

BOARD OF REGENTS EXECUTIVE/PLANNING COMMITTEE
WEDNESDAY, APRIL 23, 2014, 10:00 – 10:30 AM
CONFERENCE CALL
DIAL: 888-337-0215 ACCESS CODE: 2270877

Agenda

1. Southern Utah University – New Markets Tax Credit Financing for the Shakespeare Festival Project

LOAN AGREEMENT

BETWEEN

ALLIANCE FINANCE FUND 4, LLC

(“LENDER”)

AND

UTAH SHAKESPEARE FESTIVAL FOUNDATION

(“BORROWER”)

**Dated as of
[DATE]**

TABLE OF CONTENTS

1.	DEFINITIONS.....	3
1.2	Accounting Terms.....	17
1.3	Computation of Time.....	17
2.	THE LOAN.....	17
2.1	Loan Amount.....	17
2.2	Loan Disbursements.....	18
2.3	Interest Rate; Payment Terms; Maturity; Prepayments.....	19
3.	REPRESENTATIONS AND WARRANTIES OF BORROWER.....	20
3.1	Organizational Status; Authorizations.....	21
3.2	Plans and Specifications; Ownership of Plans and Specifications.....	21
3.3	No Actions.....	21
3.4	No Breach.....	21
3.5	Ownership of Property; No Liens.....	22
3.6	Utilities Available.....	22
3.7	Access.....	22
3.8	No Defaults; Complete Copies; Compliance with Other Instruments.....	22
3.9	Financial Statements.....	23
3.10	Leases.....	23
3.11	Environmental Matters.....	23
3.12	Compliance.....	24
3.13	Brokerage Fees.....	25
3.14	No Margin Stock; No Plan Assets.....	25
3.15	Anti-Terrorism Laws.....	25
3.16	New Markets Tax Credits Representations and Warranties.....	26
3.17	Tax Returns and Payment.....	32
3.18	No Assumption of Borrower’s Obligations.....	32
3.19	No Insolvency.....	32
4.	CONDITIONS PRECEDENT TO LENDER’S OBLIGATION TO DISBURSE THE INITIAL DISBURSEMENT AMOUNT.....	32
4.1	Request for Disbursement; Sworn Construction Cost Statement.....	32
4.2	Loan Documents.....	32
4.3	Governing Instruments.....	33
4.4	Good Standing and Resolutions.....	33
4.5	Legal Opinions.....	33
4.6	Financial Statements.....	33
4.7	Appraisal.....	33
4.8	Environmental Reports.....	33
4.9	Flood Zone Report.....	34
4.10	Insurance Policies.....	34
4.11	Governmental Approvals.....	34

4.12	Compliance.....	34
4.13	No Default.....	34
4.14	Lease Agreements.....	34
4.15	Title Commitment.....	35
4.16	Accountant Certification.....	35
4.17	Taxes.....	35
4.18	Plans and Specifications.....	35
4.19	Construction Contracts and Other Documents.....	35
4.20	Budget.....	36
4.21	Financial Projections.....	36
4.22	Building Permits.....	36
4.23	Investment Fund QEI.....	36
4.24	Other Requirements.....	36
5.	CONDITIONS PRECEDENT TO LENDER'S OBLIGATION TO MAKE DISBURSEMENTS.....	37
5.1	Representation and Warranties True.....	37
5.2	Construction in Accordance with Plans and Specifications.....	37
5.3	No Default.....	37
5.4	Disbursements.....	37
5.5	Confirmations.....	37
5.6	Date Down Endorsements.....	37
6.	DISBURSEMENTS.....	37
6.1	Where Disbursements Are To Be Made.....	37
6.2	Restatement.....	37
6.3	Application of Funds.....	38
7.	COVENANTS OF BORROWER.....	38
7.1	Use of Loan Proceeds.....	38
7.2	Prohibition of Transfer.....	38
7.3	Comply with Requirements.....	38
7.4	Inspection.....	39
7.5	Costs and Expenses.....	39
7.6	Governmental Requirements; Restrictive Covenants.....	40
7.7	Acceptable Property Management Agreement.....	40
7.8	Timetable.....	40
7.9	Receipt of Disbursements.....	40
7.10	Defects; No Waiver.....	40
7.11	Insurance.....	40
7.12	Governmental Requirements.....	43
7.13	Additional Documents and Information.....	43
7.14	Leases.....	45
7.15	Financial Restrictions on Borrower.....	45
7.16	Encroachments.....	46
7.17	Liens and Encumbrances.....	46

7.18	Certificates.	46
7.19	Use.....	46
7.20	Construction; Change Orders.....	47
7.21	No Modifications.....	47
7.22	Conduct of Business.....	47
7.23	Environmental Matters.....	47
7.24	Notice.....	48
7.25	Litigation.....	49
7.26	Other Indebtedness.....	49
7.27	Inspection.....	49
7.28	<i>Reserved</i>	49
7.29	Bank Accounts.....	50
7.30	Reserves and Impound.....	50
7.31	Anti-Terrorism Laws.....	52
7.32	New Markets Tax Credits Covenants.....	53
7.33	[Reserved].....	59
7.34	[Reserved].....	59
8.	EVENTS OF DEFAULT AND REMEDIES.....	59
8.1	Events of Default.....	59
8.2	Remedies.....	63
9.	LENDER'S RIGHT TO COMPLETE.....	64
9.1	Lender's Right.....	64
9.2	Lender's Implementation.....	65
10.	CASUALTY LOSS AND CONDEMNATION.....	66
11.	GENERAL CONDITIONS.....	67
11.1	No Waiver.....	67
11.2	Form Satisfactory.....	67
11.3	Notices.....	67
11.4	No Oral Amendments.....	68
11.5	Additional Remedies.....	68
11.6	No Partner.....	69
11.7	Deed of Trust as Security.....	69
11.8	Usury Savings.....	69
11.9	Assignment by Lender.....	69
11.10	Additional Documents.....	70
11.11	Binding Effect; Continuing Agreement.....	70
11.12	Governing Law.....	70
11.13	Headings.....	70
11.14	Consent to Forum.....	71
11.15	Waiver of Jury Trial.....	71
11.16	Duration of Agreement.....	72
11.17	Counterparts.....	72

11.18	Time is of the Essence.....	72
11.19	Purpose and Effect of Approval.....	72
11.20	Language of Agreement.....	72
11.21	Exchange of Information.....	72
11.22	Survival.....	72
11.23	Further Performance.....	73
11.24	Opinions.....	73
11.25	Attorneys Fees.....	73
11.26	Photographs and Other Media.....	73
11.27	Subordination, Non-Disturbance and Attornment Agreement.....	73

EXHIBITS AND SCHEDULES:

- Exhibit A – Legal Description
- Exhibit B – Form of Debarment Certification
- Exhibit C – Schedule of Insurance Requirements
- Exhibit D – [tbd]
- Exhibit E – NMTC Compliance Certificate
- Exhibit F – Form of Subordination, Non-Disturbance and Attornment Agreement

LOAN AGREEMENT

THIS LOAN AGREEMENT (this “*Agreement*”), dated as of [DATE], is by and between **UTAH SHAKESPEARE FESTIVAL FOUNDATION**, a Utah nonprofit corporation, having an office at 132 West College Avenue, Cedar City, Utah (“*Borrower*”) and **ALLIANCE FINANCE FUND 4, LLC**, a Utah limited liability company, having an office at c/o Community Development Finance Alliance, 1165 Wilmington Avenue, Suite 200, Salt Lake City, Utah 84106 (“*Lender*”).

R E C I T A L S

The following recitals are a material part of this Agreement:

WHEREAS, pursuant to the Ground Lease (as defined below), Borrower is ground lessee of that certain real property located at 132 West College Avenue, Cedar City, Utah, as more particularly described in Exhibit A attached hereto and incorporated herein by reference (“*Property*”). Borrower intends to construct and develop [INSERT PROJECT DESCRIPTION] (“*Theater*”) on the Property; and

WHEREAS, pursuant to the Master Lease (as defined below), SUU (as defined below) will lease the Theater from Borrower for the purpose of operating a performance art center, and, solely at the expense of SUU, Borrower will construct certain interior elements within the Project that are required by Borrower in order to operate a performance theater, including without limitation, adding finished surfaces (interior walls, floors, ceilings), furnishings, fixtures, equipment, casework, and other design elements as may be needed for the intended use of the space (“*Lessee Improvements*” and, collectively with the Theater, the “*Project*”); and

WHEREAS, the Project is located within United States population census tract number 49021110600 (“*Project Area*”), which area has been found to be characterized by economic distress and inadequate access to capital; and

WHEREAS, Borrower believes that the Project will have a positive economic and social effect on the Project Area and other low-income communities and that it will finance or assist businesses owned by residents of, or otherwise committed to remain in, the low-income communities; and

WHEREAS, Borrower’s ownership and lease of the Project to SUU is expected to constitute a “qualified active low-income community business” (as that term is defined in Section 45D of the Internal Revenue Code of 1986, as amended (the “*Code*”)), also known as a “*QALICB*,” and

WHEREAS, on the Closing Date, U.S. Bancorp Community Development Corporation, a Minnesota corporation (“*USB Fund*”), provided a net capital contribution of [\$4,855,500] to USFF Investment Fund, LLC, a Missouri limited liability company

(“**Investment Fund**”), as its 100 percent member, pursuant to that certain Operating Agreement for the Investment Fund dated as of [DATE]; and

WHEREAS, the Investment Fund will obtain one or more loans in the aggregate principal amount of [\$10,149,500] (collectively, the “**Leverage Loan**”) from SOUTHERN UTAH UNIVERSITY, a body politic and corporate of the State of Utah (“**Leverage Lender**”); and

WHEREAS, the Investment Fund will use the proceeds of the Leverage Loan and USB Fund’s capital contribution to make one or more equity investments in the aggregate principal amount of [\$15,000,000] in the Lender, which investment is intended to qualify as a “qualified equity investment” (a “**QEI**”) within the meaning of Section 45D(c) of the Code, to the extent that the Investment Fund makes capital contributions in such amounts; and

WHEREAS, Borrower desires to obtain one or more loans from Lender in the aggregate principal amount of up to [\$14,625,000] (collectively, the “**Loan**”) for the purposes of financing the construction and development of the Project and reimbursing Borrower for certain predevelopment expenses and acquisition costs of the Property; and

WHEREAS, Lender believes that the provision of private-sector capital investment as represented by the Loan on such terms will serve to stimulate economic opportunity and create jobs within the Project Area and other low-income communities; and

WHEREAS, the proceeds of the investment by the Investment Fund in Lender will be used by Lender, in part, to fund Lender’s portion of the Loan pursuant to this Agreement; and

WHEREAS, each portion of the Loan made by Lender to Borrower is expected to constitute a “qualified low-income community investment” within the meaning of Section 45D(d) of the Code, and as a result of which the Investment Fund’s investment in Lender is expected to generate “new markets tax credits” (the “**New Markets Tax Credits**”) pursuant to Section 45D of the Code; and

WHEREAS, the manager (or an affiliate thereof) of Lender has received an allocation of New Markets Tax Credits and has sub-allocated a portion of its allocation to Lender; and

WHEREAS, to evidence the Loan, Borrower has executed and delivered two promissory notes to Lender, all of even date herewith, as follows:

- (i) a promissory note in the face amount of [\$10,149,500] (hereinafter, together with all modifications, amendments, renewals, extensions, restatements and replacements thereof, the “**A Note**”); and
- (ii) a promissory note in the face amount of [\$4,475,500] (hereinafter, together with all modifications, amendments, renewals, extensions, restatements and replacements thereof, the “**B Note**” and, together with A Note, the “**Notes**”);

WHEREAS, the Notes are secured by, among other things, that certain Trust Deed, Assignment of Rents and Leases and Security Agreement of even date herewith executed by Borrower, as grantor, for the benefit of Lender, as beneficiary (hereinafter, together with all modifications, amendments, restatements and replacements thereof, the “*Deed of Trust*”), encumbering the Project; and

WHEREAS, Lender has agreed to make the Loan to Borrower upon and subject to all of the terms, conditions, covenants and agreements of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. DEFINITIONS.

All capitalized terms used in this Agreement shall, unless otherwise defined in the body of this Agreement, have the following meanings:

“*Accountants*” shall mean Novogradac & Company, LLP or such other firm of independent certified public accountants as may be engaged by Borrower which is nationally recognized and which has similar new market tax credit experience.

“*Administrative Costs*” shall mean third-party auditing, tax preparation, legal, or other related costs and expenses (including, without limitation, state and local taxes imposed on Lender) incurred by Lender in connection with servicing the Loan and complying with the NMTC Requirements, and maintaining their existence as limited liability companies.

“*Affiliate*” means, as to any Person, any other Person: (a) that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such Person; (b) that directly or indirectly beneficially owns or holds ten percent (10%) or more of any class of voting membership interests (units) of such Person; or (c) ten percent (10%) or more of the voting membership interests (units) of which is directly or indirectly beneficially owned or held by the Person in question. The term “control” means the possession, directly or indirectly, of the power to direct or cause direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise; provided, however, in no event shall the Lender be deemed an Affiliate of Borrower.

“*Agreement*” shall have the meaning set forth in the Preamble to this Agreement.

“*Allocatee*” shall mean Community Development Finance Alliance, a Utah nonprofit corporation.

“*Allocation Agreement*” means that certain Allocation Agreement entered into between Allocatee, Lender, and the CDFI Fund governing Allocatee’s and Lender’s use and application of investment funds with respect to which the allocations of New Markets Tax

Credits have been received by Allocatee and sub-allocations of New Markets Tax Credits received by Lender.

“Anti-Terrorism Laws” shall mean all laws relating to terrorism or money laundering, including, without limitation, the Executive Order and the Bank Secrecy Act, as amended by the USA Patriot Act.

“Architect” shall mean [ARCHITECT NAME].

“Architect’s Agreement” shall mean that certain [AIA B101 – 2007 Standard Form of Agreement] by and between DFCM and Architect dated [DATE].

“Asset Management Fees” means the annual asset management fee payable to SIF Allocatee in the amount of \$75,000, pro-rated for any partial year, pursuant to the CDE Fee and Expense Agreement.

“Assignment of Contracts” shall mean that certain Assignment of Contracts, Ancillary Documents and Other Rights dated as of the date hereof executed by Borrower in favor of Lender.

“Average Value” means the cost basis of Borrower’s owned property plus the reasonable value of its leased property.

“Bank Secrecy Act” shall mean the Currency and Foreign Transactions Reporting Act of 1970, Pub. L. No. 91 508, 84 Stat. 1305 (1970), as amended from time to time.

“Borrower” shall have the meaning as set forth in the Preamble of this Agreement.

“Borrower’s Counsel” shall mean Jones Waldo.

“Budget” shall mean the detailed breakdown of Costs incurred or to be incurred in connection with completing the Project, including, without limitation, the costs of purchasing and installing all furniture, fixtures and equipment useful or necessary in connection with the operation of the Project.

“Business Day” shall mean any day other than a Saturday, Sunday or a legal holiday on which banks are authorized or required to be closed for the conduct of commercial banking business in Salt Lake City, Utah.

“Capital Leases” shall mean, with respect to any person or entity, any lease which, in accordance with GAAP consistently applied, is or should be capitalized on the books of such person or entity.

“Capital Transaction” means (a) any sale, refinancing or other disposition of the Property, whether by partial sale or otherwise; (b) any casualty (where the proceeds are not to be used for reconstruction), condemnation or similar event affecting any part of the Property,

where the gross proceeds from such event exceed \$100,000; or (c) any other transaction generating cash proceeds to Borrower that are not includable in Operating Income.

“**CDE Fee and Expense Agreement**” shall mean that certain New Markets Fee and Expense Agreement of even date herewith by and between Lender, Allocatee, and Borrower.

“**CDE Reserve**” means the reserve account established in the name of Borrower at Depository Bank, which account is pledged to, and is subject to control by, Lender pursuant to the CDE Reserve Agreement to fund payment of its Asset Management Fees and Administrative Costs.

“**CDE Reserve Agreement**” shall mean that certain Reserve Pledge, and Security Agreement executed by and among Borrower, Lender, and USBNA, dated as of the date hereof.

“**CDFI Fund**” shall mean the Community Development Financial Institutions Fund of the United States Department of the Treasury, or any successor agency charged with oversight responsibility for the New Markets Tax Credit program.

“**Census Tract**” means census tract 49021110600, which is a “low-income community” as defined in Section 45D(e) of the Code (as amended by Section 221 of the American Jobs Creation Act of 2004).

“**CERCLA**” shall mean the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986.

“**Change in Control**” means any transfer, direct or indirect, of any of the voting power of Borrower, or other power to direct or cause the direction of the management and policies of Borrower, or any of the direct or indirect beneficial ownership of Borrower.

“**Closing Date**” shall mean the date hereof.

“**Code**” shall have the meaning set forth in the Recitals to this Agreement.

“**Collectibles**” means (as defined in Section 408(m)(2) of the Code) (a) any work of art; (b) any rug or antique; (c) any metal or gem; (d) any stamp or coin; (e) any alcoholic beverage; or (f) any other tangible personal property specified by the IRS, other than collectibles that are held primarily for sale to customers in the ordinary course of business. Certain coins and bullion are not Collectibles as provided in Section 408(m)(3) of the Code.

“**Completion Date**” shall mean the date which is twelve (12) months after the Closing Date.

“**Construction Documents**” shall mean, collectively, the MOU, the General Construction Contract, all Subcontracts and the Architect’s Agreement.

“Construction Consultant” shall mean [CONSTRUCTION CONSULTANT NAME], or such party as Lender or Disbursing Agent may appoint to monitor construction of the Project.

“Contingent Obligation” shall mean any agreement, undertaking or arrangement by which any person or entity guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to, or otherwise to invest in, a debtor, or otherwise to assure a creditor against loss) the indebtedness, obligation or any other liability of any other person or entity (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the shares of any other person or entity. The amount of any person’s or entity’s obligation under any Contingent Obligation shall (subject to any limitation set forth therein) be deemed to be the outstanding principal amount (or maximum principal amount, if larger) of the debt, obligation or other liability guaranteed thereby.

“Control Agreement” shall mean that certain Bank Account Control Agreement dated as of the date hereof executed by Borrower, USBNA, and Lender in connection with the pledge of the Loan Disbursement Account.

“Costs” shall mean the total amount, without duplication, of (a) the amounts payable under the General Construction Contract and all Subcontracts, including the costs of any other labor, materials, equipment, appliances, fixtures, supplies and services required to build and render the Project ready and suitable for their intended use; (b) the fees and disbursements of all architects, engineers, accountants, attorneys, developers and consultants in respect of the planning, construction and construction financing of the Project (including, without limitation, the fees and disbursements of the Architect and the General Contractor); (c) interest on the Notes and all other sums payable to Lender pursuant to the Loan or the Loan Documents; (d) the amounts of the mortgage recording taxes, charges and any other costs, expenses and amounts payable by Borrower to Lender in connection with obtaining, closing and continuing the Loan; (e) mortgagee’s and other title insurance premiums and other Title Company costs and charges payable by Borrower in connection with obtaining, closing and continuing the Loan; (f) the costs and expenses of maintaining the Project prior to the Completion Date including, without limitation, real estate taxes, service charges, water and sewer rent and charges, utility deposits and charges, and insurance premiums; and (g) any other items of cost or expense incurred by Borrower in connection with the Project set forth in the Budget, including, without limitation, any and all charges, expenses and obligations of Borrower or Lender in connection with obtaining, closing and continuing the Loan.

“Debt” of any Person shall mean all items of indebtedness or liability which in accordance with GAAP would be included in determining total liabilities as shown on the liabilities side of a balance sheet of such Person on the date as of which Debt is to be determined, including, without limitation, the aggregate payments required to be made by such Person at any time under any lease that is considered a capitalized lease under GAAP.

“Debt Service” means all scheduled payments of principal, interest, or other charges, or any combination thereof, due on the Loan and any other indebtedness of Borrower.

“Deed of Trust” shall have the meaning as set forth in the Recitals of this Agreement.

“Default” shall mean an event that, with giving of notice or passage of time, or both, would constitute an Event of Default hereunder.

“Default Rate” shall mean, with respect to each Note, a rate of interest per annum equal to five percent (5%) in excess of the rate of interest otherwise payable under such Note.

“Depository Bank” means U.S. Bank National Association.

“Development Agreement” shall mean that certain Development Services Agreement dated as of [DATE] between Borrower and SUU.

“DFCM” shall mean the State of Utah Department of Administrative Services Division of Facilities Construction and Management.

“Disbursements” shall mean the sum of all money disbursed from the Loan Disbursement Account by Lender to Borrower periodically hereunder as provided herein (including the first Disbursement) to pay Costs, fees and other expenses permitted hereunder.

“Disbursing Agent” shall mean Utah Community Reinvestment Corporation, a Utah nonprofit corporation.

“Disbursing Agreement” shall mean that certain Disbursing Agreement dated as of the date hereof between Disbursing Agent, Lender and Borrower.

