or use any personal property and equipment located on the Real Property by reason of any Environmental Requirements.

(w) The Borrower has not received any notice, whether written or oral, concerning the Property, for any alleged violation or requiring compliance of

Environmental Requirements, whether or not corrected to the satisfaction of the appropriate authority, or notice or other communication concerning alleged liability for environmental damages in connection with the Property, and to the best of the Borrower's knowledge there exists no investigation, administrative order, consent order and agreement, litigation, settlement or judgment, whether proposed, threatened, anticipated or in existence with respect to the Real Property.

(x) The representations and warranties set forth in this Section shall survive the expiration or termination of the Borrower Documents, the payment of the Bonds, and the discharge of any obligations owed by the parties to each other and will survive any transfer of title to the Property, whether by foreclosure, or otherwise and shall not be affected by any investigation by or on behalf of the Authority or the Bank or any information which the Authority or the Bank may have or obtain with respect thereto. Moreover, the Borrower does hereby and specifically represent and warrant that it has no affirmative knowledge or reason to believe that any condition, previous use, compliance or violation of Environmental Requirements are contrary to the description in this Section.

(y) The Sole Member's federal employer identification number is 27-3047777 and the Borrower's federal employer identification number is 47-3070280.

(z) The Borrower's use and operation of the Project meets or will meet all material requirements of Law, including requirements of any federal, state, county, city or other Governmental Authority having jurisdiction over the Project or its use and operation.

(aa) There has been no material adverse change in the financial condition, results of operations, or business affairs of the Borrower, ECVA or the feasibility or physical condition of the Project or the Borrower or ECVA to the date on which the Authority granted its resolution approving the issuance of the Bonds.

(bb) The Borrower shall employ (or cause to be employed) pursuant to Section 6.3 hereof, at its own expense, a Rebate Analyst so long as any Bonds remain Outstanding, to prepare the arbitrage rebate calculations required by such Section and the Tax Certificate.

(cc) The Borrower is not in violation of any Laws relating to terrorism or money laundering ("**Anti-Terrorism Laws**"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "**Executive Order**"), and Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 and is not a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order.

(dd) The Borrower has fulfilled its obligations under the minimum funding standards of ERISA and the Code with respect to any ERISA plan and is in compliance in all material respects with the applicable provisions of ERISA and the Code with respect to any such plan.

(ee) The Borrower and the Sole Member will comply with the terms of the Tax Certificate.

(ff) The Borrower shall, within ninety (90) calendar days of the Closing Date, (1) cause to be recorded an easement relating to the geothermal pipeline (the form of which easement must be provided to the Bank and the Issuer sufficiently in advance such that the Bank and the Issuer have an opportunity to review and comment on the easement prior to recordation) depicted on the ALTA Survey for the Property and referenced in exception #22 on Schedule B-2 of First American Title Insurance Company's Commitment No.: NCS-715124-HHLV dated as of March 16, 2015 (the "Title Commitment"), (2) provide to the Bank and the Issuer an updated ALTA Survey showing the location of the easement areas for the geothermal piping, and (3) provide to the Bank and the Issuer a date down endorsement to the lender's title policy that was/will be issued on the Closing Date in accordance with the terms of the Title Commitment reflecting the recorded geothermal piping easement and modifying the survey exception and the same as survey endorsement as appropriate.

All representations of the Borrower contained herein or in any certificate or other instrument delivered by the Borrower pursuant to this Financing Agreement, the Facilities Use Agreement, the Ground Lease, the Tax Certificate and the Deed of Trust or in connection with the transactions contemplated thereby, shall survive the execution and delivery thereof and the issuance, sale and delivery of the Bonds as representations of facts existing as of the date of execution and delivery of the instrument containing such representation.

**Section 2.3. Representations of the Bank.** The Bank makes the following representations as the basis for its covenants and agreements herein:

(a) It is a bank existing under and by virtue of, and doing business under, the laws of the State of Arizona with the power and authority to execute, deliver and perform the Bond Documents to which it is a party.

(b) The Bank has duly authorized the execution, delivery, and performance on its part of the Bond Documents to which it is a party.

(c) The Bonds are not rated by any rating agency, are initially fully-registered in the name of the Bank, do not contain a CUSIP number and have not and shall not be publicly marketed during any period in which the Bonds are held by the Bank pursuant to any official statement, offering memorandum or any other disclosure documentation.

(d) The Bank has reviewed the Tax Certificate and agrees to act within the restrictions contained therein that may be applicable to its performance under this Financing Agreement (e.g. investment of Bond proceeds, etc.).

## ARTICLE III

### ISSUANCE OF BONDS

**Section 3.1. Authorization of Bonds.** There is hereby authorized by the Authority to be issued hereunder and secured hereby the Bonds in the aggregate original principal amount of \$9,000,000 pursuant to the Act for the purpose of financing or refinancing the Project. The Bonds shall be designated The Industrial Development Authority of the City of Phoenix, Arizona Revenue Bonds (JMF-ECVA Convention Center Expansion Project), Series 2015, and shall be issued and sold as directed by the Authority in accordance herewith.

The Bonds are authorized to be issued as drawdown bonds. The Bank shall fund the purchase price of the Bonds in installments, at par. The initial installment for the purchase of the Bonds shall be in the amount of \$55,000 to be advanced by the Bank on the Closing Date, which purchase price shall be deposited in the Project Fund for application as provided in the Construction Advance Addendum attached hereto as **Exhibit D**. Provided that the conditions to advance contained in the Construction Advance Addendum are either satisfied or waived by the Bank, the balance of the purchase price of the Bonds shall be advanced in subsequent installments by the Bank. Upon receipt by the Bank of a Disbursement Request and the Bank's approval thereof, the Bank's payment of a Construction Advance will fund a portion of the purchase price of the Bonds, which Disbursement Request shall describe the amount of the purchase price to be funded and the purposes for which the proceeds of the Bonds so purchased will be applied. Upon the payment of any portion of the purchase price of the Bonds by the Bank in accordance with the terms of this Section 3.1, such payment shall be deposited by the Bank in the Project Fund and thereafter immediately applied in accordance with the corresponding Disbursement Request. The Bank shall maintain in its books a log which shall reflect from time to time the payment of each installment of the purchase price of the Bonds in accordance with the provisions of this Section 3.1. Amounts funded by the Bank in accordance with the provisions of this Section 3.1 shall be noted on Schedule A attached to the Bond. The Bonds shall bear interest as provided in Section 3.3 hereof on the amount of each installment of the purchase price thereof from the date of payment by the Bank of such installment pursuant to this Section 3.1.

**Section 3.2. Form of Bonds.** The Bonds shall be dated the date of the initial delivery thereof, mature on the Maturity Date subject to prior payment as provided herein, issued only in Authorized Denominations, and bear interest from the most recent Payment Date to which interest has been paid or for which due provision has been made or, if no interest has been paid, from the applicable draw down date, payable on each Payment Date, commencing May 5, 2015, during the term of the Bonds. The Bonds shall be delivered in substantially the form of **Exhibit A** to this Financing Agreement, with such appropriate variations, omissions and insertions as permitted or required by this Financing Agreement.

**Section 3.3. Interest Rates on Bonds.** Interest on the Bonds is calculated on the basis of a 360-day year consisting of twelve 30-day months and shall accrue on the portion of the principal amount of the Bonds drawn and then-Outstanding as follows:

(i) From the Original Issue Date through March 31, 2016, so long as no Event of Default has occurred and is continuing, at a tax-exempt daily floating rate equal to 72% of Wall Street Journal Prime Rate plus 0.9900% (3.3300% floor rate) and, commencing on April 1, 2016, and continuing until the Maturity Date, so long as no Event of Default has occurred and is continuing, at a tax-exempt fixed rate equal to 72% of the Ten-Year Swap Rate on April 1, 2016, plus 2.1600% (3.8700% floor rate);

(ii) Upon a Determination of Taxability: (A) prior to April 1, 2016, at a taxable daily floating rate equal to Wall Street Journal Prime Rate plus 1.375% (4.625% floor rate), and (B) after April 1, 2016, at a taxable fixed rate equal to the Ten-Year Swap Rate on April 1, 2016, plus 3.00% (5.3750% floor rate); and

(iii) Upon an Event of Default, at the Default Interest Rate until such Event of Default has been cured or waived;

provided, however, that subject to Section 8.34 hereof, the interest rate on the Bonds shall not exceed the Maximum Interest Rate.

Rates published in the International Swaps and Derivatives Association (ISDA®) mid-market par swap rates for a Fixed Rate Payer in return for receiving three-month LIBOR, based on rates collected at 11:00 a.m. Eastern Time by Thomson Reuters and published in Thomson Reuters ISDAFIX®1 will be used to calculate interest as set forth in this Section 3.3. ISDAFIX is a registered service mark of ISDA®.

#### **Section 3.4. Repayments of Bonds.**

(a) Unless required to be repaid sooner by the terms hereof, payment of principal and interest on the Bonds, through and including the Maturity Date, shall be made by the Borrower making monthly interest payments on each Payment Date commencing on May 5, 2015, and by making monthly principal payments on each Payment Date commencing May 5, 2016, in amounts sufficient to fully amortize the outstanding principal amount of the Bonds over a twenty-five (25) year amortization period as set forth on the Mandatory Sinking Fund Schedule to be attached hereto as **Exhibit C** on April 1, 2016. The balance of the principal of and interest on the Bonds will be payable in full on the Maturity Date. Payments on each Payment Date and on the Maturity Date shall be first applied to the accrued, unpaid interest on the Bonds and the remaining amounts shall be applied to the remaining Outstanding principal amount of the Bonds.

(b) The Borrower shall pay the principal of, premium, if any, and interest on the Bonds to the Owner thereof in immediately available funds at its address as it last appears on the registration books as provided in Section 3.5(b) hereof. All such payments shall be made in lawful money of the United States of America. For so long as the Bank is the Owner of the Bonds, all amounts payable to the Authority with respect to the Bonds may be paid by the Borrower directly to the Bank, upon the Bank's written notice to the Authority and the Borrower (without any presentment thereof, except upon the payment

of the final installment of principal, and without any notation of such payment being made thereon), in such manner or at such address in the United States of America as may be designated by the Bank in writing to the Authority. Any payment made pursuant to this Section shall be accompanied by sufficient information to identify the source and proper application of such payment. Upon the final payment of principal of, premium, if any, and interest on the Bonds, the Bonds shall be cancelled.

### **Section 3.5. Registration, Transfer and Exchange of Bonds.**

(a) All Bonds issued hereunder shall be negotiable, subject to the provisions for registration and transfer thereof contained herein, in the form of the Bond attached hereto as **Exhibit A** and in the Investor Letter in the form attached hereto as **Exhibit B** (the “**Investor Letter**”), or in the Bonds.

(b) The Bank, on behalf of the Authority, shall keep a registration book showing the name and address of the Owner of the Bonds. The Bonds may be transferred by an assignment duly executed by the Owner thereof or its attorney duly authorized in writing, and filed with the Bank, and the Owner thereof may, to the extent permitted by Law, sell participations in the Bonds, provided that if participated, the Bonds shall always be registered in the name of the Owner and, provided, further, that the Bonds may only be transferred to an entity described in Section 3.5(f) hereof. If the Bonds are sold or transferred, the Bank shall notify the Authority and the Borrower in writing of the name and address of the transferee, the effective date of the transfer, the principal amount of the Bonds transferred and the payment information notated on the Bonds as hereinafter described, and it will, prior to delivery of such Bonds, make a notation on such Bonds of the date to which interest has been paid thereon and of the amount of any prepayments made on account of the principal thereof.

(c) The Person in whose name a Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of such Bond shall be made by the Borrower on behalf of the Authority only to or upon the written order of the Owner thereof or his legal representative, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Bond to the extent of the sum or sums so paid.

(d) In connection with any exchange or transfer of Bonds, the Owner requesting such exchange or transfer shall as a condition precedent to the exercise of the privilege of making such exchange or transfer remit to the Bank or the Authority, as the case may be, an amount sufficient to pay any tax or other governmental charge required to be paid with respect to such exchange or transfer plus any reasonable, related administrative costs.

(e) All Bonds surrendered in any exchange or transfer of Bonds shall forthwith be canceled.

(f) Notwithstanding any other provision herein, Owners of the Bonds, regardless of whether the Bonds are acquired pursuant to the initial sale thereof or by

subsequent purchase at any time thereafter, may sell, transfer or otherwise dispose of the Bonds only to the following parties:

(1) any national banking association, state bank corporations, savings and loan companies as defined under the Investment Company Act of 1940, as amended, or brokers or dealers registered pursuant to Section 15 of the Securities Exchange Act of 1934;

(2) any party if the Bonds are rated “BBB” or higher by S&P or “BAA” or higher by Moody’s;

(3) any party if agreed in writing by the Authority; or

(4) any “qualified institutional buyer” as defined in Rule 144A promulgated under the Securities Act of 1933, as amended (the “1933 Act”), or an “accredited investor” as defined in Rule 501 of Regulation D under the 1933 Act who is able to bear the economic risks of such investment, as evidenced by an investor letter acceptable to the Authority and who purchases a minimum par amount of the Bonds of \$100,000.

**Section 3.6. Non-Presentation of Bonds.** In the event any Bond shall not be presented for payment when the principal or any portion thereof becomes due, either at maturity or otherwise, if moneys sufficient to pay such principal of and interest on such Bond shall have been deposited hereunder for such payment, all liability of the Authority to the Owner thereof for the payment of such Bond or portion thereof shall forthwith cease, determine and be completely discharged.

**Section 3.7. Replacement of Lost or Damaged Bonds.** In the event of loss of or damage to the Bonds, the Authority, at the expense of the Owner thereof, may issue a replacement Bond identical to that lost or damaged, upon receipt of an affidavit of the Owner thereof that such Bond has been lost or, if damaged, upon receipt of the damaged Bond. Such expense, which the Authority may require to be paid in advance, may include the costs of investigation, printing, typing, insurance or indemnity premiums, attorney fees, travel and communications.

**Section 3.8. Execution of the Bonds.** All Bonds shall be executed for and on behalf of the Authority by its President or Vice President and attested by its Secretary or Treasurer. The signatures of such officers may be mechanically or photographically reproduced on the Bonds. If any officer of the Authority whose signature appears on any Bond ceases to be such officer before delivery thereof, such signature shall remain valid and sufficient for all purposes as if such officer had remained in office until such delivery.

**Section 3.9. Sale, Purchase and Delivery of the Bonds.**

(a) Upon the execution and delivery hereof, the Authority shall execute the Bonds and agrees to sell the Bonds and deliver them to the Bank, and the Bank agrees to

purchase the Bonds from the Authority, provided that the conditions set forth in this Section 3.9 being satisfied in a manner acceptable to it and its counsel, at a purchase price equal to \$9,000,000.00 (100% of the par amount of the Bonds), to be paid in installments on a draw-down basis. As the principal amount of the Bonds is so drawn, the corresponding portion of the purchase price shall be paid in immediately available funds. It shall be an additional condition precedent to the purchase and sale of the Bonds on the Closing Date that all corporate and other proceedings taken in connection with the Bond Documents and the transactions contemplated therein, shall be in form and substance satisfactory to the Bank and the Authority and that there shall have been, in the sole opinion of the Bank, no Material Adverse Effect. The Authority (solely with respect to those matters within its direct control) and the Borrower represent to and agree with the Bank that all other conditions precedent have been satisfied and remain satisfied.

(b) The Bank's agreement to enter into this Financing Agreement and to purchase the Bonds shall be subject to the condition precedent that the Bank shall have received or waived the requirement for, all of the following, each in form and substance satisfactory to the Bank:

(i) copies of the Bond Documents, properly executed on behalf of the Authority, the Borrower, ECVA and the Bank, as the case may be, and, if applicable, each of the Exhibits thereto properly completed;

(ii) a certificate of the Borrower, certifying as to, among other things, (1) the resolution of the Board of Directors of the Borrower, authorizing the execution, delivery and performance of the Borrower Documents and any related documents, (2) the operating agreement of the Borrower, and (3) the signatures of the officers or agents of the Borrower authorized to execute and deliver the Borrower Documents and other instruments, agreements and certificates on behalf of the Borrower;

(iii) the Bond Resolution adopted by the Authority authorizing the issuance, sale and delivery of the Bonds and the transactions contemplated hereunder;

(iv) a closing certificate of the Authority in a form acceptable to the Authority, the Bank and Kutak Rock LLP, as Bond Counsel;

(v) current searches of appropriate filing offices showing that (1) no state or federal tax Liens have been filed and remain in effect against the Borrower, and (2) no financing statements have been filed and remain in effect against the Borrower relating to the Property other than those filed in connection with the Permitted Liens;

(vi) an opinion of counsel to the Borrower, addressed to Bond Counsel, the Bank, and the Authority, as approved by Bond Counsel and the Authority's counsel;

(vii) an opinion of counsel to ECVA addressed to Bond Counsel, the Bank, and the Authority, as approved by Bond Counsel, the Bank and the Authority's counsel;

(viii) the approving opinion of Bond Counsel dated the Closing Date, addressed to the Authority, in form and substance acceptable to the Authority and the Bank, accompanied by a letter from Bond Counsel, dated the Closing Date and addressed to the Bank, stating that such opinions may be relied upon by the Bank to the same extent as if they were addressed to the Bank;

(ix) evidence of payment of the Authority's Closing Fees and the fees of Bond Counsel, the Authority's counsel, and the Bank's costs and expenses in connection with the execution of the Bond Documents;

(x) an investor letter executed by the Bank in the form attached hereto as **Exhibit B** and such other certificates of the Bank reasonably requested by Bond Counsel and the Authority;

(xi) an appraisal ordered by and reviewed and approved by the Bank, showing that the fair market value of the Real Property and proposed Improvements will be not less than \$10,588,000;

(xii) an ALTA/ACSM survey of the Real Property in form and substance satisfactory to the Bank, certified to the Bank and its successors and assigns;

(xiii) a Phase I Environmental Assessment of the Real Property in form and substance satisfactory to the Bank and such other evidence as the Bank may require with respect to the presence of any Regulated Chemical at the Real Property;

(xiv) evidence satisfactory to the Bank that the Real Property is not located within a "special flood hazard area" as designated on maps prepared by the Department of Housing and Urban Development;

(xv) copies of the policies of insurance required to be maintained by the Borrower pursuant to the provisions of this Financing Agreement showing the Bank as additional insured and loss payee, as applicable, in amounts acceptable to the Bank;

(xvi) payment and performance bond with respect to the contract for construction of the Project (the "Construction Contract") which shall meet the following requirements (the "Payment and Performance Bond"):

(1) name the Borrower and Western Alliance Bank, and its successors as co-obligees;

(2) be in an amount not less than \$8,869,364;

(3) be issued by a corporate surety licensed to do business in the State of Nevada and approved by the Bank;

(4) include language to the effect that the Design-Builder (as defined in the Project Development Agreement) will promptly and faithfully perform its obligations under the Construction Contract and that the surety waives notice of any alteration or extension of time given by the Borrower under the Construction Contract;

(5) include a requirement of the principal to promptly make payment to all claimants; and

(6) correctly state the Borrower's name and the address of the Project;

and

(xvii) any other documents or items required by the Bank or Authority.

#### **ARTICLE IV**

#### **REDEMPTION**

**Section 4.1. Right to Redeem.** The Bonds are subject to optional and mandatory redemption and payment prior to maturity at such times, to the extent and in the manner provided herein.

**Section 4.2. Redemption.** The Bonds are callable for redemption prior to maturity as follows:

(a) in the event of damage to or destruction of the Project or any part thereof or condemnation or sale consummated under threat of condemnation of the Project or any part thereof in accordance with Section 8.23; or

(b) in the event that the Borrower shall exercise its option to prepay the Loan, for any reason and from any other amount, in an amount sufficient to redeem all or a portion of the Bonds then outstanding in accordance with Section 4.3.

**Section 4.3. Redemption.** The Bonds are subject to redemption prior to their stated Maturity Date, at the option of the Borrower, from prepayments made by the Borrower pursuant to Section 7.3 hereof. Optional redemption to be made pursuant to Section 7.3(a) shall require a Borrower Representative to give written direction to redeem the Bonds to the Owners and the Authority at least thirty (30) days (or such shorter period as is acceptable to the Owners or the Authority, as the case may be) before the redemption date.

**Section 4.4. Mandatory Sinking Fund Redemption.** The Bonds are subject to mandatory sinking fund redemption prior to maturity in accordance with the Mandatory Sinking Fund Schedule attached to this Financing Agreement as Exhibit C.

#### **Section 4.5. Notice of Redemption; Effect of Redemption.**

(a) If less than all the Outstanding Bonds shall be called for optional redemption pursuant to Section 4.3, the Bonds shall be redeemed in any denominations. A call for optional redemption shall describe whether and the conditions under which the call for redemption shall be revoked. All Bonds properly called for redemption will cease to bear interest on the date fixed for redemption, provided funds sufficient for the redemption of such Bonds have been duly and irrevocably deposited with a paying agent and, thereafter, the Owners of such Bonds called for redemption shall have no rights in respect thereof except to receive payment of the redemption price from such paying agent and a new Bond for any portion not redeemed.

(b) If there shall be called for optional redemption less than the principal amount of a Bond, the Authority, at the expense of the Borrower, shall execute and deliver, upon surrender of such Bond, without charge to the Owner thereof, in exchange for the unredeemed principal amount of such Bond at the option of such Owner, Bonds in the applicable denomination.

### **ARTICLE V**

#### **REVENUES AND FUNDS**

**Section 5.1. Creation of Funds and Accounts.** Upon the issuance of the Bonds, the Borrower shall establish the Operating Account with the Bank. The Borrower, within its own accounting system, shall assign codes to identify and track moneys as they are deposited and withdrawn, as applicable. A separate code shall be assigned to, and be deemed to create:

- (a) The Bond Fund;
- (b) The Project Fund; and
- (c) The Expense Fund.

The Bank may also establish temporary funds or accounts, as necessary, in its books or records in order to comply with the provisions of this Financing Agreement.

**Section 5.2. Loan of Bond Proceeds.** The Authority agrees to finance the costs of the Project by making the Loan to the Borrower from Bond proceeds. In order to provide the funds to make the Loan, the Bonds shall be delivered to the Bank pursuant to this Financing Agreement in installments, at par, upon receipt by the Authority of the dollar amount representing the proceeds of the respective Bonds so delivered, in aggregate not to exceed \$9,000,000. Upon each draw, the Bond proceeds shall be deposited in the Project Fund to pay the costs of acquiring, leasing constructing, improving and equipping the Project in accordance with Section 5.5.

**Section 5.3. Collateral Assignment of the Funds.** The Borrower and the Authority, as the case may be, hereby irrevocably assign to the Bank, and grant to the Bank a security interest in, the Bond Fund, the Project Fund, and any Net Proceeds Fund (collectively, the “Assigned

**Funds**”) and all present and future monies deposited therein and earned thereon as additional security for the payment and performance of the Bonds. All amounts deposited in the Assigned Funds shall remain therein subject to the Bank’s assignment and security interest, and may not be withdrawn from the Assigned Funds or moved to another financial institution without the Bank’s prior written consent, except as otherwise provided herein. Neither the Borrower nor the Authority shall pledge or assign its interest in the Assigned Funds to any Person other than the Bank.

#### **Section 5.4. Bond Fund.**

(a) There shall be deposited in the Operating Account and identified as being deposited to the Bond Fund all repayments of the Loan, all proceeds resulting from the realization of collateral, all amounts transferred to the Bond Fund pursuant to the terms hereof, and all other moneys received by the Bank and directed by an Authorized Representative of the Borrower for deposit in the Bond Fund. Moneys in the Bond Fund shall, except as otherwise expressly provided herein, be used solely for the payment of the interest on, principal of, and premium, if any, on the Bonds when due, whether on a Payment Date, redemption date, Maturity Date or otherwise.

(b) If on the Business Day prior to any Payment Date, the funds then on deposit in the Bond Fund are insufficient to make each payment of interest and principal on such Payment Date, the Bank shall demand from the Borrower, and the Borrower shall pay an amount sufficient to pay such amounts upon demand. If on any Payment Date there are any amounts on deposit in the Bond Fund in excess of the amount necessary to pay principal and interest then due on the Bonds on such Payment Date, such excess shall be promptly returned to the Borrower.

(c) After payment in full of the Bonds and the payment of all other amounts owing hereunder, including any indemnity amounts and Late Fees owing to the Authority, any amounts remaining in the Bond Fund shall be paid to the Borrower.

#### **Section 5.5. Project Fund.**

(a) Deposits to the Operating Account identified as being deposited to the Project Fund shall be made as provided in Section 3.1 hereof. Moneys on deposit in the Project Fund shall be expended to pay the costs of the Project no later than three years after the Closing Date.

(b) All disbursements from the Project Fund will be made by the Bank pursuant to the terms of the Construction Advance Addendum. Any moneys remaining in the Project Fund on the third anniversary of the Closing Date will, at the option of the Borrower, be used to redeem the Bonds pursuant to Section 4.3 hereof. Moneys on deposit in the Project Fund may be invested only in accordance with the provisions of Section 6.1 hereof, and income resulting therefrom shall be credited to the Project Fund.

(c) In the event that Bond proceeds available for payment of the costs of the Project should not be sufficient to pay the costs of the Project in full, the Borrower shall pay that portion of the costs of the Project in excess of the moneys available therefor.

The Authority does not make any warranty, either express or implied, that Bond proceeds will be sufficient to pay all of the costs of the Project. If the Borrower pays any portion of the costs of the Project pursuant to this Section, it shall not be entitled to any reimbursement therefor from the Authority, the Bank, or any registered Owner, nor shall it be entitled to any diminution in or postponement of the payments required to be paid under this Financing Agreement.

#### **Section 5.6. Expense Fund.**

(a) There shall be deposited into the Operating Account and identified as being deposited to the Expense Fund moneys received by the Bank on behalf of the Borrower sufficient that on each January 15, commencing January 15, 2016, amounts on deposit in the Expense Fund shall be sufficient to pay the Authority's Annual Administrative Fee without demand and any other amounts to be paid from the Additional Use Fee pursuant to the Facilities Use Agreement.

(b) The Borrower and the Authority hereby authorize and direct the Bank to withdraw sufficient funds from the Expense Fund to pay to (i) the Authority (A) on or before each January 15, commencing January 15, 2016, and continuing until no Bonds remain Outstanding, an amount equal to the Authority's Administrative Costs then due and payable; and (B) all other amounts, if any, payable in connection with the Authority's Unassigned Rights, when due; and (ii) all other parties to be paid from the Additional Use Fee as described in Section 3.2.1 of the Facilities Use Agreement. All amounts due and payable to the Authority under this Financing Agreement or any other Bond Document shall be electronically transferred to the Authority at the Remittance Address. Amounts on deposit in the Expense Fund shall be invested in Permitted Investments that mature as near as possible to their respective due dates.

(c) If on the Business Day prior to any due date set forth in subsection (b), amounts then on deposit in the Expense Fund are insufficient to pay Administrative Costs on such Payment Date, the Bank shall demand from the Borrower, and the Borrower shall immediately deposit with the Bank an amount sufficient to pay such amounts upon demand. If on the due dates set forth in subsection (b), there are any amounts on deposit in the Expense Fund in excess of the amounts necessary to pay the Administrative Costs and the Additional Use Fee then due and payable, such excess shall be promptly returned to the Borrower.

(d) After payment in full of the Bonds and the payment of all other amounts owing hereunder, including any indemnity amounts and Late Fees owing to the Authority, any amounts remaining in the Expense Fund shall be paid to the Borrower.

#### **Section 5.7. Insurance and Condemnation Proceeds.**

(a) If Net Proceeds of insurance payments and condemnation awards are to be transferred to the Bank for application in accordance with this Financing Agreement, then the Bank shall establish a Net Proceeds Fund (the "**Net Proceeds Fund**"). There shall be deposited into the Net Proceeds Fund as and when received all Net Proceeds. There shall

also be retained in the Net Proceeds Fund, interest and other income received on investment of moneys in the Net Proceeds Fund to the extent provided in this Financing Agreement. Any amounts on deposit in the Net Proceeds Fund after completion of any such repairs, replacements, or improvements, upon confirmation of the same by the Consulting Architect, with respect to Real Property, or the Borrower and the Bank, with respect to Personal Property, shall be transferred by the Bank to the Bond Fund, and used to redeem Bonds pursuant to the provisions of Article IV of this Financing Agreement.

(b) The Net Proceeds Fund shall be in the custody of the Bank. Absent an Event of Default hereunder, the Authority hereby authorizes and directs the Bank to make each disbursement authorized or required by the provisions of Section 8.23 and to issue its checks therefor. The Bank shall keep and maintain adequate records pertaining to the Net Proceeds Fund and all disbursements therefrom and shall annually file an accounting thereof with the Authority and the Borrower.

(c) The Bank shall fully cooperate with the Borrower in the handling and conduct of any prospective or pending insurable event or condemnation proceeding with respect to the Property or any part thereof.

## **ARTICLE VI**

### **INVESTMENT OF FUNDS**

#### **Section 6.1. Investment of Moneys Held by the Bank; Rebate.**

(a) Moneys in all funds and accounts held by the Bank shall be invested by the Bank, as soon as practicable upon receipt of immediately available funds at its designated corporate office, to the fullest amount possible in Permitted Investments as directed, in writing, by the Borrower Representative, and approved by the Bank; provided that the maturity date or the date on which such Permitted Investments may be redeemed at the option of the holder thereof shall coincide as nearly as practicable with (but in no event shall be later than) the date or dates on which moneys in the funds or accounts for which the investments were made will be required for the purposes thereof. In the absence of such direction, moneys in the funds and accounts held by the Bank shall be invested by the Bank in investments described in clause (f) of the definition of Permitted Investments.

(b) Amounts credited to a fund or account may be invested, together with amounts credited to one or more other funds or accounts, in the same Permitted Investment, provided that the Bank maintains separate records for each fund and account and such investments are accurately reflected therein.

(c) The Bank may make any investment permitted by this Section at market rates, subject to the limitations, if any, contained in the Tax Certificate, through or with its own commercial banking or investment departments unless otherwise directed by the Borrower.

(d) The Bank shall sell Permitted Investments purchased by it as an investment whenever it shall be necessary in order to provide moneys to meet any payment or transfer from the fund or account for which such investment was made.

**Section 6.2. Liability of Bank for Investments.** The Bank shall not be liable for any loss resulting from the making of any investment made in accordance with the provisions hereof, except for its own gross negligence or willful misconduct.

**Section 6.3. Rebate Requirements.** The Borrower shall provide to the Bank and the Authority within 60 days of each fifth Rebate Year, a certificate of the Borrower to the effect that (a) all requirements of this Financing Agreement and the Tax Certificate with respect to arbitrage rebate requirements of Section 148(f) of the Code have been met on a continuing basis, and (b) timely payment of all amounts due and owing to the United States Treasury has been made, which certificate may be based in part on the computations of the Rebate Analyst.

## **ARTICLE VII**

### **PAYMENTS AND SECURITY**

**Section 7.1. Amount and Source of Loan.** The Authority hereby makes to the Borrower, and the Borrower hereby accepts from the Authority, upon the terms and conditions set forth herein, the Loan evidenced by this Financing Agreement in the amount of \$9,000,000, and agrees to have the proceeds thereof applied and disbursed in accordance with the provisions of this Financing Agreement.

#### **Section 7.2. Repayment of Loan.**

(a) The Borrower hereby covenants and agrees to repay the Loan by making payments on behalf of the Authority directly to the Bank for payment of the Bonds, in amounts equal to the aggregate principal amount of the Bonds Outstanding under this Financing Agreement, together with any premium due thereon, and with interest on the unpaid principal balance of the Bonds at the applicable interest rates as may be in effect from time to time, and to pay any other amounts payable by the Authority hereunder, and all amounts to be due on or before the dates such amounts are due and payable by the Authority.

(b) It is understood and agreed that all payments payable under Sections 7.2 and 7.6 by the Borrower (except payments made directly to (or for the benefit of) the Bank, the Rebate Analyst, and those owed to the Authority) are assigned by the Authority to the Bank for the benefit of the Bank, as the Owner of the Bonds. The Borrower hereby consents to such assignment. Except as set forth herein, the Authority hereby directs the Borrower, and the Borrower hereby agrees, to pay directly to the Bank in immediately available funds, all payments payable by the Borrower pursuant to Sections 7.2 and 7.6. The Authority covenants that it will not pledge the payments payable by the Borrower under this Section 7.2 or under Section 7.6 other than to secure the Bonds.