“Dispute” means any controversy, claim or dispute between or among the parties to this Agreement, including any such controversy, claim or dispute arising out of or relating to (a) this Agreement, (b) any other Loan Document, (c) any related agreements or instruments, or (d) the transaction contemplated herein or therein (including any claim based on or arising from an alleged personal injury or business tort).

“Division” shall mean the Division of Corporations and Commercial Code of the State of Utah Department of Commerce.

“Dollars” and **“\$”** shall mean the lawful currency of the United States.

“Environmental Indemnity Agreement” shall mean that certain Certificate and Indemnity Regarding Hazardous Substances dated as of the date hereof executed by Borrower in favor of Lender.

“Environmental Laws” shall mean any and all laws, statutes, ordinances, rules, regulations, orders, or determinations of any governmental authority pertaining to health or the environment in effect in any and all jurisdictions in which Borrower is or at any time may

be doing business, or where the Property is located, including, without limitation: the Clean Air Act, as amended; CERCLA; the Federal Water Pollution Control Act, as amended; OSHA; RCRA, the Safe Drinking Water Act, as amended; and TSCA.

“Environmental Reports” means those reports listed on Exhibit B to the Environmental Indemnity Agreement

“Event of Default” shall mean any of those events set forth in Section 8.1 hereof.

“Executive Order” shall mean Executive Order No. 13224 on Terrorist Financing, as effective on July 20, 2011, as amended from time to time.

“FDIC” shall mean the Federal Deposit Insurance Corporation.

“Financial Projections” means the financial projections, prepared by the Accountants and certified as of [CLOSING DATE].

“GAAP” shall mean generally accepted accounting principles applied on a basis consistent with the accounting practices of Borrower and as historically applied in the financial statements of Borrower, except for any change in accounting practices to the extent that, due to a promulgation of the Financial Accounting Standards Board changing or implementing any new accounting standard, Borrower either (a) is required to implement such change, or (b) for future periods will be required to and for the current period may in accordance with generally accepted accounting principles implement such change, for its financial statements to be in conformity with generally accepted accounting principles (any such change is hereinafter referred to as a **“Required GAAP Change”**); provided that Borrower shall fully disclose in such financial statements any such Required GAAP Change and the effects of the Required GAAP Change on Borrower’s income, retained earnings or other accounts, as applicable.

“General Construction Contract” shall mean that certain Agreement Between DFCM and General Contractor dated [GC DATE], together with that certain General Conditions, and all other contracts, agreements and documents between DFCM and General Contractor for the construction of the Project and all amendments, modifications, replacements and restatements thereof.

“General Contractor” shall mean [CONTRACTOR NAME], a [DESCRIPTION].

“Ground Lease” shall mean that certain Ground Lease dated [DATE] by and between SUU as landlord and Borrower as tenant with respect to lease of the Property to Borrower for a term of forty (40) years.

“Hazardous Materials” shall mean gasoline, petroleum, asbestos (including, without limitation, asbestiform varieties of chrysotile, crocidolite, amosite, anthophyllite, tremolite and actinolite), explosives, radioactive materials or any hazardous or toxic material, substance or waste which is defined by those or similar terms or is regulated as such under any applicable Law, statutes, ordinances, rules and regulations of any governmental authority

having jurisdiction over the Property or any portion thereof or its use, including: (a) any “hazardous substance” defined as such in (or for purposes of) CERCLA, 42 U.S.C.A. § 9601(14), as amended from time to time, or any so-called “superfund” or “superlien” Law, including the judicial interpretation thereof; (b) any “pollutant or contaminant” as defined in 42 U.S.C.A. § 9601(33); (c) any material now defined as “hazardous waste” pursuant to 40 C.F.R. Part 260; (d) any petroleum, including crude oil or any fraction thereof; (e) natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel; (f) any “hazardous chemical” as defined pursuant to 29 C.F.R. Part 1910; and (g) any other substance, regardless of physical form, that is subject to any other applicable Law or other past or present requirement of any governmental authority having jurisdiction over the Property regulating, relating to, or imposing obligations, liability, or standards of conduct concerning the protection of human health, plant life, animal life, natural resources, property, or the reasonable enjoyment of life or property from the presence in the environment of any solid, liquid, gas, odor, any form of energy, any form of contaminant, or from any other source.

“**Improvements**” means the Theater, the Lessee Improvements, and all other on-site and off-site improvements to the Property consisting of a [REDACTED] story structure containing approximately [REDACTED] rentable square feet of commercial and parking space on the Property, together with all fixtures, tenant improvements and appurtenances now or later to be located on the Property and/or in such improvements.

“**Indebtedness**” shall mean, with respect to any person and without duplication, (a) all indebtedness for borrowed money; (b) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (other than trade payables entered into in the ordinary course of business on ordinary terms); (c) all non-contingent reimbursement or payment obligations with respect to Surety Instruments; (d) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced or incurred in connection with the acquisition of property, assets or businesses; (e) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to property acquired by the person (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property); (f) all obligations with respect to Capital Leases; (g) all indebtedness referred to in clauses (a) through (f) above secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any lien upon or in property (including accounts and contract rights) owned by such person, even though such person has not assumed or become liable for the payment of such indebtedness; and (h) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (a) through (g) above.

“**Investment Fund**” shall have the meaning set forth in the Recitals to this Agreement.

“**IRS**” means the Internal Revenue Service.

“Knowledge” means that an individual will be deemed to have “Knowledge” of a particular fact or other matter if:

(a) such individual is actually aware of such fact or other matter; or

(b) a prudent individual could be expected to discover or otherwise become aware of such fact or other matter in the course of conducting a reasonably comprehensive investigation concerning the existence of such fact or other matter.

A Person (other than an individual) will be deemed to have “Knowledge” of a particular fact or other matter if any individual who is serving, or who has at any time served, as a director, officer, partner, executor, or trustee of such Person (or in any similar capacity) has, or at any time while serving had, Knowledge of such fact or other matter.

“Laws” shall mean, collectively, all federal, state and local laws, statutes, codes, ordinances, orders, rules and regulations, including judicial opinions or precedential authority, in the applicable jurisdiction.

“Lender” shall have the meaning set forth in the Preamble to this Agreement.

“Lessee Improvements” shall have the meaning set forth in the Recitals to this Agreement.

“Lessee Improvements Account” shall have the meaning set forth in Section 7.28 of this Agreement.

“Lessee Improvements Funds” shall mean certain funds of SUU in an amount equal to a portion of the Budget allocated to the Lessee Improvements.

“Loan” shall have the meaning set forth in the Recitals to this Agreement.

“Loan Disbursement Account” shall have the meaning set forth in Section 2.1 of this Agreement.

“Loan Documents” shall mean this Agreement, the Notes, the Deed of Trust, the Pledge Agreement, the Control Agreement, the Assignment of Contracts, the Assignment of Development Agreement, the CDE Reserve Agreement, financing statements, the Environmental Indemnity Agreement, the Guaranties, and all other documents, instruments and agreements which evidence, secure or are otherwise executed in connection with the Loan, including all amendments, modifications, renewals, extensions, restatements and replacements thereof.

“Loan Proceeds” shall mean the proceeds of the Loan.

“Loan” shall have the meaning set forth in the Recitals to this Agreement.

“Low-Income Community” means any population census tract if (a) the poverty rate for such tract is at least twenty percent (20%), (b) (i) in the case of a tract not located within a metropolitan area, the median family income for such tract does not exceed eighty percent (80%) of the statewide median family income, or (ii) in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed eighty percent (80%) of the greater of statewide median family income or the metropolitan area median family income, (c) such tract has a population of less than 2,000, is within an “empowerment zone” as defined in Section 1391 of the Code the designation of which is in effect under Section 1391 and is contiguous to one or more low-income communities (as defined under clause (a) or (b) of this definition), or (d) certain targeted populations as defined by guidance or regulations issued pursuant to Section 45D(e)(2). Terms used in this definition and not otherwise defined shall have the meaning given in Section 45D(e) of the Code.

“Major Subcontract” shall mean an individual Subcontract which provides for work or materials with a cost in excess of \$250,000; provided that multiple Subcontracts with the same contractor shall be treated collectively as one Subcontract for purposes of this definition of Major Subcontract.

“Major Subcontractor” shall mean any subcontractor holding a Major Subcontract.

“Master Lease” shall mean that certain Building Lease by and between Borrower and SUU dated as of [DATE], under which SUU has acquired a leasehold interest in the commercial portion of the Property for a term of twenty (20) years plus one renewal term of five (5) years.

“Maturity Date” shall mean the earlier of (i) [DATE], and (ii) the date on which the unpaid principal balance of the Notes becomes due and payable by acceleration or otherwise pursuant to the Loan Documents or the exercise by Lender of any right or remedy under any Loan Document.

“MOU” shall mean that certain Capital Project Administration Memorandum of Understanding dated [DATE] by and between DFCM and SUU, pursuant to which SUU has retained DFCM to select and retain the Architect and General Contractor for the Project, and to otherwise manage and administer the construction of the Project on behalf of SUU.

“New Markets Tax Credit” shall have the meaning set forth in the Recitals to this Agreement.

“NMTC Control” means the direct or indirect ownership (based on value) or control (based on voting or “management rights”) of more than fifty percent (50%) of an entity. For this purpose, the term “management rights” means the power to influence the management policies or investment decisions of the entity.

“NMTC Recapture Event” means recapture or disallowance of any New Markets Tax Credits attributable to the QEI made by the Investment Fund in Lender (which are expected to be thirty-nine percent (39%) of \$15,000,000, or \$5,850,000), the proceeds of which were

or will be used to fund a QLICI or related fees, but only to the extent such recapture or disallowance is attributable to any of the following: (a) Borrower ceasing or initially failing to be a QALICB; (b) the redemption by Lender (within the meaning of Section 1.45D-1(e)(2)(iii) of the Treasury Regulations) of any portion of the Investment Fund's QEI in Lender; (c) changes in the Code or the NMTC Requirements that cause USB Fund, as the sole member of the Investment Fund, or the successors and assigns of the Investment Fund, to receive less than the amount of New Markets Tax Credits it would have otherwise been eligible to receive; (d) the failure of any tenant under any sublease to be classified as a Tenant Qualified Business, (e) the failure of Lender to maintain substantially all of the QEI invested in a QLICI attributable to a prepayment of the Loan by Borrower in violation of this Agreement; and (f) the Loan ceasing or failing to qualify as QLICI.

"NMTC Recapture Period" means the period beginning on the date of the original issue of the QEI made to fund the Loan and ending on the seventh anniversary of the date of the original issue of the QEI made to fund the Loan.

"NMTC Requirements" means, collectively, all provisions of Section 45D of the Code, the Treasury Regulations promulgated thereunder and other IRS or CDFI Fund guidance, to the extent the same are applicable to any QEI or QLICI.

"Nonqualified Financial Property" means debt, stock, partnership interests, options, futures contracts, forward contracts, warrants, notional principal contracts, annuities, and other similar property as described in Section 1.45D-1(d)(4)(i)(E) of the Treasury Regulations; provided, however, that such term shall not include (a) reasonable amounts of working capital held in cash, cash equivalents, or debt instruments with a term of 18 months or less, or (b) debt instruments described in section 1221(a)(4) of the Code. The proceeds of an equity investment or loan by a CDE that will be expended for construction of real property within 12 months after the date the investment or loan is made are treated as a reasonable amount of working capital.

"Notes" shall have the meaning set forth in the Recitals to this Agreement.

"OFAC" shall mean the Office of Foreign Asset Control of the U.S. Treasury Department.

"Operating Deficit" means for any period, the amount by which Operating Income from the Project for any particular period of time is exceeded by the sum of Operating Expenses plus Debt Service.

"Operating Expenses" mean all of Borrower's expenses in connection with operation of the Property and the Project, determined on an accrual basis, including without limitation, costs of utilities, maintenance, repairs and necessary replacements, but excluding (a) Costs; (b) Debt Service; and (c) depreciation, amortization deductions and other non-cash items. For purposes of this definition, all expenses shall be deemed paid on the earlier of the stated due date or on a sixty (60) day current basis.

“Operating Income” means all cash received by Borrower from operation of the Property and the Project in the ordinary course of business, withdrawals from reserves to the extent permitted hereunder, and all other sources; provided, however, that Operating Income shall exclude the Loan Proceeds and proceeds from any other loans to the Borrower, proceeds from any Capital Transaction, tenant security and other deposits (except to the extent applied in payment of delinquent rent, property damage or other tenant obligations), interest earned on reserves (unless withdrawn as aforesaid), and amounts withdrawn from any reserve, if applied to pay a cost excluded from the definition of Operating Expenses above.

“Operating Reserve” means the reserve of funds set aside and deposited in the Loan Disbursement Account to fund Operating Deficits pursuant to Section 7.30(c) herein.

“OSHA” shall mean the Occupational Safety and Health Act of 1970, as amended.

“Permitted Liens” shall mean the Deed of Trust and such encumbrances and other exceptions raised in the Title Commitment which Lender or its counsel shall have approved in writing.

“Person” means any individual, corporation, business trust, association, company, partnership, limited liability entity, joint venture, governmental authority, or other entity.

“Plans and Specifications” shall mean those plans and specifications for the Project, together with such additional plans and specifications and all amendments and modifications thereof in accordance with the terms of this Agreement.

“Pledge Agreement” shall mean that certain Pledge and Security Agreement dated of even date herewith pursuant to which Borrower pledges to Lender the Loan Disbursement Account.

“Prohibited Person” shall mean any of the following:

(a) a person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order;

(b) a person or entity owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order;

(c) a person or entity with whom Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(d) a person or entity who or that commits, threatens, or conspires to commit or supports “terrorism,” as defined in the Executive Order; or

(e) a person or entity that is named as a “specially designated national and blocked person” on the most current list published by OFAC at its official web site as of the date hereof or any replacement website or other replacement official publication of such list.

“**Project**” shall have the meaning set forth in the Recitals to this Agreement.

“**Property**” shall have the meaning set forth in the Recitals to this Agreement.

“**Qualified Active Low-Income Community Business**” or “**QALICB**” means, (as defined in Section 45D of the Code and Section 1.45D-1(d)(4) of the Treasury Regulations) with respect to any taxable year, a Qualified Business of which:

(a) at least fifty percent (50%) of the total gross income of the Qualified Business is derived from the active conduct of its trade or business within the Census Tract, or if such entity satisfies the requirements of either subsection (b) or (d) below, provided that fifty percent (50%) is applied instead of forty percent (40%);

(b) at least forty percent (40%) of the use of the tangible property of the Qualified Business (whether owned or leased) is within the Census Tract (for purposes of this representation, the percentage of tangible property owned or leased by the Qualified Business and used by the Qualified Business during the taxable year in the Census Tract shall be determined based on a fraction (i) the numerator of which is the Average Value of the tangible property owned or leased by the Qualified Business and used by the Qualified Business within the Census Tract during the taxable year, and (ii) the denominator of which is the Average Value of all of the tangible property owned or leased by the Qualified Business and used by the Qualified Business during the taxable year); provided, however, that for any taxable year in which the Qualified Business has no employees, at least eighty-five percent (85%) of the use of the tangible property of the Qualified Business (whether owned or leased) must be within the Census Tract;

(c) less than five percent (5%) of the average of the unadjusted basis of the property of the Qualified Business is attributable to Nonqualified Financial Property;

(d) at least forty percent (40%) of the services performed for the Qualified Business by its employees, if any, will be within the Census Tract (for purposes of this representation, this percentage is determined based on a fraction (i) the numerator of which is the total amount paid by the Qualified Business for employee services performed in the Census Tract during the taxable year, and (ii) the denominator of which is the total amount paid by the Qualified Business for employee services during the taxable year); and

(e) less than five percent (5%) of the aggregate unadjusted basis of the Qualified Business’s property is attributable to Collectibles.

“**Qualified Business**” shall have the meaning given in Section 1.45D-1(d)(5) of the Treasury Regulations and includes any trade or business except (a) the rental of Residential Rental Property; (b) any trade or business consisting predominantly of the development or holding of intangibles for sale or license; (c) any trade or business consisting of the operation

of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises; (d) any trade or business the principal activity of which is farming within the meaning of Section 2032A(e)(5)(A); or (e) any other trade, business or activity prohibited to be carried on by any amendment to Section 45D of the Code and the Treasury Regulations thereto, and any other guidance published by the IRS.

“Qualified Equity Investment” or **“QEI”** means any equity investment in Lender as defined in Section 45D of the Code and Section 1.45D-1(c) of the Treasury Regulations if (a) such investment is acquired by the Investment Fund at its original issue (directly or through an underwriter) solely in exchange for cash; (b) substantially all of such cash is used by Lender to make QLICIs; and (c) such investment is designated by Lender as a QEI.

“QLICF” means a “qualified low-income community investment” as such term is defined in Section 45D of the Code and the Treasury Regulations and Guidance and includes any of the following:

- (a) any capital or equity investment in, or loan to, any QALICB;
- (b) the purchase of certain loans from other qualified community development entities (as described in Section 1.45D-1(d)(1)(ii) of the Treasury Regulations);
- (c) financial counseling and other services to businesses located in, and residents of, low-income communities, and
- (d) investments in other qualified community development entities (as described in Section 1.45D-1(d)(1)(iv) of the Treasury Regulations).

“RCRA” shall mean the Resource Conservation and Recovery Act of 1976, as amended.

“Request for Disbursement” shall mean a written request delivered by Borrower pursuant to the Disbursing Agreement, which request shall identify the amount to be advanced together with a breakdown of such amounts attributable to Costs for the Lessee Improvements, if any, and the purpose for which Borrower shall use such advance. Each Request for Disbursement shall be in form and substance satisfactory to Lender.

“Residential Rental Property” shall have the meaning set forth in Section 168(e)(2)(A) of the Code.

“Schedule of Construction” shall mean that certain schedule of construction of the Project, containing specific dates and times of performance for each line item of the Budget.

“Subcontracts” shall mean any contract or contracts entered into with any single subcontractor or materialman employed by Borrower, SUU, DFCM, or the General

Contractor in connection with the construction of the Project, and all amendments, modifications, replacements and restatements thereof.

“***Surety Instruments***” shall mean all letters of credit (including standby and commercial), banker’s acceptances, bank guaranties, shipside bonds, surety bonds and similar instruments.

“***Survey***” shall mean that certain survey of the Property prepared by the Surveyor, dated [SURVEY DATE], as the same may be updated and revised from time to time.

“***Surveyor***” shall mean [SURVEYOR].

“***SUU***” shall mean Southern Utah University, a body politic and corporate of the State of Utah.

“***Sworn Construction Cost Statement***” shall mean a statement, in form and substance acceptable to Lender, certified by Borrower which provides a detailed breakdown of the hard and soft costs incurred to date in connection with completion of the Project, which statement shall (i) clearly indicate each line item on the Budget to which such costs can be attributed and (ii) include copies of all invoices supporting the costs listed on such statement.

“***Tax & Insurance Impound***” means the reserve of funds set aside and deposited in the Loan Disbursement Account funded quarterly in conjunction with Loan payments in an amount equal to 1/4th of the projected annual costs of property taxes and hazard/liability insurance premiums for the Property and the Project.

“***Tenant Qualified Business***” means, as relates to Section 1.45D-1(d)(5) of the Treasury Regulations, any trade or business except (a) the rental of Residential Rental Property; or (b) any trade or business consisting of the operation of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

“***Title Commitment***” shall have the meaning set forth in Section 4.15 hereof.

“***Title Company***” shall mean [TITLE COMPANY].

“***Treasury Regulations***” means any proposed, temporary and/or final regulations promulgated under the Code.

“***Tribunal***” shall mean any state, federal, regulatory, or other court or governmental department, commission, board, bureau, agency or instrumentality.

“***TSCA***” shall mean the Toxic Substances Control Act, as amended.

“***Unavoidable Delays***” shall mean any delays due to any strike, lockout or other labor disturbance, nuclear accident, plague, epidemic, windstorm, fire, flood, hurricane,

earthquake or other casualty, war, rebellion, civil insurrection or other civil disturbance, banking moratorium or declaration of national emergency, other Act of God or act of governmental authority (other than a consequence of failure by Borrower to comply with any requirement of Law), or any other cause beyond the control of Borrower; provided, however, that (a) lack of funds shall not be deemed a cause beyond the control of Borrower; (b) Borrower shall deliver to Lender notice of such a cause not later than fifteen (15) Business Days after the event claimed to cause the delay has occurred; and (c) any such delay and the aggregate time of all such delays shall in no event exceed six (6) months.

“*USA Patriot Act*” shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107 56, 115 Stat. 272 (2001), as amended from time to time.

“*USBCDC*” shall mean U.S. Bancorp Community Development Corporation, a Minnesota corporation.

“*USB Fund*” shall have the meaning set forth in the Recitals to this Agreement.

“*USBNA*” shall mean U.S. Bank, National Association, a national banking association.

1.2 Accounting Terms.

All accounting terms not specifically defined herein shall be construed in accordance with GAAP or such other accounting method as Lender and the Accountants may previously approve in writing in their reasonable discretion.

1.3 Computation of Time.

In this Agreement, in the computation of a period of time from a specified date to a later specified date, the word “from” means “from and including” and the word “to” means “to but excluding.”

2. THE LOAN.

2.1 Loan Amount.

(a) On the basis of the representations, warranties and covenants of Borrower contained herein and subject to the terms and conditions set forth herein and in the other Loan Documents, Lender agrees to lend to Borrower the Loan to be used to construct the Project; or so much thereof as may be advanced at the times and in the manner hereinafter set forth, to be disbursed by Lender before the Completion Date in accordance with the terms hereof.

(b) On the Closing Date, Lender shall advance the funds under the Notes into a restricted account of Borrower at the Depository Bank ([ACCOUNT NUMBER]) (the “*Loan Disbursement Account*”), which Loan Disbursement Account shall be pledged to Lender

pursuant to the Pledge Agreement and shall be subject to the Control Agreement in form and substance satisfactory to Lender in Lender's reasonable discretion. Lender's advance of such Lender's portion of the Loan into the Loan Disbursement Account is expected to constitute a QLICI. All funds advanced by Lender into the Loan Disbursement Account shall be evidenced by, and subject to the terms of, the respective Notes evidencing such Loan, and shall bear interest at the applicable interest rate set forth in the Notes evidencing such portion of the Loan. No funds may be withdrawn from said account without the prior written approval of Lender (which must countersign all checks drawn on said account), which approval shall not be unreasonably withheld or delayed. Borrower and Lender agree that funds deposited into the Loan Disbursement Account shall be the property of the Borrower for federal income tax purposes.

2.2 Loan Disbursements.

The Loan shall be disbursed as follows:

(a) Following the satisfaction of all of the conditions precedent set forth in Sections 4 and 5 hereof, Lender shall make the initial Disbursement on the Closing Date as follows:

(i) Lender shall disburse [\$AMOUNT] into the CDE Fee Reserve Account, which shall be used by Borrower to pay the Asset Management Fees and Administrative Costs in accordance with the terms of the CDE Fee and Expense Agreement; and

(ii) Lender shall disburse directly to governmental jurisdictions and utility providers those amounts charged in connection with Borrower securing construction permits and utility services an amount in aggregate not to exceed \$250,000;

(iii) The balance into the Loan Disbursement Account.

(b) All Disbursements of the Loan from the Loan Disbursement Account shall be made subject to the satisfaction of all of the conditions precedent set forth in Sections 4 and 5 hereof, and pursuant to the terms and conditions of this Agreement and the Disbursing Agreement. Lender shall not be obligated to make any Disbursements of the Loan subsequent to the Completion Date.

(c) Borrower shall pay all reasonable and customary fees, costs and expenses relating to each Disbursement, and all other reasonable and customary out of pocket expenses incurred by Lender in connection with this Agreement.

(d) No Disbursement shall constitute a waiver of any condition precedent to the obligation of Lender to make any further Disbursements or preclude Lender from thereafter declaring the failure of Borrower to satisfy any such condition precedent to be an Event of Default. No Disbursement shall constitute a waiver of any Default or Event of Default hereunder that may exist at the time of such advance, whether or not the same is known to Lender. All conditions precedent to the obligation of Lender to make any Disbursement are

imposed hereby solely for the benefit of Lender, and no other Person may require satisfaction of any such condition precedent or shall be entitled to assume that Lender will make or refuse to make any Disbursement in the absence of strict compliance with such condition precedent.

(e) The Lender shall not be obligated to authorize any release of Loan proceeds from the Loan Disbursement Account or of any of the Lessee Improvements Funds from the Lessee Improvement Account to the Borrower if, in the sole opinion of the Lender, the aggregate balance of the Loan Disbursement Account and the Lessee Improvement Account yet to be released pursuant to the Lender's authorization pursuant to this Agreement is at any time less (the amount by which it is less being hereinafter referred to as the "**Deficiency**") than the actual sum, as reasonably estimated by the Lender, based on the Budget, which will be required to complete the Project (and the Improvements therein) in accordance with the Plans and Specifications and this Agreement and to pay all Costs which will be incurred in connection with the completion of the Project. The Borrower shall, within ten (10) business days after being notified by the Lender that there is or will be a Deficiency, deposit into the Loan Disbursement Account and/ or the Lessee Improvements Account, amounts sufficient to eliminate the Deficiency. Any amounts deposited by the Borrower in the Loan Disbursement Account or the Lessee Improvements Account to cover a Deficiency shall be released by the Lender to the Borrower and shall be applied by the Borrower to cover the payment of Costs incurred in connection with the construction of the Project, and until so released shall be held in the Loan Disbursement Account and in the Lessee Improvements Account. If an Event of Default (as hereinafter defined) shall occur and be continuing, the Lender, in addition to all other rights which it may have, shall have the absolute and unconditional right in its discretion to apply the unreleased balance of any Deficiency deposit in the Loan Disbursement Account, together with interest earned thereon, in whole or in part to the payment of the Debt in such order, priority and proportion as the Lender in its sole and absolute discretion deems to be appropriate.

2.3 Interest Rate; Payment Terms; Maturity; Prepayments.

(a) Interest Rate.

The outstanding principal amount under the Loan shall bear interest at the applicable interest rate set forth in the applicable Note evidencing such Loan. From and after the date of any Event of Default hereunder, interest on all principal amounts outstanding under each Note shall accrue at the Default Rate. All interest payable hereunder shall be computed for on the basis of a three hundred sixty (360) day year consisting of twelve (12) thirty (30) day months. Lender is authorized to rely on the written loan requests, including facsimile, telecopy or telegraphic loan requests, which Lender believes in its good faith judgment to emanate from a properly authorized representative of Borrower, whether or not that is in fact the case. In the event that after the date hereof any governmental authority subjects Lender to any new or additional charge, fee, withholding or tax of any kind with respect to any loans hereunder or changes the method of taxation of such loans or changes the reserve or deposit requirements applicable to such loans, Borrower shall pay to Lender such additional amounts as will compensate Lender for such cost of lost income resulting therefrom as reasonably

determined by Lender (other than franchise taxes and taxes based upon or measured by the income or profits of Lender).

(b) Payment Terms.

Borrower shall make payments of interest only on an annual basis for the initial seven (7) years beginning on _____, 2014, and annual amortized payments of principal and interest thereafter until the Maturity Date, in the amounts and at the times set forth in the Notes.

(c) Maturity.

The entire outstanding principal balance under the Notes, plus all accrued and unpaid interest thereon, shall become due and payable on the Maturity Date.

(d) Prepayments.

Borrower shall not have the right to prepay any amount due under the terms of the Notes prior to the expiration of the NMTC Recapture Period ("**Prepayment Date**"). Borrower acknowledges that this prepayment restriction is derived from Section 45D of the Code and that Lender would not make the Loan without such prepayment restriction. Borrower agrees that this prepayment restriction has been specifically bargained for by Lender and Borrower, and that such restriction is reasonable both in duration and effect. After the Prepayment Date, Borrower may prepay all or any part of the Loan at any time without permission or penalty, but with written notice provided to Lender not less than five (5) business days before the date of such prepayment. Nothing contained in this Section 2.3(d) shall be deemed to limit Lender's right to accelerate the maturity of the Notes upon an Event of Default or to pursue any other remedies pursuant to Section 8.2 of this Agreement.

(e) Direct Payment of Loan.

Borrower shall pay Lender the sums due to Lender with respect to that portion of the Loan made by Lender in accordance with the payment terms set forth in each Note, and unless otherwise directed by Lender with respect to the Loan, Borrower shall make quarterly payments due under the Notes directly to Lender.

3. REPRESENTATIONS AND WARRANTIES OF BORROWER.

To induce Lender to enter into this Agreement and upon which Lender has relied in entering into this Agreement and consummating the transactions herein described, Borrower represents and warrants to Lender and, so long as any amount of the Loan remains unpaid or this Agreement remains in effect, shall be deemed to continuously represent and warrant to Lender as follows:

3.1 Organizational Status; Authorizations.

Borrower is duly organized, validly existing and in good standing as a nonprofit corporation under the laws of the State of Utah, with full power and authority to consummate the transactions contemplated hereby. Borrower has full power and authority to execute, deliver and perform all of the Loan Documents, and such execution, delivery and performance have been duly authorized by all requisite action on the part of Borrower. Borrower is duly authorized to own and develop the Project, to enter into the transactions contemplated by the Loan Documents and to pledge and assign and grant liens and security interests as contemplated by the Loan Documents. This Agreement and the other Loan Documents and the provisions contained herein and therein are and will be the valid and legally enforceable obligations of Borrower in accordance with their terms. Borrower has done everything necessary to comply with all applicable local, state or federal laws, statutes, ordinances, resolutions, orders and directives.

3.2 Plans and Specifications; Ownership of Plans and Specifications.

The Plans and Specifications are satisfactory to Borrower and have been or will be approved by any governmental authority whose approval is required. The Plans and Specifications comply with the requirements of all applicable Laws. All construction shall be performed in substantial accordance with the Plans and Specifications, all applicable Laws, appropriate set back requirements, restrictive covenants and the requirements of any governmental authority. Following an Event of a Default which remains uncured after applicable notice and cure periods hereunder, Lender shall have the absolute right to fully utilize the Plans and Specifications to complete the Project. To the Knowledge of Borrower, the Plans and Specifications for the Project conform to all applicable redevelopment plans and the ordinances approving such plans.

3.3 No Actions.

There are no actions, suits or proceedings pending or, to the Knowledge of Borrower, threatened against or affecting Borrower, SUU, DFCM, or the Property, or involving the validity or enforceability of the Loan Documents, the Construction Documents, or the priority of the lien of the Deed of Trust, at law or in equity, or before or by a governmental authority, and, to Borrower's Knowledge, none of the Borrower, SUU, or DFCM is in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority.

3.4 No Breach.

The consummation of the transactions hereby contemplated and performance of this Agreement will not result in any breach of, or constitute a default under, any deed to secure debt, mortgage, deed of trust, indenture, security agreement, lease, bank loan or credit agreement, contract, articles of organization, operating agreement, joint venture agreement, partnership agreement or other instruments to which Borrower is a party or by which Borrower may be bound or affected.

3.5 Ownership of Property; No Liens.

Borrower has a valid and enforceable leasehold interest in the Property and owns good and marketable title to the Improvements, and the Property and the Improvements are free and clear of all liens, claims, charges and encumbrances of every type or nature, except for the lien created by the Loan Documents and except for Permitted Liens.

3.6 Utilities Available.

All utility services necessary for the operation of the Project are available or will become available prior to the Completion Date, including water supply, storm and sanitary sewer facilities, electric and telephone facilities, and Borrower has the right to connect to all of such utility services, subject only to normal restrictions.

3.7 Access.

All roads necessary for ingress and egress to the Property and for the full utilization of the Improvements for their intended purposes, including all streets, gutters and curbs have been or will be installed and completed by Borrower with the approval of the appropriate governmental authority.

3.8 No Defaults; Complete Copies; Compliance with Other Instruments.

(a) There is no default on the part of Borrower under this Agreement, the Notes, or the other Loan Documents, the Construction Documents, the Ground Lease, or the Master Lease and, to the Knowledge of Borrower, no event has occurred and is continuing which with notice and/or the passage of time would constitute a default under any of the aforesaid instruments. To the best of Borrower's Knowledge, there is no default by DFCM under the MOU, the Architect under the Architect Agreement, or the General Contractor under the General Construction Contract to any condition which, given notice and/or the passage of time, would constitute a default respectively under the MOU, the Architect Agreement, or the General Construction Contract. The copies of the Construction Documents furnished to date to Lender are true, correct and complete copies thereof and all of the aforesaid agreements are in full force and effect.

(b) There is no default in the performance of any material obligation, covenant, or condition contained in any agreement to which Borrower is a party. Borrower is not in default with respect to any Law of any Tribunal which would have a material adverse effect on Borrower. The execution, delivery and performance of the terms of this Agreement, the Notes and the other Loan Documents by Borrower will not violate the provisions of any applicable Law, Borrower's organizational documents, or any order or regulation of any governmental authority to which Borrower is subject, and will not conflict with or result in a breach of any of the terms of any agreement or instrument to which Borrower is a party or by which Borrower is bound, or constitute a default thereunder, or result in the creation of a lien,

charge, or encumbrance of any nature upon any of Borrower's properties or assets except as contemplated in this Agreement.

3.9 Financial Statements.

The financial statements of Borrower to be furnished to Lender will be prepared in accordance with GAAP, as indicated upon such statements, and such statements will fairly present, as appropriate, the financial conditions and the results of operations of Borrower as of, and for the portion of the fiscal year ending on, the date or dates thereof. Except for transactions directly related to, or specifically contemplated by, the Loan Documents and transactions heretofore disclosed in writing to Lender, there have been no material or adverse changes in the respective financial conditions of Borrower, and Borrower has not incurred any material or adverse liability (including, without limitation, any additional borrowings), direct or indirect, fixed or contingent, except as previously disclosed in writing to Lender.

3.10 Leases.

Borrower represents that there are no leases on or affecting the Property, other than the Ground Lease, Master Lease, and those tenant subleases disclosed to Lender.

3.11 Environmental Matters.

(a) Except as disclosed in the Environmental Reports, (i) the Property and the operations conducted thereon by Borrower or, to Borrower's Knowledge, any prior owner or operator thereof do not violate, and have not violated, any applicable law, statute, ordinance, rule, regulation, order or determination of any governmental authority or any restrictive covenant or deed restriction (recorded or otherwise) and all applicable zoning ordinances and building codes, flood disaster laws and Environmental Laws and regulations; (ii) the Property and the operations conducted thereon by Borrower or, to Borrower's Knowledge, any prior owner or operator thereof are not in violation of, or have not been in violation of or subject to, any existing, pending or threatened action, suit, investigation, inquiry or proceeding by any governmental authority or to any remedial obligations under any Environmental Laws; (iii) to Borrower's Knowledge, all notices, permits, licenses or similar authorizations, if any, required to be obtained or filed in connection with the operation or use of the Property, including, without limitation, past or present treatment, storage, disposal or release of a Hazardous Material into the environment, have been or will be duly obtained or filed; (iv) all Hazardous Materials and solid wastes generated at the Property shall be transported, treated and disposed of only by carriers that are in compliance with applicable Environmental Laws and only at treatment, storage and disposal facilities maintaining valid permits under applicable Environmental Laws, where required, and any other Environmental Laws, which carriers and facilities are operating in compliance with such permits; (v) Borrower has no material contingent liability in connection with any release or threatened release of any Hazardous Materials or solid wastes into the environment from the Property; and (vi) the use which Borrower makes or intends to make of the Property will not result in the unlawful or unauthorized disposal or other release of any Hazardous Materials or solid wastes on or to the Property. The terms "release" and "threatened release" shall have the meanings specified

in CERCLA, and the terms “solid waste” and “disposal” (or “disposed”) shall have the meanings specified in RCRA; provided, however, in the event either CERCLA or RCRA is amended so as to broaden such meanings, then such broadened meanings shall apply subsequent to the effective date of such amendment; and provided further that, to the extent the laws of any state in which any of the Property is located establish a meaning for “release,” “threatened release,” “solid waste” or “disposal” which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply with regard to the Property.

Borrower is in compliance with all federal, state and local Environmental Laws applicable to the Property and has not been cited for any violation of any federal, state or local Environmental Laws applicable to the Property and to Borrower’s Knowledge there has been no “release or threatened release of a hazardous substance” (as defined by CERCLA) or any other release, emission or discharge into the environment of any hazardous or toxic substance, pollutant or other materials from the Property other than as permitted under the applicable Environmental Law.

3.12 Compliance.

The Project and all Improvements shall be performed in accordance with the Plans and Specifications, all applicable Laws, including, without limitation, all Utah and federal statutes relating to appropriate set back requirements, restrictive covenants and the requirements of any governmental authority. Neither the construction of nor the use of the Project when completed will violate (i) any Laws (including subdivision, zoning, building, environmental protection and wetland protection Laws), or (ii) any building permits, restrictions of record or agreements affecting the Project or any part thereof. Neither the zoning authorizations, approvals or variances nor any other right to construct or to use the Project is to any extent dependent upon any real estate other than the Property or other than as disclosed to Lender. Without limiting the generality of the foregoing, all consents, licenses and permits and all other authorizations or approvals required to complete the Project in accordance with the Plans and Specifications have been obtained or will be obtained prior to Lender’s disbursement of the Initial Disbursement Amount, and all Laws relating to the construction and operation of the Improvements have been complied with and all permits and licenses required for the operation of the Project which cannot be obtained until such construction is completed can be obtained if the Improvements are completed in accordance with the Plans and Specifications. When the Project is completed in accordance with the Plans and Specifications, no building or other improvement will encroach upon any property line, building line, setback line, side yard line or any recorded or visible easement (or other easement of which Borrower is aware or has reason to believe may exist) with respect to the Property, except as disclosed in the Survey; and the use of the Project will comply with all requirements of governmental authorities and any restrictive covenants to which the Property may be subject.

3.13 Brokerage Fees.

No brokerage fees or commissions are payable by or to any person in connection with this Agreement or the Loan to be disbursed hereunder.

3.14 No Margin Stock; No Plan Assets.

No Loan is being made for the purpose of purchasing or carrying “margin stock” within the meaning of Regulation G, T, U or X issued by the Board of Governors of the Federal Reserve System, and Borrower agrees to execute all instruments necessary to comply with all the requirements of Regulation U of the Federal Reserve System, as at any time amended. Borrower is not a party in interest to any plan defined or regulated under ERISA, and the assets of Borrower are not “plan assets” of any employee benefit plan covered by ERISA or Section 4975 of the Code.

3.15 Anti-Terrorism Laws.

Borrower represents and warrants to Lender that:

- (a) Borrower is not in violation of any Anti-Terrorism Law.
- (b) No action, proceeding, investigation, charge, claim, report, or notice has been filed, commenced, or threatened against Borrower alleging any violation of any Anti-Terrorism Law.
- (c) Borrower has no Knowledge or notice of any fact, event, circumstance, situation, or condition which could reasonably be expected to result in:
 - (i) any action, proceeding, investigation, charge, claim, report, or notice being filed, commenced, or threatened against it alleging any violation of, or failure to comply with, any Anti-Terrorism Law; or
 - (ii) the imposition of any civil or criminal penalty against Borrower for any failure to so comply.
- (d) Borrower is not a Prohibited Person.

Borrower has provided Lender with sufficient information (including names, addresses and, where applicable, jurisdiction of formation or organization) to reasonably permit Lender to verify the foregoing representation.