(c) In the event the Borrower shall fail to make any of the payments required in Sections 7.2 or 7.6, the item or installment so in default shall continue as an obligation

of the Borrower (and not the Authority) and such amounts shall accrue interest daily at a rate equal to the applicable Default Rate.

(d) The Borrower hereby authorizes the Bank to collect all principal, interest and fees due under the Bonds by charging the Borrower's Operating Account, or any other deposit account maintained by the Borrower with the Bank, for the full amount thereof. Should there be insufficient funds in the Operating Account or any other such deposit account to pay all such sums when due hereunder, the full amount of such deficiency shall be immediately due and payable by the Borrower.

**Section 7.3. Prepayment of the Loan and Redemption of the Bonds.** The outstanding principal balance of the Loan may not be prepaid in whole or in part, except as expressly permitted herein. Any prepayment with respect to the Loan shall effect an early redemption of the Bonds in like amount, including accrued interest and premium, if any. Subject to the provisions of Section 7.3(a) and (c), the Borrower is hereby granted the option to prepay amounts payable with respect to the Loan and thereby cause an early redemption of the Bonds as provided in Section 4.3. Following the delivery of the Borrower's call for redemption in accordance with Article IV, on a date no later than the date fixed for redemption in such notice, the Borrower shall pay or cause to be paid, on behalf of the Authority, to the Owners, moneys in an amount sufficient, together with other moneys, if any, held by the Owners and available for the redemption of the Bonds, to redeem the Bonds at the redemption prices described in Section 7.3(a). If such moneys are not so provided, the call for redemption shall be null and void and the Bonds called for redemption shall remain Outstanding.

(a) The Borrower may, provided no Event of Default has occurred and is continuing, at its option, and upon not less than thirty (30) days prior written notice to the Bank, prepay the Loan in whole, but not in part, on any scheduled Payment Date (and upon prepayment, a "Prepayment Date"), provided that the Borrower also pays to the Bank on such Prepayment Date, (A) interest accrued and unpaid on the principal balance of the Loan, to and including such Prepayment Date; (B) all other sums then due pursuant to the Borrower Documents; and (C) the Yield Maintenance Premium.

(b) If a Default Prepayment occurs, the Borrower shall pay to the Bank the outstanding balance of the Loan, together with an amount (the "Default Consideration") equal to the Yield Maintenance Premium.

(c) Notwithstanding anything to the contrary herein, the Borrower may prepay the Loan in whole, without premium or penalty, on any Payment Date during the three (3) months prior to the Maturity Date. In addition, the Borrower shall prepay without premium or penalty, the Loan in an amount equal to any insurance proceeds or condemnation awards which the Bank elects to have applied to the Loan, pursuant to the Borrower Documents, or the amount required by the Bank due to changes in tax and debt credit pursuant to the Borrower Documents; provided, however, that in the event any such prepayment pursuant to this sentence shall be made on a date other than a Payment Date, the amount so prepaid shall include all interest which would have accrued on such amount through the next Payment Date. In each instance of prepayment permitted by subsection (a) and this subsection (c), the Borrower shall be required to pay all other

sums due pursuant to the Borrower Documents, and no principal amount repaid may be reborrowed.

In the event of a partial redemption of the Bonds, other than pursuant to Section 8.2 of this Financing Agreement, for any failure of the entire principal amount of the Bond authorized hereunder to be purchased through the “drawdown” mechanism pursuant to Section 3.1 through the date of Substantial Completion (as defined in Section 6.4 of the Facilities Use Agreement), the Mandatory Sinking Fund Schedule set forth on the schedule attached as **Exhibit C** to this Financing Agreement shall be adjusted to provide for approximately equal monthly payments of principal and interest at the applicable rate hereunder on the Bonds remaining Outstanding after taking into account such partial redemption and the Bank shall provide the Borrower (with a copy to the Authority) with a new schedule reflecting such adjustment.

**Section 7.4. Security for the Loan.** The Borrower and the Authority each agree that the right, title and interest of the Authority hereunder and in and to the Security Documents, the Loan payments and other amounts paid or payable by the Borrower hereunder, other than the Authority’s Unassigned Rights, are hereunder assigned and pledged by the Authority to the Bank to secure the payment of the Bonds. In addition to the foregoing, the Borrower pledges to the payment of the Bonds all of the Borrower’s right, title and interest in and to (subject to Permitted Liens) (a) all Real Property secured by the Deed of Trust, and (b) all Personal Property now or hereafter owned by the Borrower.

**Section 7.5. Right of Bank to Enforce Security Documents.** The Borrower agrees that the Security Documents and all of the rights, interests, powers, privileges and benefits accruing to or vested in the Authority under the Security Documents, and (except for the Authority’s Unassigned Rights) may be assigned by the Authority to the Bank as additional security for the Bonds and may be exercised, protected and enforced for or on behalf of the Bondowners in conformity with the provisions of this Financing Agreement and the Security Documents.

**Section 7.6. Additional Payments.** In addition to all other payments hereunder the Borrower agrees to pay the following items to the following persons, which payments shall be “Additional Payments:”

(a) During the term of this Financing Agreement, the Borrower shall pay or provide for the payment of all taxes and assessments, general or special, concerning or in any way related to the Project or any part thereof, and any other governmental charges and impositions whatsoever related to the same, and premiums for insurance policies maintained with respect to the same as required by this Financing Agreement and the Security Documents.

(b) To the Bank for further remittance to the Authority when due (i) all reasonable costs, fees and expenses incurred by the Authority in relation to the Bonds which are required to be paid by the Borrower under the terms of this Financing Agreement, upon demand, (ii) the Annual Administrative Fee of the Authority without demand, and (iii) any Late Fees in connection therewith, and (iv) any amounts required to reimburse the Authority for the Authority’s Unassigned Rights. The Borrower agrees that the payment under this Financing Agreement shall be a net return to the Authority

over and above any taxes or charges of any nature whatsoever which may currently or hereafter be imposed on the receipts of the Authority under this Financing Agreement.

(c) The Borrower shall pay all amounts necessary to pay the fees and expenses of any Rebate Analyst and rebatable arbitrage, if any.

(d) In the event the Borrower should fail to make or fail to cause to be made any Additional Payments, the item or installment in default shall continue as an obligation of the Borrower until the amount in default shall have been fully paid, and the Borrower agrees to pay the same. Without limiting the foregoing, the parties intend that all fees, charges, goods, claims or any other sums or things of value (collectively, the “**Additional Sums**”) paid or transferred by the Borrower pursuant hereto or under the other Bond Documents which, under the laws of the State, may be deemed to be interest with respect to such indebtedness, shall, for the purpose of any laws of the State which may limit the maximum rate of interest to be charged with respect to such indebtedness, be payable by the Borrower as, and shall be deemed to be, additional interest, and for such purposes only, the agreed upon and contracted rate of interest described in the Bond Documents shall be deemed to be increased by the Additional Sums.

**Section 7.7. Obligations Unconditional.** The obligations of the Borrower to make payments pursuant hereto, and to perform and observe all agreements on its part contained herein shall be absolute and unconditional. Such obligations of the Borrower shall be secured by a Lien (subject to Permitted Liens) on: (a) all Real Property secured by the Deed of Trust; and (b) all Personal Property now or hereafter owned by the Borrower. The obligations to make payments pursuant hereto are secured by a pledge of all other revenues, other property and assets of the Borrower, if any. With respect to the Personal Property securing the Loan, this Financing Agreement shall constitute a security agreement between the Borrower, as debtor, and the Bank as assignee of the Authority’s right and interest in and under this Financing Agreement (other than the Authority’s Unassigned Rights), and the Borrower hereby grants to the Bank a first security interest (subject to any Permitted Liens) and Lien on the Personal Property, whether now owned or hereafter acquired. The Borrower shall cause the foregoing security interests to be perfected by the filing of financing statements (which shall comply with the Uniform Commercial Code) in the Office of the Secretary of State of Nevada and in such other offices as is at the time provided by Law as the proper place for the filing thereof. Until this Financing Agreement is terminated and payment in full of all Bonds is made or is provided for in accordance with this Financing Agreement, the Borrower: (i) will not suspend or discontinue any payments hereunder or neglect to perform any of its duties required hereunder; (ii) will perform and observe all of its obligations set forth in this Financing Agreement; and (iii) except as provided herein, will not terminate this Financing Agreement for any cause. Nothing contained in this Section shall be construed to release the Authority from the performance of any of its obligations contained herein; provided, however, the Bank and the Borrower expressly acknowledge and agree that the Authority shall have no payment obligations hereunder except for amounts the Bank receives from the Borrower directly as payment on its behalf. In the event the Authority fails to perform any such obligation, the Borrower may institute such action against the Authority as the Borrower may deem necessary and to the extent permitted by Law to compel performance, provided such action shall not violate the terms or conditions of this Financing Agreement and provided that no costs, expenses or other monetary relief shall be

recovered from the Authority except as may be payable from the amounts available hereunder and pledged to the payment of Bonds. The Borrower may, however, at its own cost and expense and in its own name prosecute or defend any action or proceeding or take any other action involving third persons that the Borrower deems reasonably necessary in order to secure or protect its rights hereunder. In such event, the Authority hereby agrees, to the extent reasonable, to cooperate fully with the Borrower, but at the Borrower's expense, and to take all action necessary to effect the substitution of the Borrower for the Authority in any such action or proceeding if the Borrower shall so request.

The rights of the Authority and the Owners shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever, whether arising out of any breach of any duty or obligation of the Authority owing to the Borrower, or by reason of any other indebtedness or liability at any time owing by the Authority to the Borrower. The preceding sentence shall not be construed to waive or abrogate any duty, obligation or liability of the Authority to the Borrower, or to waive or abrogate any claim the Borrower may have against the Authority, but rather the preceding sentence is to make clear that the Borrower is not excused from paying any amounts due hereunder, or from performing any of its obligations hereunder, as a result of any duty, obligation or liability of the Authority to the Borrower as may from time to time exist, or as a result of any claim the Borrower may have from time to time.

**Section 7.8. Right of Setoff.** The Borrower grants to the Bank a security interest in, as well as a right of setoff against, and hereby assigns, conveys, delivers, pledges and transfers to the Bank, as security for repayment of the Bonds, all the Borrower's right, title and interest in and to all the Borrower's accounts (whether checking, savings, or some other account) with Bank or any subsidiary or affiliate of Western Alliance Bank (each hereafter referred to as a "**Bank Affiliate**") and all other obligations at any time owing by the Bank or any Bank Affiliate to the Borrower. This includes all accounts the Borrower holds jointly with someone else and all accounts the Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which the grant of a security interest would be prohibited by law. The Borrower authorizes the Bank, without prior notice to the Borrower and irrespective of (i) whether or not the Bank has made any demand under this Financing Agreement or (ii) whether such Bonds are matured or unmatured, to the extent permitted by law, to collect, charge and/or setoff all sums owing on the Bonds against any and all such accounts and other obligations, and, at the Bank's options, to administratively freeze or direct a Bank Affiliate to administratively freeze all such accounts and other obligations to allow the Bank to protect the Bank's security interest, collection, charge and setoff rights provided in this paragraph.

**Section 7.9. Bank's Annual Certificate as to Principal Amount Outstanding.** On or before December 15 of each calendar year, the Bank shall provide to the Authority and the Borrower a written certificate of the Bank certifying the principal amount of the Bonds expected to be Outstanding as of January 1 of the next succeeding calendar year.

## ARTICLE VIII

### PARTICULAR COVENANTS

#### Section 8.1. Corporate Existence; Merger.

(a) The Borrower covenants that the Sole Member will maintain its corporate existence throughout the life of this Financing Agreement and will not consolidate with or merge with or into any other Person without the written consent of the Bank and written notice to the Authority.

(b) The Borrower covenants that, throughout the term of this Financing Agreement it will remain qualified to do business in the State of Nevada and will maintain within each of the State of Nevada and the State an office at which, or an agent upon whom, service of process may be made upon it.

(c) The Borrower covenants that, throughout the term of this Financing Agreement, its Sole Member will remain an organization described in Section 501(c)(3) of the Code and exempt from tax pursuant to Section 501(a) of the Code.

#### Section 8.2. Indemnity.

(a) The Borrower will pay and will indemnify, defend and hold harmless the Authority, the Authority Indemnified Parties and the City (including any person at any time serving as a director, officer, partner, employee, representative, attorney or agent of the Authority or the City, in their capacity as such) and the Bank (including any person at any time serving as a director, officer, or employee of the Bank, in their capacity as such) (the “**Bank Indemnified Parties**”) for, from and against all claims, demands, liabilities, losses, damages, causes of action, costs, expenses (including reasonable attorneys’ fees), suits, penalties and judgments of any kind (the “**Liabilities**”) arising out of the following: (i) injury to or death of any person, or damage to property, in or upon any property of the Borrower financed or refinanced with Bond proceeds, or the occupation, use, non-use, possession or condition of such property or any part thereof or relating to the foregoing, (ii) any violation of any agreement, instrument, Law, ordinance or regulation relating to the Borrower Documents, or the ownership, occupation, use, non-use, possession or condition of the Property, (iii) the issuance and sale of the Bonds, (iv) the execution, delivery hereof or of any document required hereby or in furtherance of the transactions contemplated hereby, (v) errors and omissions in proceedings before the Authority or the City or in any information relating to a purchaser’s decision to purchase the Bonds, (vi) the performance of any act required of any indemnitee under this Section under any provision hereof or in furtherance of the transactions contemplated hereby, (vii) the breach, untruthfulness or default with respect to any of the Borrower’s covenants, representations or warranties contained herein or any certificate delivered in connection with the issuance of the Bonds, (viii) any environmental condition related to the Property, including allegations of, and actual violations of Environmental Law and Environmental Requirements; (ix) any statement, information or certificate furnished by the Borrower to the Authority or the Bank that is misleading, untrue, incomplete or incorrect in any

respect. The Borrower's indemnity obligations hereunder shall not include any claims resulting from the negligence or any willful misconduct by the Authority and the Bank.

(b) The Borrower also agrees to pay, defend, protect, indemnify, and hold each of the Authority Indemnified Parties and the Bank Indemnified Parties harmless for, from, and against any and all liabilities directly or indirectly arising from or relating to (i) any errors or omissions of any nature whatsoever contained in any legal proceedings or other official representation or inducement made by or to the Authority or the City by or on behalf of the Borrower pertaining to the Bonds, and (ii) any fraud or misrepresentations or omissions contained in the proceedings of the Authority or the City relating to the issuance of the Bonds or pertaining to the financial condition of the Borrower which, if known to the original purchaser of any of the Bonds, might be considered a factor in such Person's decision to purchase such Bonds.

(c) Any party entitled to indemnity shall promptly, upon receipt of notice of the existence of a claim or the commencement of a proceeding regarding which indemnity under this Section may be sought, notify the Borrower in writing thereof. If such a proceeding is commenced, the Borrower may participate in the proceeding and, to the extent it elects to do so, may assume the defense thereof with counsel satisfactory to the Authority Indemnified Party and the Bank Indemnified Party, as applicable, provided that the Authority Indemnified Party and the Bank Indemnified Party shall at all times also have the right to fully participate in the defense. If, however, the Authority Indemnified Party or the Bank Indemnified Party is advised in an Opinion of Counsel that there may be legal defenses available to it which are different from or in addition to those available to the Borrower, or if the Borrower fails to assume the defense of such proceeding or employs counsel for that purpose satisfactory to the Authority Indemnified Party and Bank Indemnified Party, as applicable, within a reasonable time after notice of commencement of the proceeding, the Borrower shall not be entitled to assume the defense of the proceeding on behalf of the Authority Indemnified Party and Bank Indemnified Party, as applicable, but the Borrower shall be responsible for the reasonable fees, costs and expenses of the Authority Indemnified Party and Bank Indemnified Party, as applicable, in conducting its defense.

**Section 8.3. Limitation of Authority's Liability.** No agreements or provisions contained herein and no agreement, covenant or undertaking by the Authority or the City contained in any document executed by the Authority or the City in connection with any Property of the Borrower financed or refinanced directly or indirectly out of Bond proceeds or with the issuance, sale and delivery of the Bonds shall give rise to any pecuniary liability of the Authority Indemnified Parties or the City or a charge against their general credit, or shall obligate the Authority Indemnified Parties or the City financially in any way, except with respect to the funds available hereunder that are pledged to the payment of the Bonds. No failure of the Authority Indemnified Parties or the City, respectively, to comply with any term, covenant or agreement herein or in any document executed by the Authority Indemnified Parties or the City in connection with the Bonds shall subject the Authority Indemnified Parties or the City to any pecuniary charge or liability except to the extent that the same can be paid or recovered from the funds available hereunder that are pledged to the payment of the Bonds. Nothing herein shall preclude a proper party in interest from seeking and obtaining, to the extent permitted by Law,

specific performance against the Authority Indemnified Parties or the City for any failure to comply with any term, condition, covenant or agreement herein or herein; provided, that no costs, expenses or other monetary relief shall be recoverable from the Authority Indemnified Parties or the City except as may be payable from the funds available hereunder that are pledged to the payment of the Bonds.

**Section 8.4. Consent to Assignment of Financing Agreement Rights to Bank.** The Borrower agrees that this Financing Agreement and payments to be made hereunder and any rights of the Authority in and to the payments to be made herein (excluding Administrative Costs payable to the Authority, the Authority Indemnified Parties' rights to indemnification in certain circumstances, rebate related costs, and excluding the Authority's Unassigned Rights), are hereby assigned and pledged to the Bank to secure the payment of the Bonds and all of the rights, interests, powers, privileges and benefits accruing to or vested in the Authority hereunder (excluding the Authority's Unassigned Rights) may be protected and enforced in conformity with this Financing Agreement.

**Section 8.5. Changes in or Amendments to the Project.** Only with the prior written consent of the Bank, the Borrower may make, authorize or permit such changes in or amendments to the Project as the Borrower may reasonably determine necessary or desirable, provided that no such change or amendment shall be made which would result in the Borrower's Facility being used for any purpose prohibited by Article VIII of this Financing Agreement or the Tax Certificate, or which would cause the representations of the Borrower in Section 2.2 of this Financing Agreement to be untrue, if such representations were made as of the date of the change or amendment.

**Section 8.6. Assignment and Encumbrances.**

(a) The Borrower's obligations pursuant to this Financing Agreement may be assigned in whole or in part by the Borrower only with the express prior written consent of the Bank and written notice to the Authority.

(b) Except for Permitted Liens and except as further provided in the Security Documents, the Borrower will not permit any Lien, levy, attachment or restraint to be made or filed against the Property, or any portion thereof, or permit any receiver, trustee or assignee for the benefit of creditors to be appointed to take possession of the Personal Property or the Real Property or any portion thereof. Except for Permitted Liens and the security interest granted to the Bank hereunder, the Borrower will not encumber the Personal Property or the Real Property without the prior written consent of the Bank.

**Section 8.7. Title Insurance.** On the date of recordation of the Deed of Trust, at the Borrower's sole expense, the Bank shall be provided with an ALTA (2006) Extended Coverage Loan Policy of Title Insurance issued by First American Title Insurance Company, in form and substance and containing such endorsements as may be required by the Bank, dated as of the recording of the Deed of Trust, insuring the Bank's interest in and Lien against the Real Property and the other property subject to the Deed of Trust, subject only to Permitted Liens, in an amount not less than the principal amount of the Bonds, a copy of which shall be delivered to the Bank. No such policy shall permit the title insurer to purchase any Bonds in lieu of providing payment

under the policy unless, upon purchase, such Bonds are cancelled. Upon the date of issuance of the Bonds, the Deed of Trust shall be recorded in the real property records of Elko County, Nevada and provide the Bank with a perfected first priority Lien interest in the Real Property and other property subject to the Deed of Trust, subject to any Permitted Liens.

**Section 8.8. Compliance with Laws.** The Borrower will comply and, to the extent it is able, will require others to comply with all Laws and requirements of all Governmental Authorities having jurisdiction over the Project and will furnish the Bank (with written notice to the Authority) with reports of any official investigations of alleged violations of Law.

**Section 8.9. Project Inspections.** Throughout the term of this Financing Agreement, and at any time during normal business hours with reasonable notice and in compliance with applicable laws, the Borrower will permit the Bank and the Authority and their representatives, inspectors and consultants to enter upon the Real Property, to inspect the Property, to audit, examine and copy all contracts and records (including financial and accounting records) pertaining to the Loan and the Property, and to discuss the affairs, finances and accounts of the Borrower pertaining to the Loan and the Property with representatives of the Borrower; provided, however, the Authority shall have no duty or obligation to do so. The Borrower will assist the Bank and the Authority or said representatives in all reasonable ways necessary to make such inspection.

**Section 8.10. Financial Statements, Reports and Covenants.**

(a) Maintenance of Books and Accounts. The Borrower agrees that it will maintain proper books of records and accounts with full, true and correct entries of all of its dealings substantially in accordance with standard accounting procedures and such other data and information as may reasonably be requested by the Authority and the Bank from time to time of which the Borrower has written notice.

(b) Financial Reports and Other Reporting. The Borrower shall furnish or cause to be furnished to the Bank, any other registered Owner of a Bond that requests in writing to be provided with such information (and, upon written request therefor, to the Authority), the following financial reports, information and certificates within the specified time periods:

(i) As soon as available, and in any event no later than 180 days after the end of each Fiscal Year, commencing with the Fiscal Year ending December 31, 2015, in an electronic format acceptable to the Bank, (A) the consolidated and consolidating financial statements of the Borrower for the immediately preceding Fiscal Year audited in accordance with generally accepted auditing standards by a certified public accountant acceptable to the Bank, all in reasonable detail and stating in comparative form the respective figures for the corresponding date and period in the prior Fiscal Year, prepared in accordance with Generally Accepted Accounting Principles (“GAAP”), together with a copy of any management letter delivered by the auditors in connection with such financial statements, and (B) a certificate signed by the Borrower’s president or chief financial officer, in an electronic format acceptable to the Bank (with a copy

to the Authority), (I) stating that such officer has made a review of its activities during the preceding period, for the purpose of determining whether or not the Borrower has complied with all of the terms, provisions and conditions of the Bond Documents to which it is a party, (II) containing calculations of the applicable financial covenants, including those in Section 8.11, and (III) attesting that, to the best of his/her knowledge, the Borrower has kept, observed, performed and fulfilled each and every covenant, provision and condition of such documents on its part to be performed and no Event of Default has occurred or, if an Event of Default has occurred, such certificate shall specify such event or condition, the nature and status thereof and any remedial steps taken or proposed to correct such event or condition.

(ii) Within forty-five (45) days following the end of each successive fiscal quarter of the Borrower, commencing with the fiscal quarter ending December 31, 2015, financial statements (consisting of at least a balance sheet and a statement of revenues and expenses) of the Borrower for the preceding fiscal quarter.

(c) Maintenance of Lien Position. On or before the 60th day before the fifth anniversary of the Closing Date and every five (5) years thereafter, the Borrower shall provide to the Bank a copy of the actual filed UCC continuation statement(s) necessary to preserve the Lien on and security interest in the Real Property and the Liens provided in the Security Documents. If the Borrower does not take the action necessary to preserve the Lien on and security interest in the Real Property and the Liens provided in Security Documents, the Bank may take such action and, in such event, the Bank shall be entitled to reimbursement from the Borrower of its Administrative Costs.

(d) [Reserved].

(e) Other Reports. The Borrower shall furnish or cause to be furnished to the Authority (provided that the Authority delivers a written request for such information), the Bank, and any other registered Owner of a Bond that requests in writing to be provided with such information, the following other information within the following time periods:

(i) Copies of all material written reports and other material information filed or delivered by the Borrower to or with any Governmental Authority which has jurisdiction over the affairs of the Borrower, which is a creditor of the Borrower, or which issues indebtedness on behalf of the Borrower, and copies of any reports of governmental audits, inspections or other investigations of the Borrower or any of its Property.

(ii) Such other information respecting the business, condition (financial or otherwise) or operations of the Borrower and the Property as the Bank may from time to time reasonably request.

**Section 8.11. Financial Covenants.** The Borrower covenants and agrees that, from the date of this Financing Agreement and so long as the Bonds remain outstanding, the Borrower shall:

(a) Within 180 days of each Fiscal Year end, commencing with the Fiscal Year ending December 31, 2015, complete and submit to the Bank a Compliance Certificate in the form attached as Exhibit E to this Financing Agreement.

(b) Not enter into any agreement with any Person other than the Bank which prohibits or limits its ability to create or permit to exist any indebtedness or Lien on any of its Property, whether now owned or hereafter acquired.

(c) Not incur any long-term indebtedness or capital lease obligations, or create or consent to the creation of any Liens on any of the Land/Real Property, the Ground Lease, the Facilities Use Agreement, the Personal Property, the Revenues or any property of the Borrower, except, in any such case, as set forth in this Financing Agreement, without, in any such case, the prior written consent of the Bank.

**Section 8.12. Trade Names.** The Borrower shall not cause or permit any change in the legal, trade or fictitious business names used by the Borrower, unless the Borrower shall have delivered to the Bank prior to the effective date of such change an Opinion of Counsel to the effect that all filings and other actions necessary under the UCC and other applicable Law in order to preserve and protect the security interests in favor of the Bank following such name change have been made and taken. The Borrower shall, upon the Bank's request, execute or cause to be executed any additional documents and other certificates necessary to reflect the change in trade names or fictitious business names.

**Section 8.13. Further Assurances.** The Borrower shall execute and deliver from time to time, promptly after any request therefor by the Bank, any and all instruments, agreements and documents, including the filing of UCC statements pursuant to the Uniform Commercial Code, and shall take such other action as may be necessary or desirable in the opinion of the Bank to maintain, perfect or insure the security provided for in the Security Documents, including, without limitation, the execution of UCC-1 renewal statements, all as the Bank shall reasonably require, and the Borrower shall pay all fees and expenses (including reasonable attorneys' fees) related thereto.

**Section 8.14. Notice of Litigation.** There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending, or, to the actual knowledge of the Borrower, threatened against or affecting the Borrower wherein an unfavorable decision, ruling or finding would adversely affect (i) the transaction contemplated by, or the validity or enforceability of, the Bond Documents or (ii) the exclusion of the interest on the Bonds from gross income for federal tax purposes. The Borrower will give, or cause to be given, prompt written notice to the Bank and the Authority of (a) any action or proceeding which is instituted by or against it in any federal or state court or before any commission or other regulatory body, federal, state or local, foreign or domestic, or any such proceedings which are threatened against it which, if adversely determined, could have a material and adverse effect upon its business, operations, properties, assets, management, ownership or condition (financial

or otherwise), and (b) any other action, event or condition of any nature which may have a material and adverse effect upon its business, operations, management, assets, properties, ownership or condition (financial or otherwise), or which, with notice or lapse of time or both, would constitute an Event of Default or a default under any other contract, instrument or agreement to which it is a party or to which it or any of its properties or assets may be bound or subject.

**Section 8.15. Maintenance and Modifications of the Property by the Borrower.** The Borrower agrees that during the term of this Financing Agreement the Property shall be operated and maintained, in substantial material compliance with all governmental Laws, building codes, ordinances, and regulations and zoning laws as shall be applicable to the Property and will pay all fees or charges of any kind in connection therewith. The Borrower will not use, or allow the use of, the Property in any manner which violates any applicable Law or which constitutes a public or private nuisance or will not initiate or permit any zoning reclassification of the Real Property which is unacceptable to the Bank or seek any variance under existing zoning ordinances applicable to the Real Property which is unacceptable to the Bank or use or permit the use of the Property in such a manner which would result in such use becoming a nonconforming use under applicable zoning ordinances or other applicable laws. The Borrower will not impose any restrictive covenants or encumbrances upon the Real Property, execute or file any subdivision plat or replat affecting the Real Property or consent to the annexation of the Real Property to any municipality, without the prior written consent of the Bank. The Borrower will not agree or consent to any drilling or exploration for, or extraction, removal or production of minerals from the surface or subsurface of the Real Property regardless of the depth thereof or the method of mining or extraction thereof. The Borrower agrees that during the term of this Financing Agreement it will at its own expense (a) keep the Property in as safe condition as required by Law and (b) keep the Property in good repair and in good operating condition, making from time to time all necessary repairs thereto (including external and structural repairs) and renewals and replacements thereof, all of which shall be accomplished in a workmanlike manner in accordance with all applicable laws. The Borrower may dispose of portions of the Personal Property that the Borrower determines to be obsolete or not useful to operations of the Property, as applicable, only if such disposed portions of the Personal Property are replaced by the Borrower by an article of equal suitability and value, owned by the Borrower, free and clear of any Lien or security interest (other than a Permitted Lien). The Borrower may also, at its own expense, make from time to time any additions, modifications or improvements to the Property it may deem desirable for its purposes that do not reduce its value; provided that any alteration involving an estimated expenditure exceeding \$25,000.00 must have plans and specifications approved in writing by Bank and all such additions, modifications and improvements made by the Borrower which are affixed to the Real Property shall become a part of the Real Property. The Borrower will not permit any Liens, security interests or other encumbrances other than Permitted Liens to be established or to remain against the Property for labor or materials furnished in connection with the Property or any additions, modifications, improvements, repairs, renewals or replacements made by it to the Property, as applicable; provided that if: (i) the Borrower shall have notified Bank of the Lien within five (5) days of obtaining knowledge thereof; (ii) the Borrower shall diligently and in good faith contest the same by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same and the sale of the Property or any part thereof, to satisfy the same; (iii) the Borrower shall have furnished to Bank a cash deposit, or an indemnity bond satisfactory to Bank with a surety satisfactory to

Bank, in the amount of the mechanic's or materialmen's Lien claim, plus a reasonable additional sum to pay all costs, interest and penalties that may be imposed or incurred in connection therewith, to assure payment of the matters under contest and to prevent any sale or forfeiture of the Property or any part thereof; (iv) the Borrower shall promptly upon final determination thereof pay the amount of any such claim so determined, together with all costs, interest and penalties which may be payable in connection therewith; (v) the failure to pay the mechanic's or materialmen's Lien claim does not constitute a default under any other deed of trust, mortgage or security interest covering or affecting any part of the Property; and (vi) notwithstanding the foregoing, the Borrower shall immediately upon request of the Bank pay or cause to be discharged or bonded against any such claim notwithstanding such contest, if in the reasonable opinion of Bank the Property shall be in jeopardy or in danger of being forfeited or foreclosed.

**Section 8.16. Taxes, Other Governmental Changes and Utility Charges.** The Borrower will duly pay and discharge, or cause to be paid and discharged, not later than the earlier to occur of (a) the due date thereof, (b) the date any fine, penalty, interest, or cost may be added thereto or imposed, or (c) the date prior to any date any Lien may be filed for the nonpayment thereof (if such date is used to determine the due date of the respective item), (i) all taxes and governmental charges of any kind whatsoever or payments in lieu of taxes that may at any time be lawfully assessed or levied against or with respect to the Property or any interest therein, or any machinery, equipment, or other property installed or brought by the Borrower therein or thereon which, if not paid, will become a Lien (other than a Permitted Liens) on the Property or a charge on the Revenues pledged in connection with the Bonds prior to or on a parity with the charge thereon under this Financing Agreement, (ii) all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Property and (iii) all assessments, general or special, and charges lawfully made by any Governmental Authority for public improvements that may be secured by a Lien (other than a Permitted Lien) on the Property provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Borrower shall be obligated to pay only such installments as may have become due during the term of this Financing Agreement. The Borrower may, at its own expense, but only if no Event of Default hereunder has occurred and is continuing, diligently prosecute and in good faith contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges contested to remain unpaid during the period of such contest and any appeal therefrom; provided that if: (A) the Borrower shall have notified Bank of the same within five (5) days of obtaining knowledge thereof; (B) the Borrower shall diligently and in good faith contest the same by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same and the sale of the Property or any part thereof, to satisfy the same; (C) the Borrower shall have furnished to Bank a cash deposit, or an indemnity bond satisfactory to Bank with a surety satisfactory to Bank, in the amount of the unpaid taxes, charges or assessments, plus a reasonable additional sum to pay all costs, interest and penalties that may be imposed or incurred in connection therewith, to assure payment of the matters under contest and to prevent any sale or forfeiture of the Property or any part thereof; (D) the Borrower shall promptly upon final determination thereof pay the amount of any such taxes, charges or assessments so determined, together with all costs, interest and penalties which may be payable in connection therewith; (E) the failure to pay the taxes, charges or assessments does not constitute a default under any other deed of trust, mortgage or security interest covering or affecting any part of the Property; and (F) notwithstanding the foregoing, the Borrower shall immediately upon request of

the Bank pay (and if the Borrower shall fail so to do, the Bank may, but shall not be required to, pay or cause to be discharged or bonded against) any such taxes, charges or assessments notwithstanding such contest, if in the reasonable opinion of the Bank or Authority the Property shall be in jeopardy or in danger of being forfeited or foreclosed. The Bank may pay over any such cash deposit or part thereof to the claimant entitled thereto at any time when, in the judgment of the Bank, the entitlement of such claimant is established.