- (e) Borrower does not:
 - (i) conduct any business or engage in making or receiving any contribution of funds, goods, or services to or for the benefit of any Prohibited Person;

(ii) deal in, or otherwise engages in any transaction relating to, any property or interests in property blocked under the Executive Order; or

(iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

3.16 New Markets Tax Credits Representations and Warranties.

Borrower acknowledges that each portion of the Loan evidenced by a separate Note is intended to constitute a QLICI and that, for such purpose, Borrower must be and remain a QALICB. Accordingly, as a material inducement to Lender to make the Loan, Borrower hereby (i) represents and warrants that, as of the date hereof, the following are true and correct and (ii) expects that, throughout the NMTC Recapture Period, the following will remain true and correct:

(a) Borrower has provided Lender and its members with Notice of all written or oral notice of all (i) defaults or failures of compliance with respect to any other financial, contractual or governmental obligation of Borrower or any Affiliate of Borrower; (ii) IRS proceedings regarding the Property or Borrower; (iii) litigation, criminal action or administrative proceedings against Borrower or any Affiliate of Borrower; or (iv) communications from any other lenders or the Division or any other Person or governmental authority which is not in the ordinary course of business;

(b) Borrower has no Knowledge tending to indicate that it might not satisfy all of the requirements of a QALICB;

(c) Borrower currently qualifies as, and will, throughout the term of this Agreement, maintain its status as a QALICB;

(d) Borrower has not entered into, and, unless otherwise consented to in writing by Lender, will not enter into, any lease or sublease, or permit the SUU or any other tenant or subtenant to enter into any lease or sublease, with respect to the Project to any tenant whose business does not constitute a Tenant Qualified Business;

(e) Borrower reasonably expects to spend the Loan Proceeds on the Costs within eighteen (18) months of the Closing Date;

(f) with respect to the current taxable year and if Borrower has gross income, at least fifty percent (50%) of the total gross income of Borrower is and will be derived from the active conduct of a Qualified Business within the Census Tract;

(g) with respect to the current taxable year, at least fifty percent (50%) of the use of the tangible property of Borrower (whether owned or leased) is and will be within the Census Tract (for purposes of this representation, the percentage of tangible property owned or leased by Borrower during the taxable year in the Census Tract shall be determined based on a fraction (i) the numerator of which is the Average Value of the tangible property owned

or leased by Borrower and used by Borrower within the Census Tract during the taxable year, and (ii) the denominator of which is the Average Value of all of the tangible property owned or leased by Borrower and used by Borrower during the taxable year); provided, however, that for any taxable year in which Borrower has no employees, at least eighty-five percent (85%) of the use of the tangible property of Borrower (whether owned or leased) will be within the Census Tract. Borrower has provided Lender with a true, correct and complete list of tangible property owned or leased by Borrower and a description of where such property is used by Borrower. If any property is used by Borrower outside of a Low-Income Community, Borrower shall provide the cost basis of all property owned by Borrower, the estimated value of any leased property and the basis of such estimate, and the business hours of usage of Borrower's property within and without the Low-Income Community. Borrower shall retain records of the foregoing throughout the term of the Loan, provided that, in the event the Notes are retired prior to their stated maturities, Borrower's obligation under this subsection shall survive termination for a period of three (3) calendar years after the calendar year in which the last Note is retired;

(h) with respect to the current taxable year, less than five percent (5%) of the average of the unadjusted basis of the property of Borrower is and will be attributable to Nonqualified Financial Property. Borrower has provided to Lender a true, correct, and complete listing of any Nonqualified Financial Property owned by Borrower, including the unadjusted basis of such property. Borrower shall maintain records thereof throughout the term of the Loan, provided that, in the event the Notes are retired prior to their stated maturities, Borrower's obligation under this subsection shall survive termination for a period of three (3) calendar years after the calendar year in which the last Note is retired;

(i) with respect to the current taxable year in which Borrower, or any Affiliate of Borrower that is primarily engaged in providing services to Borrower, has one or more employees providing services with respect to the Project, at least fifty percent (50%) of the services performed for Borrower by its employees is and will be within the Census Tract (for purposes of this representation, this percentage is determined based on a fraction (i) the numerator of which is the total amount paid by Borrower for employee services performed in the Census Tract during the taxable year, and (ii) the denominator of which is the total amount paid by Borrower for employee services during the taxable year). Borrower has provided to Lender a true, correct and complete list of such employees, if any, providing services that includes a general description of services provided and the location where services were performed, and, if applicable, compensation paid for services rendered within and without the Low-Income Community. Borrower shall retain records of the foregoing throughout the term of the Loan to the extent Borrower has any employees;

(j) with respect to the current taxable year, less than five percent (5%) of the aggregate unadjusted basis of Borrower's property is and will be attributable to Collectibles;

(k) *reserved*;

(l) neither Borrower nor any Affiliate thereof is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in

this transaction by any Federal department or agency, as such terms are defined in Executive Order 12549, nor is any such action pending or proposed. Borrower shall, simultaneously with execution and delivery of this Agreement, execute and deliver to Lender a certification in the form attached hereto as Exhibit B to further evidence this representation and warranty;

(m) neither the Property nor any Improvements that makeup the Property constitute Residential Rental Property and at no time shall the Property or any portion thereof be used as, or converted into, Residential Rental Property;

(n) no portion of the Property constitutes a “qualified low-income building” under Section 42 of the Code;

(o) Borrower does not have or use low-income housing tax credits, as described in Section 42 of the Code;

(p) Borrower is not, and will not be, a bank, credit union or other financial institution;

(q) Borrower has no present plans or intentions to (i) change the nature of, or manner in which it conducts its business; (ii) move or expand its business to a new address; (iii) reduce the percentage of gross income derived from the active conduct of a qualified business within any Low-Income Community; (iv) change the percentage of employees services performed in any Low-Income Community; (v) reduce the percentage of use of tangible property in any Low-Income Community; (vi) maintain collectibles not held primarily for sale in the ordinary course of business at 5 percent or more of the aggregate unadjusted cost bases of its assets; (vii) maintain Nonqualified Financial Property at 5 percent or more of the aggregate unadjusted cost bases of its assets; (viii) enter into leases with any tenant that is not a Tenant Qualified Business; or (ix) take any other action that any way that would cause to be untrue any of the representations, warranties or covenants set out in this Agreement;

(r) Borrower is not and will not be an entity disregarded as separate from any other entity for federal income tax purposes;

(s) Borrower has fully and accurately stated in writing to Lender the nature of its business and of the goods or services provided, its primary sources of revenue, its primary expenditures;

(t) Borrower has had no communications with the CDFI Fund or any successor agency charged with oversight responsibilities for the New Markets Tax Credit program, concerning noncompliance with, or deficiencies in, reporting practices;

(u) Borrower expects to generate revenues within three (3) years of the date hereof, and upon such time, Borrower expects that its revenues will exceed its expenses (including, without limitation, any Debt Service expenses);

(v) Borrower has not taken or failed to take, and shall not take or fail to take, any action, which would result in USB Fund, the Investment Fund, Lender, USB CDC, or any of their Affiliates having NMTC Control of Borrower;

(w) Borrower has established its own bank accounts, and does not and shall not commingle the assets of Borrower with any Person. Borrower's assets are not listed as assets on the books and records of any other Person, except to the extent that such assets are consolidated with another Person's assets for financial reporting purposes. Borrower does not and shall not possess or use assets of any other Person, and does not and shall not permit any other Person to possess or use its assets, unless in either case such assets are rented, leased, or otherwise provided for use on an arms-length basis pursuant to a lease or services agreement or similar agreement with such Person. Borrower does not and shall not have any employees, and any services performed for or on behalf of Borrower by employees of any other Person (including any affiliate of Borrower) are and shall be performed on an arms-length basis pursuant to a services agreement or similar agreement with such Person;

(x) there have been no irregularities or illegal acts that would have a material effect on the transactions contemplated by this Agreement, there has been no fraud involving management or employees who have significant roles in the internal control structure of Borrower; fraud involving other employees that could have a material effect on the matter described in this Section; or communications from the CDFI Fund or other regulatory agencies concerning noncompliance with, or deficiencies in, financial reporting practices that could have a material effect on the matter described in this Section;

(y) Borrower will at all times have sufficient assets to pay amounts due with respect to the Loan in accordance with its terms and the value and/or income generated by Borrower's assets will be sufficient to allow Borrower to repay and/or refinance the Loan in accordance with its terms at or prior to maturity;

(z) Borrower shall not, as lessor, lease any of its property if such property does not contain "substantial improvements" within the meaning of Regulations Section 1.45D-1(d)(5)(ii);

(aa) to the best of Borrower's Knowledge, the Financial Projections fairly present the reasonably anticipated results of the operations of the Project, and the assumptions utilized therein are, with respect to items known at this time, true, accurate and complete, and with respect to projected items, reasonable estimates based on currently available information;

(bb) Borrower reasonably expects that it will have sufficient sources of funds to complete the construction of the Project; and the original principal amount of the Loan and all other sources of funds will not exceed the costs incurred or to be incurred by Borrower to construct the Project;

(cc) The amount of reserves, receivables, assets and other items of working capital shown on the Financial Projections as owned by Borrower are reasonable based upon Borrower's reasonably anticipated costs of operating the Project;

(dd) Borrower has not knowingly entered into this Agreement, or any other agreements or understandings (whether written or oral) with a principal purpose of entering into a transaction or series of transactions (i) to achieve a result that is inconsistent with Section 45D of Code, and the NMTC Requirements, and/or (ii) to avoid or evade federal income tax;

(ee) Borrower will treat the Loan as indebtedness for all purposes, and will not take any positions contrary to such treatment; and

(ff) the Project is located at [132 West College Avenue, Cedar City, Utah], and is located entirely in the Census Tract in the Iron County, which is designated by the CDFI Fund as a non-metropolitan county that qualifies for NMTC investments, and the Census Tract is a Low-Income Community that has one or more of the following criteria or programs in items (i) – (iii), two or more in items (iv) – (xvi) or is characterized by item (xvii), and as such, the Project satisfies the indicia of higher distress as set forth in Section 3.2(h) of the Allocation Agreement:

(i) Poverty rate greater than thirty percent (30%);

(ii) If located within a non-metropolitan area, median family income does not exceed sixty percent (60%) of statewide median family income or if located within a metropolitan area, median family income does not exceed sixty percent (60%) of the greater of statewide median family income or the metropolitan area median family income;

(iii) Unemployment rates at least one and one-half (1.5) times the national average;

(iv) Located in a county not contained within a Metropolitan Statistical Area (MSA), as defined in OMB Bulletin No. 99-04, with respect to the 2000 Census data;

(v) If the Property is serving Targeted Populations as permitted by the IRS and CDFI Fund guidance, (a) Borrower is sixty percent (60%) owned by low-income persons, or (b) at least sixty percent (60%) of employees are low-income persons, or (c) at least sixty percent (60%) of customers are low-income persons;

(vi) One of the following: (a) poverty greater than twenty-five percent (25%), or (b) if located within a non-Metropolitan Area, median family income does not exceed seventy percent (70%) of statewide median family income or if located within a metropolitan area, median family income does not exceed seventy percent (70%) of the greater of statewide median family income or the Metropolitan area

median family income, or (c) unemployment rates as least 1.25 times the national average;

(vii) Federally designated Empowerment Zones, Enterprise Communities, or Renewal Communities;

(viii) Small Business Administration designated HUB Zones, to the extent that the QLICI Loans will be used to support businesses that obtain HUB Zone certification from the Small Business Administration;

(ix) Brownfield sites as defined under 42 U.S.C. 9601(39);

(x) Areas encompassed by a HOPE VI redevelopment plan;

(xi) Federally designated as Native American or Alaskan Native areas, Hawaiian Homelands, or redevelopment areas by the appropriate Tribal or other authority;

(xii) Areas designated as distressed by the Appalachian Regional Commission or Delta Regional Authority;

(xiii) Colonias areas as designated by the U.S. Department of Housing and Urban Development;

(xiv) Federally designated medically underserved areas, to the extent that QLICI activities will support health related activities;

(xv) State enterprise zone programs, or other similar state/local programs targeted towards particularly economically distressed communities;

(xvi) Located in a county for which the Federal Emergency Management Agency (FEMA) has (a) issued a “major disaster declaration”; and (b) made a determination that such County is eligible for both “individual and public assistance”; provided that the initial project investment was made within 24 months of the disaster declaration;

(xvii) Businesses certified by the Department of Commerce as eligible for assistance under the Trade Adjustment Assistance for Firms (TAA) Program; or

(xviii) A Food Desert, which must either be: (1) a census tract determined to be a Food Desert by the U.S. Department of Agriculture (USDA), as identified in the USDA’s Food Desert Locator Tool; or (2) a census tract that qualifies as a Low-Income Community and has been identified as having low access to a supermarket or grocery store through a methodology that has been adopted for use by another governmental or philanthropic healthy food initiative, to the extent QLICI activities will increase access to healthy food.

(gg) Borrower will file federal income tax returns in a manner consistent with the characterization of each of the Ground Lease and the Master Lease as a lease for federal income tax purposes, and as the owner of the Improvements for federal tax purposes.

3.17 Tax Returns and Payment.

Borrower has timely filed, or has timely obtained extensions therefore, all Federal, state, local and other income and other tax returns that are required to be filed and has paid all taxes that have become due and payable pursuant to such returns and all other taxes, assessments, fees and other governmental charges upon Borrower and upon its properties, income and franchises that have become due and payable by Borrower. There is no asserted or assessed (or to the Knowledge of Borrower, proposed) tax deficiency against Borrower.

3.18 No Assumption of Borrower's Obligations.

Borrower expressly understands and agrees that Lender does not assume any duties or obligations of Borrower arising out of the Notes, or any other Loan Document.

3.19 No Insolvency.

No bankruptcy, attachment, execution proceeding, assignment for the benefit of creditors, insolvency, receivership, or other, similar proceedings with respect to Borrower is pending or overtly threatened. As of the date hereof, Borrower is sufficiently capitalized to perform all of its duties and obligations.

4. CONDITIONS PRECEDENT TO LENDER'S OBLIGATION TO DISBURSE THE INITIAL DISBURSEMENT AMOUNT.

Lender shall not be obligated to make the initial disbursement of Loan proceeds under this Agreement, unless the following conditions precedent shall have been satisfied, except as otherwise allowed for herein:

4.1 Request for Disbursement; Sworn Construction Cost Statement.

Lender shall have received and approved a Request for Disbursement and the Sworn Construction Cost Statement from Borrower indicating that the Costs incurred to date in connection with the completion of the Project are equal to or greater than the amount of the advance requested from Lender in accordance with the Disbursing Agreement. Lender shall also have received any and all other documentation required as condition precedent pursuant to the Disbursing Agreement.

4.2 Loan Documents.

Lender shall have received each of the Loan Documents, the Ground Lease, and the Master Lease each duly executed by Borrower and SUU (in its capacity as landlord under the Ground Lease and as lessee under the Master Lease) , as applicable, and all other applicable parties, all in form and substance acceptable to Lender.

4.3 Governing Instruments.

Lender shall have received from Borrower a copy of the Articles of Organization of Borrower certified as being filed and approved by the Division, a certified copy of Borrower's operating agreement (and all amendments thereto), a certificate of incumbency and authority of Borrower as to the incumbency and signature of each representative of Borrower that has executed any document on behalf of Borrower in connection with the transactions contemplated by this Agreement, and such other documents, instruments, agreements and certificates as Lender may reasonably request with respect to Borrower.

4.4 Good Standing and Resolutions.

With respect to (a) Borrower, Lender shall have received (i) a certificate of existence/good standing from the Division; (ii) certified resolutions authorizing the transactions contemplated by the Loan Documents in form and content acceptable to Lender; and (iii) such other documents, instruments and certificates as Lender may reasonably request; (b) SUU, Lender shall have received (i) certified resolutions authorizing the transactions contemplated by the Loan Documents and Development Agreement in form and content acceptable to Lender; and (ii) such other documents, instruments and certificates as Lender may reasonably request; and (c) SUU, Lender shall have received (i) certified resolutions authorizing the transactions contemplated by the Master Lease in form and content acceptable to Lender.

4.5 Legal Opinions.

There shall have been delivered by Borrower's Counsel legal opinions in form and content reasonably acceptable to Lender, USBCDC and each of their counsel.

4.6 Financial Statements.

Lender shall have received and approved certified copies of current financial statements with respect to SUU.

4.7 Appraisal.

Prior to disbursing the Initial Disbursement Amount, Lender shall have received an appraisal from American Valuation Services, Inc. in form and substance acceptable to Lender.

4.8 Environmental Reports.

Lender shall have received and approved the Environmental Reports. The Environmental Reports shall, at a minimum, (a) disclose any existing or potential Hazardous Materials contamination at the Property and physical conditions that may result in such contamination; (b) include the results of all sampling or monitoring to confirm the extent of existing or potential Hazardous Materials contamination at the Project, including the results of leak detection tests for each underground storage tank located at the Property, if any;

(c) describe response actions appropriate to remedy any existing or potential Hazardous Materials contamination, and report the estimated cost of any such appropriate response; (d) confirm that any prior removal of Hazardous Materials from the Property was completed in accordance with applicable Environmental Laws; and (e) confirm whether or not the Property is located in a wetlands district. All costs and charges by Lender's environmental consultant will be borne by Borrower.

4.9 Flood Zone Report.

Lender shall have received and approved either (i) written evidence satisfactory to Lender that the Property is not located in an area designated by the Secretary of Housing and Urban Development as a special flood hazard area or (ii) shall have received a copy of a FEMA Certification of Proof of Purchase of Flood Insurance for the Property.

4.10 Insurance Policies.

Lender shall have received and approved certified copies of all insurance policies (or certificates), along with all required endorsements and certificates thereto, as required by this Agreement and the Loan Documents. With respect to liability coverage, Borrower shall cause its insurer to identify the following entities as "additional insureds": Lender, Utah Community Reinvestment Corporation, a Utah nonprofit corporation, Investment Fund and USBCDC.

4.11 Governmental Approvals.

Lender shall have received and approved copies of all authorizations and permits required by the appropriate governmental authority to construct the Project in accordance with the Plans and Specifications.

4.12 Compliance.

Neither Borrower nor Lender shall have received any notice that claims or asserts that there has been a failure to comply with or a breach of any of the approvals or authorizations required hereunder in any material respect.

4.13 No Default.

There shall be no Event of Default under this Agreement or any of the other Loan Documents and no Default or Event of Default shall exist.

4.14 Lease Agreements.

Lender shall have received and approved the Ground Lease, the Master Lease, and all leases, occupancy agreements or letters of intent of prospective tenants of the Property, and shall have received from SUU evidence of readily available funds of SUU to pay for the Lessee Improvements in accordance with the Development Agreement.

4.15 Title Commitment.

The Title Company shall have issued to Lender a title insurance commitment (the “*Title Commitment*”) (American Land Title Association Lenders’ Policy (2006 Form)) (with the creditor’s rights exception and arbitration provision deleted pursuant to a creditor rights endorsement and an arbitration deletion endorsement) to issue a title policy to Lender in the amount of the Loan secured by the Deed of Trust insuring the Deed of Trust to be a valid lien on Borrower’s leasehold interest in the Property, free and clear of all defects and encumbrances, except such as Lender and their counsel shall approve, and which shall contain:

- (a) full coverage against mechanic’s liens (or endorsements up to the aggregate principal amount outstanding under the Notes as of the current Disbursement);
- (b) the deletion of all standard exceptions;
- (c) such endorsements thereto reasonably required by Lender, without limitation: zoning, comprehensive, access, parcel contiguity, variable rate, survey, tax benefit, location, multi-tax parcel, pending disbursement, future advance, arbitration, pending improvements and line of credit; and
- (d) such Title Commitment must remain in full force and effect, enforceable against the Title Company in accordance with its terms.

4.16 Accountant Certification.

Lender shall have received a certification from the Accountants that the Financial Projections for the Project accurately reflect the anticipated tax consequences to Borrower and Lender based upon the projections provided by Borrower and Lender.

4.17 Taxes.

All taxes owing by Borrower must be current as of the date hereof.

4.18 Plans and Specifications.

Lender shall have received the Plans and Specifications.

4.19 Construction Contracts and Other Documents.

Lender shall have received and approved the following, all in form and substance reasonably satisfactory to Lender:

- (a) a copy of the Architect’s Agreement;
- (b) the Plans and Specifications;
- (c) an engineer’s building report;

- (d) a report from the Architect (regarding the soil report, the engineer's building report and the adequacy of the buildings and foundations for the proposed Project);
- (e) a copy of the floor plans;
- (f) a copy of the General Construction Contract and each Major Subcontract entered into to date;
- (g) a qualification statement from the General Contractor together with any other information which Lender deem necessary including overall bonding capacity;
- (h) a copy of the Bonds (as defined in the MOU) showing SUU as co-obligee; and
- (i) a Survey prepared by the Surveyor in compliance with minimum standards as adopted by ALTA and ACSM with a certificate in form and substance acceptable to Lender; and
- (j) a copy of MOU duly executed by SUU and DFCM.

4.20 Budget.

Lender shall have received and approved the Budget.

4.21 Financial Projections.

Lender shall have received and approved the Financial Projections, including, without limitation, evidence satisfactory to Lender that there are sufficient sources of funds (loan, equity or otherwise) committed on the Closing Date to pay the costs set forth on the Budget.

4.22 Building Permits.

To the extent available, a copy of all building permits, licenses and other governmental permits, or proof of the immediate availability of same, required to authorize the construction of the Project in accordance with the Plans and Specifications.

4.23 Investment Fund QEI.

The Investment Fund shall have made equity investments in the Lender in the aggregate amount of [\$15,000,000], which investments are intended to qualify as QEI.

4.24 Other Requirements.

Lender shall have received the documents, data or information with respect to the Property, the Improvements and the Project as Lender may reasonably request, including, without limitation, subordination agreements, attornment agreements and consents from any entities involved in the transactions contemplated by this Agreement, all in form and content reasonably satisfactory to Lender; provided that Lender shall have the option in their reasonable discretion to waive or defer any of the foregoing requirements.

5. CONDITIONS PRECEDENT TO LENDER'S OBLIGATION TO MAKE DISBURSEMENTS.

Lender's obligation to make any and all Disbursements (including the first Disbursement) is subject to the satisfaction of the following additional conditions precedent:

5.1 Representation and Warranties True.

Borrower's representations and warranties herein shall be and remain true and correct in all material respects.

5.2 Construction in Accordance with Plans and Specifications.

The construction of the Project shall be constructed to date substantially in accordance with the Plans and Specifications and the Schedule of Construction.

5.3 No Default.

No default or Event of Default shall have occurred and be continuing under this Agreement, under any other Loan Document, or under any of the Construction Documents.

5.4 Disbursements.

The requirements of the Disbursing Agreement with respect to requests for Disbursements shall have been complied with.

5.5 Confirmations.

If required by Lender, Lender shall have received and approved written confirmations from the SUU reaffirming its obligations under the Development Agreement.

5.6 Date Down Endorsements.

Lender shall have received a date down endorsement to each of their title insurance policies pursuant to the terms of the Disbursing Agreement.

6. DISBURSEMENTS.

6.1 Where Disbursements Are To Be Made.

All Disbursements are to be made from the Loan Disbursement Account held at USBNA in [City of Salt Lake, Utah], or at such other place as Lender may designate.

6.2 Restatement.

Each Request for Disbursement by Borrower shall constitute an affirmation that the representations and warranties of Borrower contained in Section 3 hereof remain true and correct in all material respects and that no material breach of the covenants contained in

Section 7 hereof has occurred as of the date of the Disbursement, unless Lender is notified to the contrary prior to the disbursement of the requested Disbursement.

6.3 Application of Funds.

Upon the occurrence of an Event of Default, Lender, in its sole discretion, may advance such amounts to satisfy any of Borrower's obligations hereunder, and all amounts so advanced and applied shall be part of the Loan and shall be secured by the Deed of Trust.

7. COVENANTS OF BORROWER.

Borrower (in addition to and not in derogation of its covenants contained in any of the other Loan Documents) covenants and agrees, from the date hereof and for so long as any Loan or any portion thereof is outstanding or Borrower has the right to receive Disbursements under this Agreement (whether or not the conditions to receiving Disbursements have been or can be fulfilled), and unless Lender otherwise consents in writing, as follows:

7.1 Use of Loan Proceeds.

Borrower shall use the proceeds of the Loan deposited into the Loan Disbursement Account solely to reimburse Borrower for paying Costs shown on the Sworn Construction Cost Statement and incurred by Borrower in connection with the construction of the Project, together with other expenses set forth on the Budget and such incidental costs and expenses relating thereto approved in writing by Lender. Borrower shall also use the proceeds of the Loan to reimburse SUU for certain construction and development costs previously incurred by SUU with respect to the Project pursuant to the term of the Development Agreement.

7.2 Prohibition of Transfer.

Borrower will not convey or further encumber the Property or any Improvements in any way other than as permitted by the Loan Documents or as referenced in the title policy of Lender, without the prior written consent of Lender, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Borrower shall have the right to grant utility service easements or environmental deed restrictions reasonably required in connection with the development of the Project without Lender's consent, provided that Borrower delivers to Lender an opinion from Borrower's counsel that such proposed change will not result in a recapture or disallowance of New Markets Tax Credits. Borrower shall notify Lender promptly in writing of any Change in Control or any change in the key management of Borrower, which changes shall not be made without the prior written consent of Lender, which consent shall not be unreasonably withheld.

7.3 Comply with Requirements.

Borrower will comply within any legally mandated time period with any requirement of any governmental authority relating to Borrower, the Property and/or the Project.

7.4 Inspection.

Upon receipt of reasonable prior notice, Borrower will permit Lender and Construction Consultant, and their respective agents and employees to enter upon the Property to inspect the Project and all materials to be used in construction thereof and to examine all detailed Plans and Specifications and shop drawings which are or may be kept at the construction site. Borrower shall pay for all inspections, whether made by an independent architect, engineer, or other inspector, or by Bank, and for all costs of any independent inspector, architect or other professional retained by Lender and/or Construction Consultant to assist it in monitoring the Loans.

7.5 Costs and Expenses.

The Loan shall be without any cost whatsoever to Lender. Borrower shall pay, or cause to be paid, on demand all costs and expenses in connection with the preparation, negotiation, execution, delivery, filing, recording and administration (including amendments and modifications) of the Loan Documents. In addition, but not as a limitation, Borrower shall pay:

(a) all taxes and recording expenses, including all intangible, registration and stamp taxes, if any;

(b) the Asset Management Fees to Allocatee (or if paid by Lender to Allocatee, to reimburse Lender for such Asset Management Fees) payable annually in accordance with the CDE Fee and Expense Agreement from the CDE Reserve on or before the first business day of each calendar year in each of the years 2014 through 2021;

(c) the Administrative Costs to Lender payable in accordance with the CDE Fee and Expense Agreement from the CDE Reserve upon receipt of invoices from Lender, provided that if amounts in such reserves are insufficient, Borrower shall pay the amounts due from other funds of Borrower after payments due under the Notes;

(d) title insurance premiums, appraiser fees and environmental audit fees;

(e) if any, fees due to brokers in connection with the Property or this Agreement (other than any broker hired by or contracted for by Lender);

(f) all legal fees and expenses, including, without limitation, Lender's and its members, and USBCDC's counsel's fees and expenses for services performed and sums advanced in connection with the transactions contemplated by this Agreement, plus reimbursement of all out of pocket expenses incurred in connection therewith;

(g) all fees incurred in connection with the delivery of the legal opinions;

(h) all fees of Accountants in connection with preparation of the Financial Projections; and

- (i) All fees of the Construction Consultant pursuant to the Disbursing Agreement.

Borrower shall also pay, at the direction of Lender, the auditing, tax and accounting fees, all reasonable out-of-pocket expenses and other operating expenses incurred with respect to the Loan by USB Fund, USBCDC, Lender, the Investment Fund, and their respective members during the term of this Agreement.

7.6 Governmental Requirements; Restrictive Covenants.

Borrower will comply with (i) any requirement of any governmental authority relating to the Property or the Project and (ii) all restrictive covenants affecting the Property, including, without limitation, the provisions of any applicable redevelopment plan or agreement.

7.7 Acceptable Property Management Agreement.

Borrower will not, and will not permit SUU to, enter into a property management agreement unless the same is in a form and substance acceptable to Lender and the property manager is acceptable to Lender and Lender has reasonably and timely consented to the same in writing.

7.8 Timetable.

Borrower will cause the construction of the Project to be commenced and prosecuted with diligence and continuity in accordance with the Schedule of Construction, and will complete the same in substantial accordance with the Plans and Specifications free and clear of liens or claims for liens for material supplied and for labor or services performed in connection with the construction of the Project, on or before the Completion Date, and except as such date may be extended for Unavoidable Delays.

7.9 Receipt of Disbursements.

Borrower will receive the Disbursements to be made hereunder for the purpose of paying the Costs.

7.10 Defects; No Waiver.

Borrower will, upon demand of Lender, correct (i) any structural defect in the Project, or (ii) subject to the provisions of Section 7.20 below, any departure from the Plans and Specifications not approved by Lender in writing. The advance of any Loan Proceeds shall not constitute a waiver of Lender's right to require compliance with this covenant.

7.11 Insurance.

(a) Borrower, at its sole cost and expense, shall provide or cause to be provided and shall keep in force at all times for the benefit of Lender the following insurance coverages with respect to the Property:

(i) insurance against loss of or damage to the Project by fire and other hazards covered by so-called “extended coverage” and such other casualties and hazards as Lender shall reasonably require and advise Borrower of from time to time (excluding acts of terrorism coverage if Borrower elects to purchase such coverage with terrorism coverage excluded);

(ii) flood insurance in the maximum available amount if the Property is now or later becomes designated as located in a flood hazard area as described in the Flood Disaster Protection Act of 1973;

(iii) comprehensive general public liability insurance against claims for bodily injury, death or property damage; and

(iv) such other insurance on the Property or any replacements or substitutions thereof as Lender may reasonably require and advise Borrower of in writing, including, without limitation the Schedule of Insurance Requirements attached hereto as Exhibit C.

(b) The insurance coverage required by this paragraph shall be with companies, and in forms, amounts and limits and for such periods of time and subject to such deductibles, as is customary for projects of this kind, and shall insure the respective interests of Borrower and Lender. Lender acknowledges that such insurance may be provided in umbrella policies covering more than one property. The insurance proceeds thereof (other than the proceeds from the policy required under clause (iv) of paragraph (a)) shall be payable in accordance with the terms of the Deed of Trust and other Loan Documents. Original policies (or certificates) and renewals thereof covering the risks provided by this Agreement to be insured against, bearing satisfactory evidence of payment of all premiums thereon, shall be delivered to and held by Lender. At least thirty (30) calendar days prior to the expiration of any insurance coverage required to be provided by Borrower hereunder, Borrower shall deliver renewal policies (or certificates) to Lender with appropriate evidence of payment of premiums therefore. All insurance coverage required by this Agreement shall:

(i) include effective waivers by the insurer of all rights of subrogation against any named insured, the indebtedness secured by the Deed of Trust and the Property and all claims for insurance premiums against Lender;

(ii) provide that any losses (other than losses payable under the policy required under clause (iv) of paragraph (a)) shall be payable in accordance with the terms of the Deed of Trust and other Loan Documents; and

(iii) provide that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) calendar days after receipt by Lender of written notice thereof.

Borrower shall not permit any activity to occur or condition to exist on or with respect to the Property that would wholly or partially invalidate any of the insurance thereon.

(c) All proceeds of the insurance required to be obtained by Borrower hereunder (other than the proceeds from the policy required under clause (iv) of paragraph (a) hereof) shall be paid in accordance with the terms of the Deed of Trust and other Loan Documents.

(d) In case of any casualty loss covered by insurance or in case of any damage caused by a taking or exercise of eminent domain, notwithstanding anything in this Agreement to the contrary, the terms of the Deed of Trust and other Loan Documents shall control the manner of distribution of proceeds of any insurance or condemnation awards relating thereto.

(e) If Borrower fails to maintain any insurance required hereunder or under the other Loan Documents or fails to provide evidence of such insurance as required hereunder or under the other Loan Documents, Lender may, but shall not be obligated to, purchase such required insurance at Borrower's expense to protect their interests in the Property. This insurance may, but need not, protect Borrower's interests in the Property. The coverage that Lender purchases shall not be required to pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Property. Borrower may later cancel any insurance purchased by Lender, but only after providing evidence that Borrower has obtained the insurance required hereunder and under any other Loan Document. If Lender purchases insurance for the Property, Borrower will be responsible for the costs of the insurance, including the insurance premiums, interest thereon from the date of each such payment or expenditure at the then highest applicable interest rate under the Notes and any other charges Lender may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. All sums so paid or expended by Lender, the interest thereon and the other charges in connection therewith shall be added to a Loan, as selected by Lender, and shall be secured by the lien of the Deed of Trust. The costs of the insurance obtained by Lender may be more than the cost of insurance Borrower may be able to obtain on its own. Unless Lender otherwise agree in writing, Borrower shall pay to Lender the full costs of such insurance, together with the accrued interest thereon and the other charges in connection therewith, within thirty (30) calendar days after receipt of notice.

WARNING

NOTICE IS GIVEN THAT:

UNLESS BORROWER PROVIDES LENDER WITH EVIDENCE OF THE INSURANCE COVERAGE AS REQUIRED BY LENDER'S CONTRACT OR LOAN AGREEMENT, LENDER MAY PURCHASE INSURANCE AT BORROWER'S EXPENSE TO PROTECT LENDER'S INTEREST. THIS INSURANCE MAY, BUT NEED NOT, ALSO PROTECT BORROWER'S INTEREST. IF THE COLLATERAL BECOMES DAMAGED, THE COVERAGE LENDER PURCHASES MAY NOT PAY ANY CLAIM BORROWER MAKES OR ANY CLAIM MADE AGAINST BORROWER. BORROWER MAY LATER CANCEL THIS COVERAGE BY PROVIDING

EVIDENCE THAT BORROWER HAS OBTAINED PROPERTY COVERAGE ELSEWHERE.

BORROWER IS RESPONSIBLE FOR THE COST OF ANY INSURANCE PURCHASED BY LENDER. THE COST OF THIS INSURANCE MAY BE ADDED TO BORROWER'S CONTRACT OR LOAN BALANCE. IF THE COST IS ADDED TO BORROWER'S CONTRACT OR LOAN BALANCE, THE INTEREST RATE ON THE UNDERLYING CONTRACT OR LOAN WILL APPLY TO THIS ADDED AMOUNT. THE EFFECTIVE DATE OF COVERAGE MAY BE THE DATE BORROWER'S PRIOR COVERAGE LAPSED OR THE DATE BORROWER FAILED TO PROVIDE PROOF OF COVERAGE.

THE COVERAGE LENDER PURCHASES MAY BE CONSIDERABLY MORE EXPENSIVE THAN INSURANCE BORROWER CAN OBTAIN ON BORROWER'S OWN AND MAY NOT SATISFY ANY NEED FOR PROPERTY DAMAGE COVERAGE OR ANY MANDATORY LIABILITY INSURANCE REQUIREMENTS IMPOSED BY APPLICABLE LAW.

7.12 Governmental Requirements.

Borrower will comply with all Environmental Laws and all land use, building, subdivision, zoning, pollution, sales practices laws, regulations and similar laws, rules, ordinances and regulations promulgated by any governmental authority and applicable to the Property and its development and the sale or operation of the Property. In addition, Borrower shall (i) comply with the provisions of all state and local zoning laws, building codes, health and safety codes and all other applicable governmental and contractual obligations and (ii) deliver a copy of all building permits, licenses and other governmental permits to Lender promptly upon availability of such documents, or proof of the immediate availability of same, required to authorize the construction of the Project in accordance with the Plans and Specifications. Borrower shall promptly provide written notice to Lender of the receipt of any notice of violation thereof from any governmental authority which violation, alone or together with any other such violations, could reasonably be expected to have a material adverse effect on its business, assets, operations or condition, financial or otherwise.

7.13 Additional Documents and Information.

Borrower shall maintain its books and records on an accrual basis in accordance with GAAP, and retained for such period required by law or if longer, such period recommended by the Accountants. Borrower shall keep a ledger and shall maintain all records with respect to the Project. Borrower's books and all other records with respect to the Project, and financial statements of Borrower and SUU shall be available for examination by Lender, or its duly authorized representative, at any and all reasonable times after reasonable notice; provided, however, that this provision shall not limit the obligations of Borrower to provide

reports and other information to Lender in accordance with this Agreement. Borrower shall provide the following reports to Lender and USBCDC at Borrower's expense:

(a) any reports and information reasonably required by Lender or USBCDC to maintain compliance with New Markets Tax Credit requirements, including those reports set forth in Section 7.32;

(b) upon the occurrence of any natural disaster and/or incident and/or widespread property damage having a material, adverse impact on the Property, a report of the extent of the damage to the Property, and the effect such damage might have on the operations of the Property.

(c) learning of any violation of any health, safety, building code, or other statute or regulation by Borrower which violation has or could reasonably be expected to have a material adverse effect on Borrower, a detailed statement describing such matters along with any written notices thereof received by Borrower from any federal, state, or local governmental entity;

(d) within five (5) Business Days after receipt by Borrower, copies of all default notices, notices of material reductions or elimination of benefits under any federal, state, or local program previously enjoyed by Borrower; notice of any demand for payment or draw under any construction completion guarantee, performance bond, or letter of credit regarding Borrower; and notices regarding the Property's compliance with any regulatory restrictions imposed thereon; and Borrower shall provide Lender with Notice of any written or oral notice of any (i) default or failure of compliance with respect to any other financial, contractual or governmental obligation of Borrower; (ii) IRS proceeding regarding the Property or Borrower; (iii) litigation, criminal action or administrative proceeding against Borrower or any Affiliate of Borrower; or (iv) communication from any other lenders or the Secretary of State of the State of Utah or any other Person or governmental authority which is not in the ordinary course of business;

(e) within ninety (90) calendar days following the end of each fiscal year, annual audited financial statements of Borrower and SUU in form and detail acceptable to Lender, which shall include, without limitation (i) balance sheets, statements of income and retained earnings and statements of cash flows; and (ii) an opinion by an independent certified public accountant selected by Borrower and acceptable to Lender, which opinion shall state that said audited financial statements have been prepared in accordance with GAAP.

(f) within two hundred forty (240) calendar days following the end of each calendar year, annual reviewed financial statements of SUU, in form and detail acceptable to Lender which shall include, without limitation, statements of financial position activities, and cash flows, all in reasonable detail and certified by SUU to be true and correct;

(g) copies of filed federal and state income tax returns of Borrower and SUU, including all extensions and all supporting schedules (including K-1's or their equivalent) for

each taxable year within thirty (30) calendar days after filing, but in any event not later than one hundred eighty (180) calendar days after the close of such taxable year;

(h) upon not less than forty-five (45) days prior written notice (which notice period shall be waived after an Event of Default) from Lender, Borrower shall provide, and shall cause SUU to provide, to Lender such other information reasonably relating to the condition or operations, financial or otherwise, of Borrower and SUU and/or the Project or the economic impact of the Project as Lender may from time to time reasonably request; and

(i) not later than thirty (30) days after the end of each calendar quarter prior to meeting the leasing hurdle set forth in Section 7.34(b) herein and not later than sixty (60) days after the end of each calendar year after meeting such leasing hurdle:

(i) company prepared financial statements for Borrower and SUU, including a balance sheet, profit and loss statements, a statement of operations, a statement of cash flows and a statement of change in financial position of Borrower and SUU, each certified by Borrower or SUU, as applicable; and

(ii) a report of such other information as may be deemed by Borrower to be material to the existence or operation of Borrower, SUU, Developr, or Borrower's business as it relates to the Project or the Property.

(j) Within forty-five (45) days of the end of each calendar year after completion of construction and lease-up (at the SUU level) of the Project, Borrower shall furnish to Lender, all in a form reasonably acceptable to Lender, an annual operating statement for the Property dated as of December 31 of the previous calendar year, the completed Tenant Summary Reports as required under Section 7.14 herein, and a certified rent roll for the Project in such form as Lender may reasonably require and such supporting data as Lender may request.

(k) Within fifteen (15) days of the end of each calendar month after completion of construction and during lease-up (at the SUU level) of the Project, Borrower shall furnish to Lender a certified rent roll for the Project in such form as Lender may reasonably require and such supporting data as Lender may request.

7.14 Leases.

Without the prior written consent of Lender, which consent shall not be unreasonably withheld, Borrower shall not enter into any lease of space with respect to any portion of Property, other than the Master Lease. Borrower shall not permit SUU to sublease or lease the Property to other parties without Lender's and USBCDC's express consent.

7.15 Financial Restrictions on Borrower.

(a) Except as otherwise set forth in this Section, Borrower shall not, without Lender's prior written approval, (i) make any distributions of capital, income or other assets to, or pay any loans payable to any person or entity affiliated with Borrower, or to any

officer, director, partner or shareholder of Borrower or to any family member of them; (ii) declare or make any distributions of capital or make any loans or gifts; or (iii) liquidate, terminate or voluntarily dissolve.

(b) Notwithstanding anything to the contrary herein, Borrower shall be permitted, without Lender's consent, to make distributions to its members as required pursuant to Borrower's Operating Agreement and in such amounts as described in the Financial Projections, or to otherwise distribute any cash or other assets as necessary to comply with Section 7.32(k) regarding Nonqualified Financial Property.

7.16 Encroachments.

Borrower shall not cause or permit any portion of the Project to be constructed on the Property which would cause an encroachment upon any easements, rights-of-way or adjoining properties unless expressly permitted under such easement, right-of-way or lease or shown on the Survey. Except as shown on the Survey, all portions of the Project are wholly within any building restriction lines however established. Borrower shall furnish at the request of Lender evidence satisfactory to Lender that Borrower is in compliance with this Section 7.16, including, without limitation, on the Completion Date, a survey showing that the Improvements erected on the Property are free from any encroachments.

7.17 Liens and Encumbrances.

All of (i) the fixtures, maintenance supplies, tools, equipment and the like, now and to be owned by Borrower or to be appurtenant to, or to be used in the operation of the Property, as well as (ii) the rents, revenues and profits earned from the operation of the Property, will be free and clear of all security interests and encumbrances except as may be contained in the Deed of Trust or the title policy of Lender.

7.18 Certificates.

Borrower shall furnish to Lender prior to final disbursement of Loan Proceeds, and in any event, not later than ninety (90) calendar days after the completion of the Project (a) a copy of the original certificate of occupancy issued by the governmental authority having jurisdiction over the Property and all other necessary consents and approvals of any governmental boards, bureaus or departments having jurisdiction over the Property; (b) all necessary certificates and approvals of the appropriate Board of Fire Underwriters or other similar body acting in and for the locality in which the Property is situated; and (c) all required licenses and agreements in respect of any easements extending beyond the boundary lines of the Property.

7.19 Use.

The anticipated use to which the Project will be put will comply with all requirements of governmental authorities and any restrictive covenants to which the Property may be subject.