**Section 8.17. Insurance Requirements.** At all times throughout the term of this Financing Agreement, the Borrower shall, at its sole cost and expense, maintain or cause to be maintained the insurance policies and coverages shown on Schedule 5.1 of the Ground Lease, and shall pay or cause to be paid, as same becomes due and payable, all premiums in respect thereto, in accordance with the terms thereof.

**Section 8.18. [Reserved].**

**Section 8.19. Advances by Authority or Bank.** In the event the Borrower shall fail to maintain the full insurance coverage required by this Financing Agreement or shall fail to keep the Property in the condition required hereby (except as otherwise herein permitted), the Authority or the Bank may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same, or make the required repairs, renewals and replacements; and all amounts advanced therefor by the Authority or the Bank shall become an additional obligation of the Borrower under this Financing Agreement to the one making the advance, which amounts the Borrower agrees to pay on demand together with interest thereon at a rate which shall be 3% per annum above the highest interest rate borne by any of the Bonds or the Maximum Interest Rate if less than such rate.

**Section 8.20. Environmental Indemnity.** In addition to the indemnification otherwise set forth in this Financing Agreement: The Borrower and its successors, heirs and assigns, shall and do hereby indemnify and hold harmless the Bank its successors, assigns, trustees, directors, officers, employees, agents, contractors, subcontractors, licensees, and invitees (collectively the “**Indemnified Parties**”) and the Authority Indemnified Parties, for, from and against any and all Environmental Damages that the Indemnified Parties or Authority Indemnified Parties, may incur as well as any and all loss, costs, damages, exemplary damages, natural resources damages, Liens, and expenses, (including, but not limited to, reasonable attorneys’ and paralegals’ fees and any and all other costs incurred in the investigation, defense and settlement of claims) that Indemnified Parties or Authority Indemnified Parties, may incur as a result of or in connection with the assertion against Indemnified Parties or Authority Indemnified Parties, as the case may be, or against all or a portion of the Property, of any claim, civil, criminal or administrative, which:

(a) arises out of the actual, alleged or threatened discharge, dispersal, release, storage, treatment, generation, disposal or escape of any Regulated Chemical, including, but not limited to, any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, vapor, soot, fumes, acids, alkalis, chemicals, medical waste and waste (including materials to be recycled, reconditioned or reclaimed); or

(b) actually or allegedly arises out of the use of any Regulated Chemical, the existence or failure to detect the existence or proportion of any Regulated Chemical in the soil, air, surface water or groundwater, or the performance or failure to perform the abatement or removal of any Regulated Chemical or of any soil, water, surface water or groundwater containing any Regulated Chemical; or

(c) arises out of the actual or alleged existence of any Regulated Chemical on, in, under, or affecting all or a portion of the Property; or

(d) arises out of any misrepresentations of the Borrower concerning any matter involving Regulated Chemicals or Environmental Requirements; or

(e) arises out of the Borrower's failure to provide all information, make all submissions and filings, and take all steps required by appropriate government authority under any applicable Environmental Requirements, regulation, statute or program, whether federal, state or local, whether currently existing or hereinafter enacted.

Without prejudice to the survival of any other agreements of the Borrower hereunder, this indemnification shall survive any termination, payment, or satisfaction of the indebtedness and the termination of this Financing Agreement, and any foreclosure or any other transfer of any kind of the Property and shall continue and survive *ad infinitum*. The Borrower's indemnification contained herein shall be effective not only with any existing Environmental Requirements affecting the Borrower, Indemnified Parties, Authority Indemnified Parties and/or the Property, but also for any hereinafter enacted Environmental Requirement, regulation, statute or program, whether federal, state or local affecting the Borrower, Indemnified Parties, Authority Indemnified Parties and/or the Property. The Borrower's indemnification contained herein shall extend to any and all like claims which arise from the acts or omissions of any user, tenant, lessee, agent or invitee of the Borrower. The obligation under this Section shall not be affected by any investigation by or on behalf of Indemnified Parties or Authority Indemnified Parties, as the case may be, or by any information which Indemnified Parties or Authority Indemnified Parties, as the case may be, may have or obtain with respect thereto. The Borrower's indemnification shall include the duty to defend any and all claims, and Indemnified Parties and/or the Authority Indemnified Parties, as the case may be, may participate in the defense of any claim without relieving the Borrower of any obligation hereunder. This duty to defend shall apply and constitute an obligation of the Borrower regardless of any challenge by the Borrower to this provision, the indemnification contained herein, or any other provision of this Financing Agreement. This duty to defend shall apply regardless of the validity of the Borrower's indemnification, as may ultimately be determined by a court of competent jurisdiction. Notwithstanding anything to the contrary contained in this Section, no indemnification shall be required for any Environmental Damage incurred solely as the result of the gross negligence or willful misconduct of the party seeking indemnification.

#### **Section 8.21. Environmental Covenants.**

(a) Use of Property. The Borrower will not intentionally or unintentionally conduct, or allow to be conducted, any business, operation, or activity on, under, or in the Property, or employ or use the Property or allow for it to be employed or used, to

manufacture, transport, treat, store, or dispose any Regulated Chemical which would violate or potentially violate Environmental Requirements, including, but not limited to, any action which would:

(i) bring the Borrower, or the Property, within the ambit of, or otherwise violate, the Resource Conservation and Recovery Act of 1976, as amended by the Solid and Hazardous Waste Amendments of 1984, 42 U.S.C. §§ 6901, *et seq.*;

(ii) cause, or allow to be caused, a release or threat of release, of hazardous substances on, under, in, or about the Property as defined by, and within the ambit of, CERCLA; or

(iii) violate the Clean Air Act of 1970, as amended, 42 U.S.C. §§ 7401, *et seq.*, or other similar state, regional or local statute, Law, regulation, rule or ordinance, including without limitation, the laws of the State of Nevada, or any other statute providing for the financial responsibility for cleanup for the release or threatened release of substances provided for thereunder.

The Borrower will not do or permit any act or thing, business or operation that materially increases the dangers, or poses an unreasonable risk of harm, or impairs, or may impair, the value of the Property, or any part thereof.

(b) Maintenance of Property. The Borrower shall maintain the Property free from contamination by Regulated Chemicals and shall not intentionally or negligently allow a release, discharge or emission, or threat of release, discharge or emission, of any Regulated Chemical on, under, in or about the Property, and shall use its best efforts to not permit the migration or threatened migration from other properties upon, about or beneath the Property.

(c) Notice of Environmental Problem. The Borrower (provided that the Borrower shall only forward to the Bank those notices, letters, citations, orders, warnings, complaints, inquiries, claims or demands actually received by the Borrower) and/or any tenant and/or sub lessee shall promptly provide a copy to the Bank, and in no event later than 15 days from the Borrower's and/or any tenants' and/or sublessee's receipt or submission, of any notice, letter, citation, order, warning, complaint, inquiry, claim or demand that:

(i) the Borrower and/or any tenants or sublessees have violated, or are about to violate, any federal, state, regional, parish or local environmental, health, or safety Law;

(ii) there has been a release, or there is a threat of release, of any Regulated Chemical from the Property;

(iii) the Borrower and/or any tenants or sublessees may be or are liable, in whole or in part, for the costs of cleaning up, remediating, removing or responding to a release of any Regulated Chemical; and

(iv) any portion of the Property are subject to a Lien in favor of any Governmental Authority for any liability, costs or damages, under Environmental Requirements arising from, or costs incurred by such Governmental Authority in response to, a release of any Regulated Chemical.

(d) Response Action. The Borrower shall take all appropriate responsive action, including any removal and remedial action (“**Response Action**”) within thirty (30) days (or longer period if the Borrower believes such is necessary in the Borrower’s reasonable discretion) after written demand by the Bank for performance thereof (or such shorter period of time as may be required under any Environmental Requirements), in the event of a release, emission, discharge or disposal of any Regulated Chemical in, on, under or about the Property, so as to remain in compliance with the above, and to keep the Property free from, and unaffected by, Regulated Chemicals. The Borrower shall (i) provide the Bank, within ten (10) days after providing the notice required under Section 8.21(c) above, with a bond, letter of credit or similar financial assurance which is equal to the cost of the Response Action and which may be drawn upon by the Bank for the purpose of completing the Response Action if an Event of Default occurs or if the Response Action is not completed within six (6) months of the issuance of the financial assurance, and (ii) discharge any assessment, Lien or encumbrance which may be established on the Property as a result thereof.

(e) No Liens or Encumbrances. The Borrower shall prevent the imposition of any Liens or encumbrances against the Property for the costs of any response, removal, or remedial action or cleanup of any Regulated Chemicals. Should such a Lien or encumbrance be levied on the Property, the Borrower shall follow the procedure set forth in Section 8.21(d) above.

(f) Compliance with Environmental Requirements. The Borrower shall carry on the business and operations at the Property to comply in all respects and will continue to remain in compliance with all applicable Environmental Requirements and maintain all permits and licenses required thereunder.

## **Section 8.22. Additional Environmental Provisions.**

(a) Right to Notify Governmental Authorities. To the extent the Bank receives written notice, whether from the Borrower or any other party, to the effect that the Borrower is in violation of any Environmental Requirement, whether federal, state, or local, or that there has been a release or threat of release of any Regulated Chemical from or upon the Property, the Bank shall promptly provide such notice to the Authority. If the Bank determines that such notice requires notification to the respective Governmental Authorities, the Bank retains the right to so notify the respective Governmental Authorities. The Bank may make written demand upon the Borrower, as circumstances may require, to notify the respective Governmental Authorities, however, the Bank retains the right to separately notify the respective Governmental Authorities, and the Borrower shall have no cause of action against the Bank as a result of any such notification.

(b) Right of Inspection.

(i) In addition to the inspection rights provided above, the Bank may, not more than once every five years, unless the Bank has reasonable cause to require the same more frequently, upon notice, either prior to or after the occurrence of any Event of Default hereunder, require the Borrower to submit to the Bank within 90 days of either (A) receipt of a notice required under Section 8.21(c) hereof or (B) a written request from the Bank, a written report of a site assessment and environmental audit ("**Environmental Assessment**"), in scope, form and substance satisfactory to the Bank, and prepared by an independent, competent and qualified engineer, satisfactory to the Bank, showing that the engineer made all appropriate inquiry consistent with good commercial and customary practice, and that, no evidence or indication came to light which would suggest there was a release of substances on, under, in, or about any Property which could necessitate an environmental response action, and which Environmental Assessment demonstrates that the Property complies with, and does not deviate from, all applicable environmental statutes, laws, ordinances, rules and regulations, including any licenses, permits or certificates required thereunder, and that the Borrower is in compliance with, and has not deviated from, the representations and warranties set forth herein hereof.

(ii) In addition to the inspection rights provided above, the Borrower hereby grants, and will cause any tenants or users of the Property to grant, to the Bank, its agents, attorneys, employees, consultants and contractors, upon reasonable notice, and under reasonable conditions established by the Borrower, which do not impede the performance of the Environmental Assessment, an irrevocable license and authorization to enter upon and inspect the Property, and perform such sampling, tests, and analysis ("**Tests**") including without limitation, subsurface testing, soils and groundwater testing, and other tests which may physically invade the Property, as the Bank or its agent determines is necessary. The Bank shall be liable for any damage or injury to any person or property caused by the acts of the Bank or its agents, attorneys, employees, consultants or contractors, as applicable, except to the extent such damage or injury is contributed to, caused by or exacerbated by the actions or omissions of the Borrower.

(iii) The Borrower will cooperate with the consultants and supply to the consultants such historical and operational information as may be reasonably requested by the consultants, together with any notices, permits or other written communications pertaining to violations of Environmental Requirements and any and all necessary information and make available personnel having knowledge of such matters as may be required by the Bank, Bank's agents, consultants and engineers to complete an Environmental Assessment.

(iv) Should the Borrower fail to perform an Environmental Assessment within the time period set forth in this Section 8.21(b)(i) hereof, Bank shall have

the right but not the obligation to retain an environmental consultant to perform said Environmental Assessment.

(v) The cost of performing any Environmental Assessment shall be paid by the Borrower upon demand of Bank and any such obligations shall be included in the indebtedness.

(c) Event of Default. If an Environmental Assessment reveals any violations of Environmental Requirements or the Borrower receives a notice of a violation of Environmental Requirements, and the Borrower fails to cure the violation in the time period and the manner specified in Section 8.21(d) hereof, such action will constitute an Event of Default.

(d) No Assumption of Risk. The Bank's rights under this Section shall be exercised by it in its sole discretion and not for the benefit of the Borrower. The Bank shall have no obligation (unless directed and indemnified as provided herein) to enter into the Property or to take any other action which is authorized by this Financing Agreement for the protection of its security interest. The Borrower specifically agrees and acknowledges that any action permitted under this Section shall not be construed to be the management or control of the Property by the Bank.

**Section 8.23. Use of Net Proceeds upon Damage, Destruction and Condemnation.** In the event of a casualty or condemnation with respect to the Property, and so long as no Event of Default exists and is continuing, the proceeds from any insurance policy or the proceeds of any condemnation award resulting from such casualty or condemnation shall be used to repair or replace the portion of the Property damaged, destroyed or taken or to prepay the Loan and redeem the Bonds in accordance with the provisions of Article XVII of the Facilities Use Agreement and Article 14 of the Ground Lease, as applicable. Any prepayment of the Loan or any portion thereof shall be applied to the redemption of the Bonds under Section 4.5 of this Financing Agreement

**Section 8.24. [Reserved].**

**Section 8.25. No Change in Loan Payments; No Liens.** All buildings, improvements and equipment acquired in the repair, rebuilding or restoration of the Property shall be deemed a part of the Property and shall be available for use and occupancy by the Borrower, without the payment of any payments other than the payments required to be made under this Financing Agreement, to the same extent as if they were specifically described herein, provided that no buildings, improvements or equipment shall be acquired subject to any Lien or encumbrance other than Permitted Liens.

**Section 8.26. Investment of Net Proceeds.** Any Net Proceeds of insurance payments or condemnation awards held by the Bank pending restoration, repair or rebuilding shall be invested at market rates in Permitted Investments subject to the limitations on yield contained in this Financing Agreement and the Tax Certificate. Any earnings or profits on such investments shall be considered part of the Net Proceeds.

**Section 8.27. Lease or other Disposition of the Property.** Except as otherwise provided herein, the Borrower agrees that it will not sell, lease or otherwise dispose of the Property financed or refinanced with Bond proceeds without the written consent of the Bank.

**Section 8.28. Nonsectarian Use.** The Borrower acknowledges that in order for the Bonds to be validly issued, it is necessary that the requirements of the United States Constitution and the Constitution of the State with respect to the establishment and free exercise of religion be satisfied. The Authority has been advised that under the Law in effect as of the date of issue of the Bonds and as interpreted by the courts, the financing of facilities for a pervasively sectarian school or the financing of non-secular facilities (*e.g.*, places of religious worship) could be in violation of these constitutional requirements. The Borrower covenants that it will not finance pervasively sectarian improvements with the proceeds of the Bonds and will not use the proceeds of the Bonds to acquire, construct, install, or refinance any facilities which are intended to be used, other than a *de minimis* amount, for sectarian purposes. The Borrower may rely upon the opinion of counsel acceptable to the Authority in order to determine whether it is in compliance from time to time with the covenants this Section.

**Section 8.29. No Warranty of Condition or Suitability by the Authority.** The Authority makes no warranty, either express or implied, as to the Project or Property or that it will be suitable for the Borrower's purposes or needs or that the proceeds of the Bonds will be sufficient to pay the costs of the Project.

**Section 8.30. Authority of Authorized Representatives of the Authority.** Whenever under the provisions of this Financing Agreement the approval of the Authority is required, or the Borrower or the Bank is required to take some action at the request of the Authority, such approval or such request shall be made by the Authorized Representative of the Authority unless otherwise specified in this Financing Agreement. The Borrower or the Bank shall be authorized to act on any such approval or request and the Authority shall have no complaint against the Borrower or the Bank as a result of any such action taken in accordance with such approval or request. The execution of any document or certificate required under the provisions of this Financing Agreement by an Authorized Representative of the Authority shall be on behalf of the Authority and shall not result in any personal liability of such Authorized Representative.

**Section 8.31. ERISA Plans.** The Borrower shall maintain and administer all ERISA plans maintained by the Borrower in compliance with their terms and in all material respects with all applicable Laws, including ERISA and the Code and shall not permit any such plan to experience unfunded liabilities. The Borrower shall not permit a condition to exist or a transaction to occur with respect to any ERISA plan maintained by the Borrower which could reasonably be expected to result in the incurrence of any material liability, fine or penalty.

**Section 8.32. Federal Reserve Board Regulations.** The Borrower shall not use any portion of the Bond proceeds for the purpose of carrying or purchasing any Margin Stock and has not incurred any Indebtedness to be reduced, retired or purchased by the Borrower out of such Bond Proceeds for the purpose of purchasing or carrying any Margin Stock, and the Borrower does not own and has no intention of acquiring any Margin Stock.

**Section 8.33. Deposit Relationship.** The Borrower shall maintain its primary depository and cash management accounts related to the Project with the Bank so long as the Bonds (or any portion thereof) are held by the Bank. Such services may include deposit accounts, cash management services, trust services, treasury services or other financial services acceptable to the Borrower and the Bank. The financial services that the Bank offers to the Borrower shall be offered on a basis reasonably competitive with the commercial banking marketplace for customers with similarly sized deposit and cash management accounts.

**Section 8.34. Increased Costs.** If any Change in Law shall:

(a) impose on the Bank or any Owner any insurance charge or similar requirement against assets of, deposits with or for the account of, or advances, loans or other credit extended or participated in by, the Bank or any Owner; or

(b) impose on the Bank or any Owner any other condition, cost or expense affecting this Financing Agreement or the Bonds;

and the result of any of the foregoing shall be to increase the cost to the Bank or such Owner of maintaining this Financing Agreement or owning the Bonds, or to reduce the amount of any sum received or receivable by the Bank or such Owner hereunder or under the Bonds (whether of principal, interest or any other amount) then, upon written request of the Bank or such Owner, the Borrower shall promptly pay to the Bank or such Owner, as the case may be, such additional amount or amounts as will compensate the Bank or such Owner, as the case may be, for such additional costs incurred or reduction suffered; provided however, the increased costs provisions of this Section 8.34 shall only be invoked to the extent that Bank, as applicable, has applied similar provisions to all of its loans in the loan portfolio for which the Bonds are held.

**Section 8.35. No Further Approvals.** No further authorizations, consents or approvals of governmental bodies or agencies are required in connection with the execution and delivery by the Borrower of this Financing Agreement or the other Bond Documents to which the Borrower is a party or in connection with the carrying out by the Borrower of its obligations under this Financing Agreement or the other Bond Documents to which the Borrower is a party.

**Section 8.36. Tax Representation and Warranties.** All of the representations and warranties of the Borrower contained in the Tax Certificate are hereby reaffirmed and incorporated herein by reference.

**Section 8.37. Compliance with Ground Lease and Facilities Use Agreement.** The Borrower covenants and agrees that during the term of this Financing Agreement it will comply with all provisions of the Ground Lease and the Facilities Use Agreement, maintain such agreements in full force and effect, and enforce the obligations of ECVA under such agreements.

## ARTICLE IX

### EVENTS OF DEFAULT AND REMEDIES

**Section 9.1. Events of Default.** Each of the following events shall constitute and be referred to herein as an “**Event of Default:**”

(a) Failure by the Borrower to pay principal of, premium, if any, or interest on the Bonds when due, whether at maturity, upon a redemption date, or a Payment Date, as applicable, by declaration of acceleration or otherwise pursuant to the terms hereof, and continuation thereof for a period of five (5) days.

(b) Failure of the Borrower to observe or perform any covenant, condition or agreement in this Financing Agreement to be observed or performed by the Borrower, other than any referred to in any other subsection of this Section, for a period of 30 days after written notice to the Borrower from the Bank, specifying such failure and requesting that it be remedied; provided, however, that if the failure stated in such notice is correctable but cannot be corrected within 30 days after the receipt of such notice, such failure shall not constitute an Event of Default if and so long as corrective action is instituted by the Borrower within such 30 day period and is diligently pursued to the satisfaction of the Bank.

(c) Any event of default described in Section 17.1 of the Ground Lease or in Section 21.1 of the Facilities Use Agreement.

(d) The dissolution or liquidation of the Borrower, or failure by the Borrower promptly to contest and have lifted any execution, garnishment, or attachment of such consequence as will impair its ability to meet its obligations with respect to the Property or to make any payments under this Financing Agreement. The phrase “**dissolution or liquidation of the Borrower,**” as used in this subsection, shall not be construed to include the cessation of the corporate existence of the Borrower resulting either from a merger or consolidation of the Borrower into or with another domestic corporation or a dissolution or liquidation of the Borrower following a transfer of all or substantially all of its assets under the conditions permitting such actions contained in this Financing Agreement.

(e) The entry of a decree or order for relief by a court having jurisdiction in the premises in respect of the Borrower in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar Law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Borrower or for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days.

(f) The commencement by the Borrower of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state

bankruptcy, insolvency or other similar Law, or the consent by it to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Borrower or for any substantial part of its property, or the making by it of any assignment for the benefit of creditors, or the failure of the Borrower generally to pay its debts as such debts become due, or the taking of corporate action by the Borrower in furtherance of any of the foregoing.

(g) Failure of the Borrower to comply with any covenants contained in the Tax Certificate between the Authority and the Borrower.

(h) The occurrence of an event of default under the Security Documents or any of the other Borrower Documents, subject to any applicable notice and cure periods.

(i) Any representation or warranty made by the Borrower herein or made by the Borrower in any statement or certificate furnished by the Borrower, either required hereby or in connection with the execution and delivery of this Financing Agreement and the sale and the issuance of the Bonds, shall prove to have been untrue in any material respect of the date of the issuance or making thereof.

(j) Judgment for the payment of money in excess of \$100,000.00 (which is not covered by insurance) is rendered by any court or other Governmental Authority against the Borrower, and the Borrower does not discharge the same or provide for its discharge in accordance with its terms, or procure a stay of execution thereof within 60 days from the date of entry thereof, and within said 60-day period or such longer period during which execution of such judgment shall have been stayed, appeal therefrom and cause the execution thereof to be stayed during such appeal while providing such reserves therefore as may be required under GAAP.

(k) A writ or warrant of attachment or any similar process shall be issued by any court against the Property, and such writ or warrant of attachment or any similar process is not released or bonded within 60 days after its entry.

(l) Any of the Borrower's representations and warranties herein or in any of the other Borrower Documents with respect to environmental matters are false in any material respect.

(m) The occurrence and continuation of any event of default, after applicable notice and cure periods, under any other indebtedness of the Borrower or an agreement in connection with or securing such indebtedness if as a result of such event of default the holder of such indebtedness would have the right to declare principal thereof to be immediately due and payable.

Upon having actual notice of the existence of an Event of Default, the Bank shall give written notice thereof to the Authority and the Borrower.

**Section 9.2. Remedies in General.** Upon the occurrence and during the continuance of any Event of Default, the Bank may take such action as it deems necessary or appropriate to collect amounts due hereunder, to enforce performance and observance of any obligation or

agreement of the Borrower hereunder or to protect the interests securing the same, and may, without limiting the generality of the foregoing:

(a) Declare the principal of all Bonds then Outstanding (if not then due and payable) and the interest accrued thereon to be due and payable immediately, and, upon said declaration, such principal and interest shall become and be immediately due and payable.

(b) Require the Borrower to re-margin the Loan and cause a corresponding redemption of Bonds as a result thereof to ensure that the Loan to Value Ratio does not exceed eighty percent (80%); provided that in connection with any such re-margining, the Bank shall have the right to obtain a then-current appraisal of the Real Property at the sole cost and expense of the Borrower; and provided further that in lieu of prepaying a portion of the Loan and redeeming a corresponding portion of the Bonds as described in Section 4.6 hereof, the Borrower may, with the prior written consent of the Bank (acting in its sole discretion), provide first Lien pledges of additional collateral and security of a nature and in an aggregate amount satisfactory to Bank (acting in its sole discretion) in order to meet such maximum Loan to Value Ratio requirement.

(c) Exercise any or all rights and remedies given hereby or available hereunder or given by or available under any other instrument of any kind securing the Borrower's performance hereunder or under the Bonds.

(d) Take any action at law or in equity to collect the payments then due, whether on the stated due date or by declaration of acceleration or otherwise, for damages or for specific performance or otherwise to enforce performance and observance of any obligation, agreement or covenant of the Borrower hereunder.

(e) The Bank (acting as assignee of the Authority) or the Authority (in the event of a failure of the Bank to act under this subsection), as and to the extent provided herein, may exercise the power of sale or foreclose under the Deed of Trust and may exercise all the rights and remedies of a secured party under the Uniform Commercial Code with respect thereto.

(f) Apply to a court of competent jurisdiction for the appointment of a receiver of any or all of the Property, such receiver to have such powers as the court making such appointment may confer. The Borrower hereby consents and agrees, and, if requested by the Bank, will consent and agree at the time of application by the Bank for appointment of a receiver, to the appointment of such receiver and that such receiver may be given the right, power, and authority, to the extent the same may lawfully be given, to take possession of and operate and deal with such Property and the revenues, profits, and proceeds therefrom, with like effect as the Borrower could do so.

(g) The Bank (acting as assignee of the Authority) or the Authority (in the event of a failure of the Bank to act under this subsection), as and to the extent provided herein, may take whatever action at law or in equity as may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance

or observance of any obligations, agreements, or covenants of the Borrower under this Financing Agreement.

Whenever any Event of Default has occurred and is continuing under this Financing Agreement, the Bank may, but except as otherwise provided herein, shall not be obligated to, exercise any or all of the rights of the Authority under this Financing Agreement, upon notice as required to the Authority. In addition, the Bank shall have available to it all of the remedies prescribed herein. If the Bank is not enforcing the Authority's rights in a manner to protect the Authority or is otherwise taking action that brings adverse consequences to the Authority, then the Authority may, without the consent of the Bank, take whatever action at law or in equity may appear necessary or, appropriate to enforce the Authority's Unassigned Rights and to collect all sums then due and thereafter to become due to the Authority under this Financing Agreement.

Any amounts collected pursuant to action taken under the immediately preceding paragraph (other than sums collected for the Authority on account of the Authority's Unassigned Rights, which sums shall be paid directly to the Authority), after reimbursement of any costs incurred by the Authority or the Bank in connection therewith shall be applied in accordance with the provisions of this Financing Agreement.

**Section 9.3. Discontinuance or Abandonment of Default Proceedings.** If any proceeding taken by the Bank on account of any Event of Default shall have been discontinued or abandoned or shall have been determined adversely to the Bank, then and in every case the Authority, the Bank and the Borrower shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Authority and the Bank shall continue as though no such proceeding had taken place.

**Section 9.4. Remedies Cumulative.** No remedy conferred upon or reserved to the Authority or the Bank hereby or now or hereafter existing at law or in equity or by statute, shall be exclusive but shall be cumulative with all others. Such remedies are not mutually exclusive and no election need be made among them, but any such remedy or any combination of such remedies may be pursued at the same time or from time to time so long as all amounts realized are properly applied and credited as provided herein. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient by the Authority or the Bank. In the event of any waiver of an Event of Default hereunder, the parties shall be restored to their former positions and rights hereunder, but no such waiver shall extend to any other or subsequent Event of Default or impair any right arising as a result thereof. In order to entitle the Bank to exercise any remedy reserved to it, it shall not be necessary to give notice other than as expressly required herein.

**Section 9.5. Application of Moneys Collected.** Any amounts collected pursuant to action taken pursuant to this Article shall be applied in accordance with the provisions of Article V of this Financing Agreement, and, to the extent applied to the payment of amounts due on the Bonds, shall be credited against amounts due on the Loan.

**Section 9.6. Attorneys' Fees and Other Expenses.** If the Authority or the Bank employs attorneys or other professionals or incurs other expenses for the collection of payments due hereunder or for the enforcement of performance or observance of any obligation or agreement on the part of the Borrower, the Borrower will, on demand, reimburse the Authority or the Bank, as the case may be, for the reasonable fees of such attorneys or other professionals and such other reasonable expenses so incurred.

**Section 9.7. Waiver of Jury Trial.** Each party hereto waives its right to a jury trial of any and all claims or causes of action based upon or arising out of this agreement and the Bond Documents. It is hereby acknowledged that the waiver of a jury trial is a material inducement for the Bank to purchase the Bonds and that the execution and delivery of this Financing Agreement by the Borrower and the Bank is made in reliance upon such waiver. Each party hereto further warrants and represents that such waiver has been knowingly and voluntarily made following consultation with its respective legal counsel.

**Section 9.8. Proofs of Claim.** In the case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Authority or the Borrower or any other obligor upon the Bonds or the property of the Authority, the Bank (irrespective of whether the principal of the Bonds shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Bank shall have made any demand on the Authority and/or the Borrower for the payment of overdue principal or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of principal, premium, if any, and interest owing and unpaid in respect of the Bonds then Outstanding and to file such other papers or documents as may be necessary or advisable in order to prove the claims of the Bank (including any claim for the reasonable compensation, expenses, disbursements and advances of the Bank, its agents and counsel); and to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

(b) and any receiver, assignee, trustee, liquidator, sequestrator (or other similar official) in any such judicial proceeding is hereby authorized to make such payments to the Bank, and, in the event that the Bank shall consent to the making of such payments, to pay to the Bank any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Bank, its agent and counsel.

So long as Bonds are outstanding the Bank is appointed under the terms of this Financing Agreement, and the successive respective Owners of the Bonds, by taking and holding the same, shall be conclusively deemed to have so appointed the Bank, the true and lawful attorney in fact of the respective Owners of the Bonds, with authority to make or file, in the respective names of the Owners of the Bonds or on behalf of all Owners of the Bonds, as a class, any proof of debt, amendment to proof of debt, petition or other documents and to execute any other papers and documents and to do and perform any and all acts and things for and on behalf of all Owners of the Bonds, as a class, as may be necessary or advisable in the opinion of the Bank, in order to have the respective claim of the Owners of the Bonds against the Authority, the Borrower or any

other obligor allowed in receivership, insolvency, liquidation, bankruptcy or other proceeding to which the Authority, the Borrower or any other obligor, as the case may be, shall be a party. The Bank shall have full power of substitution and delegation in respect of any such powers.

**Section 9.9. Treatment of Funds in Bankruptcy.** The Borrower acknowledges and agrees that in the event the Borrower commences a case under the United States Bankruptcy Code located at 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”) or is the subject of involuntary case that results in an order for relief under the Bankruptcy Code: (i) amounts on deposit in any of the funds are not, nor shall they be deemed to be, property of the Borrower’s bankruptcy estate as defined by Section 541 of the Bankruptcy Code; (ii) that in no event shall the Borrower assert, claim or contend that amounts on deposit in any of the funds are property of the Borrower’s bankruptcy estate; and (iii) that amounts on deposit in any of the funds are held in trust solely for the benefit of the Bondowners, shall be applied only in accordance with, the provisions of this Financing Agreement and the Borrower has no legal, equitable nor reversionary in, or right to, such amounts.

## ARTICLE X

### SATISFACTION AND DISCHARGE

**Section 10.1. Discharge.** If payment of all principal of, premium, if any, and interest on all of the Bonds in accordance with their terms and as provided herein is made, and if all other sums, if any, payable by the Authority solely from amounts pledged hereunder and the Borrower hereunder (including Administrative Costs) shall be paid, then the Liens, estates and security interests granted hereby shall cease. Thereupon, upon the request of the Authority, and upon receipt by the Bank of an Opinion of Counsel addressed to the Authority and the Bank stating that all conditions precedent to the satisfaction and discharge of the Lien hereof have been satisfied, the Bank shall execute and deliver proper instruments acknowledging such satisfaction and discharging the Lien hereof and the Bank shall transfer all property held by it hereunder, other than moneys or obligations held by the Bank for payment of amounts due or to become due on the Bonds, to the Authority, the Borrower or such other person as may be entitled thereto as their respective interests may appear; provided, however, that the Bank shall not require the Opinion of Counsel described herein as a condition to taking action to acknowledge the satisfaction and discharge of the Lien hereof and taking such other action required in connection therewith following payment of all sums payable hereunder on the Maturity Date. Such satisfaction and discharge shall be without prejudice to the rights of the Bank thereafter to charge and be compensated or reimbursed for services rendered and expenditures incurred in connection herewith.