7.20 Construction; Change Orders.

All construction and redevelopment shall be performed in accordance with the Plans and Specifications, all Utah and federal statutes relating to appropriate set back requirements, any restrictive covenants and the requirements of any governmental authority, and the anticipated use to which the Project will be put will comply with all requirements of governmental authorities and any restrictive covenants to which the Property may be subject. Borrower shall at all times maintain a minimum contingency line item of five percent (5%) of the hard costs identified in the Budget throughout the construction period of the Project. Except as specifically permitted by this Section, no plans and specifications shall be utilized and no changes shall be made in the Plans and Specifications referred to herein, unless first approved by Lender in writing, and any other party where approval may be required by Lender; provided, however, that Borrower may make changes to the Plans and Specifications without Lender's approval if (i) Borrower notifies Lender in writing of such change within forty-eight (48) hours thereafter; (ii) Borrower obtains the approval of all parties whose approval is required, including the General Contractor and any Governmental Authority to the extent approval from such parties is required; (iii) sufficient funds are available in the Budget line items affected by the change; (iv) the structural integrity of the Improvements is not impaired; (v) no substantial change in architectural appearance is effected; (vi) the performance of the mechanical, electrical, and life safety systems of the Improvements is not affected; and (vii) the cost of or reduction resulting from any one such change does not exceed ten percent (10%) of any specific line item and the aggregate change in cost of all such changes does not exceed five percent (5%) of total costs of the Project. For the purposes of computing such "aggregate change in cost," pursuant to clause (vii), increases shall be added to, rather than netted against, decreases. Borrower shall promptly furnish to Lender copies of all change orders, regardless of whether Lender's approval is required.

7.21 No Modifications.

Except as expressly permitted under Section 7.20 immediately above, Borrower shall not amend, modify or terminate any Construction Document or the Master Lease, or consent to or acquiesce in the amendment, modification, or termination of the Master Lease.

7.22 Conduct of Business.

Borrower shall maintain in full force and effect (a) its organizational existence, and (b) all licenses, bonds, franchises, leases, patents, contracts and other rights necessary to the profitable conduct of its business, including, without limitation, all notices, permits or licenses, if any, filed or obtained with regard to compliance with Environmental Laws.

7.23 Environmental Matters.

Borrower shall comply, and shall cause SUU, any subtenant, any property manager, any permitted lessees and other operators of the Property to comply, with all Environmental Laws. Any environmental land use restriction or other environmental deed restriction filed against the Property must be reasonably acceptable to Lender.

7.24 Notice.

(a) If Borrower shall receive any of the following with respect to the Property or the Project:

(i) notice that any violation of any Law or Environmental Law may have been committed or is about to be committed by Borrower or otherwise affecting the Project;(ii) notice that any administrative or judicial complaint or order has been filed or is about to be filed against Borrower or the Project alleging violations of any Environmental Law or requiring Borrower to take any action in connection with the release or threatened release of any hazardous substances or solid wastes into the environment;

(iii) notice from a federal, state, or local governmental agency or private party alleging that Borrower may be liable or responsible for costs associated with a response to or cleanup of a release or threatened release of Hazardous Materials or solid wastes into the environment or any damages caused thereby, including, without limitation, any notice that Borrower is a “potentially responsible party,” as defined by CERCLA; or

(iv) notice under any Construction Document or the Master Lease that Borrower is in default thereunder,

then Borrower shall provide Lender and USBCDC with a copy of such notice within five (5) Business Days of Borrower’s receipt thereof.

1. Promptly after learning thereof, Borrower will notify Lender in writing of:

1. The occurrence of any Default, and if such Default is then continuing, a certificate of its chief financial officer or other authorized officer setting forth the details thereof and the action which it is taking or proposes to take with respect thereto;

(i) The occurrence of any release of any Hazardous Substances onto or affecting the Real Property or any adjacent property, any Collateral, or any other environmental problem or liability with respect to any such property;

(ii) The details of any material claim, lien, litigation, administrative proceeding or judgment involving any Collateral or any assets of Borrower, including but not limited to any and all enforcement, cleanup, removal or other governmental or regulatory proceedings pursuant to any Environmental Laws; and

(iii) Any material adverse change in its financial condition.

7.25 Litigation.

Borrower shall promptly advise Lender, in writing, of any action, suit or proceeding brought against it prior to full payment of the Notes if such action, suit or proceeding seeks damages, penalties, fines, costs or expenses in excess of \$10,000.

7.26 Other Indebtedness.

Borrower shall not incur any indebtedness other than the Loan to be made hereunder evidenced by the Notes.

7.27 Inspection.

(a) So long as there is a reasonable business reason for doing so, Lender, or any person designated by Lender, shall have the right, from time to time hereafter, to call at Borrower's place or places of business (or any other place where the collateral or any information relating thereto is kept or located) and coordinate a time, during reasonable business hours and without unreasonable hindrance or delay by Borrower, that Lender may, (i) inspect, audit, check and make copies of and extract from Borrower's books, records, journals, orders, receipts, correspondence and other data relating to Borrower's business or to any transactions between the parties hereto and whether such items or data are maintained in accordance with Borrower's standard operating procedures pursuant to this Agreement; (ii) verify such matters concerning the collateral as Lender may consider reasonable under the circumstances; (iii) discuss the affairs, finances and business of Borrower with any officers, employees or directors of Borrower; and (iv) inspect the real property of Borrower, and any books, records, journals, orders, receipts, correspondence, notices, permits or licenses, with regard to, among other things, compliance with Environmental Laws. Borrower will deliver to Lender, within ten (10) Business Days of request therefor, any instruments necessary to obtain records from any person maintaining the same.

(b) Lender may inspect, from time to time, (i) the construction of the Project, the Improvements, the Property and all materials used or held in storage on site to be used in the construction of the Project, (ii) the Plans and Specifications, (iii) the construction disbursements and (iv) such other matters, documents and information as Lender deems necessary or desirable. Such inspection may not be relied upon by Borrower or any other party, person or entity, and any decision by Lender to advance any Loan Proceeds or not to advance any Loan Proceeds shall not indicate, on behalf of Lender, any approval or disapproval of the status, quality or completion of the Project either at the time of, or before or after such Disbursement, or refusal to make such Disbursement.

(c) Borrower shall pay on demand or within fifteen (15) Business Days thereafter all expenses reasonably incurred by Lender in acquiring information pursuant to this Section 7.27.

7.28 Lessee Improvements Funds. Borrower to cause SUU to deposit the Lessee Improvement Funds when so requested by Lender into a restricted account of Borrower at the

Depository Bank ([ACCOUNT NO. _____]) (“*Lessee Improvements Account*”), which Lessee Improvements Account shall be subject to the Control Agreement in form and substance satisfactory to Lender in Lender’s reasonable discretion. The parties hereto agree and acknowledge that construction of the Lessee Improvements is an integral part of the Project in order to permit the Project be used by SUU for its intended purpose, and to assure timeliness and the completion of the Project, the parties further agree that, upon receipt of an approved Request for Disbursement pursuant to the terms of the Disbursing Agreement, Lender shall disburse the Lessee Improvements Funds from the Lessee Improvements Account to Borrower to pay for Costs attributable to the Lessee Improvements.

7.29 Bank Accounts.

Borrower shall maintain its accounts with USBNA at all times during the term of the Loan, including, but not limited to, the Loan Disbursement Account. Amounts in the Loan Disbursement Account shall be released upon satisfaction of the terms and conditions of the Disbursing Agreement.

7.30 Reserves and Impound.

Borrower shall fund and maintain the following required reserves and impounds, each of which shall be held in the Loan Disbursement Account (unless Lender requires such reserves to be held in a separate account in Borrower’s name at Depository Bank):

(a) The CDE Reserve as provided in the CDE Reserve Agreement.

(b) The Tax & Insurance Impound, which shall be funded quarterly in an amount equal to 1/4th of the projected annual costs of property taxes, hazard/liability insurance premiums for the Project, and such other premiums for insurance covering the Property as Lender may require pursuant to this Agreement, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof. Lender shall not be obligated to pay to or credit Borrower with any interest, earning or profits in connection with the Tax & Insurance Impound, and shall not charge Borrower for any administration thereof. The Tax & Insurance Impound shall be maintained for the term of Loan.

(c) The Operating Reserve, which shall be funded as follows and maintained for the term of Loan as follows:

(i) Borrower shall make an initial deposit into the Operating Reserve on the Closing Date from Loan Proceeds in an amount equal to [RESERVE AMOUNT]. All fees and expenses related to the Operating Reserve including but not limited to Lender administrative expenses, shall be the responsibility of the Borrower and all interest accrued thereon shall accrue to the benefit of the Borrower.

(ii) If the balance of the Operating Reserve falls to less than 75% of the initial required reserve amount (the “*Replenishment Operating Reserve Balance*”)

Borrower shall replenish the Operating Reserve to equal the greater of (i) the initial required reserve amount, adjusted by the appropriate consumer price index for the period since the Closing Date (but not less than the initial reserve amount), and (ii) an amount equal to three (3) months of Operating Expenses based upon the most recent Project fiscal year multiplied by 103%.

(iii) Until the Note is paid in full, Lender shall, upon Borrower's request but not more frequently than once in any ninety (90) day period, disburse funds from the Operating Reserve to Borrower, to the extent such funds are available, solely for Operating Deficits in the amount paid or incurred by Borrower for operating the Project within ten (10) days following:

(A) Request by Borrower. The receipt by Lender of a written request from Borrower for disbursement and a certification by Borrower in a form approved in writing by Lender that the applicable expense has been incurred;

(B) Verification of Costs. The delivery to Lender of invoices, receipts or other evidence satisfactory to Lender, verifying the cost of such expense; and

(C) Project Budget. The delivery to Lender of Borrower's current operating budget showing budgeted expenses and year to date actual expenses for approval by Lender, which requirement shall continue in force for Borrower's subsequent fiscal years until the Operating Reserve is fully replenished to its required amount.

(iv) Notwithstanding anything herein to the contrary, Lender shall not be obligated to disburse any funds from the Operating Reserve if:

(A) the requested disbursement would deplete the Operating Reserve to less than seventy five percent (75%) of the required Operating Reserve amount and Lender did not approve Borrower's current fiscal-year operating budget prior to the commencement of such fiscal year;

(B) an Event of Default has occurred and is continuing that would not be cured by such disbursement of Operating Funds; or

(C) amounts incurred or paid by Borrower to its partners or members or any of their affiliates in Borrower's current fiscal year exceed on a pro rata annualized basis more than one hundred three percent (103%) of such amounts incurred or paid by Borrower in its immediately preceding fiscal year.

(d) Lender's Rights.

(i) In advancing any funds from the Operating Reserve, Lender shall be entitled to rely on such request from Borrower without any inquiry into the accuracy, validity or contestability of any such amount.

(ii) In the event any payment of principal and interest due under the Notes, or the amount of any Tax & Insurance Impounds and/or any other funds required by the Notes, this Loan Agreement, or any other of the Loan Documents is not timely paid, Lender may, but is not obligated to, advance funds from the Operating Reserve for such payments and Borrower shall be required to replenish the Operating Reserve as provided above.

(e) Funds held in the Operating Reserve shall not, unless otherwise explicitly required by applicable law, be or be deemed to be held by Lender in escrow or trust for the benefit of Borrower, but solely for the benefit and protection of Lender.

7.31 Anti-Terrorism Laws.

Borrower covenants and agrees with Lender as follows:

(a) Borrower shall not:

(i) conduct any business or engage in making or receiving any contribution of funds, goods, or services to or for the benefit of any Prohibited Person;

(ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or any other Anti-Terrorism Law; or

(iii) engage in, or conspire to engage in, any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(b) Before any changes in the direct or indirect ownership of Borrower, Borrower shall give a written notice to Lender:

(i) advising Lender in reasonable detail as to the proposed ownership change; and

(ii) reaffirming that the representations and warranties herein contained will remain true and correct notwithstanding such change in ownership.

(c) Borrower agrees to deliver to Lender promptly (but in any event within ten (10) Business Days of Lender's written request) any certification or other evidence requested from time to time by Lender in their reasonable discretion, confirming Borrower's compliance with the foregoing covenants.

7.32 New Markets Tax Credits Covenants.

Borrower hereby covenants and agrees and certifies to Lender and USBCDC that, during the term of the Loan, the following shall be true and correct:

(a) at the direction of Lender, Borrower shall prepare and submit, as appropriate, to the Secretary of the Treasury or the IRS (or any other governmental authority designated for such purpose), on a timely basis, any and all annual reports, information returns and other certifications and information required to avoid any NMTC Recapture Event or the imposition of penalties or interest on the Investment Fund or any of its members for failure to comply with the requirements of the Code or any other applicable laws relating to the New Market Tax Credits;

(b) Borrower shall exercise good faith in all activities relating to the conduct of its business, including the operation and maintenance of the Property, and Borrower shall take no action which is not reasonably related to the achievement of the purpose of completing the Project in accordance with this Agreement;

(c) Borrower shall provide such information and sign such documents as are necessary for Lender and their members to make timely, accurate and complete submissions of (i) federal and state income tax returns, (ii) reports to governmental agencies, and (iii) any other reports required to be delivered by Lender and its members;

(d) Borrower shall provide Lender and its members with Notice of any written or oral notice of any (i) default or failure of compliance with respect to any other financial, contractual or governmental obligation of Borrower; (ii) IRS proceeding regarding the Property or Borrower; (iii) litigation, criminal action or administrative proceeding against Borrower or any Affiliate of Borrower; or (iv) communication from any other Lender or the Secretary of State of the State of Utah or any other Person or governmental authority which is not in the ordinary course of business;

(e) Borrower shall maintain its status as a QALICB and shall operate the Property in a manner that satisfies, and shall continue to satisfy, all restrictions applicable to the Property and projects generating New Markets Tax Credits;

(f) Borrower shall maintain its status as a Qualified Business;

(g) unless otherwise consented to, in writing, by Lender, each tenant under a lease or sublease with respect to the Project must constitute a Tenant Qualified Business;

(h) with respect to any draw of the proceeds of the Loan made pursuant to this Agreement, Borrower shall expend such draw on the Project within one (1) year of the draw;

(i) with respect to any taxable year, at least fifty percent (50%) of the total gross income of Borrower will be derived from the active conduct of a Qualified Business within the Census Tract;

(j) with respect to any taxable year, at least fifty percent (50%) of the use of the tangible property of Borrower (whether owned or leased) will be within the Census Tract (for purposes of this representation, the percentage of tangible property owned or leased by Borrower and used by Borrower during the taxable year in the Census Tract shall be determined based on a fraction (i) the numerator of which is the Average Value of the tangible property owned or leased by Borrower and used by Borrower within the Census Tract during the taxable year, and (ii) the denominator of which is the Average Value of all of the tangible property owned or leased by Borrower and used by Borrower during the taxable year with respect to the Project); provided, however, that for any taxable year in which Borrower has no employees, at least eighty-five percent (85%) of the use of the tangible property of Borrower (whether owned or leased will be within the Census Tract. Borrower will provide Lender with a true, correct and complete list of tangible property owned or leased by Borrower and a description of where such property is used by Borrower. If any property is used by Borrower outside of a Low-Income Community, Borrower shall provide, the cost basis of all property owned by Borrower, the estimated value of any leased property and the basis of such estimate, and the business hours of usage of Borrower's property within and without the Low-Income Community. Borrower shall retain records of the foregoing throughout the term of the Loan;

(k) with respect to any taxable year, less than five percent (5%) of the average of the unadjusted basis of the property of Borrower will be attributable to Nonqualified Financial Property. Borrower will provide to Lender a true, correct, and complete listing of any Nonqualified Financial Property owned by Borrower, including the unadjusted basis of such property. Borrower shall maintain records thereof throughout the term of the Loan;

(l) with respect to any taxable year in which Borrower, or any Affiliate of Borrower that is primarily engaged in providing services to Borrower, has one or more employees providing services with respect to the Project, at least fifty percent (50%) of the services performed for Borrower by its employees will be within the Census Tract (for purposes of this representation, this percentage is determined based on a fraction (i) the numerator of which is the total amount paid by Borrower for employee services performed in the Census Tract during the taxable year, and (ii) the denominator of which is the total amount paid by Borrower for employee services during the taxable year). Borrower will provide to Lender a true, correct and complete list of its employees that includes a general description of services provided and the location where services were performed, and, if applicable, compensation paid for services rendered within and without the Low-Income Community. Borrower shall retain records of the foregoing throughout the term of the Loan;

(m) with respect to any taxable year, less than five percent (5%) of the aggregate unadjusted basis of Borrower's property will be attributable to Collectibles;

(n) at no time shall any of the Improvements that make up the Property be used as, converted into, or otherwise constitute Residential Rental Property;

(o) no portion of the Property has received or shall receive the benefit of Low-Income Housing Tax Credits, as described in Section 42 of the Code;

(p) neither Borrower nor any of its principals shall be debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Tribunal;

(q) Borrower shall not be a bank, credit union or other financial institution;

(r) Borrower shall not discontinue conducting business or change the nature of, or manner in which it conducts its business in any way that would cause to be untrue any of the representations, warranties or covenants set out in this Agreement;

(s) at no time during the NMTC Recapture Period shall Borrower be an entity disregarded as separate from any other entity for federal income tax purposes;

(t) Borrower shall treat the Loan as indebtedness for all purposes, and shall not take any positions contrary to such treatment;

(u) Borrower shall promptly supply Lender with any reports, records, statements, documents or other information reasonably requested by Lender in connection with responding to any request by the CDFI Fund and the US Department of Treasury, including any request pursuant to Section 6.3 or Section 6.5 of the Allocation Agreements (*e.g.*, financial and activity reports, records, statements, documents and other information for purposes of ensuring compliance with this Section 7.32) as may be required to comply with the New Markets Tax Credit requirements, and shall promptly cooperate with Lender to enable Lender to comply with all of the requirements of the Allocation Agreements. In connection therewith, Borrower shall maintain records of:

(i) if applicable, the activities and services performed by employees and the administration of their employment (including where their services are performed and, in instances where such employees also perform services for persons or entities other than Borrower, the allocation of their time between Borrower and any such other person or entity) that are sufficient to establish compliance with the requirements of this Section 7.32;

(ii) the average values and locations of tangible personal property of Borrower that are sufficient to establish compliance with the requirements of this Section 7.32; and

(iii) the unadjusted bases of the property of Borrower generally and in particular, any collectibles and any Nonqualified Financial Property it may own, that are sufficient to establish compliance with the requirements of this Section 7.32;

(v) Borrower shall provide all information, reports and statements reasonably requested by Lender for purposes of Lender's reporting requirements pursuant to the Allocation Agreements, to monitor compliance with Section 45D of the Code, and to measure the community benefit of the Loan;

(w) Borrower shall promptly notify Lender of any noncompliance with this Section;

(x) Borrower shall provide such information and sign such documents as are necessary for Lender and the Investment Fund to make timely, accurate and complete submissions of (i) federal and state income tax returns, (ii) reports to governmental agencies, and (iii) any other reports required to be delivered to Lender and the Investment Fund or their members;

(y) Borrower shall generate revenues from the Property within three (3) years after the date hereof;

(z) Borrower shall not take any action, or fail to take such action, which would result in USBCDC, the Investment Fund, Lender, or any of their Affiliates and/or members having NMTC Control of Borrower;

(aa) Borrower shall collaborate with Lender with respect to the response to be made to any 90-day notice of noncompliance and ability to cure the provisions of this Section 7.32 provided by the CDFI Fund to Lender pursuant to Section 8.6 of the Allocation Agreements;

(bb) Borrower shall cooperate with Lender and their members in seeking any waiver or extension sought by Lender and its members with respect to a NMTC Recapture Event (regardless of whether or not Borrower has violated any covenants provided herein or failed to act or not act as directed by Lender and its members), pursuant to Section 1.45D-1(e)(5) of the Treasury Regulations and Rev. Proc. 2008-1, 2008-1 I.R.B. 1;

(cc) Borrower shall not, by its action or inaction, cause a NMTC Recapture Event and shall cooperate with Lender and their members to the extent necessary to cure any such NMTC Recapture Event, as permitted by the NMTC Requirements;

(dd) in the event that Lender receives a payment of, or for, capital, equity or principal which triggers the reinvestment requirements of Section 1.45D-1(d)(2) of the Treasury Regulations, Borrower shall cooperate to the extent required by Lender and its members;

(ee) Borrower shall be responsible for informing Lender and their members of any failure by Borrower, whether through its actions or omissions, to comply with the duties and responsibilities set forth in this Section 7.32 of which Borrower has Knowledge within ten (10) calendar days of the occurrence of such an event;

(ff) Borrower shall supply Lender with such information as may be reasonably requested by Lender for inclusion in reports concerning the economic impact of New Markets Tax Credits provided by Lender, including, without limitation, information on the number of jobs created by the Project and associated payroll information;

(gg) Borrower shall provide Lender with a bi-annual NMTC Compliance Certificate by April 30th and November 15th of each year during the NMTC Recapture Period in the form attached hereto as Exhibit E (which certificate is subject to revision by Lender and/or USBCDC from time to time) to confirm compliance with the representations, warranties and covenants set forth in this Agreement, including in such certification the current percentages or ratios under the above paragraphs that are applicable to Borrower at such time;

(hh) As of the date hereof and at all times thereafter during the term of the Loan, the following shall be true and correct: Borrower shall maintain, or cause to be maintained, its records, books of account, bank accounts, financial statements, accounting records and other entity documents separate and apart from those of any other Person, shall not maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person and will not be or become a disregarded entity and shall file its own tax returns as required under federal and state law. Such books and records shall be maintained throughout the NMTC Recapture Period and for a period of forty-two (42) months from the last day of the year in which the NMTC Recapture Period ended;

(ii) Borrower shall provide Lender with a summary report of the books and records of Borrower as required under this Agreement. Further, Borrower shall disclose such additional information to Lender and/or USBCDC as may be reasonably required to support such entries;

(jj) Borrower shall furnish the following financial information prepared in accordance with generally accepted accounting principles concerning Borrower and the Project:

(i) current annual financial statements for Borrower, including a balance sheet, an income statement and a cash flow statement, within one hundred twenty (120) calendar days following the end of each fiscal year of Borrower,

(ii) within sixty (60) calendar days after the end of each calendar quarter, an operating statement for the Project for such calendar quarter and for the immediately preceding four calendar quarters,

(iii) any reports and information reasonably required by Lender to maintain compliance with NMTC Requirements including those reports set forth in this Section 7.32, and

(iv) such other information and reports concerning the financial affairs of Borrower or the Project as Lender may reasonably request.

(kk) Borrower shall maintain separate bank accounts, and shall not commingle the assets of Borrower with any Person. Borrower shall not possess or use assets of any other Person, and Borrower shall not permit any other Person to possess or use its assets, unless in

either case such assets are rented, leased, or otherwise provided for use on an arms-length basis pursuant to a lease or services agreement or similar agreement with such Person. Borrower shall not have any employees, and any services performed for or on behalf of Borrower by employees of any other Person (including any affiliate of Borrower) shall be performed on an arms-length basis pursuant to a services agreement or similar agreement with such Person;

(ll) Borrower shall permit representatives of Lender to have free access to and to inspect and copy all books, records and contracts of Borrower. Any such inspection by Lender and its representatives shall be for the sole benefit and protection of Lender, and Lender shall not have any obligation to disclose the results thereof to Borrower or to any third party;

(mm) In the event further regulatory guidance is hereafter issued detailing additional requirements that must be met in order to demonstrate that complete and separate books and records are being maintained for purposes of Section 1.45D-1(d)(4)(iii) of the Treasury Regulations, Borrower agrees to comply with such additional requirements within a reasonable time following receipt;

(nn) Borrower shall use all of the proceeds of the Loan in connection with completion of the Project as set forth in the Budget, and the Project's books and records shall be maintained in such a manner that such Loan proceeds can be traced to the Project;

(oo) neither Borrower nor any Affiliate thereof nor any of its principals shall be debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency as such terms are defined in Executive Order 12549; and

(pp) Borrower shall not discontinue conducting business, as contemplated by the Loan Documents, shall not materially change the nature of its business, and shall not materially change the manner in which its business activities are conducted, other than changes in the nature of its business or the manner in which it conducts its business that do not cause the Loan to cease to constitute a QLICI (as determined by Lender in its good faith judgment and based upon the advice of counsel) and which are otherwise permitted hereunder.

(qq) Without limiting any other rights or remedies of Lender, Borrower acknowledges and agrees that (i) the failure of the Loan to constitute a QLICI, as well as the failure of Borrower to provide the certifications and other information that Lender may require in order to confirm and report that each Loan constitutes a QLICI, will have a material adverse effect on Lender, and (ii) accordingly, in the event that any Event of Default shall arise as a result of (A) any of the representations and warranties set forth herein not being true in any material respect or (B) a breach, violation, or failure to comply with any of the covenants set forth herein, such Event of Default shall be material and shall entitle Lender to exercise any and all remedies available under the Loan Documents, or at law or in equity on account of any such Event of Default.

7.33 [Reserved]

7.34 [Reserved]

8. EVENTS OF DEFAULT AND REMEDIES.

8.1 Events of Default.

The following shall constitute Events of Default hereunder:

(a) if Borrower shall fail to pay any sum due and owing under the Notes within ten (10) Business Days after such amount becomes due and payable or if Borrower shall fail to comply with any other monetary covenant hereunder or under any of the other Loan Documents within ten (10) Business Days of such amount becoming due and payable;

(b) if Borrower fails to comply with any non-monetary covenant made by it hereunder or under any of the other Loan Documents (other than a failure which would be an Event of Default under another subparagraph of this Section 8.1 and other than an Event of Default described in subparagraph 8.1(c) hereof) within thirty (30) calendar days after receipt of written notice of such default from Lender; provided, however that if such default results in a lien that has priority over Lender's lien in collateral supporting the obligations arising out of this Agreement and the priority of Lender's lien is not fully insured over such prior lien by Lender's title policy, or if Borrower has committed any fraud or conversion as to such collateral or misrepresentation as to the value or condition of such collateral, Lender needs not provide Borrower with any notice of or right to cure such default; further provided, however, that the cure period to comply with such non-monetary covenants, agreements, and obligations shall be extended for a period of not more than an additional sixty (60) days if the ability to cure such failure to comply within the specified cure period is not within the reasonable control of Borrower (as determined by Lender), the failure can be cured by Borrower within such extended cure period, and Borrower promptly and in good faith undertakes the curing of such failure and diligently thereafter in good faith pursues the curing to completion;

(c) if at any time any material representation, covenant or warranty of Borrower made herein, including, without limitation, Section 3.16 and Section 7.32 of this Agreement, or in any of the other Loan Documents, including the application for the Loan or any certificate submitted with any Request for Disbursement, or at any time any material representation, covenant or warranty of SUU made in the Development Agreement or in the Master Lease, shall be incorrect in any material respect when made;

(d) if any default or event of default shall exist under any of the Loan Documents other than this Agreement, and such default or event of default shall continue beyond any applicable grace or cure periods;

(e) if the construction of the Project is not carried on with reasonable dispatch, and in accordance with the Schedule of Construction, or at any time be discontinued for a

period of ten (10) consecutive Business Days; provided, however, this paragraph shall not apply to Unavoidable Delays;

(f) if Borrower, other than as herein provided, executes any security agreement, chattel mortgage or other instrument creating a security interest in any materials, fixtures or articles intended to be incorporated in the Project, the Improvements or the appurtenances thereto, or in any articles of personal property placed in the Improvements, or files or permits the filing of a financing statement publishing notice of such security interest, or if any of such materials, fixtures or articles be not purchased so that the ownership thereof shall vest unconditionally in Borrower on delivery at the Property, or if Borrower does not produce to Lender upon demand the contracts, bills of sale, statements, receipted vouchers or agreements, or any of them, under which Borrower claims title to such materials, fixtures and articles;

(g) if Borrower does not disclose to Lender upon demand, the names of all Persons with whom Borrower has contracted, or, if known, intends to contract with for the construction of the Project or for the furnishing of labor or material therefor;

(h) if Borrower is unable to satisfy any condition to its right to the receipt of a Disbursement hereunder or under the Disbursing Agreement, for a period in excess of ten (10) calendar days;

(i) if Borrower defaults beyond any applicable grace or cure period under the Construction Documents or any other indebtedness of Borrower, or if SUU defaults beyond any applicable grace or cure period under the Development Agreement, or if SUU defaults beyond any applicable grace or cure period in the payment of any indebtedness of SUU in excess of \$100,000 or in the observance or performance of any other agreement or condition relating to any such indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, in each case, the effect of which default or other event or condition is to cause, or to permit the holder or beneficiary of such indebtedness (or a trustee or agent on behalf of such holder or beneficiary) to cause, with the giving of notice if required, such indebtedness to become due prior to its stated maturity or (in the case of any such indebtedness constituting a contingent obligation) to become payable;

(j) if Borrower assigns this Agreement or any Disbursement to be made hereunder or any interest in either, or if the Property be conveyed, assigned, mortgaged, pledged or encumbered in any way other than as herein provided without the prior written consent of Lender;

(k) if a lien or claim of lien for the performance of work or the supply of materials be filed against the Property and remains unsatisfied for a period of thirty (30) calendar days after the date of filing thereof, or if the Title Company refuses to insure or commit to insure any Disbursement made hereunder; provided that Borrower may cure this default by escrowing an amount equal to one hundred twenty-five percent (125%) of the amount of such claim with Lender, bond over and contest such lien or claim of lien; provided, however, that

such cure does not prevent Borrower from making timely principal, interest and other payments as required under this Agreement;

(l) if Borrower shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or if any proceeding shall be instituted by Borrower seeking to adjudicate it bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, or similar official for it or for any substantial part of its property; or if any proceeding shall be instituted against Borrower seeking to adjudicate it bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of its or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, or similar official for it or for any substantial part of its property and any such proceeding is not dismissed within ninety (90) calendar days after the commencement of such proceeding; or if Borrower shall take any action to authorize any of the actions set forth in this subparagraph (l);

(m) If SUU shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; if any proceeding shall be instituted by SUU seeking to adjudicate it as bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, or similar official for it or for any substantial part of its property; if any proceeding shall be instituted against SUU seeking to adjudicate it as a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, or similar official for it or for any substantial part of its property and any such proceeding is not dismissed within ninety (90) calendar days; or if SUU shall take any action to authorize any of the actions set forth in this subsection (m).

(n) if SUU shall fail to perform, observe or comply with, or a default or event of default shall occur under any of the terms, covenants, conditions or provisions contained in the Development Agreement (including, without limitation, failure of SUU to deliver funds to pay for the Lessee Improvements when so requested by Borrower) and in any such instance, any applicable cure period has elapsed, or if Development Agreement shall for any reason cease to be valid and binding on SUU, or SUU shall so state in writing.

(o) if any judgment or order, that is beyond all applicable appeal periods, singly or in the aggregate, for the payment of \$10,000 or more in excess of available insurance shall be rendered against Borrower and either (i) enforcement proceedings shall have been

commenced by any creditor upon such judgment or order, or (ii) there shall be any period of sixty (60) consecutive calendar days during which a stay of enforcement of such judgment or order by reason of a pending appeal or otherwise shall not be in effect; provided, however, that any such judgment or order shall not be deemed an Event of Default under this subparagraph if and for so long as (A) the amount of such judgment or order is covered by a valid and binding insurance policy covering payment thereof by a solvent and reputable insurer, and (B) such insurer has been notified of, and has not disputed the claim made for payment of, the amount of such judgment or order, or Borrower provides Lender with an acceptable bond, letter of credit or other assurances, which is satisfactory to Lender, that Borrower has the required funds to satisfy the judgment following final resolution of all matters relating to such judgment;

(p) if any material provision of any Loan Document shall for any reason cease to be valid and binding on Borrower, or Borrower shall so state in writing; or if the Deed of Trust after delivery thereof to Lender shall for any reason, except to the extent permitted by the terms thereof, ceases to create a valid and perfected first-priority lien and security interest in any of the collateral purported to be covered thereby, subject to any cure rights otherwise provided in this Section 8.1;

(q) if there shall occur, in the reasonable judgment of Lender, any material adverse change in the financial condition, business, operations or prospects of Borrower or SUU;

(r) any challenge, whether by litigation or otherwise, shall be asserted against the validity of this Agreement, the development of the Project or any of the transactions carried out pursuant to any of them, including, without limitation, a claim that Borrower or SUU has no authority to enter into them, or that such transactions violate any federal, state or municipal constitution, charter, law, ordinance, regulation, resolution or rule, or any court order;

(s) any Change in Control of Borrower;

(t) if notice is given to Lender purporting to terminate the operation of the Deed of Trust as security for future Disbursements and/or future obligations;

(u) if the SUU defaults under the Master Lease and any such default remains uncured after any applicable notice and cure periods or the Master Lease terminates for any reason; and

(v) if DFCM shall have failed to perform, observe or comply with, or a default or event of default shall occur under any of the terms, covenants, conditions or provisions contained in the Construction Documents and in any such instance, any applicable cure period has elapsed, or if the Construction Documents shall for any reason cease to be valid and binding on DFCM, or DFCM shall so state in writing.

8.2 Remedies.

(a) Upon the occurrence of any Event of Default, Lender, in addition to all remedies conferred upon Lender by law and by the terms of the other Loan Documents, or other documents serving as security for Borrower's indebtedness, may pursue any one or more of the following remedies:

(i) to refuse to advance any additional Loan Proceeds hereunder;

(ii) to cancel this Agreement by written notice to Borrower, in which event Lender shall be fully released and relieved of all further obligations and liabilities to Borrower hereunder;

(iii) to institute appropriate proceedings to specifically enforce performance hereof;

(iv) to take immediate possession of the Property, as well as all other property to which title is held by Borrower as is necessary to fully complete all on-site and off-site improvements contemplated to be developed and/or constructed under this Agreement;

(v) to appoint a receiver as a matter of strict right without regard to the solvency of Borrower for the purpose of preserving the Property and the Improvements, preventing waste and to protect all rights accruing to Lender by virtue of this Agreement or under the Loan Documents and expressly to make any and all further improvements, whether on-site or off-site, as may be determined by Lender for the purpose of completing the Project in accordance with this Agreement. All expense incurred in connection with the appointment of said receiver, or in protecting, preserving, or improving the Property and the Improvements, shall be chargeable against Borrower and shall be enforced as a lien against the Property;

(vi) to accelerate maturity of the Notes, and demand payment of the principal sums due thereunder with interest, advances and costs, and in default of said payment or any part thereof, to exercise the power of sale, if given and available, and pursue any or all of its other rights and remedies under the Deed of Trust and the other Loan Documents;

(vii) to foreclose and to enforce collection of such payment by foreclosure under the Deed of Trust and/or other appropriate action in any court of competent jurisdiction;

(viii) upon or after the occurrence and during the continuation of any Event of Default, Lender is hereby authorized at any time and from time to time, without notice to Borrower (any such notice being hereby waived by Borrower), to set-off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by Lender to or for the credit or the account of Borrower against any and all of the obligations of Borrower to

Lender, irrespective of whether or not Lender shall have made any demand under this Agreement or any of the other Loan Documents and although such obligations may be unmatured; and/or

(ix) to establish and require Borrower to pay into reserves imposed by Lender in its reasonable credit judgment.

(b) The rights of Lender hereunder are in addition to any other rights and remedies (including, without limitation, other rights of set-off) which Lender may have at law or in equity.

(c) The remedies and rights of Lender shall be cumulative and not exclusive of any other remedies of Lender under any other provision of this Agreement or under any other instrument or at law or in equity. Lender shall be privileged and have the absolute right to resort to any one or more or all of said remedies, none to the exclusion of the others, concurrently or successively, in such order as Lender may select. Except if Lender chooses the option of specific performance, Lender shall have the absolute right to refuse to disburse and to apply any balance of the funds of the Loan as a payment toward the Notes and any obligations under the Deed of Trust to the extent not prohibited by law. No other party, whether architect, engineer, contractor, subcontractor, laborer, materialman or supplier, shall have any interest in the Loan funds so applied and shall not have any right to garnish, require or compel payment thereof toward discharge or satisfaction of any claim or lien which they or any of them have or may have for work performed or materials supplied to the Project. Any additional funds advanced by Lender pursuant to this Agreement shall be secured by the lien of the Deed of Trust and shall be considered a part of the Loan as though initially included therein.

(d) As security for the payment and performance of all obligations of Borrower under the Loan Documents, Borrower hereby grants Lender a security interest in, a lien on, and an express contractual right to set off against all depository account balances, cash, and any other property of Borrower now or hereafter in the possession of Lender and the right to refuse to allow withdrawals from any account. Lender may, at any time upon the occurrence of any Default or Event of Default under this Loan Agreement or any other Loan Document, setoff against any amounts outstanding under the Loan whether or not the Loan or any portion thereof is then due or has been accelerated, all without any advance or contemporaneous notice of demand of any kind to Borrower, such notice and demand being expressly waived.

9. LENDER'S RIGHT TO COMPLETE.

9.1 Lender's Right.

Upon the occurrence of any contingency (and the expiration of any applicable cure period) of the character described in Section 8 which would give Lender the right under this Agreement to refrain from making any further Disbursement hereunder, Lender, at its sole option (whether or not they exercised any rights under Section 8) but without any obligation

upon Lender to do so, may at any time thereafter (1) advance the proceeds of the Loan or any part thereof, or if necessary, sums in excess of the Loan Proceeds, to the General Contractor, any subcontractor or any person furnishing labor or material in the construction of the Project for the account of Borrower, and the sums so paid or advanced shall for the purposes of this Agreement, be deemed to have been advanced to Borrower pursuant to the provisions hereof; and (2) take possession of the Property together with all materials, equipment and improvements thereon whether affixed to the realty or not, and all Plans and Specifications, which Borrower hereby assigns to Lender, and Lender shall have the right but shall be under no obligation to perform any and all work and labor necessary to complete the Project substantially according to the Plans and Specifications and may employ watchmen or take any action they may deem necessary to protect them from depredation or injury.

9.2 Lender's Implementation.

To implement the rights of Lender under this Section 9, Lender shall have the authority and right to complete the Project as follows:

(a) to use the balance of the Loan including any funds of Borrower which may not have been advanced for the purpose of completing the Project;

(b) to make such additions and changes and corrections in the Plans and Specifications as may be necessary or desirable to complete the Project in substantially the manner contemplated in the Plans and Specifications;

(c) to succeed to the rights of Borrower under the General Construction Contract and all or any one or more Subcontracts, or to make new contractual arrangements to employ the present or new contractors, subcontractors, agents, architects and inspectors as shall be required;

(d) to pay, settle or compromise all existing bills and claims which may be or become liens against the Property, the Project or the Improvements or as may be necessary or desirable for completion of the Improvements or for the clearance of title;

(e) to execute all applications, certificates or instruments in the name of Borrower which may be required by any governmental authority or contract; and

(f) to do any and every act which Borrower might or could do in its own behalf.

Lender, in its name or on behalf of Borrower, shall also have power to prosecute and defend all actions and proceedings in connection with the construction of the Project on the Property and to take such action and require such performance as it deems necessary. Borrower hereby assigns and quitclaims to Lender all sums unadvanced hereunder conditioned upon the use of said sums in trust for the completion of the Project, such assignment to become effective only at the option of Lender in the event of the occurrence of any such contingency of the character described in Section 8. In addition it is agreed that Lender may, at its option, expend money in completing said construction and protecting and preserving the Property, which shall be over and above the total amount of the funds in the

Loan fund to the maximum extent permitted by the law of the applicable jurisdiction, and said money when so expended, shall be added to the principal of the Loan and the same, together with interest thereon at the default rate specified in the Notes, shall be secured by the lien of the Loan Documents and shall be payable by Borrower on demand.

10. CASUALTY LOSS AND CONDEMNATION.

(a) If the Project is partially or totally damaged or destroyed by fire or other casualty Lender may, in its sole discretion, require the Borrower to repay the Loan in full. In the alternative, Lender may, in its sole discretion, require the Borrower to repair and restore the Project with the proceeds of casualty insurance paid to the Lender, together with any such sum that Lender, in its sole discretion, should require Borrower to deposit with Lender (“Deficiency Deposit”) in order to fully repair and restore the Project to the satisfaction of Lender, subject to the following conditions:

(i) Borrower shall diligently prosecute the work of repair and restoration to completion,

(ii) if any casualty insurance proceeds are disbursed to the Lender, the Borrower’s obligation to proceed with such repair and restoration shall be contingent upon the Lender disbursing to the Borrower the proceeds of such insurance to pay the cost of such repair and restoration in accordance with the same terms and conditions applicable to disbursements of the Loan proceeds pursuant to terms and conditions of Section 2.2 of the Loan Agreement and the Disbursing Agreement (as defined in the Loan Agreement),

(iii) the cost of such repair and restoration shall in no event or under any circumstance exceed the sum of insurance proceeds and the Deficiency Deposit available for restoration,

(iv) the Project can be restored within twelve (12) months,

(v) no Event of Default shall exist, and

(vi) the Master Lease shall be in full force and effect.

If the Lender is required to disburse any insurance proceeds or Borrower funds for such repair and restoration, such amounts shall be disbursed on the basis of certifications of the Construction Consultant Loanas to costs incurred by the Borrower for work in place as part of such repair and restoration as set forth with more specificity in the Disbursing Agreement and otherwise on terms and conditions satisfactory in all respects to the Senior Construction Lender .

(b) If all or any part of the Project is damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of Borrower’s remaining unpaid

indebtedness under the Loan, is hereby assigned to Lender, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Borrower and the same shall be paid forthwith to Lender. Such award or monies shall be applied to Borrower's indebtedness under the Loan, irrespective of whether such debt is then due and payable and, at any time from and after the taking Lender may declare the whole of the balance of Loan to be due and payable. Notwithstanding the provisions of this section to the contrary, if any condemnation or taking of less than the entire Project occurs and provided that (i) no Loan Default Event under the Loan Documents and no event or circumstance which with the passage of time, the giving of notice or both would constitute a Loan Default Event thereunder then exists, and (ii) such partial condemnation, in the reasonable discretion of Lender, has no material adverse effect on the operation or value of the Project, then the award or payment for such taking or consideration for damages resulting therefrom may, subject to the terms and conditions set forth in this Section above regarding the use of casualty proceeds, be used to repair and restore the Project, with any remaining balance applied to Borrower's full indebtedness under the Loan.