## ARTICLE XI

### AMENDMENTS; SUPPLEMENTAL AGREEMENTS

**Section 11.1. Amendments to Financing Agreement or the Deed of Trust Not Requiring Consent of Owner.** The Authority, the Bank and the Borrower shall, without the need for the consent of or notice to the Owner, consent to any amendment, change or modification of this Financing Agreement or the Deed of Trust as may be required (i) by the

express provisions of this Financing Agreement or the Deed of Trust, (ii) for the purpose of curing any ambiguity or formal defect or omission in this Financing Agreement or in the Deed of Trust, or (iii) so as to more precisely identify the Project or any collateral. The Borrower agrees that it shall, within ten (10) days of a request by the Bank, comply with any request by the Bank to correct documentation errors, omissions or oversights, if any, that occur in any documentation relating to the Bonds.

**Section 11.2. Amendments to Financing Agreement or the Deed of Trust Requiring Consent of Owner.** Except for the amendments, changes or modifications as provided in Section 11.1 hereof, none of the Authority, the Bank or the Borrower shall consent to any other amendment, change or modification of this Financing Agreement or the Deed of Trust without the mailing of notice to, and the written approval or consent of, the Owner at the time Outstanding given as in this subsection provided. If at any time the Authority, the Bank and the Borrower shall desire to so amend this Financing Agreement or the Deed of Trust, as the case may be, the Borrower shall cause notice and copies of such proposed amendment, change or modification to be given by registered or certified mail to the Owner at the last address shown in the registration books of the Bank.

**Section 11.3. Other Amendment Provisions.** No amendment or waiver of any provision of this Financing Agreement, or consent to any departure by the Borrower, the Bank or the Authority from any such provision shall in any event be effective unless the same shall be in writing and signed by the Bank. Any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. In the event any agreement contained in this Financing Agreement should be breached by the Borrower or the Authority and thereafter waived by the Bank, such waiver shall be limited to the particular breach so waived for the specific period set out in such waiver and such waiver shall not constitute a waiver of such breach for any other period and shall not waive any other or similar breach hereunder.

**Section 11.4. Approving Opinion Required.** No agreement supplemental to or amendment of this Financing Agreement shall become effective without the delivery to the Authority of an opinion of Bond Counsel, to the effect that such action (a) is permitted by this Financing Agreement and the Act, and (b) will not adversely affect the exclusion of interest on the Bonds from gross income of the Holders for purposes of federal income taxation.

## **ARTICLE XII**

### **MISCELLANEOUS**

**Section 12.1. Applicable Law.** This Financing Agreement shall be governed by and construed in accordance with the laws and judicial decisions of the State, without reference to choice of law principles, except as such laws may be preempted by any federal rules, regulations and laws applicable to the Authority. The parties hereto expressly acknowledge and agree that any judicial action to interpret or enforce the terms of this Financing Agreement against the Authority shall be brought and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa, the United States District Court in and for the District of Arizona or any United States Bankruptcy Court in any case involving or having jurisdiction over the Borrower or the Project.

**Section 12.2. Execution in Counterparts; One Instrument.** This Financing Agreement may be executed in several counterparts, each of which shall be an original, and all of which together shall constitute but one instrument.

**Section 12.3. Severability.** In the event any clause or provision hereof shall be held to be invalid by any court of competent jurisdiction, the invalidity of any such clause or provision shall not affect any of the remaining provisions hereof.

**Section 12.4. Time of the Essence; Non-Business Days.** Time shall be of the essence of this Financing Agreement. When any action is provided for herein to be done on a day named or within a specified time period, and the day or the last day of the period falls on a day other than a Business Day, such action may be performed on the next ensuing Business Day with the same effect as though performed on the appointed day or within the specified period.

**Section 12.5. Limitation of Rights.** With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Financing Agreement is intended or shall be construed to give to any Person other than the parties hereto, the Bank, the other Owners of the Bonds, the Authority Indemnified Parties or the Bank Indemnified Parties any legal or equitable right, remedy or claim under or in respect to this Financing Agreement or any covenants, conditions or provisions herein contained. Each of the Authority Indemnified Parties (other than the Authority), the Bank Indemnified Parties (other than the Bank) and other Owners of the Bonds are intended “**Third Party Beneficiaries**” of this Financing Agreement.

**Section 12.6. Limitation on Bank Provisions.** At such time as the Bank is no longer the Owner of any Bonds, all provisions applicable to the Bank, including those provisions requiring Bank notices, consents and approvals, and providing for Bank control, will be null and void and of no further force and effect as to the Bank and such provisions shall instead mean and refer to the Bondowner Representative. The Bank will provide immediate written notice to the Borrower and the Authority when it no longer owns any Bonds.

**Section 12.7. Binding Effect.** This instrument shall inure to the benefit of and shall be binding upon the Authority and the Borrower and their respective successors and assigns subject to the limitations contained herein.

**Section 12.8. Notices.** Unless otherwise expressly specified or permitted by the terms hereof, all notices, consents or other communications required or permitted hereunder shall be deemed sufficiently given or served if given in writing, mailed by certified mail, postage prepaid, facsimile or electronic mail and addressed as follows:

**If to the Authority:**

The Industrial Development Authority  
of the City of Phoenix, Arizona  
Calvin C. Goode Municipal Building  
251 W. Washington Street, 9th Floor  
Phoenix, AZ 85003  
Phone: 602-262-7304  
Email: [jsalgado@phoenixida.com](mailto:jsalgado@phoenixida.com)

Attention: Juan Salgado, Executive Director

**with a copy to:**

Kutak Rock LLP  
8601 N. Scottsdale Road, Suite 300,  
Scottsdale, AZ 85253  
Phone: 480-429-4833  
Email: [kelly.mcguire@kutakrock.com](mailto:kelly.mcguire@kutakrock.com)  
Attention: Kelly A. McGuire, Esq.

**If to the Borrower:**

JMF-ECVA 2015, LLC  
c/o The James Megellas Foundation  
501 E. Arizona Avenue  
Buckeye, AZ 85326  
Phone: 623-386-5858  
Email: [meltoninbuckeye@gmail.com](mailto:meltoninbuckeye@gmail.com)  
Attention: Mike Melton, President

**with a copy to:**

Quarles & Brady, LLP  
One Renaissance Square  
Phoenix, AZ 85004-2553  
Two North Central Avenue  
Phoenix, AZ 85004  
Phone: 602-229-5000  
Email: [lara.rhodes@quarles.com](mailto:lara.rhodes@quarles.com)  
Attention: Lara M. Rhodes, Esq.

**If to the Bank:**

Alliance Bank of Arizona  
a division of Western Alliance Bank  
3033 W. Ray Road  
Chandler, AZ 85226  
Phone: 480-609-2912  
[vnapolitano@alliancebankofarizona.com](mailto:vnapolitano@alliancebankofarizona.com)  
Attention: Victor J. Napolitano, Senior Vice President

**Section 12.9. Statutory Notice Regarding Cancellation of Contracts.** As required by the provisions of Section 38-511 of the Arizona Revised Statutes notice is hereby given that the State, its political subdivisions (including the Authority) or any department or agency of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the State, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating

the contract on behalf of the State, its political subdivisions, or any of the departments or agencies of either is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. The State, its political subdivisions or any department or agency of either may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the State, its political subdivisions or any department or agency of either from any other party to the contract arising as the result of the contract. The Authority and the Borrower each represent that to the best of its knowledge, no basis exists for termination of this Financing Agreement pursuant to Section 38-511 of the Arizona Revised Statutes as of the date hereof.

**Section 12.10. Survival.** Notwithstanding the payment in full of the Bonds and the discharge, termination or expiration of this Financing Agreement, all provisions in this Financing Agreement concerning (a) the interpretation of this Financing Agreement, (b) the governing Law, (c) the forum for resolving disputes, (d) the Authority's right to rely on facts or certificates, (e) the indemnity of the Authority Indemnified Parties, and (f) the Authority's lack of pecuniary liability shall survive and remain in full force and effect; and (g) the privileges, immunities and indemnities of the Bank under the Bond Documents; and (h) the rights, powers and duties of the Bank as may be necessary and convenient for the payment of amounts due or to become due on the Bonds and the registration, transfer, exchange and replacement of Bonds, shall survive and remain in full force and effect.

**Section 12.11. No Pecuniary Liability of Authority or City.** No provision, covenant, or agreement contained in this Financing Agreement, or any obligations herein imposed upon the Authority, or the breach thereof, shall constitute an indebtedness or liability of the Authority (except to the extent provided herein and in the Bonds) or of the City within the meaning of any Arizona constitutional provision or statutory limitation or shall constitute or give rise to charge against the Authority's general credit or of the City. In making the agreements, provisions and covenants set forth in this Financing Agreement, the Authority has not obligated itself except with respect to the application of the Revenues, income and all other personal property pledged and assigned as security for the Bonds as hereinabove provided.

**Section 12.12. No Personal Liability of Officials of the Borrower, Authority or the Bank.** None of the covenants, stipulations, promises, agreements and obligations of the Authority, the Bank or the Borrower contained herein shall be deemed to be covenants, stipulations, promises, agreements or obligations of any official, officer, employee, agent or Executive Director of the Authority, the Bank or the Borrower in his or her individual capacity, and no recourse shall be had for the payment of the principal of or premium, if any, or interest on the Bonds or for any claim based thereon or any claim hereunder against any official, officer, employee, agent or Executive Director of the Authority or the Borrower or any officer, agent, servant or employee of the Bank or any natural person executing any Bond, including any officer or employee of the Bank.

**Section 12.13. Special, Limited Obligations of Authority.**

(a) This Financing Agreement shall inure to the benefit of and shall be binding upon the Authority, the Borrower and the Bank for the benefit of the Owners of the Bonds, and their respective successors and assigns, subject to the limitation that any obligations of the Authority created by or arising out of this Financing Agreement shall be special, limited obligations of the Authority, payable solely out of the amounts paid by the Borrower pursuant hereto and other security pledged to the payment of the Bonds and shall never constitute the debt or indebtedness of the Authority, the State, or any political subdivision of the State within the meaning of any provision or limitation of the constitution or statutes of the State and shall not constitute nor (except for its fraud or intentional misrepresentation) give rise to a pecuniary liability of the Authority, the State or any political subdivision of the State or a charge against the general credit or taxing powers, if any, of such entities. The Authority has no taxing power.

(b) Anything in this Financing Agreement to the contrary notwithstanding, it is expressly understood and agreed by the parties hereto that the Authority may rely conclusively on the truth and accuracy of any certificate, opinion, notice, or other instrument furnished to the Authority by the Borrower as to the existence of any fact or state of affairs required hereunder to be noticed by the Authority.

(c) No recourse shall be had for the enforcement of any obligation, covenant, promise, or agreement of the Authority contained in this Financing Agreement, any other Authority Documents, or in any Bond or for any claim based hereon or otherwise in respect hereof or upon any obligation, covenant, promise, or agreement of the Authority contained in any agreement, instrument, or certificate executed in connection with the Project or the issuance and sale of the Bonds, against any Authority Indemnified Party, whether by virtue of any constitutional provision, statute, or rule of the law, or by the enforcement of any assessment or penalty or otherwise; it being expressly agreed and understood that no personal liability whatsoever shall attach to, or be incurred by, any Authority Indemnified Party, either directly or by reason of any of the obligations, covenants, promises, or agreements entered into by the Authority with the Borrower or the Bank to be implied therefrom as being supplemental hereto or thereto, and that all personal liability of that character against each and every Authority Indemnified Party, by the execution of the Bonds, this Financing Agreement, and the other Authority Documents, and as a condition of, and as part of the consideration for, the execution of the Bonds, this Financing Agreement, and the other Authority Documents, is expressly waived and released.

(d) No agreements or provisions contained herein, nor any agreement, covenant, or undertaking by the Authority in connection with the Project or the issuance, sale, and/or delivery of the Bonds shall give rise to any pecuniary liability of the Authority or a charge against its general credit, or shall obligate the Authority financially in any way, except as payable solely out of the amounts paid by the Borrower pursuant hereto and other security pledged to the payment of the Bonds. No failure of the Authority to comply with any term, covenant, or agreement contained in the Bonds, this Financing Agreement, or in any document executed by the Authority in connection with the Project or the issuance and sale of the Bonds, shall subject the Authority to liability for any claim for damages, costs, or other financial or pecuniary charge, except to the

extent that the same can be paid or recovered from amounts paid by the Borrower pursuant hereto and other security pledged to the payment of the Bonds. Nothing herein shall preclude a proper party in interest from seeking and obtaining, to the extent permitted by Law, specific performance against the Authority 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 Authority, except as may be payable from amounts paid by the Borrower pursuant hereto and other security pledged to the payment of the Bonds. No provision, covenant, or agreement contained herein, or any obligations imposed upon the Authority, or the breach thereof, shall constitute Indebtedness of the Authority within the meaning of any State constitutional or statutory limitation or shall constitute or give rise to a charge against its general credit. In making the agreements, provisions, and covenants set forth in this Financing Agreement, the Authority has not obligated itself, except with respect to the application of the amounts paid by the Borrower pursuant hereto and other security pledged to the payment of the Bonds. The Authority shall have no liability or obligation with respect to the payment of the purchase price of the Bonds. None of the provisions of this Financing Agreement shall require the Authority to expend or risk its own funds or to otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder, unless payable from amounts paid by the Borrower pursuant hereto, or the Authority shall first have been adequately indemnified to its satisfaction against the cost, expense, and liability which may be incurred thereby. The Authority shall not be under any obligation hereunder to perform any record keeping or to provide any legal services, it being understood that such services shall be performed or provided as arranged by the Bank or the Borrower. The Authority covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions expressly contained in this Financing Agreement, and in any and every Bond executed, authenticated, and delivered hereunder; provided, however, that (a) the Authority shall not be obligated to take any action or execute any instrument pursuant to any provision hereof until it shall have been requested to do so by the Borrower or the Bank, (b) the Authority shall have received the instrument to be executed, and (c) any action or execution of any instrument requested of the Authority shall be at the Borrower's sole expense.

**Section 12.14. No Warranty by Authority.** THE BORROWER RECOGNIZES THAT BECAUSE THE COMPONENTS OF THE PROJECT HAVE BEEN AND ARE TO BE SELECTED BY IT, THE AUTHORITY HAS NOT MADE AND SHALL NOT MAKE AN INSPECTION OF THE PROJECT, IF AND WHEN ACQUIRED, OR OF ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, AND THE AUTHORITY MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED OR OTHERWISE, WITH RESPECT TO THE SAME OR THE LOCATION, USE, DESCRIPTION, DESIGN, MERCHANTABILITY, FITNESS FOR USE FOR ANY PARTICULAR PURPOSE, CONDITION OR DURABILITY THEREOF, OR AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, IT BEING AGREED THAT ALL RISKS INCIDENT THERETO ARE TO BE BORNE BY THE BORROWER. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER PATENT OR LATENT, THE AUTHORITY SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH

RESPECT THERETO. THE PROVISIONS OF THIS SECTION HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES OR REPRESENTATIONS BY THE AUTHORITY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE OR ANY OTHER LAW NOW OR HEREAFTER IN EFFECT.


**Section 12.15. Covenant by the Borrower with Respect to Statements, Representations and Warranties.** It is understood by the Borrower that all such statements, representations and warranties made in this Financing Agreement shall be deemed to have been relied upon by the Authority as an inducement to issue the Bonds, and that if any such statements, representations and warranties were false at the time they were made or (with respect to those representations and warranties which are to continue) are breached during the term hereof, such misrepresentation or breach shall constitute a breach of this Financing Agreement which may give rise to an Event of Default hereunder.

**Section 12.16. Patriot Act.** The Bank hereby notifies the Borrower that pursuant to the requirements of the Patriot Act it is required to obtain, verify and record information that identifies the Borrower, which information includes the names and addresses of the Borrower and other information that will allow the Bank to identify the Borrower in accordance with the Patriot Act. The Borrower hereby agrees that it shall promptly provide such information upon request by the Bank.

[Remainder of page intentionally blank]

IN WITNESS WHEREOF, the Authority, the Borrower, and the Bank have entered into this Financing Agreement to be executed in their respective corporate names by their duly authorized officers, all as of the date first written above.

**THE INDUSTRIAL DEVELOPMENT  
AUTHORITY OF THE CITY OF  
PHOENIX, ARIZONA**, as Authority

By:   
Name: Tommy Espinoza  
Title: President

**JMF-ECVA 2015, LLC**, a Nevada limited liability company, as Borrower

By: The James Megellas  
Foundation, Inc., an Arizona  
nonprofit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**WESTERN ALLIANCE BANK**, an  
Arizona corporation, as Bank

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_


IN WITNESS WHEREOF, the Authority, the Borrower, and the Bank have entered into this Financing Agreement to be executed in their respective corporate names by their duly authorized officers, all as of the date first written above.

**THE INDUSTRIAL DEVELOPMENT  
AUTHORITY OF THE CITY OF  
PHOENIX, ARIZONA**, as Authority

By: \_\_\_\_\_  
Name: Tommy Espinoza  
Title: President

**JMF-ECVA 2015, LLC**, a Nevada limited liability company, as Borrower

By: The James Megellas  
Foundation, Inc., an Arizona  
nonprofit corporation

By:   
Name: Michael Melton  
Title: President

**WESTERN ALLIANCE BANK**, an  
Arizona corporation, as Bank

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the Authority, the Borrower, and the Bank have entered into this Financing Agreement to be executed in their respective corporate names by their duly authorized officers, all as of the date first written above.

**THE INDUSTRIAL DEVELOPMENT  
AUTHORITY OF THE CITY OF  
PHOENIX, ARIZONA**, as Authority

By: \_\_\_\_\_  
Name: Tommy Espinoza  
Title: President

**JMF-ECVA 2015, LLC**, a Nevada limited liability company, as Borrower

By: The James Megellas  
Foundation, Inc., an Arizona  
nonprofit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**WESTERN ALLIANCE BANK**, an  
Arizona corporation, as Bank

By: Victor J Napolitano  
Name: VICTOR J NAPOLITANO  
Title: Senior Vice President

**EXHIBIT A**

**FORM OF BOND**

THE BONDS REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED PURSUANT TO THE SECURITIES ACT OF 1933, AS AMENDED (THE “**SECURITIES ACT**”), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION, AND HAVE BEEN OFFERED AND SOLD IN RELIANCE ON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND SUCH LAWS.

THE TRANSFER, PLEDGE OR OTHER DISPOSITION OF THE BENEFICIAL OWNERSHIP INTERESTS IN THIS BOND BY THE REGISTERED OWNER HEREOF IS SUBJECT TO CERTAIN RESTRICTIONS SET FORTH HEREIN AND IN THE FINANCING AGREEMENT.

**\$9,000,000**  
**THE INDUSTRIAL DEVELOPMENT AUTHORITY**  
**OF THE CITY OF PHOENIX, ARIZONA**  
**REVENUE BONDS**  
**(JMF-ECVA CONVENTION CENTER EXPANSION PROJECT)**  
**SERIES 2015**

**NO:** R-1 \$9,000,000

| <b>Interest Rate</b> | <b>Dated Date</b> | <b>Maturity Date</b> |
|----------------------|-------------------|----------------------|
| Variable             | March 27, 2015    | March 5, 2026        |

Registered Owner: **WESTERN ALLIANCE BANK**

Principal Amount: **NINE MILLION AND NO/100 DOLLARS**

The Industrial Development Authority of the City of Phoenix, Arizona, a nonprofit corporation designated as a political subdivision of the State of Arizona (the “**Authority**”), for value received hereby acknowledges itself obligated to, and promises to pay to, the registered owner identified above, or registered assigns, but only out of the sources pledged for that purpose pursuant to the Financing Agreement, dated as of March 1, 2015 (the “**Financing Agreement**”), among the Authority, JMF-ECVA 2015, LLC, a Nevada limited liability company (the “**Borrower**”), the sole member of which is The James Megellas Foundation, Inc., an Arizona nonprofit corporation, and Western Alliance Bank (the “**Bank**”), and not otherwise, on the dates hereinafter specified, the principal amount set forth above less the aggregate amount of all payments or prepayments of principal duly made or provided for by the Borrower, and to pay interest on the unpaid balance of said sum from the most recent interest payment date to which interest has been paid or for which due provision has been made or, if no interest has been paid, from the dated date set forth above, at the rate of interest per annum calculated as set forth below until the Authority’s obligation with respect to payment of the principal amount is discharged.

Capitalized terms used but not defined herein shall have the meanings set forth in the Financing Agreement.

Unless required to be repaid sooner by the terms of the Financing Agreement, payment of principal and interest on the Bonds, through and including the Maturity Date, shall be made by making monthly interest payments on each Payment Date commencing on May 5, 2015, and by making monthly principal payments on each Payment Date commencing May 5, 2016, in amounts sufficient to fully amortize the outstanding principal amount of the Bonds over a twenty-five (25) year amortization period as set forth on the Mandatory Sinking Fund Schedule to be attached as **Exhibit C** to the Financing Agreement on April 1, 2016. The balance of the principal of and interest on the Bonds will be payable in full on the Maturity Date. Payments on each Payment Date and on the Maturity Date shall be first applied to the accrued, unpaid interest on the Bonds and the remaining amounts shall be applied to the remaining Outstanding principal amount of the Bonds.

The Borrower shall pay the principal of, premium, if any, and interest on the Bonds to the Owner thereof in immediately available funds at its address as it last appears on the registration books as provided in Section 3.5(b) of the Financing Agreement. All such payments shall be made in lawful money of the United States of America. For so long as the Bank is the Owner of the Bonds, all amounts payable to the Authority with respect to the Bonds may be paid by the Borrower directly to the Bank, upon the Bank's written notice to the Authority and the Borrower (without any presentment thereof, except upon the payment of the final installment of principal, and without any notation of such payment being made thereon), in such manner or at such address in the United States of America as may be designated by the Bank in writing to the Authority. Any payment made pursuant to this Section shall be accompanied by sufficient information to identify the source and proper application of such payment. Upon the final payment of principal of, premium, if any, and interest on the Bonds, the Bonds shall be cancelled.

Interest on the Bonds is calculated on the basis of a 360-day year consisting of twelve 30-day months and shall accrue on the portion of the principal amount of the Bonds drawn and then-Outstanding as follows:

(i) From the Dated Date through March 31, 2016, so long as no Event of Default has occurred and is continuing, at a tax-exempt daily floating rate equal to 72% of Wall Street Journal Prime Rate plus 0.9900% (3.3300% floor rate) and, commencing on April 1, 2016, and continuing until the Maturity Date, so long as no Event of Default has occurred and is continuing, at a tax-exempt fixed rate equal to 72% of the Ten-Year Swap Rate on April 1, 2016, plus 2.1600% (3.8700% floor rate);

(ii) Upon a Determination of Taxability: (A) prior to April 1, 2016, at a taxable daily floating rate equal to Wall Street Journal Prime Rate plus 1.375% (4.625% floor rate), and (B) after April 1, 2016, at a taxable fixed rate equal to the Ten-Year Swap Rate on April 1, 2016, plus 3.00% (5.3750% floor rate); and

(iii) Upon an Event of Default, at the Default Interest Rate until such Event of Default has been cured or waived;

provided, however, that subject to Section 8.34 of the Financing Agreement, the interest rate on the Bonds shall not exceed the Maximum Interest Rate.

Rates published in the International Swaps and Derivatives Association (ISDA®) mid-market par swap rates for a Fixed Rate Payer in return for receiving three-month LIBOR, based on rates collected at 11:00 a.m. Eastern Time by Thomson Reuters and published in Thomson Reuters ISDAFIX®1 will be used to calculate interest as set forth in this Section 3.3. ISDAFIX is a registered service mark of ISDA®.

Principal of and interest on this Bond are payable in lawful money of the United States of America which on the date of payment thereof is legal tender for the payment of public and private debts. Except as otherwise provided in the Financing Agreement, payments of the principal of, premium, if any, and interest on the Bonds will be paid by the Borrower to the person entitled thereto; provided, however, that the Financing Agreement provides that upon certain circumstances the payments of interest on this Bond may, at the direction of the person in whose name this Bond is registered, be made by wire transfer of immediately available funds.

This Bond is one of the Bonds of the Authority issued in an aggregate original principal amount of \$9,000,000 and designated as The Industrial Development Authority of the City of Phoenix, Arizona Revenue Bonds (JMF-ECVA Convention Center Expansion Project), Series 2015 (the “**Bonds**”), issued under the Financing Agreement in order to make a loan to the Borrower to be used (i) to finance and/or refinance the acquisition, construction, improvement, operation and/or equipping of land and buildings to be owned or operated by the Borrower, including a facility consisting of approximately 28,834 square feet (the “**Facility**”) to be constructed on approximately 3.47 acres of land located at 724 Moren Way, Elko, Nevada, which land (the “**Land**”) will be leased from the Elko Convention and Visitors Authority (“**ECVA**”) pursuant to a Ground Lease dated as of March 1, 2015 (the “**Ground Lease**”); (ii) to pay capitalized interest on the Bonds, if any; and (iii) to pay certain issuance expenses (collectively, the “**Project**”). Under the Financing Agreement, the Authority has loaned to the Borrower the proceeds of the Bonds and has assigned and pledged to the Bank, as the initial purchaser of the Bonds, certain of the Authority’s interest in the Financing Agreement.

Counterparts or copies of the Financing Agreement and the other documents referred to herein are on file at the designated corporate office of the Bank, and reference is hereby made thereto and to the documents referred to therein for the provisions thereof, the terms on which this Bond is issued and secured, the manner in which interest is computed on this Bond, redemption rights, acceleration, and the provisions with respect to the rights, obligations, duties and immunities of the Authority, the Bank, and any other registered owners of the Bonds under such documents, to all of which the registered owner hereof, by acceptance of this Bond, assents.

THIS BOND IS BEING ISSUED AS A DRAW-DOWN BOND, IN THAT THE HOLDER OF THE BOND WILL PURCHASE THE PRINCIPAL AMOUNT OF THE BOND IN INSTALLMENTS, AT PAR, IN ACCORDANCE WITH THE TERMS OF AND AS REQUIRED BY SECTION 3.01(b) OF THE FINANCING AGREEMENT. ACCORDINGLY,

THE PRINCIPAL AMOUNT OF THE BONDS WHICH HAS BEEN PURCHASED BY THE HOLDER AND IS OUTSTANDING AT ANY GIVEN TIME MAY BE LESS THAN THE MAXIMUM PRINCIPAL AMOUNT OF THE BONDS AS SET FORTH ON THE FACE OF THIS BOND. UPON EACH PURCHASE OF A PORTION OF THE PRINCIPAL AMOUNT OF THE BONDS IN ACCORDANCE WITH THE TERMS OF SECTION 3.1 OF THE FINANCING AGREEMENT, THE PURCHASER WILL NOTE ON A LOG MAINTAINED BY THE PURCHASER FOR SUCH PURPOSE THE PRINCIPAL AMOUNT OF THE BOND SO PURCHASED AND THE DATE OF SUCH PURCHASE. THE RECORDS MAINTAINED BY THE BANK IN SUCH REGARD WILL BE CONCLUSIVE EVIDENCE (ABSENT MANIFEST ERROR) OF THE PRINCIPAL AMOUNT OF THE BONDS WHICH HAVE BEEN PURCHASED AND ARE OUTSTANDING.

THE BONDS, THE PREMIUM, IF ANY, AND THE INTEREST THEREON ARE SPECIAL, LIMITED OBLIGATIONS OF THE AUTHORITY PAYABLE EXCLUSIVELY FROM THE PROPERTY HELD AND RECEIPTS AND REVENUES RECEIVED BY OR ON BEHALF OF THE AUTHORITY (OR DIRECTLY BY THE BANK) AS PROVIDED IN THE FINANCING AGREEMENT. THE BONDS DO NOT CONSTITUTE A DEBT OR A LOAN OF CREDIT OR A PLEDGE OF THE FULL FAITH AND CREDIT OR TAXING POWER OF THE AUTHORITY, THE CITY OR THE STATE, OR OF ANY POLITICAL SUBDIVISION THEREOF, WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL PROVISION OR STATUTORY LIMITATION AND SHALL NEVER CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF, THE AUTHORITY, THE STATE OR THE CITY. THE BONDS SHALL NOT CONSTITUTE, DIRECTLY OR INDIRECTLY, OR CONTINGENTLY OBLIGATE OR OTHERWISE CONSTITUTE A GENERAL OBLIGATION OF OR A CHARGE AGAINST THE GENERAL CREDIT OF THE AUTHORITY, BUT SHALL BE SPECIAL, LIMITED OBLIGATIONS OF THE AUTHORITY PAYABLE SOLELY FROM THE SOURCES DESCRIBED HEREIN, BUT NOT OTHERWISE. THE AUTHORITY HAS NO TAXING POWER.

NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR PREMIUM, IF ANY, OR INTEREST ON THE BONDS AGAINST ANY PAST, PRESENT, OR FUTURE OFFICER, DIRECTOR, EMPLOYEE, COUNSEL, ADVISOR, AGENT OR EXECUTIVE DIRECTOR OF THE AUTHORITY, OR OF ANY SUCCESSOR TO THE AUTHORITY, AS SUCH, EITHER DIRECTLY OR THROUGH THE AUTHORITY OR ANY SUCCESSOR TO THE AUTHORITY, UNDER ANY RULE OF LAW OR EQUITY, STATUTE, OR CONSTITUTION OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY OR OTHERWISE, AND ALL SUCH LIABILITY OF ANY SUCH OFFICERS, DIRECTORS, EMPLOYEES, COUNSEL, ADVISORS, OR AGENTS, AS SUCH, IS HEREBY EXPRESSLY WAIVED AND RELEASED AS A CONDITION OF AND CONSIDERATION FOR THE EXECUTION AND ISSUANCE OF THE BONDS.

The registered owner of this Bond shall have no right to enforce the provisions of the Financing Agreement or to institute an action to enforce the covenants thereof, or to take any action with respect to a default hereof, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Financing Agreement.

The Financing Agreement and other documents referred to therein may be modified or amended to the extent permitted by and as provided therein. Certain amendments, modifications or changes which would affect the rights of registered owners of Bonds of this issue may be made only with the consent of a majority of the registered owners of the Bonds then outstanding under the Financing Agreement, as provided in the Financing Agreement. Any such consent by the registered owner of this Bond shall be conclusive and binding upon such registered owner and all subsequent registered owners. However, as to certain other amendments, no consent of any Bondowner shall be required.

Upon the occurrence of certain Events of Default, all Bonds may be declared immediately due and payable and thereupon shall become and be immediately due and payable as provided in the Financing Agreement.

Bonds may be issued only in fully registered form. Subject to the limitations provided for in the Financing Agreement, this Bond may be exchanged for a like aggregate principal amount payable at maturity of Bonds of the same maturity in authorized denominations.

Bonds are transferable by the registered owner thereof in person or by his attorney duly authorized in writing at the designated corporate trust office of the Bank, but only in the manner and subject to the limitations provided for in the Financing Agreement and upon surrender and cancellation of this Bond; provided, that the registered owner may, to the extent permitted by law and subject to the conditions contained in the Financing Agreement and herein, sell participations in this Bond. Upon such transfer a new Bond or Bonds of the same maturity and in authorized denominations for the same aggregate principal amount payable at maturity will be issued to the transferee in exchange.

The Bank may require a registered owner, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes and fees required by law or permitted by the Financing Agreement in connection with any exchange or transfer.

The Authority, the Bank and any successor paying agent may treat the registered owner of this Bond as the absolute owner for the purpose of receiving payment as herein provided and for all other purposes and none of them shall be affected by any notice to the contrary.

THE FINANCING AGREEMENT PROVIDES THAT OWNERS OF THE BONDS, REGARDLESS OF WHETHER THE BONDS ARE ACQUIRED PURSUANT TO THE INITIAL SALE THEREOF OR BY SUBSEQUENT PURCHASE AT ANY TIME THEREAFTER, MAY SELL, TRANSFER OR OTHERWISE DISPOSE OF THE BONDS ONLY TO THE FOLLOWING PARTIES:

- (i) ANY NATIONAL BANKING ASSOCIATIONS, STATE BANK CORPORATIONS, SAVINGS AND LOAN ASSOCIATIONS, INSURANCE COMPANIES, INVESTMENT COMPANIES AS DEFINED UNDER THE INVESTMENT COMPANY ACT OF 1940, AS AMENDED, OR BROKERS OR DEALERS REGISTERED PURSUANT TO SECTION 15 OF THE SECURITIES EXCHANGE ACT OF 1934;

(ii) ANY PARTY IF THE BONDS ARE RATED “BBB” OR HIGHER BY S&P OR “BAA” OR HIGHER BY MOODY’S;

(iii) ANY PARTY IF AGREED IN WRITING BY THE AUTHORITY; OR

(iv) ANY “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED IN RULE 144A PROMULGATED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “1933 ACT”), OR AN “ACCREDITED INVESTOR” AS DEFINED IN RULE 501 OF REGULATION D UNDER THE 1933 ACT WHO IS ABLE TO BEAR THE ECONOMIC RISKS OF SUCH INVESTMENT AND WHO PURCHASES A MINIMUM PAR AMOUNT OF THE BONDS OF \$100,000, AS EVIDENCED BY AN INVESTOR LETTER ACCEPTABLE TO THE AUTHORITY.

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

[Remainder of Page Intentionally Left Blank]

IN TESTIMONY WHEREOF, the Authority has caused this Bond to be executed and attested by the printed facsimile signatures of its duly authorized officers.

THE INDUSTRIAL DEVELOPMENT  
AUTHORITY OF THE CITY OF  
PHOENIX, ARIZONA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(Form of Assignment)

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM — as tenants in common

UNIF GIFT/TRANS MIN ACT      Custodian

(Cust) (Minor)  
Under Uniform Gifts/ Transfers to Minors Act  
(State)

TEN ENT - as tenants by the entireties

JT TEN — as joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used, though not in the above list. .

## ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

(Please Print or Typewrite Name, Address and Social Security Number or other Federal Tax Identification Number of Assignee) the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints attorney to transfer the within bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated

Signature Guaranteed:

Note: The signature(s) on this assignment must correspond with the name(s) as written on the face of the within registered certificate in every particular without alteration or enlargement or any change whatsoever.

(Signature(s) must be guaranteed by an eligible guarantor institution pursuant to Securities and Exchange Commission Rule 17-Ad-15)

**SCHEDULE A**

**\$9,000,000**

**THE INDUSTRIAL DEVELOPMENT AUTHORITY  
OF THE CITY OF PHOENIX, ARIZONA  
REVENUE BONDS  
(JMF-ECVA CONVENTION CENTER EXPANSION PROJECT)  
SERIES 2015**

**Draw-Down Purchases**

The installments represented by the draw-down of this Bond may be registered only by the registered owner in person or by its duly authorized officer or attorney, who shall make note thereof in the books kept for such purpose and in the registration blank below.

| <b>Date of<br/>Draw-Down</b> | <b>Principal<br/>Amount</b> | <b>Interest Rate</b> | <b>Signature of<br/>Bank Representative</b> |
|------------------------------|-----------------------------|----------------------|---|
| March 27, 2015               | \$55,000                    |                      | _____                                       |
| _____                        | _____                       |                      | _____                                       |
| _____                        | _____                       |                      | _____                                       |
| _____                        | _____                       |                      | _____                                       |
| _____                        | _____                       |                      | _____                                       |
| _____                        | _____                       |                      | _____                                       |
| _____                        | _____                       |                      | _____                                       |

**EXHIBIT B**

**FORM OF INVESTOR LETTER**

[LETTERHEAD OF BANK]

March 27, 2015

ADDRESSEE:

The Industrial Development Authority  
of the City of Phoenix, Arizona  
Phoenix, Arizona

Kutak Rock LLP  
Scottsdale, Arizona

**\$9,000,000**

**The Industrial Development Authority of the City of Phoenix, Arizona  
Revenue Bonds (JMF-ECVA Convention Center Expansion Project),  
Series 2015**

Gentlemen:

The undersigned authorized representative of WESTERN ALLIANCE BANK (the "*Investor*"), hereby acknowledges receipt of the above-captioned Bonds, dated March 27, 2015, in fully registered form in the aggregate principal amount of \$9,000,000 bearing interest at the rates and in the amounts as set forth in the Financing Agreement, dated as of March 1, 2015 (the "*Financing Agreement*"), by and among The Industrial Development Authority of the City of Phoenix, Arizona (the "*Authority*"), JMF-ECVA 2015, LLC, a Nevada limited liability company, as borrower (the "*Borrower*"), and the Investor. The Bonds have been checked, inspected and approved by the Investor.

The Investor acknowledges that (i) the Bonds have been issued pursuant to the Financing Agreement, (ii) the proceeds from the sale of the Bonds have been or will be loaned to the Borrower, (iii) the Bonds are payable from amounts paid by the Borrower under the Financing Agreement, and (iv) the Borrower's obligations under the Financing Agreement are secured as described therein and in the other Bond Documents.

Capitalized terms used herein and not otherwise defined have the meanings given such terms in the Financing Agreement.

In connection with the sale of the Bonds to the Investor, the Investor hereby makes the following representations upon which you may rely:

**A. QUALIFICATION.** The Investor is a corporation organized under the laws of the State of Arizona and has duly authorized, by all necessary action, the purchase of the Bonds and the execution and delivery of this letter and any other instruments and documents required to be executed by the Investor in connection with the purchase of the Bonds. Investor hereby represents and warrants that Investor is an Accredited Investor as defined in Rule 501(a) of Regulation D promulgated under the Securities Act of 1933 (the “*Securities Act*”). The Investor has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal obligations or other tax advantaged investments, to be able to evaluate the risks and merits of the investment represented by the purchase evidenced by the Bonds.

**B. NO REGISTRATION.** Investor acknowledges that the Bonds are not currently required to be, have not been, and are not intended to be, registered under the Securities Act or registered or otherwise qualified under the securities laws of any state or other jurisdiction. The Bonds are currently not rated by any national security rating agency.

**C. RESTRICTED TRANSFER.** Investor acknowledges and agrees that it will only offer, sell or otherwise transfer such Bonds (a) to the Authority, (b) pursuant to Rule 144A, to a person the holder reasonably believes is a “qualified institutional buyer”, as defined in Rule 144A, that purchases for its own account or for the account of a qualified institutional buyer to whom notice is given that the transfer is being made in reliance on Rule 144A, (c) to a “non U.S. person” in an “offshore transaction” pursuant to Regulation S under the Securities Act, (d) pursuant to an exemption from the registration requirements of the Securities Act to an “accredited investor” within the meaning of Rule 501 under the Securities Act that is acquiring the Bonds for its own account, or for the account of such an “accredited investor,” for investment purposes and not with a view to, or for offer or sale in connection with, any distribution in violation of the Securities Act, or (e) pursuant to another available exemption from the registration requirements of the Securities Act, subject to the Authority’s right prior to any such offer, sale or transfer pursuant to clauses (d) or (e) to require the delivery of an opinion of counsel, certification and/or other information satisfactory to it in accordance with the Bond Documents, a copy of which may be obtained by the Investor from the Authority.

**D. PURCHASE FOR INVESTMENT.** The Bonds are being acquired by the Investor for investment and not with a view to, or for offer or sale in connection with, any distribution in violation of the Securities Act. The Investor presently intends to hold the Bonds for its own account and for an indefinite period of time, and does not intend at this time to dispose of all or any part of the Bonds. The Investor understands that it may need to bear the risks of this investment for an indefinite time, since any sale may not be possible.

**E. INDEPENDENT EVALUATION; WAIVER AND RELEASE.** The Investor has independently evaluated the factors associated with its investment decision. The Investor has been given full and complete access to and has been furnished with all information requested by the Investor regarding the Bonds, including financial statements and other financial information of the Borrower, as the Investor has deemed significant in making its investment decisions. The Investor has had the opportunity to ask questions and receive answers from knowledgeable individuals, and has conducted its own investigations and analysis relating to the Bonds, the Authority and the Borrower, as in the opinion of the Investor were necessary in connection with its purchase of the Bonds. The Investor hereby waives any requirements of due diligence in investigation or inquiry on the part of Authority, and the officers, attorneys, staff, employees, and independent contractors of the Authority, and agents of any of the foregoing, and all claims, actions, or causes of action which the Investor may have directly or indirectly from or relating to any action which the Authority, and the officers, attorneys, staff, employees, and independent contractors of the Authority, and agents of any of the foregoing took, or could have taken, in connection with the issuance and sale of the Bonds to the Investor. The Investor has been furnished with

and has examined the Financing Agreement and the other Bond Documents, and the other documents, certificates and legal opinions delivered in connection with the issuance of the Bonds.

**F. LEGAL AUTHORIZATION.** Investor is duly and legally authorized to purchase the Bonds, and Investor is duly and legally authorized to execute this Investor Letter. Investor has satisfied itself that the Bonds are a lawful investment for it under all applicable laws.

**G. SURVIVAL.** All representations of Investor contained herein shall survive the sale and delivery of the Bonds to Investor as representations of fact existing as of the date of execution and delivery of this Investor Letter.

**H. REPRESENTATION.** The undersigned represents that the affirmations contained herein are true and correct in all material respects and agrees that such affirmations may be relied upon by the Authority, Kutak Rock LLP, and others in connection with an investment by the undersigned in the Bonds. The undersigned agrees to furnish such additional information as is reasonably necessary in order to verify the affirmations contained herein. The undersigned is a duly authorized officer of the Investor with the authority to sign this Investor letter on behalf of the Investor, and this Investor letter has been duly authorized, executed, and delivered.

Very truly yours,

WESTERN ALLIANCE BANK

By: \_\_\_\_\_

Name: Victor J. Napolitano

Title: Senior Vice President

**EXHIBIT C**  
**MANDATORY SINKING FUND SCHEDULE**  
**{to be attached April 1, 2016}**

## EXHIBIT D

### CONSTRUCTION ADVANCE ADDENDUM

**THIS CONSTRUCTION ADVANCE ADDENDUM** (this “Addendum”) is attached to, and made a part of, that certain Financing Agreement dated as of March 1, 2015 (the “Financing Agreement”), by and among **THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF PHOENIX, ARIZONA**, an Arizona nonprofit corporation (the “Authority”), and **JMF-ECVA 2015, LLC**, a Nevada limited liability company (the “Borrower”), and **WESTERN ALLIANCE BANK**, an Arizona corporation (the “Bank”), and by execution of the Financing Agreement, each party is deemed to have agreed to the terms of this Addendum.

The parties hereby agree as follows:

1. Definitions. Unless otherwise defined herein, terms that are defined in the Financing Agreement will have the same meanings when used herein. The following terms will have the following meanings when used in this Addendum:

(a) “Architect” means Lombard Conrad Architects – Nevada, LTD., or such other architect agreed upon by the Bank and the Borrower.

(b) “Bonds” means the Authority’s Revenue Bonds (JMF-ECVA Convention Center Expansion Project) Series 2015, issued in the original principal amount of \$9,000,000 and purchased by the Bank in installments.

(c) “General Contractor” means CORE Construction Services of Nevada, Inc., or such other general contractor agreed upon by the Bank and the Borrower.

(d) “Retention Funds” means the funds retained in connection with the 90% advances set forth below in Section 2.

2. Disbursement Request Procedure. The Bank will disburse moneys to the Borrower for payment of construction costs (each “a Construction Advances”) no more frequently than monthly, as construction progresses, in amounts equal to: (i) ninety percent (90%) of expenditures for labor performed and material supplied under the construction contract for construction of the Project, in accordance with the plans and specifications therefore approved by the Bank, during the period immediately preceding that Construction Advance, plus (ii) one hundred percent (100%) of indirect construction costs actually paid or incurred by the Borrower that have not been covered by previous Construction Advances. Each Construction Advance is deemed a payment of an installment of the purchase price of the Bonds. When the Borrower believes it is entitled to a Construction Advance, the Borrower agrees to furnish the Bank with the following, all in form and content satisfactory to the Bank:

(a) A Disbursement Request in form substantially similar as attached hereto as Exhibit A (a “Disbursement Request”), together with AIA Forms G702 and G703 (and such other forms as may from time to time be approved or required by the Bank), setting forth such details concerning the construction at the Project as the Bank may reasonably require, including the amounts expended to the date of the Disbursement Request for the Project, the amounts then

due and unpaid for construction at the Project and an itemized estimate of the amount necessary to complete the Project.

(b) A certification by the Borrower that no Event of Default described in the Financing Agreement exists, and no event has occurred and no condition exists that, after notice or lapse of time, or both, would constitute an Event of Default.

(c) Paid invoices and lien waivers relating to the construction at the Project for all work through the date of the previous Disbursement Request and invoices for all work covered by the current Disbursement Request.

(d) Evidence that any inspection required by any state, city or other governmental authority has been completed with results satisfactory to that authority.

(e) Such other information and documents as the Bank may reasonably require.

3. Completion of Project. Upon completion of the Project (or as otherwise provided), the Borrower must furnish the Bank with the following, all in form and content satisfactory to the Bank, as a condition precedent to disbursement of any retention funds:

(a) The certification by the Borrower's Architect, the General Contractor and the Borrower that: (i) the Project has been completed in accordance with the plans and specifications approved by the Bank; (ii) all governmental licenses and permits required for the Project as then completed have been obtained and will be provided to the Bank upon request; (iii) the Project as then completed does not violate, and, if further completed in accordance with the approved plans and specifications, will not violate, any applicable law, ordinance, rule or regulation; and (iv) the remaining undisbursed proceeds of the Loan plus the then-existing balance of any the Borrower's funds are sufficient to pay for the completion of the Project.

(b) Final certificates of occupancy issued by the political subdivision authorized to issue such certificate as required by such political subdivision;

(c) At the Bank's option, a certification on AIA Form G704 by the architect or engineer selected by the Bank, if any, that the Project have been fully completed in accordance with the approved plans and specifications;

(d) Final payment lien waivers from the General Contractor, and, at the Bank's option, from all subcontractors and all other persons or entities for all labor performed and/or materials supplied in connection with the construction at the Project;

(e) An affidavit of payment of debts and claims executed by the General Contractor;

(f) Written certification on AIA Forms G706, 706A or 707 from the Borrower's Architect that each final punch list item for the Project has been completed;

(g) Copies of all special inspection reports, certificates or any similar items as required by any political subdivision relating to the Project;

(h) At the Bank's option, the ALTA "as-built" survey or other satisfactory evidence, such as a "certified letter" from the Project engineer of record, verifying that (i) the Project have been built in accordance with the approved plans and specifications and does not encroach on any easement or public or private right of way, (ii) the Project has been constructed within the boundaries of the Real Property, and (iii) the Project has been constructed within the setback lines as required by applicable zoning ordinances and does not encroach upon any other lot or other property;

(i) If required by the Bank, copies of all guaranties for workmanship, and all warranties and maintenance agreements, relating to the completed Project;

(j) "As-built" record drawings and specifications that include all modifications and changes that have been included in the approved plans and specifications; and

(k) Evidence that a "Notice of Completion" on the Bank's approved form executed by the Borrower has been properly recorded in the county recorder's office where the Project is located.

#### 4. Inspections.

(a) The Bank and its representatives or agents shall have the right at all reasonable times during the regular business hours (and at any time in the event of an emergency) to enter upon the Real Property and the Project and inspect the work to determine that the same is in conformity with the approved plans and specifications and all of the requirements hereof. The Borrower will permit the Bank or the Bank's representative to audit, examine and copy contracts, records (including, but not limited to, financial and accounting records pertaining to the Loan and the Project), plans and shop drawings kept at the construction site or at the Borrower's offices, and to discuss affairs, finances and accounts of the Borrower with representatives of the Borrower. The Bank may, from time to time, retain an independent engineer or consultant ("Project Inspector"), whose fees shall be reasonable and consistent with those inspectors for comparable construction projects to review the plans and specifications, Project budget and any other documents or information relating to construction at the Project, and inspect the work, in order to verify compliance by the Borrower with the provisions hereof. All such inspections and reviews shall be at the Borrower's sole cost and expense. The Borrower agrees to pay the line item amount for any such inspections as established in the Project budget, at loan closing. The inspection line item shall include the costs associated for both internal and external reviews and inspections. If the Bank incurs additional inspection, review or disbursement expenses beyond those established in the Project budget (such as inspections and reviews of the Project and the work performed prior to the first Construction Advance of funds from the Loan), the Borrower agrees to reimburse the Bank for the cost of such services within a reasonable time after receipt of the Bank's request, or, at the Bank's option, the cost of such services may be deemed to be an advance of credit under the Loan and, shall be added to the principal balance of the Loan; provided, however, that the Bank shall not be required to undertake such inspections or reviews, and the making of such inspections or review

shall not create or impose any responsibility or liability of or on the Bank for the quality of construction or for compliance of the Project with the approved plans and specifications or any governmental requirements, and the Borrower releases and holds the Bank and its Project Inspector harmless from any responsibility with respect to any such inspections or reviews.

(b) The Borrower understands and agrees that such inspections and reviews are for the sole purpose of protecting the Construction Advances under the Loan and the Bank's security for the Loan and are made solely for the Bank's benefit; that such inspections may be superficial and general in nature, primarily to inform the Bank of the progress of construction at the Project and, that in any event, the Borrower agrees that it is not entitled to rely on such inspection(s) as constituting the Bank's approval, satisfaction or acceptance with respect to materials, workmanship, conformance to the approved plans and specifications or otherwise. The Borrower hereby agrees to make its own inspections of the construction to determine that the quality of the Project and all other requirements of the work financed hereby are being performed in a manner satisfactory to the Borrower, and to notify the Bank in writing immediately should the same show any work to be unsatisfactory in any manner which is likely to or could result in material delay or material cost increase. Without limiting the foregoing, the Borrower agrees to permit the Bank and the Bank's representative to examine and copy all books and account records and other papers relating to the Project, and the Borrower will use commercially reasonable efforts to cause all contractors, subcontractors and materialmen to cooperate with the Bank.

5. Method of Construction Advance. Any Construction Advance made by the Bank under any option for disbursement, or so much thereof as the Bank may consider proper, shall be disbursed into a deposit account maintained by the Borrower with the Bank. The Bank shall have no obligation to see that the disbursements made by it to the Borrower or any designee of the Borrower are actually used by that party to pay for labor and materials furnished for construction of the Project. The Borrower acknowledges that this is its responsibility, and the Borrower assumes all risks in connection with any disbursement to any such designee.

6. Protective Provision. The Bank may withhold from any Construction Advance or, on account of subsequently discovered evidence, withhold from a later Construction Advance, as the Bank in its sole discretion considers necessary to protect the Bank from loss on account of (i) defective work on the Project that has not been remedied, (ii) any obligation required by this the Financing Agreement to have been performed that has not been performed, (iii) liens filed against the Project or reasonable evidence that such liens will be filed (other than in connection with work the cost of which is being properly contested in accordance with the provisions hereof), (iv) failure of the Borrower to make payments to contractors or subcontractors for material or labor (other than in connection with work the cost of which is being properly contested in accordance with the provisions hereof), or (v) a reasonable doubt by the Bank that construction at the Project can be completed with the undisbursed proceeds of the Loan, plus any amounts deposited by the Borrower with the Bank. Subject to the other provisions of the Financing Agreement, any amount so withheld shall be disbursed after the basis for such withholding has been cured or removed.

7. Stop Notice. The Bank may withhold any Construction Advance if, as to the particular Construction Advance in question, the Bank reasonably believes that withholding such

Construction Advance in whole or in part is required by the applicable stop notice laws (and any such stop notice has not been bonded over), in which case the amount withheld by the Bank shall be limited to the amount of the claim.

8. Withholding Construction Advances. Under any option for Construction Advances, the Bank may, in its discretion, withhold any payment or portion thereof until the Bank has received releases of lien, waivers of lien or paid bills as required by the terms of the Financing Agreement. The Bank shall have no obligation to require and/or obtain lien waivers or receipts, and, although the Bank requires presentation of lien waivers and/or receipts, the Bank shall have no responsibility for the validity thereof or for the correctness of the amounts indicated thereon. No Construction Advance by the Bank shall constitute approval of any certification or relieve any person making such certification of responsibility therefor.

9. Construction Advances for Insurance, Taxes, Assessments and Liens. The Bank may, from time to time, but shall not be obligated to, make Construction Advances in payment of insurance premiums, taxes, assessments, liens or encumbrances existing against the Project, interest accrued and payable upon the Loan, and any charges and expenses that are the obligation of the Borrower under the Financing Agreement or any Security Document and any charges or matters necessary to protect or preserve the Project or to cure any Event of Default.

10. Satisfaction of Conditions. Although the Bank will have no obligation to make any Construction Advance unless and until all of the conditions and prior performances set forth herein have been kept, fulfilled or performed, and until all inspections, certifications, releases, waivers, or paid bills or other requirements set forth herein have been made, delivered and complied with, the Bank may, in its sole discretion, make Construction Advances prior to that time without waiving or releasing any of the requirements or conditions of the Financing Agreement; but the Borrower agrees to continue to be strictly obligated and subject thereto, and all such conditions, prior performances and other requirements shall nevertheless be strictly and punctually complied with, fulfilled and performed; and, notwithstanding any such disbursement, the Bank, at its sole discretion, may discontinue any further Construction Advances at any time until all of the conditions, prior performances and other requirements of the Financing Agreement have been fulfilled, performed and complied with.

11. Payment of Construction Costs. The Borrower agrees to promptly pay for all labor, materials, equipment and fixtures actually installed at the Project and all other costs relating to the Project except that the Borrower may contest in good faith the validity or amount thereof. Upon the final determination of the Borrower's contest, the Borrower agrees to promptly pay all sums, if any, determined to be due according to applicable law.

12. Completion of Project. The Borrower agrees to commence construction of the Project not later than May 1, 2015, after the recording of the Deed of Trust, and proceed without interruption and promptly complete the Project not later than the Completion Date, in a good and workmanlike manner according to the approved plans and specifications, free from all liens and encumbrances, and in accordance with all applicable ordinances and statutes, including zoning laws, all covenants and restrictions running with the land, and all regulations and building codes of any governmental or municipal agency having jurisdiction over the Project.

13. Broken Priority. The Borrower warrants that no labor or material has been or will be furnished for construction of the Project until the Deed of Trust has been recorded and the title company has committed to issue the Title Policy; or, if construction has commenced, the Borrower agrees to ensure that all necessary indemnification or other agreements are made, in form satisfactory to the title company, so that the Bank receives the Title Policy without exception for mechanics' or materialmen's liens, as required herein.

14. Enforcement of Contracts. The Borrower agrees to enforce the contracts for the construction at the Project to ensure that the contractors are required to perform promptly and diligently all of their obligations thereunder and in such a manner as to preserve the Bank's security in the Project. No change, amendment or modification shall be made to such contracts without the prior written consent of the Bank, except changes, amendments or modifications that are designed to implement changes to the approved plans and specifications permitted hereby.

15. Additional Contractor Lists. The Borrower agrees to furnish to the Bank, promptly upon request of the Bank from time to time, correct lists of the contractors, all subcontractors, suppliers and materialmen employed or retained in connection with the construction at the Project, together with, if required by the Bank, copies of each such contract. Each such list shall show the name, address and telephone number of each such person, a general statement of the nature of the work to be done, the labor and materials to be supplied, the names of materialmen, if known, and the approximate dollar value of such labor or work with respect to each. The Bank shall have the right to telephone or otherwise communicate with the contractors, subcontractors and materialmen to verify the facts disclosed by said list or by any disbursement request, or for any other purpose.

16. No Other Security Interests. No materials, equipment, fixtures or any other part of the Project shall be purchased or installed under any security agreement or other arrangements wherein the seller reserves or purports to reserve the right to remove or to repossess any such items or to consider them personal property after their incorporation into the Project.

17. Maintenance of Licenses and Permits. The Borrower agrees to maintain in full force and effect all rights and licenses necessary to carry on its business, and all permits, licenses, consents and approvals necessary for the construction and maintenance of the Project. The Borrower agrees to maintain its present existence and agrees to maintain executive personnel and management at a level of experience and ability equivalent to present personnel and management.

18. Publicity. After the execution of the Financing Agreement, any and all publicity releases to newspapers of general or limited circulation or trade publications announcing any of the financing by the Bank provided for herein shall be issued by or subject to prior approval by the Bank. The Bank, at its option and at the Borrower's expense, may erect a sign upon the Real Property indicating that the Bank is the source of the financing for the construction of the Project.

19. Notice of Completion. Upon completion of the Project, as "completion" is defined in NRS \_\_\_\_\_, the Borrower agrees to promptly record a "Notice of Completion" pursuant to NRS \_\_\_\_\_.

20. Payment of Taxes. The Borrower will pay all of its current obligations before delinquent, including all federal, state and local taxes and all other payments required under federal, state or local law.

21. Books and Records; Access. The Borrower agrees to maintain, in a safe place, proper and accurate books and records relating to its operations and its business affairs. The Bank shall have the right from time to time to examine, and to make abstracts from and photocopies of, the Borrower's books and records.

22. Subsequent Actions. The Borrower agrees to immediately inform the Bank of any actions, suits or proceedings involving the Borrower or the Project that could materially and adversely affect the repayment of the Loan, the performance by the Borrower pursuant to the Financing Documents, or the financial condition, business or operations of the Borrower.

23. Further Assurances. The Borrower agrees to execute and deliver such additional documents and do such other acts as the Bank may reasonably require in connection with the Loan.

24. Borrower's Funds Account. If at any time or from time to time the Bank determines, in the exercise of its reasonable business judgment, that the remaining undisbursed proceeds of the Loan are insufficient to pay the total cost for the completion of the Project, the Bank may demand that an amount equal to such deficiency be deposited with the Bank in the Borrower's Funds Account to ensure such completion and payment. The Borrower's Funds Account and the funds deposited therein will be: (i) held in a non-interest-bearing account, and (ii) disbursed by the Bank in the manner provided herein for Construction Advances prior to, in conjunction with or after any or all Construction Advances. All funds at any time in the Borrower's Funds Account are hereby assigned to the Bank as additional security for the Loan and all other indebtedness of the Borrower arising pursuant to the Loan.

25. Borrower Notices. The Borrower agrees to give prompt written notice to the Bank of (i) the occurrence of any Event of Default, (ii) any change in the name of the Borrower, and in the case of a reorganization, any change in name, identity or corporate structure, or (iii) any uninsured or partially insured loss through fire, theft, liability or property damage.

26. Notice of Community Facilities or Special District. The Borrower agrees to promptly give notice to the Bank of any notification or advice that the Borrower may receive from any municipality or other third party of any intent or proposal to include all or any part of the Project in a community facilities or other special district. The Bank shall have the right to file a written objection to the inclusion of all or any part of the Project in such a district, either in its own name or in the name of the Borrower, and to appear at, and participate in, any hearing with respect to the formation of any such district.

27. Removal of Mechanics Liens. The Borrower agrees to institute the following procedures to insure prompt removal of mechanic's liens from the Project:

(a) Forward a copy of all known recorded mechanic's liens to the Bank within ten (10) days of receipt of notice thereof by the Borrower with a written explanation of the controversy, if any.

(b) If payment and performance bonds shall not be in effect or not in a sufficient amount or surety thereof shall fail to pay a mechanic's lien then, within the aforementioned ten (10) days, the Borrower may elect to (i) pay the lien and obtain a recorded release thereof, or (ii) post a recorded bond issued by an underwriter acceptable to the Bank indemnifying against any loss by reason of such lien, or, (iii) contest the validity of the lien and deposit with the Bank an amount equal to approximately 150% of the amount of the lien, which shall be held by the Bank in a separate escrow account, without interest, or in the Bank's sole judgment, the Bank may set aside and hold loan funds in the amount of 150% of the lien, to provide the Borrower a reasonable time to contest the lien and obtain a recorded release thereof, and upon receipt of the recorded release thereof by the Bank, the entire escrowed funds shall be returned to the Borrower, or the set aside loan funds will be released and become available to the Borrower. The Borrower is further notified that should the Bank, in Bank's sole judgment, determine, that the Bank's security or priority position is in jeopardy, the Bank may, upon five (5) days' notice to the Borrower of its intention to do so, but without any obligation, pay from any undisbursed proceeds of the Loan reasonable costs and expense, including reasonable attorneys' fees; and should such payments exceed the balance of the escrowed or set aside funds, then such additional amount may be expended by the Bank at its option and shall be secured by the Security Documents.

28. Release of Stop Notice. In the event that any stop notice or claim is asserted against the Bank by any person furnishing labor or materials to the Project, the Borrower agrees, upon demand by the Bank, to take such action as the Borrower may elect to release the Bank from any obligation or liability with respect to such stop notice or claim, including (i) if the claim is being contested in good faith by appropriate proceedings, obtaining a bond or other security in form, substance and amount reasonably satisfactory to the Bank, or (ii) payment of such claim.

29. Prompt Payment Statute. The Borrower agrees to comply with the following in connection with Nevada's Prompt Payment Statute:

(a) Compliance with Statute. To the extent applicable to the Borrower, the Borrower agrees to at all times comply with the provisions of NRS Sections 624.606 through 624.630 (collectively, the "Prompt Payment Statute"). The Borrower represents and warrants to the Bank that the Borrower is the "Borrower" for purposes of the Prompt Payment Statute. The Bank shall not be deemed or considered to be a "Borrower" for purposes of the Prompt Payment Statute and the Bank shall not be considered or deemed to be a person responsible for making progress payments on a construction contract for the purposes of any Prompt Payment Statute. The Borrower agrees not to cause or permit any statements or representations to be made or agreements to be entered into pursuant to which the Bank would or might be asserted to be such a designated payer.

(b) Bank Not Responsible. The Borrower agrees that the Bank is not responsible for compliance with the Prompt Payment Statute and as more particularly provided in subsection (a) above, the Borrower agrees to be solely responsible for such compliance. The Borrower's obligation to comply with the Prompt Payment Statute shall not in any way expand the obligations of the Bank hereunder and the Bank shall at all times retain the right to approve or disapprove Construction Advances in accordance with the Financing Agreement regardless of

the Borrower's obligations to the general contractor or any contractor. In no event will the Bank have any liability or obligation to the Borrower or any other person to approve Construction Advances or make Construction Advances within any time periods required pursuant to the Prompt Payment Statute, nor will the Bank have any liability or obligation for costs, fees, expenses, or damages of any nature incurred by the Borrower by reason of any failure to comply with the Prompt Payment Statute except as otherwise provided herein. Without limiting the generality of the foregoing, the Borrower acknowledges, represents and warrants to the Bank that (i) the Borrower has taken into consideration the period of time within which the Bank has to approve requests for Construction Advances (the "Bank's Review Period"), (ii) the Borrower has taken into consideration the period of time within which the Bank has to make Construction Advances once the conditions precedent to Construction Advances have been satisfied ("Bank's Disbursement Period"), and (iii) to the extent that Bank's Review Period or Bank's Disbursement Period may extend beyond any period of time required pursuant to the Prompt Payment Statute within which the Borrower may either approve and certify any billing or estimate (or within which any billing or estimate may be deemed approved) or make payments to the general contractor or any contractor, then the Borrower has complied with the provisions of the Prompt Payment Statute extending the billing cycle, payment provisions or approval periods in order to conform such periods to Bank's Review Period and Bank's Disbursement Period.

(c) Submission of Request for Construction Advance. Without limiting any of the other requirements or provisions hereof, in addition to all other requirements of the Financing Agreement with respect to requests for and the making of Construction Advances, the Borrower agrees to provide to the Bank a request for a Construction Advance together with all other supporting materials (including, without limitation, invoices and lien waivers) each month at least ten (10) days prior to the date on which a billing or estimate by the general contractor or any contractor may be deemed approved by the Borrower pursuant to any provision of the Prompt Payment Statute.

(d) Required Retention. The Borrower represents and warrants that the general contract and each construction contract provides for the right of the Borrower to retain from requested payments under such contracts an amount at least equal to the retention required pursuant to the Financing Agreement. The Borrower represents and warrants that the Borrower has required the general contractor and each construction contractor to include in all subcontracts a retention requirement that is at least equal to the amount of the retention pursuant to the Financing Agreement.

(e) Indemnification. The Borrower agrees to defend, indemnify and hold the Bank and the Bank's agents, employees, representatives, directors, officers, successors and assigns for, from and against any and all claims, damages, loss, liability, judgments, costs and expenses arising from or related to the breach or violation by the Borrower of the Prompt Payment Statute or the failure by the Borrower to pay any person as and when required under the Prompt Payment Statute. This indemnity will survive the payment and performance of the Loan.

30. Bank Costs. The Borrower agrees that it shall pay all reasonable and customary costs incurred by the Bank in connection with this transaction, including without limitation all reasonable and customary costs of title insurance, surveys, inspections, appraisals and attorneys' fees.

31. Copies of Contracts and Agreements. The Borrower agrees to deliver to the Bank promptly true and complete copies of all sales contracts, option contracts, leases and other agreements relating to the Project.

32. Disputes. In the event of any dispute that, in the good faith opinion of the Bank, may endanger the timely completion of the Project or the fulfillment of any condition precedent or covenant herein, the Bank may agree to make Construction Advances for the account of the Borrower without prejudice to the Borrower's rights, if any, to recover such funds from the party to whom paid. Such agreement or agreements may take any form that the Bank in its reasonable discretion deems proper, including, without limitation, agreements to indemnify a title insurer against possible assertion of lien claims and agreements to pay disputed amounts to contractors in the event the Borrower is unable or unwilling to pay the same. All sums paid or agreed to be paid pursuant to such agreement shall be for the account of the Borrower and shall be charged as a Construction Advance.

33. Right to Construction Advances. The Borrower agrees it has no right to any Construction Advance other than to have the same disbursed by the Bank in accordance with one or more of the disbursement provisions contained in the Financing Agreement. Any assignment or transfer, voluntary or involuntary, of the Financing Agreement or any right hereunder shall not be binding upon or in any way affect the Bank without its written consent; the Bank may make Construction Advances under one or more of the disbursement provisions herein, notwithstanding any such assignment or transfer.

34. Effect of Addendum. The terms of this Addendum are in addition to, and not in replacement of, the terms of the Financing Agreement; provided, however, if and to the extent of any inconsistency between this Addendum and the Financing Agreement, this Addendum will control.

**EXHIBIT A  
TO THE CONSTRUCTION ADVANCE ADDENDUM**

**(in the form attached as EXHIBIT D to the Agreement)**

**FORM OF DISBURSEMENT REQUEST**

\$9,000,000

The Industrial Development Authority of the City of Phoenix, Arizona  
Revenue Bonds (JMF-ECVA Convention Center Expansion Project)  
Series 2015

Application and Certificate for Disbursement Request No. \_\_\_\_

Date: \_\_\_\_\_, 20\_\_

Western Alliance Bank,  
as Owner of the Bonds  
3033 W. Ray Road  
Chandler, Arizona 85226  
Attn: Victor Napolitano

Pursuant to Section 5.5 of the Financing Agreement, dated as of March 1, 2015 (the "Agreement"), by and among The Industrial Development Authority of the City of Phoenix, Arizona (the "Authority"), Western Alliance Bank (the "Bank"), and JMF-ECVA 2015, LLC (the "Borrower"), the undersigned Borrower Representative hereby requests that you pay the aggregate sum of \$\_\_\_\_\_ from the proceeds of the above-captioned Bonds to those parties whose names and addresses are listed on the Disbursement Schedule attached hereto to pay such person(s) or to reimburse the Borrower, in the manner set forth in the Disbursement Schedule, for advances, payments and expenditures made by it in connection with the items listed in the Disbursement Schedule.

In connection with the foregoing disbursement request, the undersigned hereby certifies that:

(a) A copy of the invoice or demand for payment from the contractor, supplier, vendor or other payee or proof, satisfactory to the Bank, of payment thereof by the Borrower is attached hereto and the Borrower hereby requests that the Bank pay the amount stated in the Disbursement Schedule;

(b) The Construction Advance will comply with the restrictions described in Exhibit D of the Agreement;

(c) In the case of any items to become affixed to the Real Property/Land, all such items are presently located on the Real Property/Land;

(d) No Event of Default described in the Agreement has occurred and is continuing;

(e) Each item for which disbursement is requested hereunder is properly payable with the terms and conditions of the Agreement and the Tax Certificate, and none of those items has formed the basis for any prior disbursement;

(f) Each such item is or was necessary in connection with the acquisition, construction, renovation, restoration and equipping of the real and personal property comprising the Project, as defined in the Agreement;

(g) This statement and all exhibits hereto, including the Disbursement Schedule, shall be conclusive evidence of the facts and statements set forth herein and shall constitute full warrant, protection and authority to the Authority and the Bank for any actions taken pursuant hereto;

(h) This statement constitutes the approval of the Borrower of each disbursement hereby requested and authorized;

(i) Each item for which disbursement is requested hereby was included in the description of the Project, as defined in the Agreement as of the date of original delivery of the Bonds; provided that if any such item was not so included, attached hereto are: (1) a revised description of the Project, and an opinion of Bond Counsel to the effect that such revised Project constitutes a "project" within the meaning of the Act and was included within the Project described in the TEFRA notice published pursuant to Section 147(f) of the Code, and (2) either (i) a computation evidencing that the weighted average reasonably expected economic life of the facilities which have been and will be paid for with proceeds of the Bonds is not less than 5/6ths of the weighted average maturity of the Bonds, or (ii) an opinion of Bond Counsel; and

(j) Upon the application of the proceeds of the Bonds requested hereby, the Borrower will be in compliance with the Tax Certificate.

IN WITNESS WHEREOF, the Borrower Representative has executed this Disbursement Request as of \_\_\_\_\_, 2015.

JMF-ECVA 2015, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**DISBURSEMENT SCHEDULE NO. \_\_\_\_**

**To Disbursement Request No. \_\_\_\_**

**I. Advance:**

| <b>Payee (Name and Address)*</b> | <b>Description and Purpose<br/>of Cost Item</b> | <b>Total Amount<br/>Budgeted From<br/>Bond Proceeds</b> | <b>Amount Requested</b> |
|----------------------------------|---|---|-------------------------|
|----------------------------------|---|---|-------------------------|

**TOTAL**

\* See attached Wire Instructions and/or Invoice  
for payment instructions

## EXHIBIT E

### FORM OF COMPLIANCE CERTIFICATE

For the Fiscal Year Ending: \_\_\_\_\_

#### FIXED CHARGE COVERAGE RATIO

JMF-ECVA 2015, LLC to maintain minimum Debt Service Charge Coverage Ratio of 1.00 to 1.00, measured annually at fiscal year-end.

|     |   |         |
|-----|---|---------|
|     |   | \$      |
| 1.  | Net Profit (Changes in Net Position)  | -       |
|     |   | \$      |
| 2.  | Depreciation Expense (+)  | -       |
|     |   | \$      |
| 3.  | Amortization Expense (+)  | -       |
|     |   | \$      |
| 4.  | Interest Expense (+)  | -       |
|     |   | \$      |
| 5.  | Distributions (-)   | -       |
| 6.  | Cash Flow Available for Fixed<br>Charges (No. 1 + No. 2 + No. 3 + No.<br>4 - No. 5) | \$      |
|     |   | -       |
|     |   | \$      |
| 7.  | Interest Expense (+)  | -       |
|     |   | \$      |
| 8.  | Scheduled Principal Payments on<br>Long-term Debt (+)                               | -       |
|     |   | \$      |
| 9.  | Principal Payments on Capitalized<br>Lease Obligations (+)                          | -       |
|     |   | \$      |
| 10. | Sum of Fix Charges (No. 7 + No. 8 +<br>No. 9 + No. 10)                              | -       |
|     |   | \$      |
| 11. | Debt Service Coverage Ratio (No.<br>6 / No. 11)                                     | #DIV/0! |

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In accordance with the requirements of the Financing Agreement among THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF PHOENIX, ARIZONA (the "Authority") and JMF-ECVA 2015, LLC (the "Borrower") and WESTERN ALLIANCE BANK (the "Bank"); the undersigned certifies that no Event of Default has occurred and that Grantee is in compliance with all terms and conditions, unless otherwise disclosed, as of the below date. Further Grantee certifies that the information provided as of the fiscal period referenced above is true and correct and has been prepared in compliance with the requirements of the Financing Agreement.

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**BORROWER**

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Authorized Signature

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Authorized Signer's  
Name and Title

---

Date

**GROUND LEASE**

**for**

**Elko Convention and Visitors Authority New Event  
Center**

by and between

**ELKO CONVENTION AND VISITORS AUTHORITY, Landlord**

and

**JMF-ECVA 2015, LLC, Tenant**

Dated as of the 1st day of March, 2015

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The interest of JMF-ECVA 2015, LLC in this Ground Lease will be  
collaterally assigned to Western Alliance Bank.

## GROUND LEASE

This GROUND LEASE FOR ELKO CONVENTION AND VISITORS AUTHORITY NEW EVENT CENTER (this "**Lease**") dated as of March 1, 2015 (the "**Effective Date**"), is by and between JMF-ECVA 2015, LLC, a Nevada limited liability company (the "**Tenant**"), whose sole member is The James Megellas Foundation, Inc., an Arizona nonprofit corporation, and ELKO CONVENTION AND VISITORS AUTHORITY, a body corporate and politic, and a municipal corporation of the State of Nevada (the "**Landlord**").

### ARTICLE 1 Lease of the Site

1.1 Premises. Landlord, hereby lets to Tenant and Tenant hereby leases from Landlord, upon and in consideration of the terms and conditions contained herein, that certain parcel of land consisting of approximately 151,154 net square feet, more particularly described on the Attachment 1.1 attached to and made a part of this Lease (the "**Land**"), which Land is commonly known as 724 Moren Way, in Elko County, State of Nevada, and which Land, together with the sanitary sewer and storm drain easements granted in favor of the Land (as set forth in the Parcel Map recorded as Document No. 695804 in the Elko County Official Records) and all improvements presently situated thereon or to be constructed thereon pursuant to the terms of this Ground Lease, shall hereinafter be referred to as the "**Premises**," subject, however, to the following: (i) other covenants, restrictions, easements, agreements, and reservations, if any; (ii) present and future building restrictions and regulations, zoning laws, ordinances, resolutions and regulations of the municipality in which the land lies and all present and future ordinances, laws, regulations and orders of all boards, bureaus, commissions, and bodies of any municipal, county, state, or federal authority, now or hereafter having jurisdiction over the Premises; and (iii) the condition and state of repair of the Premises as the same may be on the Effective Date.

1.2 Term. The term of this Lease (the "**Term**") shall commence on the Effective Date and shall expire (unless earlier terminated according to the terms of the Loan Documents and the Facilities Use Agreement) on March 4, 2041 (the "**Expiration Date**"); provided, however, that the Term shall automatically terminate as of the first date on which no Bonds shall remain Outstanding (as defined in the Financing Agreement); and further provided that, if Landlord timely exercises the extension option contained in Section 1.3 below, the Expiration Date shall be redefined to mean the last day of the last Extension Term for which Landlord has so exercised such option (as the same may be affected by the early termination provisions of the Loan Documents and the Facilities Use Agreement as described in Section 1.3).

1.3 Optional Extensions. The Term may be extended for no more than two (2) additional periods of ten (10) years each (each an "**Extension Term**"), at the sole option of Landlord. If Landlord wishes to exercise its option to extend the Term, it shall provide Tenant with written notice of such exercise not later than one hundred eighty (180) days prior to the then-current Expiration Date. The word Term, as used in this Lease, shall include any Extension Term for which Landlord timely exercises the extension option created in this Section 1.3.

## ARTICLE 2 Definitions

2.1 Definitions. For the purposes of this Lease, the following words shall have the definition and meaning hereafter set forth:

**“Additional Indemnitor”** has the meaning set forth in Section 12.2.

**“Additional Rent”** shall mean all Ground Lease Rent payable by Tenant other than the Base Rent.

**“Bank”** means Western Alliance Bank and any successor holder of the Bonds.

**“Bank Mortgage”** shall mean every mortgage, deed of trust, assignment, and other collateral, pledge, and security required under the Financing Agreement.

**“Base Rent”** has the meaning set forth in Section 3.1.

**“Bonds”** shall mean The Industrial Development Authority of the City of Phoenix, Arizona Revenue Bonds (JMF-ECVA Convention Center Expansion Project), Series 2015 issued in the principal amount of \$9,000,000 pursuant to the Financing Agreement.

**“Business Days”** shall mean every calendar day Monday through Friday, inclusive, but excluding legal holidays of the United States of America and of the state where the Facilities are located.

**“Claims”** has the meaning set forth in Section 12.1.

**“Completion Date”** shall have the same meaning as the “Target Commencement Date” under the Facilities Use Agreement.

**“Condemnation Proceeds”** has the meaning set forth in Section 14.2A.

**“Consulting and Predevelopment Agreement”** shall mean the Consulting and Predevelopment Agreement dated as of October 21, 2014, and entered into by and between Landlord and Developer (a copy of which is attached to as Attachment 2.1.1 and made a part of this Lease), as thereafter modified, amended, or assigned according to the terms of such agreement.

**“Control”** means the full power and legal authority to direct and control the business, operations, decisions and actions of the subject person or entity.

**“Deed of Trust”** means the Leasehold Deed of Trust, Security Agreement, Assignment of Rents and Leases, and Fixture Filing dated as of March 1, 2015 and entered into from Borrower, as trustor, to First American Title Insurance Company, as trustee, for the benefit of the Bank.

**“Developer”** shall mean GFDS ECVA 1, LLC, a Nevada limited liability company.

**“Effective Date”** has the meaning set forth in the preamble to this Lease.

**“Emergency”** or **“emergency”** shall mean a situation in which a reasonable person would conclude that any individual’s or individuals’ health or welfare is in imminent danger and/or a situation, imminent or otherwise, that renders a portion of the Premises unusable for the intended purpose, and/or a situation in which there is a declaration of an emergency or emergency situation by an authorized governmental unit.

**“Environmental Laws”** has the meaning set forth in the Financing Agreement.

**“Event of Default”** has the meaning set forth in Section 17.1.

**“Expiration Date”** has the meaning set forth in Section 1.2.

**“Extension Term”** has the meaning set forth in Section 1.3.

**“Facilities Use Agreement”** shall mean the Facilities Use Agreement for Elko Convention and Visitors Authority New Event Center dated of even date herewith and entered into by and between Tenant (as grantor) and Landlord (as grantee), (a copy of which is attached as Attachment 2.1.2 and made a part of this Lease) as thereafter modified, amended, or assigned according to the terms of such agreement.

**“Financing Agreement”** shall mean the Financing Agreement dated as of March 1, 2015 among the Issuer, the Bank and the Tenant.

**“Ground Lease Rent”** has the meaning set forth in Section 3.1.

**“Hazardous Materials”** shall mean any material or substance that is regulated from time to time by any local, state or federal law relating to environmental conditions and industrial hygiene, including, without limitation, the Resource Conservation and Recovery Act of 1976, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, the Hazardous Materials Transportation Act, the Federal Water Pollution Control Act, the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Safe Drinking Water Act, and all similar federal, state and local environmental statutes, ordinances and the regulations, orders, or decrees now or hereafter promulgated thereunder. **“Hazardous Materials”** includes any and all material or substances that are defined as “hazardous waste,” “extremely hazardous waste,” or a “hazardous material” pursuant to Legal Requirements.

**“Impositions”** has the meaning set forth in Section 5.2 of the Facilities Use Agreement.

**“Indemnitee”** has the meaning set forth in Section 12.1.

**“Indemnitor”** has the meaning set forth in Section 12.1.

**“Insurance Proceeds”** has the meaning set forth in Section 13.1(B).

**“Insurance Requirements”** means the insurance coverages required to be maintained pursuant to ARTICLE 5 of this Lease, and all requirements of the insurers issuing the policies containing such coverages.

**“Issuer”** shall mean The Industrial Development Authority of the City of Phoenix, Arizona.

**“Land”** has the meaning set forth in Section 1.1.

**“Landlord”** shall mean Landlord named in this Lease and its successors and assigns.

**“Landlord Affiliate”** means any person or entity that Controls, is Controlled by, or is under common Control with Landlord.

**“Landlord Party”** means Landlord and any Landlord Affiliate, and their respective officers, directors, shareholders, constituent partners, members or principals, employees, staff, students, parents, consultants, contractors, agents and professional advisors.

**“Lease Year”** shall mean (i) the period beginning on the Effective Date and ending on February 28, 2016, and (ii) every period of March 1st through February 28th thereafter occurring during the Term.

**“Legal Requirements”** means all present and future statutes, laws, codes, regulations, ordinances, orders, rules, bylaws, administrative guidelines, requirements, directives and actions of any federal, state or local governmental or quasi-governmental authority, and other legal requirements of whatever kind or nature that are applicable to the Premises.

**“Loan”** has the meaning set forth in the Financing Agreement.

**“Loan Documents”** shall mean all of the following: (i) the Financing Agreement; (ii) the Deed of Trust; and (iii) the Revenue Pledge.

**“Manager”** shall mean EFDS Management Services Nevada, LLC.

**“Memorandum of Understanding”** shall mean that Memorandum of Understanding dated as of August 1, 2014, and entered into between Landlord and Tenant (a copy of which is attached hereto as Attachment 2.1.4 and made a part of this Lease), as thereafter modified, amended, or assigned according to the terms of such Memorandum.

**“Operating and Compliance Agreement”** shall mean that Operating and Compliance Agreement dated of even date herewith and entered into by and between Tenant and Manager (a copy of which is set forth on the Attachment 2.1.3 attached to and made a part of this Lease), as thereafter modified, amended, or assigned according to the terms of such agreement.

**“Parties”** shall mean both the Landlord Party and the Tenant Party.

**“Party”** shall mean either the Landlord Party or the Tenant Party, as the pertinent reference may indicate.

**“Permitted Mortgage”** has the meaning set forth in Section 16.4.

**“Permitted Mortgagee”** shall mean the beneficiary, secured party or mortgagee under any Permitted Mortgage, and its successors and assigns and purchasers at any foreclosure sale.

**“Permitted Sublease”** has the meaning set forth in Section 16.1.

**“Phase I ESA”** shall mean that certain Phase I - Environmental Site Assessment of the Premises, dated March 10, 2015 (File No. 82065), as revised (if at all), prepared by Summit Engineering Corporation.

**“Plans and Specifications”** has the meaning set forth in the Facilities Use Agreement.

**“Premises”** has the meaning set forth in Section 1.1.

**“Project Development Agreement”** shall mean the Project Development Agreement for the Elko Convention & Visitors Authority - Component 1 dated as of August 1, 2014 and entered into by and between Tenant and Developer (a copy of which is attached hereto as Attachment 2.1.5 and made a part of this Lease), as thereafter modified, amended, or assigned according to the terms of such Agreement.

**“Revenue Pledge”** means the revenue pledge by EVCA in favor of Bank contained in Section 3.6 of the Facilities Use Agreement as credit enhancement for the Loan.

**“Second Notice”** has the meaning set forth in Section 17.2.

**“Sublease”** shall mean (i) the Facilities Use Agreement and (ii) any other agreement, written or oral, entered into by Tenant, by which Tenant grants to any individual or entity any rights of use or occupancy of or any benefit flowing from the Premises or a portion thereof, including a permit, license, or concession.

**“Substantial Completion”** and **“Substantially Complete”** have the meanings set forth in the Facilities Use Agreement.

**“Substantially Damaged”** has the meaning set forth in Section 13.1B.

“**Subtenant**” shall mean any person, firm, corporation, or other legal entity using or occupying or entitled to use or occupy any part of the Premises under a Sublease, other than students or others entitled to occupy or use a part of the Premises by way of a residential lease or license.

“**Target Commencement Date**” has the meaning set forth in the Facilities Use Agreement.

“**Tenant**” shall mean Tenant named in this Lease and its successors and assigns.

“**Tenant Affiliate**” means any person or entity that Controls, is Controlled by, or is under common Control with Tenant.

“**Tenant Party**” means Tenant and any Tenant Affiliate, and their respective officers, directors, shareholders, constituent partners, members or principals, employees, staff, students, parents, consultants, contractors, agents and professional advisors.

“**Tenant’s Work**” shall mean all acts and undertakings reasonably necessary for Tenant to cause full performance of all covenants, conditions, and obligations to be undertaken by the Tenant, the Developer, or the Manager pursuant to the Consulting and Predevelopment Agreement, the Memorandum of Understanding, the Operating and Compliance Agreement, and the Project Development Agreement.

“**Term**” has the meaning set forth in Section 1.2.

“**Unavoidable Delay**” has the meaning set forth in ARTICLE 25.

“**Use Fee Commencement Date**” has the meaning set forth in the Facilities Use Agreement.

### ARTICLE 3 **Rent**

#### 3.1 Ground Lease Rent.

A. In consideration of the Landlord’s execution and delivery of this Lease, the Tenant covenants and agrees to pay and provide, or cause to be paid and provided, all of the following (altogether, the “**Ground Lease Rent**”): (i) to Landlord, the single lump sum of One Hundred and No/100 United States Dollars (USD 100.00) per year (the “**Base Rent**”), to be paid to Landlord on the Commencement Date as partial consideration for the demise hereunder; and (ii) for the benefit of Landlord, full performance by Tenant, Developer, and Manager of all covenants, conditions, and obligations to be undertaken by the same pursuant to the Consulting and Predevelopment Agreement, the Memorandum of Understanding, the Operating and Compliance Agreement, and the Project Development Agreement

B. If, and only if, (i) the Facilities Use Agreement shall be terminated before the Expiration Date by reason of any of the occurrences provided at Section 21.1 of the Facilities Use Agreement and (ii) the Foundation (as defined in the Facilities Use Agreement) shall thereafter continue to possess the Premises pursuant to the terms of this Ground Lease, then Tenant shall pay as additional Ground Lease Rent hereunder, with respect to each remaining Lease Year of the Term during which Tenant shall so possess the Premises, the then fair market rental value of the Land as determined by an independent MAI appraiser reasonably agreed upon by Landlord and Tenant and, if they cannot agree, then the average of the fair market rental value as determined by two independent MAI appraisers, one chosen by Tenant and the other by Landlord, which amounts shall be due and payable on the last day of each Lease Year.

3.2 Rent Absolutely Net. It is the purpose and intent of Landlord and Tenant that Ground Lease Rent payable hereunder shall be absolutely net to Landlord, free of any charges, assessments, Impositions, or deductions of any kind charged, assessed, or imposed on or against the Premises and without abatement, deduction, or set-off by Tenant, and that Landlord shall not be expected or required to pay any such charge, assessment, or Imposition or be under any obligation or liability hereunder except (i) as otherwise expressly set forth in this Lease or (ii) as expressly provided as a term, covenant, condition, or obligation of the Landlord as grantee under the Facilities Use Agreement.

3.3 Non Subordination. This Lease shall not be modified, amended, or renewed, and shall not be subject or subordinate to (i) any mortgage now or hereafter placed upon Tenant's interest in this Lease, or (ii) any other liens or encumbrances hereafter affecting Tenant's interest in this Lease, except as specifically provided in the Financing Agreement, and subject to the Permitted Uses as described in Section 7.2.

3.4 No Release of Obligations. Except for either a mutual release and waiver of rights and liabilities arising under this Lease or to the extent expressly provided in this Lease, no event, occurrence, or situation during the Term shall permit Tenant to quit or surrender the Premises or this Lease, nor obviate the Landlord's right to receive the Lease Payments and Additional Rent and other charges under this Lease, nor relieve Tenant of any of its other obligations under this Lease.

#### ARTICLE 4 **Additional Rent**

If lawfully applicable, Tenant shall cause to be paid, pursuant to the terms of the Facilities Use Agreement, and as Additional Rent during the Term, without notice (except as specifically provided) and without abatement, deduction or setoff (except as specifically provided in this Lease), before any fine, penalty, interest, or cost may be added thereto, or become due or be imposed by operation of Legal Requirements for the nonpayment thereof, all Impositions.

#### ARTICLE 5 **Insurance**

Tenant shall cause its contractors, consultants, and licensees to carry all insurance coverage required of such contractors, consultants, and licensees (together with all of their respective employees, representatives, and agents) pursuant to the Facilities Use Agreement, the Consulting and Predevelopment Agreement, the Memorandum of Understanding, the Project Development Agreement, and the Operating and Compliance Agreement. Tenant shall also cause Landlord, to the extent of its title interest in the Premises, to be named as a loss payee under the requisite insurance coverages. A summary of coverages required under the Facilities Use Agreement, the Consulting and Predevelopment Agreement, the Memorandum of Understanding, the Project Development Agreement, and the Operating and Compliance Agreement is set forth on the attached Schedule 5.1.

#### ARTICLE 6 **Reserved**

## ARTICLE 7 Uses and Maintenance

7.1 Condition of the Property; Waste. Tenant has leased the Premises and accepts the condition or state as of the Effective Date, subject to the reasonable opportunity for a full and complete examination of the property, without any representation or warranty, express or implied in fact or by law, by Landlord (except only as specifically set forth in this Lease) and without recourse to Landlord, as to the title thereto, the nature, condition, or usability thereof or the use or uses to which the Premises or any part thereof may be put. Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the Premises or to provide any off-site improvements, such as utilities or paving, or other forms of access to the Premises, other than what may already exist on the Effective Date, throughout the Term. Tenant shall not commit or suffer to be committed any waste or impairment of the Premises. The prohibition against waste shall not, however, restrict Tenant's rights with respect to alteration, demolition, and replacement of buildings and improvements as permitted elsewhere in this Lease. Tenant hereby assumes the full and sole responsibility for the condition, construction, operation, repair, demolition, replacement, maintenance, and management of the Premises, including but not limited to the performance of all burdens running with the Land. Notwithstanding the foregoing, the Parties acknowledge that Tenant shall have no liability for environmental conditions existing on the Premises before the date that Tenant is granted possession of the Premises, except to the extent aggravated or exacerbated thereafter.

7.2 Permitted Uses. In no event shall the Premises or any part thereof be used for any purpose that violates any Legal Requirements. Further, during the term of the Facilities Use Agreement, use of the Premises is hereby restricted to (i) the Tenant's Work, and (ii) the "Permitted Use" of the Premises pursuant to the Facilities Use Agreement.

7.3 Hazardous Materials.

A. Landlord hereby represents, warrants, and covenants as follows: (i) that, from the earliest effective date of any portion of the Phase I ESA until the Effective Date, the Premises have not been used for any activities that, directly or indirectly, involve the use, generation, treatment, storage, transportation, or disposal of any Hazardous Materials, except in the normal course of operations, and then only in compliance with all Environmental Laws; (ii) that, from the earliest effective date of any portion of the Phase I ESA until the Effective Date, the Premises and their existing and prior uses have at all times materially complied with all Environmental Laws, and the Landlord has not during such time materially violated any Environmental Law with respect to the Premises; and (iii) that, as of the Effective Date, there are no facilities on the Premises that are subject to reporting under Section 312 of the Federal Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. §11022), or to any federal regulations promulgated thereunder.

B. Tenant represents, warrants, and covenants that during the Term it shall not use, cause to be used, or store any Hazardous Materials within the Premises or dispose of any Hazardous Materials at or from the Premises in a manner that violates applicable Legal Requirements and Insurance Requirements governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials. In addition, Tenant shall notify Landlord, within forty-eight (48) hours of obtaining knowledge thereof, of any release of Hazardous Materials on the Premises. Nothing herein shall prohibit Tenant from using any substance, material, or process commonly used in connection with Tenant's Work; *provided* that such use and storage in the Premises is in strict compliance with Legal Requirements and all such Hazardous Materials are

removed from the Premises on or before the expiration or sooner termination of this Lease. Upon request by Landlord, Tenant shall submit to Landlord periodic reports regarding Tenant's use, storage, and disposal of any of the Hazardous Materials, such reports to include information regarding continued Hazardous Materials inspections, personal interviews, and federal, state and local agency listings. In addition, Tenant shall execute affidavits, representations and the like from time to time at Landlord's reasonable request concerning Tenant's best knowledge and belief regarding the presence or absence of Hazardous Materials on the Premises.

C. Tenant shall, in accordance with all Legal Requirements and to Landlord's reasonable satisfaction remove any and all Hazardous Materials placed in the Premises by Tenant or by its agents, invitees, employees or its contractors in performing Tenant's Work, and Tenant shall be responsible for all costs including, but not limited to, those resulting from monitoring, clean-up or compliance in accordance with all Legal Requirements incurred with respect to any Hazardous Materials placed in the Premises in performing Tenant's Work, and shall be responsible for all such costs incurred with respect to any Hazardous Materials placed in, on or under the Premises by Tenant or its agents, invitees, employees or contractors. Tenant shall indemnify and hold Landlord and each other Landlord Party harmless from and against any and all costs, claims, suits, causes of action, losses, injuries or damage, including without limitation, personal injury damage (including death) as well as damage to property as well as any and all sums paid for settlement of claims, reasonable attorney's fees, consultant and expert fees arising during the Term as a result of a breach of this ARTICLE 7 or resulting from the presence or removal of Hazardous Materials from the Premises.

D. The Parties hereby acknowledge receipt of the Phase I ESA concerning the Premises. Notwithstanding any other term, covenant, or condition of this Lease, the Parties hereby expressly agree that Tenant shall have no liability whatsoever (whether for monitoring, clean-up, compliance, indemnity, defense, or otherwise) to Landlord or to any third party by reason of any Hazardous Material(s) shown by any such report(s) to have existed on the Premises as of the date of such report(s).

## **ARTICLE 8 Compliance**

8.1 Tenant Obligations. Except as otherwise provided for in this Lease, Tenant shall assume and perform (or cause to be assumed and performed pursuant to the terms, covenants and conditions of the Consulting and Predevelopment Agreement, the Memorandum of Understanding, the Project Development Agreement, the Operating and Compliance Agreement, and the Facilities Use Agreement) any and all obligations of Landlord that Landlord is otherwise legally and lawfully required to undertake with respect to the Premises during the Term. To the extent permitted by Legal Requirements, Tenant may, in good faith and wherever necessary to make the contest effective, in the name of, but without expense to Landlord, contest the validity of any such Legal Requirements and, pending the determination of such contest, may postpone compliance therewith, except that Tenant shall not so postpone compliance therewith, as to subject Landlord to the risk of any fine or penalty or prosecution for a crime, or to cause the Premises or any part thereof to be condemned for non-compliance.

8.2 Certificate of Occupancy. Tenant shall obtain or, if applicable, issue any certificate of occupancy with respect to the Premises (or any portion thereof) that may at any time be required by the City of Elko and any governmental agency having jurisdiction thereof.

ARTICLE 9  
**Construction and Operation of Tenant's Work**

9.1 Completion. Tenant shall use its reasonable efforts to cause the Tenant's Work to be Substantially Complete on or before the Completion Date.

9.2 Approval of Plans. The Parties hereby acknowledge that the Developer has received and approved the Plans and Specifications for the construction of Tenant's Work. After the Effective Date, Tenant shall submit to Landlord any approved amendments to the Plans and Specifications. Tenant shall deliver to Landlord true copies of the final "as built" Plans and Specifications according to the requirements of the Facilities Use Agreement.

9.3 Government Approval. Tenant shall, according to the requirements of the Facilities Use Agreement, cause the Developer under the Project Development Agreement to obtain the approval of the Plans and Specifications by any and all federal, state, municipal and other governmental authorities, offices and departments having jurisdiction in the matter and make available upon request conformed copies of executed approvals to Landlord.

9.4 Completion Requirements. Tenant shall cause the Developer to construct the Tenant's Work in a good, careful, proper, and workmanlike manner in accordance with (i) the Plans and Specifications, (ii) the Project Development Agreement, and (iii) the Facilities Use Agreement.

9.5 Ownership of Buildings and Improvements. During the Term, title to all buildings and improvements placed or constructed on the Land by Tenant pursuant to this Lease shall be vested in Tenant (including its successors and permitted assigns). Upon the expiration of the Facilities Use Agreement, Tenant shall have an obligation to remove all improvements and return the property to its existing condition unless otherwise instructed by the Landlord. In the event that the Landlord elects to have Tenant leave the improvements, Tenant shall request transfer of title pursuant to a written request to Landlord.

9.6 Tenant's Management and Operating Covenant. After the Use Fee Commencement Date under the Facilities Use Agreement and during the remainder of the Term, Tenant shall—subject to the provisions of ARTICLES 9, 13 and 14 of this Lease with respect to alterations, damage and destruction, and condemnation—prudently manage and operate (or cause to be managed and operated) the Premises according to the terms, covenants, and conditions of the Operating and Compliance Agreement.

ARTICLE 10  
**Impairment of Landlord's Title**

10.1 No Liens. Neither Party shall permit the lien of any contractor, subcontractor, mechanic, materialman, laborer, architect or any other person or entity arising out of work, material or services performed or supplied or contracted for by that Party or those claiming by, through or under it, to be or remain a lien upon the Premises, but such Party shall, within a reasonable time within the receipt of notice of such lien, discharge such lien or cause it to be released by order of court of competent jurisdiction, payment, deposit, bond or other security reasonably satisfactory to the other Party; provided, however, that such Party shall have the right to contest the lien in good faith by appropriate judicial proceedings so long as (i) the proceeding operates to stay any execution or foreclosure on the lien, (ii) the Party diligently pursues the contest to its conclusion and provides notice to the other Party of the progress of such contest, and (iii) within twenty (20) Business Days of

the exhaustion of such contest, if it is determined that such lien is valid, such Party shall cause any such lien to be discharged or released by payment, deposit, bond, or other security reasonably satisfactory to such other Party. Neither Tenant nor Landlord shall suffer any other matter or thing arising out of the use and occupancy of the Premises whereby the estate, rights, and interests of Landlord or Tenant in the Premises or any part thereof might be impaired, except as permitted under this Lease or as mutually agreed upon in writing between Landlord and Tenant. The provisions of this ARTICLE 10 are not intended to limit any rights Tenant may have under ARTICLE 16 of this Lease.

10.2 No Implied Consent. Nothing contained in this Lease shall be deemed or construed in any way as constituting Landlord's expressed or implied authorization, consent, or request to any contractor, subcontractor, laborer or materialman, architect, or consultant, for the construction or demolition of any improvement, the performance of any labor or services or the furnishing of any materials for any improvements, alterations to or repair of the Premises or any part thereof.

10.3 Limited Agency. The Parties acknowledge that Tenant is entitled to construct (or cause to be constructed) the Tenant's Work, and may act as the agent of Landlord for such construction, as well as for any alteration or repair required to be performed by Tenant as to any improvement, subject to the reasonable approval of Landlord.

## ARTICLE 11

### Inspection

Landlord shall have the right to enter into the Premises at reasonable times upon twenty-four (24) hours advance notice (except in the case of an emergency) for the purpose of inspecting the Premises. The twenty-four (24) hour notice provision of this ARTICLE 11 shall not be construed to prohibit or delay any entry by Landlord in its capacity as a municipality, if any, in its criminal law enforcement capacity or an Emergency, nor to any entry authorized by any writ or warrant issued by any Court, nor to an entry authorized by any health or welfare statute, code, ordinance, rule or regulation.

## ARTICLE 12

### Indemnification

12.1 Mutual Indemnification. Each Party (as "**Indemnitor**") agrees to indemnify, defend, and hold harmless the other Party (as "**Indemnitee**") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "**Claims**") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteer; provided, however, (i) that Landlord shall not be required to indemnify, defend, and hold harmless Tenant for any Claims arising in connection with acts or omissions by Tenant during the course of Tenant's agency (if any) under Section 10.3, and (ii) that Landlord shall not be responsible to Tenant under ARTICLE 18 for any damage or injury that Tenant may suffer during the course of Tenant's agency (if any) under Section 10.3.

12.2 Additional Indemnification. Tenant shall require that Developer cause all contractors and other third parties engaged in Tenant's Work (each an "**Additional Indemnitor**") to indemnify, defend, save and hold harmless Indemnitees from and against any and all Claims for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or

alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the Additional Indemnitor, its employees, representatives, and agents (including all of their respective directors, officers, agents, and subcontractors). This indemnification includes any claim or amount arising out of or recovered under applicable workers' compensation laws or arising out of the failure of such Additional Indemnitor to conform to any Legal Requirements. It is the specific intention of the Parties that the Indemnitee shall, in all instances, except for Claims arising from the negligent or willful acts or omissions of the Indemnitee, be indemnified by such Additional Indemnitor from and against any and all Claims; *provided, however*, that the foregoing is not intended to require Additional Indemnitors to indemnify any Indemnitee against any Claim that does not arise from negligent or willful acts or omissions of that Additional Indemnitor's own contractors, directors, officers, agents, or employees or subcontractors. It is agreed that with respect to any Claim falling within the scope of an Additional Indemnitor's indemnity obligation, such Additional Indemnitor will be responsible for primary loss investigation, defense and judgment costs. In consideration of the use and occupancy of the Premises, Tenant shall require each Additional Indemnitor to agree to waive all rights of subrogation against Landlord and Tenant, and their respective officers, officials, agents and employees for losses arising from the use, occupancy or condition of the Premises.

Tenant, its contractors and sublessees, will hold all goods, materials, furniture, fixtures, equipment, machinery and other property whatsoever on the Premises and improvements at their sole risk.

The obligations under this ARTICLE 12 shall not in any way be affected by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting the Premises.

12.3 Survival. The provisions of this ARTICLE 12 shall survive the expiration or earlier termination of this Lease.

### ARTICLE 13 Damage or Destruction

13.1 Fire or Other Damage. Tenant shall give Landlord immediate notice in case the Premises are damaged by fire or other casualty.

A. If, between the Effective Date of this Lease and the Use Fee Commencement Date under the Facilities Use Agreement, the Tenant's Work is Substantially Damaged by fire or other casualty (the term "**Substantially Damaged**" meaning damage of such a character that the Premises cannot, in the ordinary course, reasonably be expected to be repaired within two hundred (200) Business Days from the time that repair work would commence, as determined by a contractor mutually satisfactory to the Parties), then the Tenant shall have the right to terminate this Lease by giving notice of such election within forty-five (45) Business Days after the occurrence of such casualty, which termination shall be effective as of the date of such notice.

B. If this Lease is terminated pursuant to Section 13.1, the Term shall end on the specified cancellation date with the same force and effect as if such date were the date originally established as the expiration date of this Lease. Tenant shall have no obligation to pay any Ground Lease Rent after the termination date of the Lease, and all Base Rent shall be prorated to the date of termination. Tenant will look only to insurance required by this Lease (including insurance required under the Project Development Agreement), whether or not obtained, to recover any damages or losses suffered as a result of the damage, including (but not limited to) early termination of the

Lease, loss of business, and damage to property. Tenant releases Landlord from liability and waives right of recovery against Landlord for all losses or damages resulting from the casualty to the extent that it would have been compensated by insurance required to be carried by Tenant under this Lease. The proceeds of insurance carried pursuant to ARTICLE 5 ("**Insurance Proceeds**") shall be used to pay all sums then due and owing, and to satisfy any other outstanding obligations, under the Loan Documents, and any excess Insurance Proceeds shall be applied to restoring the Land, as nearly as reasonably possible, to its condition as of the Commencement Date, provided, however, that the application of such proceeds shall be the full extent of Tenant's restoration obligations. If, after repayment of the outstanding obligations under the Loan Documents and the restoration of the Land as provided above, there remain excess Insurance Proceeds, such excess shall be paid to Tenant.

C. If this Lease is not terminated pursuant to this Section 13.1, then the Insurance Proceeds shall be used to pay for the repair and restoration work performed pursuant to the terms hereof. If the total cost of restoring the Premises, as provided in this Article, is less than the amount of the Insurance Proceeds applicable to such restoration work, the balance of the Insurance Proceeds shall be paid to Tenant, subject to the terms and conditions of the Loan Documents.

13.2 Partial Damage. If, between the Effective Date of this Lease and the Use Fee Commencement Date under the Facilities Use Agreement, the Tenant's Work is damaged by fire or other casualty, but either (i) are not Substantially Damaged or (ii) are Substantially Damaged but this Lease is not terminated pursuant to Section 13.1, then Tenant shall thereafter promptly restore the Premises to substantially the condition they were in immediately prior to such casualty; provided, however, that Tenant's obligation shall be limited to the amount of Insurance Proceeds available therefor, and that Tenant shall not be obligated to commence restoration until Insurance Proceeds have been received by Tenant (subject to the terms and conditions of the Loan Documents) and Landlord has reimbursed Tenant for the applicable deductible.

## ARTICLE 14 Condemnation

14.1 General. The term "condemnation" as used in this Lease means the taking or appropriation of property, or any interest therein, in exercise of the power or right of eminent domain or such taking for public or quasi-public use or any state of facts relating to the taking or appropriation of property which, without an actual taking or appropriation, shall result in direct or consequential damages to the Premises. Such term shall also be deemed to include to the extent not otherwise defined in this paragraph, a temporary taking of the Premises or any part thereof or the improvements thereon for a period of one year or more, and the taking of the leasehold interest created herein.

14.2 Total Condemnation. If, between the Effective Date of this Lease and the Use Fee Commencement Date under the Facilities Use Agreement, all of the Premises (or such substantial portion thereof as shall, in Tenant's sole discretion, make it economically unfeasible to continue to operate the remaining portion for the Permitted Use herein) is condemned, then:

A. This Lease shall terminate on the date title to the Premises vests in the condemnor; provided, however, that such termination shall be without prejudice to the rights of Landlord or Tenant to recover just and adequate compensation from any such condemnor ("**Condemnation Proceeds**").

B. All condemnation proceeds (“**Condemnation Proceeds**”) shall be used to pay all sums then due and owing, and to satisfy any other outstanding obligations, under the Loan Documents. Any excess Condemnation Proceeds shall be allocated first to the fee simple interest of Landlord, subject to encumbrances of record (other than those arising under the Loan Documents) existing at the time of condemnation in the Land and shall be paid to Landlord, and any remaining Condemnation Proceeds shall, in consideration of the leasehold interest of Tenant in the Land and the Tenant’s interest in the Tenant’s Work, be distributed to Tenant.

14.3 Partial Condemnation. If, between the Effective Date of this Lease and the Use Fee Commencement Date under the Facilities Use Agreement, the Premises are subject to less than a total taking (as provided in Section 14.2), then:

A. This Lease shall terminate as to the condemned portion of the Premises on the date title to the condemned portion of the Premises vests in the condemnor (provided, however, that such termination shall be without prejudice to the rights of Landlord and Tenant to recover just and adequate compensation from any such condemnor), and the provisions of this Lease shall remain in full force and effect as to the portion of the Premises not condemned; and

B. A portion of the condemnation proceeds allocable to the fee simple interest of Landlord, subject to the terms and conditions of the Loan Documents, and further subject to encumbrances of record not arising under the Loan Documents and existing at the time of condemnation in the Land shall be paid to Landlord, and any remaining condemnation proceeds shall, in consideration of the leasehold interest of Tenant in the Land and the Tenant’s interest in the Tenant’s Work, be distributed to Tenant.

## ARTICLE 15 **Assignment**

Subject to the provisions of ARTICLE 16, Tenant shall not assign or in any manner transfer this Lease or any part thereof, or the interest of Tenant in any sublease or the rentals thereunder without the prior written consent of Landlord and the Bank. This section shall not apply to permits or temporary use agreements that are of a duration of less than twenty (20) Business Days in the aggregate.

## ARTICLE 16 **Subletting and Mortgages**

16.1 Permitted Subleases. Tenant shall provide Landlord with prior written notice of any prospective Sublease, sublicensing, or other contractual arrangement for occupancy of any portion of the Premises, other than the Facilities Use Agreement. Every Sublease other than the Facilities Use Agreement must be approved in advance in writing by Landlord. Once consent is obtained, a Sublease is a “**Permitted Sublease**” provided that:

A. Any sublet or sublicensed portion of the Premises may be used and occupied for the purposes permitted under Section 7.2 of this Lease; and

B. Any violation of any provision of this Lease, whether by act or omission by any Subtenant, shall be deemed a violation of such provision by Tenant, it being the intention and meaning of the Parties that Tenant shall cause any such Subtenant to observe all obligations applicable to such Subtenant under this Lease.

Landlord has approved all terms and conditions of the Facilities Use Agreement and confirms that the Facilities Use Agreement is consistent with this Lease. Accordingly, the Facilities Use Agreement, together with any Sublease that is permitted by this Section 16.1, are hereafter referred to, respectively, as a “Permitted Sublease”.

16.2 Nondisturbance. Landlord covenants and agrees with Tenant, for the benefit of the Subtenant under the Facilities Use Agreement and any and all other Subtenants occupying any part of the Premises from time to time under Permitted Subleases, that in the event of a termination of this Lease, the possession of each such Subtenant under a Permitted Sublease shall not be disturbed so long as such Subtenant shall not be in default under its Permitted Sublease, provided such Subtenant shall attorn to Landlord and provided such Permitted Sublease shall be a Permitted Sublease with a Permitted Subtenant or has otherwise been approved by Lessor and further provided that Landlord shall have no monetary obligations to such Subtenant. This nondisturbance agreement shall be self-operative and no further agreement between Landlord and any such Subtenant shall be necessary to effect the same, however, Landlord agrees that from time to time, promptly upon request of Tenant or any Subtenant, it will enter into agreements with Tenant and any such Subtenant confirming such nondisturbance agreement, provided such Subtenant agrees to attorn to Landlord. The provisions of this Section 16.2 shall survive the termination of this Lease.

16.3 Consent Limited. Any consent by Landlord herein contained or hereafter given to any act of assignment shall be held to apply only to the specific transaction hereby or thereby approved. Such consent shall not be construed as a waiver of the duty of Tenant, or its successors or assigns, to obtain Landlord’s consent to any other or subsequent assignment, or as a modification or limitation of the right of Landlord with respect to the foregoing covenant by Tenant.

16.4 Mortgages. Tenant shall not encumber its leasehold interest under this Lease with a mortgage, deed of trust, or other financing encumbrance without Landlord’s consent. Once consent is obtained, the mortgage is a “**Permitted Mortgage**” provided that:

A. Subtenant or the holder of such Permitted Mortgage shall promptly deliver to Landlord, in the manner herein provided for the giving of notice to Landlord, a true copy of the Permitted Mortgage(s), of any assignment thereof, and of the satisfaction thereof; and

B. Each Permitted Mortgage shall contain provisions permitting the disposition and application of the insurance proceeds and Condemnation Proceeds in the manner provided in this Lease.

Landlord hereby expressly consents to the “**Bank Mortgage**” as such term is defined in the Facilities Use Agreement. Accordingly, the Bank Mortgage permitted by this Section 16.4 is hereafter referred to as a “Permitted Mortgage”.

16.5 Landlord’s Lien Waiver. At Tenant’s request, Landlord agrees to execute a form of landlord’s lien waiver with respect to Tenant’s financing of any personal property located on the Premises, subject to Landlord’s review and approval of any such landlord’s lien waiver form.

## ARTICLE 17 **Default by Tenant**

17.1 Events of Default. Subject to the provisions of this ARTICLE 17, the occurrence of the following (in each instance, an “**Event of Default**”) shall be considered a material breach and

default by Tenant under this Lease: Failure by Tenant to perform or comply with any of the covenants, agreements, terms, limitations, or conditions applicable to Tenant under this Lease, which failure shall continue for a period of forty (40) Business Days after Landlord delivers written notice of such failure to Tenant; *provided that*, if Tenant proceeds with due diligence during such forty (40) Business Day period to cure such failure and is unable by reason of the nature of the work involved, to cure the same within the required forty (40) Business Days, then Tenant's time to cure such default shall be extended by the time reasonably necessary to cure the same).

17.2 No Termination. Upon the occurrence of one or more of the events listed in Section 17.1, Landlord at any time thereafter, but not after such default is cured, may deliver written notice ("**Second Notice**") to Tenant specifying such Event(s) of Default. Landlord expressly and knowingly waives the right to terminate this Agreement, however, on account of an Event of Default by Tenant under this Lease. Except as expressly otherwise provided in this Lease, Landlord's sole remedy for Tenant's default shall be an action for damages or injunctive or declaratory relief.

17.3 No Implied Waivers. No failure by Landlord to insist upon the strict performance of any covenant, agreement, term or condition hereof or to exercise any right or remedy consequent upon a breach hereof, and no acceptance of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition hereof to be performed or complied with by Landlord or Tenant, and no breach thereof, shall be waived, altered or modified, except by a written instrument executed by the Party to be charged therewith. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term, limitation and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach hereof.

## ARTICLE 18

### Limitations on Landlord's Liability

The term "Landlord," as used in this Lease, so far as Landlord's covenants and agreements hereunder are concerned, shall be limited to mean and include only the owner or owners of the fee title to the Land or those having the right of immediate possession in a pending condemnation action at the time in question. In the event of any conveyance of such title pursuant to the provisions of Section 9.5, Landlord named in this Lease shall be automatically relieved, from and after the date of such conveyance, of all personal liability as respects the performance of any of Landlord's covenants and agreements thereafter to be performed.

Unless caused by the negligence or willful act of Landlord or its agents or employees, Landlord shall not be responsible or liable for any damage or injury to any property, fixtures, merchandise, or decorations or to any person or persons at any time on the Premises from steam, gas, electricity, water, rain, or any other source whether the same may leak into, issue or flow from any part of the Tenant's Work or from pipes or plumbing work of the same, or from any other place or quarter, nor shall Landlord be in any way responsible or liable in case of any accident or injury including death to any of Tenant's employees, agents, Subtenants, or to any person or persons in or about the Premises or the streets, sidewalks or vaults adjacent thereto; and Tenant agrees that it will not hold Landlord in any way responsible or liable therefor.

Landlord shall not be liable for interference with light or incorporeal hereditaments caused by anybody or the operation of or for any governmental authority in the construction of any public or quasi-public work, and Landlord shall not be liable for any latent or any other defects in the

Premises. Landlord shall not be responsible or liable for any damage or injury to any property or persons resulting from the activities of Tenant's employees or agents.

## ARTICLE 19 Notices

Any notices under this Agreement must be in writing and must be sent by (i) personal delivery, (ii) by United States registered or certified mail (postage prepaid), (iii) by electronic mail or facsimile (with a copy sent the same day by one of the other prescribed methods of delivery) or (iv) by an independent overnight courier service, addressed to the addresses specified below or at such other place as a Party may designate to the other Parties by written notice given in accordance with this Section. Notices given by registered or certified mail are deemed effective three (3) Business Days after the Party sending the notice deposits the notice with the United States Post Office. Notices given by electronic mail or facsimile are deemed effective on the Business Day transmitted (or, if transmitted on a day that is not a Business Day, then on the next occurring Business Day). Notices delivered by overnight courier are deemed effective on the next Business Day after the day the Party delivering the notice timely deposits the notice with the courier for overnight (next day) delivery.

If to Tenant:           JMF-ECVA 2015, LLC  
                                  c/o The James Megellas Foundation, Inc.  
                                  501 E Arizona Avenue  
                                  Buckeye, Arizona 85236  
                                  Attention: President  
                                  Facsimile: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_  
                                  Email: meltoninbuckeye@gmail.com

With Copies to:       GFDS ECVA 1, LLC  
                                  11811 N Tatum Boulevard  
                                  Suite 3031  
                                  Phoenix, Arizona 85028  
                                  Attention: Mr. Gary Aller, President  
                                  Facsimile: (602) 953-7737  
                                  Email: [gary@efdsllc.com](mailto:gary@efdsllc.com)

And to:                 Quarles & Brady LLP  
                                  Two North Central Avenue  
                                  Phoenix, Arizona 85004  
                                  Attn: Michael J. Ostermeyer  
                                  Facsimile: (414) 978-8956  
                                  Email: [michael.ostermeyer@quarles.com](mailto:michael.ostermeyer@quarles.com)

If to Landlord:       Elko Convention and Visitors Authority  
                                  724 Moren Way  
                                  Elko, Nevada 89801  
                                  Attention: Don Newman  
                                  Facsimile: (775) 738-2420  
                                  Email: [don@elkocva.com](mailto:don@elkocva.com)

With Copy to: Robert J. Wines, P.C.  
687 6th Street, #1  
Elko, NV89801  
Attention: Robert J. Wines  
Facsimile: (775) 753-9860  
Email: [bobwines@citlink.net](mailto:bobwines@citlink.net)

If to Bank: Alliance Bank of Arizona  
a division of Western Alliance Bank  
3033 W. Ray Road  
Chandler, AZ 85226  
Phone: 480-609-2912  
[vnapolitano@alliancebankofarizona.com](mailto:vnapolitano@alliancebankofarizona.com)  
Attention: Victor J. Napolitano, Senior Vice President

With Copy to: Ballard Spahr LLP  
1 E. Washington Street, Suite 2300  
Phoenix, AZ 85004  
Phone: 602-798-5423  
Email: [hicksw@ballardspahr.com](mailto:hicksw@ballardspahr.com)  
Attention: William A. Hicks III, Esq.

Any notice by either Party hereto, whether required or permissible hereunder, may be given by such Party's then current attorney, which notice, when given by such attorney, shall be deemed equally as effective as if given by such Party directly.

#### ARTICLE 20 Condition of Premises

Tenant represents that the Premises, any sidewalks, vaults, the title to the Premises, parking areas adjoining the same, any subsurface conditions thereof, and the present uses and non-uses thereof, have been examined by Tenant and that Tenant accepts the same in the condition or state in which they or any of them may be on the date of the execution of this Lease, without representation or warranty, express or implied in fact or by law, by Landlord and without recourse to Landlord, as to the nature, condition, or usability thereof or the use or uses to which the Premises or any part thereof may be put.

#### ARTICLE 21 Quiet Enjoyment

Subject to all of the conditions, terms, and provisions contained in this Lease, Landlord covenants that Tenant, upon paying the Ground Lease Rent, and observing and keeping all terms, covenants, agreements, limitations, and conditions hereof on its part to be kept, shall quietly have and enjoy the Premises during the term hereof, without hindrance or molestation by Landlord.

ARTICLE 22  
**Estoppel**

Upon request by either Party, the other Party shall execute and deliver a certificate evidencing whether: (i) the Lease is in full force and effect, along with the amount and current status of the Ground Lease Payments due hereunder; (ii) the Lease has been modified in any respect or describing such modifications or amendments, if any; and (iii) there are any existing defaults thereunder to the knowledge of the party executing the certificate, and specifying the nature of such defaults, if any.

ARTICLE 23  
**Consents**

23.1 Parties and Notice. Whenever the consent or approval of a Party is required or reasonably requested under this Lease, if the Party from whom consent or approval is sought fails to notify the requesting Party in writing within twenty (20) Business Days (except where a longer period is otherwise specified herein for the giving of such consent or approval) after the giving of a written request therefor in the manner specified herein for the giving of notice, it shall be concluded that such consent or approval has been given.

23.2 No Unreasonable Withholding. Wherever in this Lease the consent or approval of either Party is required, such consent or approval shall not be unreasonably withheld nor delayed, except where otherwise specifically provided. The remedy of the Party requesting such consent or approval, if such Party should claim or establish that the other Party has unreasonably withheld or delayed such consent or approval, shall be limited to injunction or declaratory judgment and in no event shall such other Party be liable for a money judgment.

ARTICLE 24  
**Miscellaneous**

24.1 Enforceability. If any term or provision hereof or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision hereof shall be valid and be enforced to the fullest extent permitted by Legal Requirements.

24.2 Choice of Law. This Lease shall be construed and enforced in accordance with the Legal Requirements of the State of Nevada.

24.3 Memorandum. Landlord and Tenant agree that at the request of either, each will execute a short form memorandum of this Lease in a form satisfactory for recording in the Office of the County Recorder, Elko County, Nevada.

24.4 Entire Agreement. This Lease with its schedules and annexes contains the entire agreement between Landlord and Tenant and any executory agreement hereafter made between Landlord and Tenant shall be ineffective to change, modify, waive, release, discharge, terminate, or effect an abandonment of this Lease, in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, waiver, release, discharge, termination, or the effect of the abandonment is sought.

24.5 Captions. The captions of Articles and Sections in this Lease and its Table of Contents (if any) are inserted only as a convenience and for reference and they in no way define, limit, or describe the scope of this Lease or the intent of any provision thereof. References to Articles and Section numbers are to those in this Lease unless otherwise noted.

24.6 Execution and Delivery. This Lease shall bind Tenant upon its execution thereof. Landlord shall be bound only after it executes and delivers the Lease to Tenant.

24.7 Singular and Plural Gender. If two or more persons, firms, corporations, or other entities constitute either Landlord or Tenant, the word "Landlord" or the word "Tenant" shall be construed as if it reads "Landlords" or "Tenants" and the pronouns "it," "he," and "him" appearing herein shall be construed to be the singular or plural, masculine, feminine, or neuter gender as the context in which it is used shall require.

24.8 Multiple Parties. If at any time Landlord, Tenant, or any Permitted Mortgagee (Landlord, Tenant or any such mortgagee being in this Section referred to as a "person") is other than one individual, partnership, firm, corporation, or other entity, the act of, or notice, demand, request, or other communication from or to, or payment of refund from or to, or signature of, or any one of the individuals, partnerships, firms, corporations, or other entities then constituting such person with respect to such person's estate or interest in the Premises or this Lease shall bind all of them as if all of them so had acted, or so had given or received such notice, demand, request, or other communication, or so had given or received such payment or refund, or so had signed, unless all of them theretofore have executed and acknowledged in recordable form and given a notice (which has not theretofore been revoked by notice given by all of them) designating not more than three individuals, partnerships, firms, corporations, or other entities as the agent or agents for all of them. If such a notice of designation has theretofore been given, then, until it is revoked by notice given by all of them, the act of, or notice, demand, request or other communication from or to, or payment or refund from or to, or signature of, the agent or agents so designated with respect to such person's estate or interest in the Premises or this Lease shall bind all of the individuals, partnerships, firms, corporations, or other entities then constituting such person as if all of them so had acted, or so had given or received such notice, demand, request, or other communication, or so had given or received such payment or refund, or so had signed.

24.9 Attachments and Incorporation. The following attachments are in the possession of Landlord and Tenant, and are incorporated herein by reference as though fully set forth:

|                  |   |
|------------------|---|
| Attachment 2.1.1 | Consulting and Predevelopment Agreement |
| Attachment 2.1.2 | Facilities Use Agreement                |
| Attachment 2.1.3 | Operating and Compliance Agreement      |
| Attachment 2.1.4 | Memorandum of Understanding             |
| Attachment 2.1.5 | Project Development Agreement           |

In addition, the following are attached to and made a part of this Lease: (i) Attachment 1.1 (Legal Description) and (ii) Attachment 5.1 (Project Insurance Requirements).

## ARTICLE 25 Unavoidable Delay

In addition to specific provisions of this Lease, performance by any Party shall not be deemed to be in default where delays or defaults are due to strikes, lockouts, labor troubles, inability

to procure materials, failure of power, governmental restrictions, litigation that results in an injunction prohibiting or otherwise delaying the continuity of such construction or other acts, or other reasons not within the reasonable control of the Party delayed in performing such obligation (each an “**Unavoidable Delay**”). In the event of an Unavoidable Delay, the period of such Delay shall be deemed added to the time herein provided for the performance of any such obligation, and the defaulting Party shall not be liable for loss or damage caused by such Unavoidable Delays; *provided, however*, that a lack of funds or inability to obtain funds shall not be included in this definition of Unavoidable Delay. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause. Notwithstanding the allowance hereunder for Unavoidable Delay, time is of the essence with respect to all terms, covenants, and conditions under this Lease.

*[Signatures begin on next page.]*

**IN WITNESS WHEREOF**, Landlord and Tenant have duly executed this Lease on the Effective Date.

**LANDLORD:**

**ELKO CONVENTION AND VISITORS AUTHORITY,**  
a body corporate and politic, and a municipal corporation of the  
State of Nevada

By: \_\_\_\_\_

Name: Don Newman

Title: Executive Director

**TENANT:**

**JMF-ECVA 2015, LLC,**  
a Nevada limited liability company

By: The James Megellas Foundation, Inc.

Its: Sole Member

By: \_\_\_\_\_

Name:

Title:

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease on the Effective Date.

**LANDLORD:**


**ELKO CONVENTION AND VISITORS AUTHORITY,**  
a body corporate and politic, and a municipal corporation of the  
State of Nevada

By: \_\_\_\_\_  
Name: Don Newman  
Title: Executive Director

**TENANT:**

**JMF-ECVA 2015, LLC,**  
a Nevada limited liability company

By: The James Megellas Foundation, Inc.  
Its: Sole Member

By:  \_\_\_\_\_  
Name: Michael Melton  
Title: President

**ATTACHMENT 1.1**  
Legal Description of the Premises

A PORTION OF SECTION 11, TOWNSHIP 34 NORTH, RANGE 55 EAST, MOUNT DIABLO MERIDIAN, CITY OF ELKO, ELKO COUNTY, NEVADA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1 AS SHOWN BY PARCEL MAP #3227, THEREOF AS FILE NO. 695804, IN THE OFFICE OF THE COUNTY RECORDER OF ELKO COUNTY, NEVADA, AND AS AMENDED BY CERTIFICATE OF AMENDMENT RECORDED MARCH 18, 2015 AS DOCUMENT NO. 696066, OFFICIAL RECORDS.

**ATTACHMENT 2.1.1**  
Consulting and Predevelopment Agreement

**ATTACHMENT 2.1.2**  
Facilities Use Agreement

**ATTACHMENT 2.1.3**  
Operating and Compliance Agreement

**ATTACHMENT 2.1.4**  
Memorandum of Understanding

**ATTACHMENT 2.1.5**  
Project Development Agreement

**SCHEDULE 5.1**  
**Project Insurance Requirements**

Pursuant to ARTICLE 5 of this Ground Lease, the parties shall carry, and/or cause their respective contractors, consultants, and licensees to carry, all insurance coverage required of such contractors, consultants, and licensees (together with all of their respective employees, representatives, and agents) pursuant to the Facilities Use Agreement, the Project Development Agreement, the Operating and Compliance Agreement, and the Memorandum of Understanding.

A summary of insurance coverages required under the Facilities Use Agreement, the Project Development Agreement, the Operating and Compliance Agreement, and the Memorandum of Understanding is set forth in this Schedule 5.1.

Capitalized terms used in this Schedule 5.1 and not otherwise defined herein shall have the meanings given them in the Facilities Use Agreement.

**1. Project Development Agreement Between GFDS ECVA 1, LLC (“Developer”) and JMF-ECVA 2015, LLC (“Owner”):** Pursuant to Section 20.2 of the Project Development Agreement, the Developer shall include in all Service Agreements and contracts it executes in connection with the Project insurance requirements in accordance with Exhibit 5 of the Project Development Agreement. Specifically, pursuant to Exhibit 5 of the Project Development Agreement, the Developer shall itself comply with the insurance requirements of subsection 1(a) below, and shall include in the Design Build Agreement the insurance requirements of subsection 1(b) below.

**a. INSURANCE REQUIRED OF DEVELOPER**

The Developer shall purchase from and maintain in a company or companies reasonably satisfactory to the Owner, and lawfully authorized to do business in the State of Nevada, such insurance as will protect the Developer from claims set forth below which may arise out of or result from the Developer’s services and for which the Developer may be legally liable, or by anyone directly or indirectly employed by the Developer, or by anyone for whose acts the Developer may be liable:

- .1** Claims under workers’ compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2** Claims for damages because of bodily injury, occupational sickness or disease, or death of the Developer’s employees;
- .3** Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Developer’s employees;
- .4** Claims for damages insured by usual personal injury liability coverage;
- .5** Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including explosion, collapse and damage to utilities and loss of use resulting therefrom;
- .6** Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Developer's indemnity obligations.

The insurance required above shall, at a minimum, include the following coverages:

- .1 Worker's Compensation Insurance coverage complying with the laws of Nevada and Employer's Liability Insurance with a minimum limit of \$500,000 each accident, including occupational disease coverage with a limit of \$500,000 per person subject to an aggregate limit of \$500,000 per annum;
- .2 Comprehensive Automobile Liability insurance with limits of not less than \$2,000,000 combined single limit per occurrence, with coverage for the use, loading and maintenance of any owned, hired or non-owned vehicles;
- .3 Commercial General Liability insurance with limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate per project or location or limits sufficient to be scheduled under Excess/Umbrella liability insurance policy including Completed Operations;
- .4 Professional Liability with limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate.

The Owner, the Financing Entity providing funding for the Project, the Elko Convention and Visitors Authority - the intended occupant of the Project following Final Completion, and their respective officers, directors, partners, shareholders, members, employees and agents) shall be shown as additional, named insureds on all policies described above on a primary and non-contributory basis.

The Developer's Certificate of Insurance shall be filed with the Owner prior to commencement of any services under this Agreement, and upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final application for payment.

**b. INSURANCE REQUIRED OF DESIGN-BUILDER:** The Design-Builder shall purchase from and maintain in a company or companies reasonably satisfactory to Owner, the Foundation, the Financing Entity, and any lender providing funding for the Project, and lawfully authorized to do business in the State of Nevada, such insurance as will protect the Design-Builder from claims set forth below which may arise out of or result from the Design-Builder's operations and completed operations under this Agreement and for which the Design-Builder may be legally liable, whether such operations be by the Design-Builder or by a Design Consultant, Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;

- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Design-Builder's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Design-Builder's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including explosion, collapse and damage to utilities and loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Design-Builder's indemnity obligations.

The insurance required above shall, at a minimum, include the following coverages:

- .1 Worker's Compensation Insurance coverage complying with the laws of Nevada and Employer's Liability Insurance with a minimum limit of \$500,000 each accident, including occupational disease coverage with a limit of \$500,000 per person subject to an aggregate limit of \$500,000 per annum;
- .2 Comprehensive Automobile Liability insurance with limits of not less than \$2,000,000 combined single limit per occurrence, with coverage for the use, loading and maintenance of any owned, hired or non-owned vehicles;
- .3 Commercial General Liability insurance with limits of not less than \$2,000,000 per occurrence, \$5,000,000 general aggregate per project or location or limits sufficient to be scheduled under Excess/Umbrella liability insurance policy including Completed Operations;
- .4 Excess/Umbrella Liability Insurance with limits of not less than \$10,000,000 to be in excess of the above coverages.

Coverages, whether written on an occurrence or claims-made basis, shall be maintained in full force and effect without interruption from the date of commencement of the Work until the date of final payment and, with respect to the Design-Builder's completed operations coverage, until two (2) years after Substantial Completion of the Work. All of the Owner Indemnified Parties (as defined in the Agreement) shall be shown as additional, named insureds on all policies described above on a primary and non-contributory basis.

The Design-Builder's Certificate of Insurance shall be filed with the Owner prior to commencement of any construction, and upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final application for payment.

The Design-Builder shall cause each Subcontractor to (.1) procure insurance reasonably satisfactory to the Owner and the Foundation, and (.2) name the Owner Indemnified Parties as additional named insureds under the Subcontractor's liability insurance. If Owner or any additional insured has other insurance which is applicable to a loss arising out of operations performed by or on behalf of the Design-Builder, then such other insurance shall be on an excess or contingent basis.

c. **BUILDER'S RISK INSURANCE.** Design-Builder shall procure and maintain, from insurance companies authorized to do business in the state in which the Project is located, property insurance upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Design-Builder shall be the broadest coverage commercially available, and shall include as additional insureds the interests of the Owner Indemnified Parties, Design-Builder, Design Consultants and Subcontractors of any tier. Such insurance shall include, but not be limited to, the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. The property insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Project Site or at another location as may be indicated in Design-Builder's Application for Payment and approved by Owner. The Design-Builder is responsible for the payment of any deductibles under the insurance required by this Section.

Design-Builder shall procure and maintain boiler and machinery insurance that will include the interests of Owner, Design-Builder, Design Consultants, Subcontractors and Sub-Subcontractors. The Design-Builder is responsible for the payment of any deductibles under the insurance required by this Section.

d. **DESIGN-BUILDER'S PROFESSIONAL LIABILITY INSURANCE.** In addition to the foregoing, Design-Builder shall provide professional liability insurance complying with the requirements of the General Conditions and any additional requirements above, with coverage amounts of \$1,000,000 per claim and \$2,000,000 aggregate and with deductibles not more than \$10,000 per claim and \$30,000 aggregate, together with umbrella coverage of not less than \$4,000,000.

e. **BONDS REQUIRED OF DESIGN-BUILDER.** The Design-Builder shall provide payment and performance bonds in the full amount of the Contract Price minus Professional Fees, Permits and F.F. & E. on forms and from sureties acceptable to the Owner, the Foundation and the Financing Entity in their commercially-reasonable discretion. Such bonds shall guarantee the faithful performance of the Design-Builder's obligations under the Design Build Agreement.

Additional Insureds. The policies listed above must include as additional insureds the ECVA, the Foundation, the Financing Entity, and the Issuer, as their respective interests may appear, and as may be further required by any lender providing Project financing.

2. Operating and Compliance Agreement between ("Manager") and ("Owner"):  
Pursuant to Section 11 of the Operating and Compliance Agreement, the Manager shall, if (and at all times) that Manager shall have any employees, obtain and maintain:

- (i) employee dishonesty insurance with limits of not less than \$1,500,000 arising out of any one occurrence and \$1,500,000 in the annual aggregate;

- (ii) Worker's Compensation Insurance coverage complying with the laws of Nevada and Employer's Liability Insurance with a minimum limit of \$500,000 each accident, including occupational disease coverage with a limit of \$500,000 per person subject to an aggregate limit of \$500,000 per annum;
- (iii) Comprehensive Automobile Liability insurance with limits of not less than \$1,000,000 combined single limit per occurrence, with coverage for the use, loading and maintenance of any owned, hired or non-owned vehicles;
- (iv) Commercial General Liability insurance with limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate per project or location or limits sufficient to be scheduled under Excess/Umbrella liability insurance policy including Completed Operations; and
- (v) Professional Liability with limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate.

3. Facilities Use Agreement between JMF-ECVA 2015, LLC ("Grantor") and Elko Convention and Visitors Authority ("Grantee"): The Facilities Use Agreement contains specific insurance obligations, which are set forth below and shall, with the Design-Builder (as hereinafter defined) insurance requirements set forth below, constitute the Insurance Requirements for Component 1 (as that term is defined in the various Project documents).

a. Insurance Types and Amounts Required of Elko convention and visitors authority ("ECVA") Grantee under the Facilities Use Agreement:

i. Property Insurance. ECVA shall obtain and maintain, at the ECVA's expense, property insurance on an "All Risk" basis and for such other insurable hazards as, under good insurance practices, are insured against for other property and buildings similar to the Premises in nature, use, location, height, and type of construction. Such policy shall include all standard perils including wind. The amount of such insurance shall be not less than one hundred percent (100%) of the replacement cost without depreciation of the Premises. Such insurance policy shall not be subject to any form of coinsurance. Such insurance shall cover increased cost of construction due to the enforcement of building codes well as loss of income. During the period of any construction, repair, renovation, restoration or replacement of improvements comprising the Premises, excepting therefrom, the initial construction, which ECVA does not have any legal right to insure, ECVA shall obtain and maintain, prior to commencement of such construction, repair, renovation, restoration or replacement of improvements, at the ECVA's expense (including, without limitation, deductibles), a completed value "All Risk" Builder's Risk Insurance policy for the full replacement cost of the Premises (including upgrades and any leasehold improvements but excluding the ECVA's Removable Property and Alterations made by the ECVA). The policy is to be written on a non-reporting basis, and in an amount not less than the total value of the Premises (less the value of such uninsurable items as land, site preparation, grading, paving, and parking lots). Such policy may not contain a permission to occupy limitation. The policy shall not be subject to any form of coinsurance. The policy must not contain any "Protective Safeguard" endorsements limiting coverage. Coverage shall be provided for against the standard perils. Such policy shall include coverage for mechanical breakdown and testing, collapse, expediting expenses, demolition and increased cost of construction (for renovation and/or additions to existing structures), water damage, and permission for partial occupancy.

ii. Commercial General Liability. Commercial General Liability insurance on the broadest forms available for similar risks, written on an “occurrence policy form,” or its reasonable equivalent, against all claims for bodily injury, disease or death, property damage, personal injury, facilities operations, products and completed operations, consultants and independent contractors and contractual liability in an amount of \$10,000,000 arising out of any one occurrence and \$10,000,000 in the annual aggregate. Such insurance shall be provided under a primary policy or policies. If liability coverage for the Premises is included under any blanket policy written on an aggregate form, then the annual aggregate limit of insurance applying solely to the Premises must not be less than \$10,000,000. The policy must include as insureds ECVA’s employees, volunteers and directors. The policy shall be endorsed to include, as additional insureds and/or loss payees (as appropriate), on a primary and non-contributory basis, the Foundation, its managers, members, directors, officers, employees, agents, affiliates, successors and assigns, the Bank, and the Issuer.

iii. Worker’s Compensation / Employer’s Liability. Worker’s Compensation insurance to the extent required, and in the amounts required by applicable Legal Requirements covering the ECVA and its employees; and employer’s liability insurance for both bodily injury for accident in the amount of \$2,000,000 per accident and for bodily injury by disease in the amount of @\$2,000,000 per employee. If the ECVA uses borrowed employees (including employees from a temporary employment agency) to perform services, it shall require the primary employer to provide an alternate employer endorsement showing the ECVA in the schedule as the alternate employer.

iv. Commercial Automobile Liability Insurance. Commercial Automobile Liability insurance on all owned, hired or non-owned vehicles used in connection with the ECVA’s operations in the amount of \$10,000,000 combined single limit for bodily injury and property damage. The coverages must extend to employees, agents, and volunteers of the ECVA who utilize personal vehicles within the course and scope of their employment or service.

v. Crime / Employee Theft. Crime/Employee Theft insurance covering the ECVA’s employees, volunteers and the acts of any third party vendor or contractor that otherwise might have the opportunity to misappropriate the ECVA’s property or funds shall be included in the primary insurance coverage.

vi. Personal Property Insurance. ECVA shall obtain and maintain insurance coverage on all of ECVA’s Removable Property. Such insurance shall be full replacement cost coverage with a deductible not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by ECVA for the repair or replacement of ECVA’s Removable Property. ECVA shall provide Foundation with written evidence that such insurance is in force no later than three (3) Business Days before the Commencement Date.

vii. Other.

(a) Directors’ and Officers’ Insurance shall be included in the primary insurance coverage;

(b) Any other commercially reasonable insurance types or amounts that the Foundation or the Bank requires; and

(c) During any design and construction (i) of any Alterations or (ii) involving ECVA's Removable Property, the ECVA shall require that all of its contractors maintain at least the following coverages (all of which shall include the Foundation and, if requested by the Foundation, the Bank, and the Issuer as additional insureds):

(1) Property insurance written on an "all risk" builders risk or equivalent policy form for the full replacement cost of the Alterations and the ECVA's Removable Property, and with deductibles not in excess of commercially reasonable amounts.

(2) Commercial General Liability insurance on an occurrence basis with a combined limit for bodily injury, personal injury and property damage and products and completed operations of at least \$1,000,000 per occurrence. The limit may be provided through a combination of primary and umbrella/excess liability policies. Limits shall apply on a per project basis.

(3) Worker's Compensation insurance to the extent required, and in the amounts required by applicable Legal Requirements covering the ECVA and its employees, as well as employer's liability insurance in the amount of \$1,000,000 per accident, \$1,000,000 per illness (per employee), and \$1,000,000 per illness (aggregate). If borrowed employees are used (including employees from a temporary employment agency) to perform services, the insured shall require the primary employer to provide an alternate employer endorsement showing the insured in the schedule as the alternate employer.

(4) Commercial Automobile Liability insurance on all owned, hired or non-owned vehicles used in connection with the ECVA and/or its contractors or subcontractors' operations in the amount of \$1,000,000 combined single limit for bodily injury and property damage. The coverages must extend to employees, agents, and volunteers of the ECVA and/or its contractors and subcontractors who use personal vehicles within the course and scope of their employment or service.

b. Insurance Types and Amounts Required of JMF-ECVA 2015 LLC ("Foundation") as Tenant under the Ground Lease:

i. Commercial General Liability insurance on the broadest forms available for similar risks, written on an "occurrence policy form," against all claims for bodily injury, disease or death, property damage, personal injury, facilities operations, products and completed operations, consultants and independent contractors and contractual liability in an amount of not less than \$1,000,000 arising out of any one occurrence and \$2,000,000 in the annual aggregate, per location. Such insurance may be provided under a primary and an umbrella policy or policies. If liability coverage for the Premises is included under any blanket policy written on an aggregate form, then the annual aggregate limit of insurance applying solely to the Premises must not be less than \$2,000,000. The policy must include as insureds the ECVA's employees, volunteers and directors.

ii. Worker's Compensation / Employer's Liability. Worker's Compensation insurance to the extent required, and in the amounts required by applicable Legal Requirements covering the ECVA and its employees; and employer's liability insurance in the amount of \$2,000,000 per accident, \$2,000,000 per illness (per employee) and \$2,000,000 per illness (aggregate). If the ECVA uses borrowed employees (including employees from a temporary

employment agency) to perform services, it shall require the primary employer to provide an alternate employer endorsement showing the ECVA in the schedule as the alternate employer.

iii. Commercial Automobile Liability Insurance. Commercial Automobile Liability insurance on all owned, hired or non-owned vehicles used in connection with the ECVA's operations in the amount of \$1,000,000 combined single limit for bodily injury and property damage. The coverages must extend to employees, agents, and volunteers of the Foundation who utilize personal vehicles within the course and scope of their employment or service.

c. General Terms Applicable to FUA Insurance Requirements.

Blanket Policies. The policies required above may, where applicable, be maintained under blanket policies of insurance covering the Premises and other facilities, provided that any such policy shall in all other respects comply with the requirements of this Agreement.

Policies and/or Certificates of Insurance. Each policy required to be obtained by the ECVA shall be obtained from insurance companies authorized to do business in the State of Nevada and rated A:IX or better in the most current edition of Best's Insurance Report or a Standard and Poor's rating of "AA." Policies may not have more than a \$25,000 deductible (except in the case of the ECVA's Employer's Liability Insurance, which may have a deductible of \$500,000) or retention for any occurrence, except for mandatory deductibles or retentions where required under local regulations, or when required by insurers for specific catastrophic perils. The party providing the insurance shall obtain, before the expiration date of each such policy, original policies (or renewals or extensions of the insurance afforded thereby), certified duplicates thereof or certificates thereof (together with copies of endorsements for each additional insured) acceptable to all covered parties. The above mentioned policies, and proof of payment of all premiums therefor, are to be provided by the party providing the insurance to all other insureds at least five (5) Business Days before the Commencement Date and at least annually thereafter or as requested by an insured. Each such policy shall provide that all insureds be given written notice at least five (5) Business Days before the expiration, material alteration, cancellation or non-renewal of any policies, and that any loss otherwise payable shall be paid notwithstanding any act or negligence on the part of any insured which might, absent such provision, result in a forfeiture of all or part of such insurance payment.

Additional Insureds. All policies listed above must include as insureds the Foundation, the ECVA, the Bank, and the Issuer, and their respective managers, members, directors, officers, employees, agents, affiliates, successors and assigns, together with any other parties required by any lender providing Project financing, with the party required to provide the insurance as insured and all others as additional insureds and/or loss payee as appropriate, on a primary and non-contributory basis.

4. Design-Build Agreement between GFDS ECVA 1, LLC ("Owner") as agent for JMF-ECVA 2015, LLC c/o The James Megellas Foundation, Inc. ("Foundation") and CORE Construction Services of Nevada, Inc. ("Design-Builder"): See Section 1 above.

5. Construction Administration and Disbursement Agreement (the "CAD Agreement") by and among JMF-ECVA 2015, LLC (as "Borrower"), GFDS ECVA 1, LLC (as "Developer"), CookDZ, LLC (as the "Construction Monitor"):

The Construction Monitor shall purchase from and maintain in a company or companies reasonably satisfactory to the Borrower, the Developer, and the Financing Entity, and lawfully

authorized to do business in the State of Nevada, such insurance as will protect the Construction Monitor from claims set forth below which may arise out of or result from the Construction Monitor's services and for which the Construction Monitor may be legally liable, or by anyone directly or indirectly employed by the Construction Monitor, or by anyone for whose acts the Construction Monitor may be liable:

- i. Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- ii. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Construction Monitor's employees;
- iii. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Construction Monitor's employees;
- iv. Claims for damages insured by usual personal injury liability coverage;
- v. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including explosion, collapse and damage to utilities and loss of use resulting therefrom;
- vi. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- vii. Claims for bodily injury or property damage arising out of completed operations; and
- viii. Claims involving contractual liability insurance applicable to the Construction Monitor's indemnity obligations.

The insurance required above shall, at a minimum, include the following coverages:

- (a) Worker's Compensation Insurance coverage complying with the laws of Nevada and Employer's Liability Insurance with a minimum limit of \$500,000 each accident, including occupational disease coverage with a limit of \$500,000 per person subject to an aggregate limit of \$500,000 per annum;
- (b) Comprehensive Automobile Liability insurance with limits of not less than \$1,000,000 combined single limit per occurrence, with coverage for the use, loading and maintenance of any owned, hired or non-owned vehicles (a General Liability policy that includes Hired and Non-Owned Auto Liability is acceptable, when there are no company owned vehicles, with limits of not less than \$1,000,000 combined single limit per occurrence);
- (c) Commercial General Liability insurance with limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate per project or location or limits sufficient to be scheduled under Excess/Umbrella liability insurance policy including Completed Operations;
- (d) Professional Liability with limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate.

Coverages, whether written on an occurrence or claims-made basis, shall be maintained in full force and effect without interruption from the date of this Agreement until the date of final payment and, with respect to the Construction Monitor's completed operations coverage, until two (2) years after Substantial Completion of the Project. All of the Indemnified Parties (consisting of Borrower, Developer, the Foundation, The James Megellas Foundation, the Financing Entity providing funding for the Project, the Elko Convention and Visitors Authority - the intended occupant of the Project following Final Completion, and their respective officers, directors, partners, shareholders, members, employees and agents) shall be shown as additional, named insureds on all policies described above on a primary and non-contributory basis.

The Construction Monitor's Certificate of Insurance shall be filed with the Developer prior to commencement of any services under this Agreement, and upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Developer. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final application for payment.

**6. Project Management Agreement (the "PM Agreement") by and between GFDS ECVA 1, LLC (as "Developer") and CookDZ, LLC (as the "Project Manager"):**

**a. INSURANCE REQUIRED OF THE PROJECT MANAGER:** The Project Manager shall purchase from and maintain in a company or companies reasonably satisfactory to the Developer, the Foundation, and the Financing Entity, and lawfully authorized to do business in the State of Nevada, such insurance as will protect the Project Manager from claims set forth below which may arise out of or result from the Project Manager's Services and for which the Project Manager may be legally liable, or by anyone directly or indirectly employed by the Project Manager, or by anyone for whose acts the Project Manager may be liable:

**i.** Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;

**ii.** Claims for damages because of bodily injury, occupational sickness or disease, or death of the Project Manager's employees;

**iii.** Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Project Manager's employees;

**iv.** Claims for damages insured by usual personal injury liability coverage;

**v.** Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including explosion, collapse and damage to utilities and loss of use resulting therefrom;

**vi.** Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

**vii.** Claims for bodily injury or property damage arising out of completed operations; and

**viii.** Claims involving contractual liability insurance applicable to the Project Manager's indemnity obligations.

The insurance required above shall, at a minimum, include the following coverages:

**(a)** Worker's Compensation Insurance coverage complying with the laws of Nevada and Employer's Liability Insurance with a minimum limit of \$500,000 each accident, including occupational disease coverage with a limit of \$500,000 per person subject to an aggregate limit of \$500,000 per annum;

**(b)** Comprehensive Automobile Liability insurance with limits of not less than \$1,000,000 combined single limit per occurrence, with coverage for the use, loading and maintenance of any owned, hired or non-owned vehicles;

**(c)** Commercial General Liability insurance with limits of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate per project or location or limits sufficient to be scheduled under Excess/Umbrella liability insurance policy including Completed Operations;

**(d)** Professional Liability with limits of not less than \$1,000,000 per occurrence, \$1,000,000 general aggregate.

Coverages, whether written on an occurrence or claims-made basis, shall be maintained in full force and effect without interruption from the date of commencement of the Work until the date of final payment to the Project Manager for services and, with respect to the Project Manager's completed operations coverage, until two (2) years after Substantial Completion of the Project. All of the Foundation Indemnities (defined in the PM Agreement) shall be shown as additional, named insureds on all policies described above on a primary and non-contributory basis.

The Project Manager's Certificate of Insurance shall be filed with the Developer prior to commencement of any Services under this Agreement, and upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Developer. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final application for payment.

**7. Consulting and Pre-Development Agreement by and between the ELKO CONVENTION AND VISITORS AUTHORITY ("ECVA"), and GFDS ECVA 1, LLC a Nevada limited liability company ("GFDS"):**

GFDS shall maintain insurance coverages (i) for general commercial liability in the minimum amount of Two Million Dollars (\$2,000,000.00) per occurrence, (ii) for automobile liability in the minimum amount of One Million Dollars (\$1,000,000.00) per occurrence with respect to owned, hired or non-owned vehicles, (iii) for errors and omissions coverage in the minimum amount of Two Million Dollars (\$2,000,000.00), (iv) for property damage in the minimum amount of One Hundred Thousand Dollars (\$100,000.00) per occurrence, and (v) other types of

insurance and coverage amounts reasonably approved by GFDS. GFDS's coverage's will include acts and omissions of GFDS Parties occurring on ECVA property. "**GFDS Parties**" means the following: GFDS's directors, officers, members, employees or agents entering upon any Component site or otherwise acting in connection with this Agreement.

Each GFDS insurance policy must contain a provision requiring the insurer to endeavor to notify ECVA in writing of any cancellation, alteration or non-renewal at least thirty (30) days prior thereto, except in the case of a cancellation or non-renewal for failure to pay a premium payment, in which case the insurer must endeavor to notify ECVA no less than ten (10) days prior to cancellation or non-renewal.

**8. MEMORANDUM OF UNDERSTANDING OF AGREED TERMS ("MOU")** by and between the ELKO CONVENTION AND VISITORS AUTHORITY ("**ECVA**") and JMF-ECVA 2015, LLC ("**JMF**"):

**a.** During the term of the MOU, JMF shall maintain insurance coverages (i) for general liability in the minimum amount of One Million Dollars (\$1,000,000.00) per occurrence, (ii) for automobile liability in the minimum amount of One Million Dollars (\$1,000,000.00) per occurrence with respect to owned, hired or non-owned vehicles, (iii) for property damage of One Hundred Thousand Dollars (\$100,000.00) per occurrence, and (iv) workers' compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of JMF, its employees or both engaged in activities relating to this MOU and employer's liability insurance as required by Nevada law. The liability insurance coverage of JMF shall be primary and not contributing with respect to any insurance maintained by ECVA. ECVA will be named as additional insureds on JMF's insurance coverage to the extent of the acts or omissions of JMF or the JMF Parties (defined below). JMF's insurance coverage shall be on the basis that the coverage will not be invalidated due to any act or omission of the State of Nevada, City of Elko, ECVA or the regents, officers, employees or agents of any of them. JMF will deliver to ECVA a certificate of insurance showing such insurance coverages within ten (10) days after execution of this MOU and before any JMF Parties enter upon any Component. JMF's coverages will include acts and omissions of JMF Parties occurring on ECVA property. "**JMF Parties**" means the following: JMF's directors, officers, employees or agents entering upon any Component or otherwise acting in connection with this MOU.

**b.** The insurance policy must contain a provision requiring the insurer to notify ECVA in writing of any cancellation, alteration or non-renewal at least thirty (30) days prior thereto, except in the case of a cancellation or non-renewal for failure to pay a premium payment, in which case the insurer must notify ECVA no less than ten (10) days prior to cancellation or non-renewal.

**c.** If JMF fails to carry and maintain the required insurance or to deliver certificates of insurance, then, in addition to being a default by JMF under this MOU, ECVA will be entitled, but not obligated, to obtain the policies at JMF's expense, and the cost thereof will be deemed to be a payment due by JMF to ECVA and shall be due and payable by JMF to ECVA upon demand.

**d.** Upon request by ECVA, JMF will provide ECVA with certified copies of any and all required insurance policies and endorsements.

**e.** Any third party performing Predevelopment Services for or on behalf of JMF hereunder who has access to any Component shall also satisfy the provisions of Section 5.2.1 prior to entering upon any Component.

**NRS 350.014 Approval or notification of commission required for certain proposals.**

1. Before any proposal to incur a general obligation debt or levy a special elective tax may be submitted to the electors of a municipality, before any issuance of general obligation bonds pursuant to subsection 4 of [NRS 350.020](#), before entering into an installment-purchase agreement with a term of more than 10 years or, before any other formal action may be taken preliminary to the incurrence of any general obligation debt, the proposed incurrence or levy must receive the favorable vote of two-thirds of the members of the commission of each county in which the municipality is situated.

2. Before the board of trustees of a district organized or reorganized pursuant to [chapter 318](#) of NRS whose population within its boundaries is less than 5,000 incurs a medium-term obligation or otherwise borrows money or issues securities to evidence such borrowing, other than securities representing a general obligation debt or installment-purchase agreements with a term of 10 years or less, the proposed borrowing or issuing of securities must receive the favorable vote of a majority of the members of the commission of each county in which the district is situated.

3. When any municipality other than a general improvement district whose population within its boundaries is less than 5,000 issues any special obligations, it shall so notify in its annual report the commission of each county in which any of its territory is situated.

4. The commission shall not approve any proposal submitted to it pursuant to this section by a municipality:

(a) Which, if the proposal is for the financing of a capital improvement, is not included in its plan for capital improvement submitted pursuant to [NRS 350.013](#), if such a plan is required to be submitted;

(b) If, based upon:

(1) Estimates of the amount of tax revenue from property taxes needed for the special elective tax, or to repay the general obligation debt, and the dates that revenue will be needed, as provided by the municipality;

(2) Estimates of the assessed valuation of the municipality for each of the years in which tax revenue is needed, as provided by the municipality;

(3) The amount of any other required levies of property taxes, as shown on the most recently filed final budgets of each entity authorized to levy property taxes on any property within the municipality submitting the proposal; and

(4) Any other factor the municipality discloses to the commission,  
→ the proposal would result in a combined property tax rate in any of the overlapping entities within the county which exceeds the limit provided in [NRS 361.453](#), unless the proposal also includes an agreement which complies with [NRS 361.457](#) and which is approved by the governing bodies of all affected municipalities within the area as to how the combined property tax rates will be brought into compliance with the statutory limitation or unless the commission adopts a plan that is approved by the Executive Director of the Department of Taxation pursuant to which the combined property tax rate will be in compliance with the statutory limitation; or

(c) If, based upon the factors listed in subparagraphs (1) to (4), inclusive, of paragraph (b), the proposal will affect the ability of an affected governmental entity to levy the maximum amount of property taxes that it may levy pursuant to [NRS 354.59811](#), unless:

(1) The proposal includes a resolution approving the proposal pursuant to subsection 3 of [NRS 350.0135](#) from each affected governmental entity whose ability to levy property taxes will be affected by the commission's approval of the proposal; or

(2) The commission has resolved all conflicts between the municipality and all affected governmental entities and has approved the increase in property taxes resulting from the proposal pursuant to [NRS 350.0135](#).

5. Except as otherwise provided in subsection 6 or in paragraph (b) of subsection 3 of [NRS 350.583](#), if general obligation debt is to be incurred more than 36 months after the approval of that debt

by the commission, the governing body of the municipality shall obtain additional approval of the commission before incurring the general obligation debt. The commission shall only approve a proposal that is submitted pursuant to this subsection if, based on the information set forth in paragraph (b) of subsection 4 that is accurate as of the date on which the governing body submits, pursuant to this subsection, its request for approval to the commission:

(a) Incurrence of the general obligation debt will not result in a combined property tax rate in any of the overlapping entities within the county which exceeds the limit provided in [NRS 361.453](#);

(b) The proposal includes an agreement approved by the governing bodies of all affected municipalities within the area as to how the combined tax rates will be brought into compliance with the statutory limitation; or

(c) The commission adopts a plan that is approved by the Executive Director of the Department of Taxation pursuant to which the combined property tax rate will be in compliance with the statutory limitation.

↪ The approval of the commission pursuant to this subsection is effective for 18 months. The governing body of the municipality may renew that approval for successive periods of 18 months by filing an application for renewal with the commission. Such an application must be accompanied by the information set forth in paragraph (b) of subsection 4 that is accurate as of the date the governing body files the application for renewal.

6. The commission may not approve a proposal pursuant to subsection 5 which, based upon the factors listed in subparagraphs (1) to (4), inclusive, of paragraph (b) of subsection 4, will affect the ability of an affected governmental entity to levy the maximum amount of property taxes that it may levy pursuant to [NRS 354.59811](#), unless:

(a) The proposal includes a resolution approving the proposal pursuant to subsection 3 of [NRS 350.0135](#) from each affected governmental entity whose ability to levy property taxes will be affected by the commission's approval of the proposal; or

(b) The commission has resolved all conflicts between the municipality and all affected governmental entities and has approved the increase in property taxes resulting from the proposal pursuant to [NRS 350.0135](#).

7. As used in this section, "affected governmental entity" has the meaning ascribed to it in subsection 9 of [NRS 350.0135](#).

(Added to NRS by 1965, 1434; A 1971, 524; [1977, 538](#); [1981, 943](#); [1991, 973](#); [1993, 2656](#); [1995, 309, 768](#); [1997, 2463](#); [1999, 3222](#); [2001, 881, 2306](#); [2003, 162](#); [2007, 432](#))

### **NRS 350.087 Resolution authorizing medium-term obligation or installment-purchase agreement: Adoption; contents; notice.**

1. If the public interest requires a medium-term obligation or installment-purchase agreement, **the governing body of any local government, by a resolution adopted by two-thirds of its members,** may authorize a medium-term obligation or installment-purchase agreement. For the purposes of the issuance of a medium-term obligation pursuant to [NRS 280.266](#), a metropolitan police committee on fiscal affairs shall be deemed the governing body of a local government.

2. The resolution must contain:

(a) A finding by the governing body that the public interest requires the medium-term obligation or installment-purchase agreement;

(b) A statement of the facts upon which the finding required pursuant to paragraph (a) is based;

(c) A statement that identifies:

(1) Each source of revenue of the local government that is anticipated to be used to repay the medium-term obligation or installment-purchase agreement; and

(2) The dollar amount that is anticipated to be available to repay the medium-term obligation or installment-purchase agreement from each such source; and

(d) If the resolution is for an installment-purchase agreement with a term of more than 10 years:

(1) A statement comparing the cost of installment-purchase financing with other available methods of financing, including, without limitation, financing with general obligation bonds or revenue bonds; and

(2) If such statement concludes that installment-purchase financing is more expensive than other available methods of financing, a statement explaining the reasons for choosing installment-purchase financing instead of a less expensive alternative.

3. Except as otherwise provided in subsection 4, before the adoption of any such resolution, the governing body shall publish notice of its intention to act thereon in a newspaper of general circulation for at least one publication. No vote may be taken upon the resolution until 10 days after the publication of the notice. The cost of publication of the notice required of an entity is a proper charge against its general fund.

4. If such a resolution will be adopted by a metropolitan police committee on fiscal affairs, the sheriff of the county in which the metropolitan police department is located shall publish the notice required pursuant to subsection 3.

(Added to NRS by [1995, 1810](#); A [1997, 1295](#); [1999, 275](#); [2001, 2312](#))

**NRS 350.089 Approval of resolution for medium-term obligation or installment-purchase agreement by Executive Director of Department of Taxation; appeal to Nevada Tax Commission.** Except as otherwise provided in [NRS 280.266](#) and [496.155](#):

1. Upon the adoption by a local government of a resolution for a medium-term obligation or installment-purchase agreement, as provided in [NRS 350.087](#), a certified copy thereof must be forwarded to the Executive Director of the Department of Taxation. As soon as is practicable, the Executive Director of the Department of Taxation shall, after consideration of the tax structure of the local government concerned, the probable ability of the local government to repay the requested medium-term obligation or installment-purchase agreement and the compliance of the local government with the applicable provisions of law, including, without limitation, the provisions of [chapter 354](#) of NRS, approve or disapprove the resolution in writing to the governing board. No such resolution is effective until approved by the Executive Director of the Department of Taxation. The written approval of the Executive Director of the Department of Taxation must be recorded in the minutes of the governing board.

2. If the Executive Director of the Department of Taxation does not approve the resolution for the medium-term obligation or installment-purchase agreement, the governing board of the local government may appeal the Executive Director's decision to the Nevada Tax Commission.

(Added to NRS by [1995, 1810](#); A [1997, 1295](#); [1999, 276](#); [2001, 2312](#))