11. GENERAL CONDITIONS.

The following conditions shall be applicable throughout the term of this Agreement:

11.1 No Waiver.

No Disbursement of the Loan Proceeds hereunder nor any future advance shall constitute a waiver of any of the obligations set forth herein, nor, in the event Borrower is unable to satisfy any such condition, shall any such waiver have the effect of precluding Lender from thereafter declaring such inability to be an Event of Default hereunder.

11.2 Form Satisfactory.

All proceedings taken in connection with the transactions provided herein, all documents required or contemplated by this Agreement, the designation of the persons responsible for the preparation and execution thereof and the form of all policies of insurance and the issuers thereof shall be reasonably satisfactory to Lender in all respects.

11.3 Notices.

Any notice, request, demand, consent, confirmation or other communication hereunder shall be in writing and delivered (a) in person, by messenger or overnight courier, (b) by registered or certified mail, return receipt requested and postage prepaid, or (c) by facsimile, to the applicable party at its address or facsimile number set forth below, or at such other address or facsimile number as such party hereafter may designate as its address for communications hereunder by notice so given. Such notices and communications shall be deemed delivered upon receipt (or refusal to accept delivery); provided that all notices and communications sent by facsimile shall also be evidenced by the facsimile machine's confirmation identifying the recipient's facsimile number and transmission; and provided

further that all notices or other communications sent by facsimile shall also delivered by another means permitted by this Section 11.3.

(a) If to Borrower: Utah Shakespeare Festival Foundation
c/o Southern Utah University
132 West College Avenue
Cedar City, Utah _____
Attn: _____
Facsimile:

With a copy to:

Jones Waldo
170 S. Main Street, Suite 1500
Salt Lake City, UT 84101
Attn: Tom Berggren
Facsimile: (801) 328-0537

(b) If to Lender: Alliance Finance Fund 4, LLC
c/o Community Development Finance Alliance
1165 Wilmington Avenue, Suite 200
Salt Lake City, UT 84106
Attn: President and/or Board Chair
Facsimile: (801) 366-0402

With a copy to:

Kantor Taylor Nelson Evatt & Decina PC
901 Fifth Avenue, Suite 4000
Seattle, WA 98164
Attention: Thomas H. Nelson
Facsimile: 206-607-1852

And with copies to:

And to:

11.4 No Oral Amendments.

Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of such change, waiver, discharge or termination is sought.

11.5 Additional Remedies.

The remedies herein provided shall be in addition to and not in substitution for the rights and remedies which would otherwise be vested in Lender in any Loan Document or at

law or in equity, all of which rights and remedies are specifically reserved by Lender. The remedies herein provided or otherwise available to Lender shall be cumulative and may be exercised concurrently. The failure to exercise any of the remedies herein provided shall not constitute a waiver thereof, nor shall use of any of the remedies hereby provided prevent the subsequent or concurrent resort to any other remedy or remedies. It is intended that all remedies herein provided for or otherwise available to Lender shall continue and be available to Lender until all sums due them by reason of this Agreement have been paid to them in full and all obligations incurred by them in connection with the ownership or operation of the Project and the Improvements have been fully discharged without loss or damage to Lender.

11.6 No Partner.

Lender is not a partner with Borrower or any other party in the operation of the Project or the Improvements. Lender shall not in any way be liable or responsible by reason of the provisions hereof, or otherwise, for the payment of any claims growing out of the operation of the Project or any Improvements.

11.7 Deed of Trust as Security.

The Deed of Trust shall constitute security for all monies advanced by Lender under the Notes. All obligations incurred by Lender in excess of the Loan advanced or incurred by Lender pursuant to the authority of this Agreement shall constitute a lien upon Borrower's leasehold interest in the Property secured by the Deed of Trust, and recovery therefore may be had by Lender upon the Deed of Trust, in addition to all other remedies herein granted to Lender. Anything to the contrary herein notwithstanding, the breach of any Loan Document does not impose any general obligation or liability upon the Utah Board of Regents, SUU, the State of Utah, the proceeds of ad valorem taxes, or appropriations from the Utah Legislature.

11.8 Usury Savings.

Notwithstanding any provision herein or in any other Loan Document, the total liability of Borrower for any payments of interest or in the nature of interest shall not exceed the maximum limits imposed by the usury laws of the State of Utah. In the event that such payment is paid by Borrower or received by Lender, then such excess sum shall be credited as a payment of principal, unless Borrower shall notify Lender, in writing, that it elects to have such excess sum returned forthwith. Such credit or return shall not cure or waive any Event of Default under this Agreement, the Notes, the Deed of Trust or any other Loan Document.

11.9 Assignment by Lender.

Lender may pledge or otherwise hypothecate or may assign, in whole or in part, or issue participating interests in and to, this Agreement and any of their rights and security hereunder, the Notes, the Deed of Trust, and all of the other Loan Documents to any other person, firm or corporation; provided that all of the provisions of this Agreement shall

continue to apply to the Loan, the Notes, and the Deed of Trust. In the event of such assignment, it shall be deemed a compliance by Lender with this Agreement and to have been made in pursuance of this Agreement and not to be in modification hereof, and the Disbursement made by any such assignee shall be evidenced by the Notes, and shall be secured by the Deed of Trust. In the case of any such transfer by Lender, whether by assignment, issuance of participations, pledge, or hypothecation, Borrower will accord full recognition thereto and agrees that all rights and remedies of Lender in connection with the interest so transferred shall be enforceable against Borrower by any such assignee with the same force and effect and to the same extent as the same would have been enforceable by Lender but for such transfer.

11.10 Additional Documents.

Borrower agrees upon demand to do any act or execute any additional documents (including, without limitation, security agreements on any personalty included or to be included in the Property or the Improvements) as may be reasonably required by Lender to secure the Notes or to confirm the lien of the Deed of Trust. All of said documents shall be in form and substance prepared by or acceptable to Lender.

11.11 Binding Effect; Continuing Agreement.

The terms, conditions, covenants, agreements, powers, privileges, notices and authorizations herein contained shall extend to, be binding upon and available to the heirs, executors, administrators, successors and, to the extent permitted hereunder, the assigns of each of the respective parties hereto. Notwithstanding the foregoing, Borrower shall not, without the prior written consent of Lender, assign or transfer this Agreement, whether voluntarily or by operation of law. An assignment or transfer in violation of this provision shall be invalid, of no force or effect and an Event of Default hereunder. Borrower's obligations, covenants, representations and warranties hereunder shall continue beyond the final disbursement of the Loan made hereunder for so long as Borrower has any obligations outstanding to Lender hereunder, or Lender has any lien on any property of Borrower.

11.12 Governing Law.

This Agreement and each transaction consummated hereunder shall be deemed to be made under the internal laws of the State of Utah and shall be construed in accordance with and governed by the laws of said State, without regard to the choice of law rules of that State, except to the extent that any of such laws may now or hereafter be preempted by Federal law.

11.13 Headings.

The titles and headings of the Sections of this Agreement have been inserted for convenience of reference only and are not intended to summarize or otherwise describe, or limit, modify or expound upon the subject matter of such Sections.

11.14 Consent to Forum.

As part of the consideration for new value this day received, Borrower hereby consents to the jurisdiction of any state court located within Salt Lake City or the United States District Court for the District of Utah, and any appellate court from any thereof, and waives personal service of any and all process upon Borrower and consents that all such service of process be made by certified or registered mail directed to Borrower at the address set forth in the preliminary statements hereof, and service so made shall be deemed to be completed upon actual receipt thereof. Nothing contained herein should be deemed to affect the parties' right to remove to Federal Court within the District of Utah. Borrower waives any objection to jurisdiction and venue of any action instituted against Borrower as provided herein and agrees not to assert any defense based on lack of jurisdiction or venue. Borrower further agrees not to assert against Lender (except by way of a defense or counterclaim in a proceeding initiated by Lender) any claim or other assertion of liability with respect to this Agreement, the Notes, any of the other Loan Documents, Lender's conduct in respect of any of the foregoing or otherwise in any jurisdiction other than the foregoing jurisdictions. Nothing in this Section 11.14 shall affect the right of Lender to serve legal process in any other manner permitted by law or affect the right of Lender to bring any action or proceeding against Borrower in the courts of any other jurisdictions.

11.15 Waiver of Jury Trial.

TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, EACH OF BORROWER AND LENDER HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY OR OF ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION BASED UPON OR ARISING UNDER THIS AGREEMENT OR ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DISCUSSIONS, DEALINGS, OR ACTIONS OF THE PARTIES TO THIS LOAN AGREEMENT OR ANY OF THEM (WHETHER ORAL OR WRITTEN) WITH RESPECT THERETO, OR TO THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREINAFTER ARISING, AT LAW OR IN EQUITY, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. EACH OF BORROWER AND LENDER HEREBY CONSENT AND AGREE THAT ANY SUCH CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION SHALL BE DECIDED BY A TRIAL COURT WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY HEREOF WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF BORROWER AND LENDER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY. BORROWER AND LENDER EACH ACKNOWLEDGE AND AGREE THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION (AND EACH OTHER PROVISION OF THIS AGREEMENT AND EACH OTHER DOCUMENT TO WHICH IT IS A PARTY) AND THAT THIS PROVISION IS A MATERIAL

INDUCEMENT FOR LENDER IN MAKING THE LOAN. BORROWER AND LENDER EACH FURTHER REPRESENT AND WARRANT THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

11.16 Duration of Agreement.

Borrower's agreements hereunder, including, without limitation, Borrower's agreements relating to maintenance of insurance, shall remain in effect after the Loan are fully disbursed so long as any amounts under any Note are outstanding or the Deed of Trust remains a lien on the Property.

11.17 Counterparts.

This Agreement may be executed in counterparts, any one of which shall be deemed an original, and all of which taken together shall be treated as one document.

11.18 Time is of the Essence.

Time is of the essence in the performance of this Loan Agreement and the other Loan Documents by Borrower, and each and every term thereof.

11.19 Purpose and Effect of Approval.

Lender's approval of any matter in connection with the Loan is for the sole purpose of protecting Lender's security and rights. No such approval shall result in a waiver of any default of Borrower. In no event shall Lender's approval be a representation of any kind with regard to the matter being approved.

11.20 Language of Agreement.

The language of this Loan Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any party.

11.21 Exchange of Information.

Borrower agrees that Lender may exchange or disclose financial and other information about Borrower with or to any of Lender's affiliates or other related entities and with any party that acquires a participation or other interest in all or part of the Loan.

11.22 Survival.

The representations, warranties, acknowledgments, and agreements set forth herein shall survive the date of this Loan Agreement.

11.23 Further Performance.

Borrower, whenever and as often as it shall be requested by Lender, shall execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered to Lender, such further instruments and documents, and do any and all things as may be requested, in order to carry out the intent and purpose of this Agreement and the other Loan Documents.

11.24 Opinions.

In connection with the issuance of certain opinion letters to be delivered by counsel to Lender, USBCDC, USB Fund, and other parties to the transaction described in the Recitals hereto, Borrower acknowledges and agrees that counsel to each of the Lender may rely on the representations, warranties and covenants contained in this Agreement, including, without limitation, Sections 3.16 and 7.32 in rendering such opinions as related to this transaction.

11.25 Attorney Fees.

In the event a suit or action is instituted to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees at trial, on any appeal, on any petition for review, in an arbitration proceeding, and in any bankruptcy proceeding, in addition to all other sums provided by law. Whether or not any court action is involved, all reasonable expenses incurred by Lender that are necessary at any time in Lender's opinion for the protection of their interest or the enforcement of their rights shall become a part of the obligations payable on demand and shall bear interest from the date of expenditure until repaid at the applicable rate of interest provided in the Notes.

11.26 Photographs and Other Media.

Borrower hereby authorizes Lender and USBCDC and their direct and indirect members to reproduce and display any media (including, without limitation, photographs and illustrations of the Project submitted to Lender by Borrower. Borrower represents and warrants to Lender and USBCDC and their direct and indirect members that Borrower has obtained any and all licenses and/or permissions necessary for Borrower's and Lender's and their direct and indirect members' use of such media. In conjunction with this authorization, Borrower shall provide Lender and USBCDC with external and internal pictures of the Project as requested by Lender no less frequently than annually.

11.27 Subordination, Non-Disturbance and Attornment Agreement.

Borrower and Lender shall deliver a subordination, non-disturbance and attornment agreement in the form attached hereto as **Exhibit F** no later than the date hereof.

11.28 Severability.

If any provisions contained in this Agreement or any document executed in connection herewith shall be invalid, illegal or unenforceable in any respect, under any

applicable law, the validity, legality and enforceability of the remaining provisions contained herein shall not, in any way, be affected or impaired, and such illegal, invalid or unenforceable provisions, at the reasonable request of Lender, shall be replaced by other provisions in accordance with the purpose and meaning of this Agreement.

[SIGNATURE PAGE FOLLOWS]

**COUNTERPART SIGNATURE PAGE
LOAN AGREEMENT**

IN WITNESS WHEREOF, the parties have set their signatures to this Loan Agreement as of the date first written above.

BORROWER:

UTAH SHAKESPEARE FESTIVAL FOUNDATION,
a Utah nonprofit corporation

By: _____
[Name]

[Signatures continue on following page]

**COUNTERPART SIGNATURE PAGE
LOAN AGREEMENT**

IN WITNESS WHEREOF, the parties have set their signatures to this Loan Agreement as of the date first written above.

LENDER:

ALLIANCE FINANCE FUND 5, LLC

a Utah limited liability company

By: Community Development Finance Alliance,
a Utah nonprofit corporation

Its: Manager

By: _____
Jessica Norie, President

[End of signatures]

EXHIBIT A

Legal Description of Property

EXHIBIT B

Form of Debarment Certification

NON DEBARMENT CERTIFICATE **CERTIFICATION REGARDING DEBARMENT, SUSPENSION,** **INELIGIBILITY AND VOLUNTARY EXCLUSION**

LOWER TIER COVERED TRANSACTIONS

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transactions, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier coverage transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

LOWER TIER COVERED TRANSACTIONS

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

UTAH SHAKESPEARE FESTIVAL FOUNDATION,
a Utah nonprofit corporation

By: _____
[Name]

Dated as of [_____]

EXHIBIT C
SCHEDULE OF INSURANCE REQUIREMENTS
[ATTACHED]

EXHIBIT D

[tbd]

EXHIBIT E

NMTC COMPLIANCE CERTIFICATE

EXHIBIT F

FORM OF SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT
AGREEMENT

4852-3987-2534, v. 5

**SECURED PROMISSORY NOTE
(A Note)**

[\$10,149,500]

[CLOSING DATE]

FOR VALUE RECEIVED, the undersigned, **UTAH SHAKESPEARE FESTIVAL FOUNDATION**, a Utah nonprofit corporation ("**Borrower**"), promises to pay to the order of **ALLIANCE FINANCE FUND 4, LLC**, a Utah limited liability company ("**Lender**"), in lawful money of the United States of America, the principal sum of [Ten Million One Hundred Forty-Nine Thousand Five Hundred and No/100 Dollars (\$10,149,500.00)] (the "**Loan**") or such lesser amount as may be advanced herein (this "**A Note**").

1. Definitions; Loan Agreement

(a) For the purposes of this Note, unless otherwise defined herein, capitalized terms used herein shall have the meaning ascribed to such terms in the Loan Agreement. The following definitions (some of which are restated from those definitions contained in the Loan Agreement) shall apply to the words and phrases used herein:

"**Business Day**" shall mean any day other than a Saturday, Sunday or a legal holiday on which banks are authorized or required to be closed for the conduct of commercial banking business in Salt Lake City, Utah.

"**Deed of Trust**" shall mean that certain Leasehold Deed of Trust with Security Agreement, Assignment of Leases and Rents, Financing Statement and Fixture Filing dated as of the date hereof executed by Borrower in favor of Lender.

"**Event of Default**" shall mean any of those events set forth in Section 8.1 of the Loan Agreement.

"**Interest Rate**" shall mean [1.000000%].

"**Loan Agreement**" shall mean that certain Loan Agreement, dated as of the date hereof, by and between the Lender, as lender, and the Borrower, as borrower.

"**Loan Documents**" shall mean the Loan Agreement, this A Note, the B Note, the Deed of Trust, financing statements, and all other documents, instruments and agreements which evidence, secure or are otherwise executed in connection with the Loan, including all amendments, modifications, renewals, extensions, restatements and replacements thereof.

"**Maturity Date**" shall mean the earlier of (i) [March 19, 2054], and (ii) the date on which the unpaid principal balance of this A Note becomes due and payable by acceleration

or otherwise pursuant to the Loan Documents or the exercise by Lender of any right or remedy under any Loan Document.

(b) All of the terms, covenants and agreements of the Loan Agreement and the other Loan Documents are incorporated herein by reference.

2. Interest, Payments and Maturity of Loan

(a) Subject to the terms and conditions of this A Note, interest will accrue on the outstanding principal amount of this A Note at the Interest Rate commencing as of the date first above written. Interest under this A Note shall be computed on the basis of a three hundred sixty (360) day year consisting of twelve (12) thirty (30)-day months; *provided, however*, the Interest calculated for partial months shall be based upon a 365-day year and actual days of accrual.

(b) Interest only is payable annually beginning on [December 10, 2014], and continuing on the tenth (10th) day of each December thereafter through and including [December 10, 2020], in such amount to pay fully all accrued interest through the last day of the calendar quarter in which payment is due at the Interest Rate; *provided, however*, that on [March 20, 2021], Borrower shall make a payment of interest in the amount of [\$22,273].

(c) Commencing on [December 20, 2021], and continuing on the tenth (10th) day of each December thereafter until the Maturity Date, Borrower shall make consecutive annual installments of principal and interest, the amount of which shall be sufficient to fully repay the unpaid principal balance, together with interest at the Interest Rate.

(d) The entire outstanding principal balance under this A Note plus all accrued and unpaid interest thereon and any other amount due hereunder shall become due and payable on the Maturity Date.

(e) Payments of principal and interest shall be made to Lender by crediting before 12:00 noon, Utah Time, on the appropriate due date, to Lender at c/o Community Development Finance Alliance, 1165 East Wilmington Avenue, Suite 200, Salt Lake City, Utah 84106; or in such other manner as Lender may elect from time to time. If any payment is due on a calendar day other than a Business Day, such payment shall be due on the next succeeding Business Day. Failure to make payments on this A Note within ten (10) Business Days of the date such amount becomes due and payable shall constitute an Event of Default hereunder.

(f) Amounts repaid hereunder shall be applied first to reduce the accrued unpaid interest on the aggregate unpaid principal amount of this A Note and second to reduce the aggregate unpaid principal amount of this A Note. In addition, any amounts repaid may not be reborrowed.

(g) In no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof or otherwise, shall the amount paid or agreed to be paid to Lender for the use, forbearance or detention of money advanced hereunder exceed the highest lawful rate

permissible under any law which a court of competent jurisdiction may deem applicable hereto.

3. [Reserved]

4. Prepayment

Borrower shall not have the right to prepay any amount due under the terms of the A Note prior to the expiration of the NMTC Recapture Period (the "*Prepayment Date*"). Borrower acknowledges that this prepayment restriction is derived from Section 45D of the Code and that no Lender would make the Loan without such prepayment restriction. Borrower agrees that this prepayment restriction has been specifically bargained for by Lender and Borrower, and that such restriction is reasonable both in duration and effect. After the Prepayment Date, Borrower may prepay all or any part of the Loan at any time without permission or penalty, but with written notice provided to Lender not less than five (5) days before the date of such prepayment.

5. Security

This A Note is secured, inter alia, by the Deed of Trust to which reference is hereby made for a description of the nature and extent of the security provided thereby and the rights and limitations of rights of the Lender and of the Borrower (or other debtor or pledgor under a pledge or security agreement) in respect of such security.

6. Default; Default Rate

If the Borrower shall fail to pay any amount herein provided within ten (10) Business Days of the date each such amount becomes due and payable, or in case an event of default (as defined in the any of the Loan Documents, or any pledge and/or security agreement or any other document executed by Borrower in connection with or to secure this A Note) shall occur, the principal of this A Note and any accrued interest and all other indebtedness secured or to be secured by the Loan Documents may be declared due and payable in the manner and with the effect provided in the Loan Documents, and the same shall thereafter bear interest at the rate contained in this A Note plus five percent (5%) per annum, initially determined on the date incurred and changing thereafter, if and when the rate changes. Failure to exercise this option shall not constitute a waiver of the right to exercise the same at any other time. Notwithstanding the foregoing, the Lender shall not be obligated to provide notice of default for failure to make any payment if it has delivered notice of default for failure to make payment on at least three previous occasions.

7. Late Charge

The Borrower recognizes that default by the Borrower in making the payments under this A Note and/or in any of the other Loan Documents when due will result in the Lender incurring additional expense servicing the loan, loss to the Lender of the use of the money due, and frustration to the Lender in meeting its other loan commitments. In the event that any payment or portion thereof is not paid within fifteen (15) days after the date it is due, the

Lender hereof may collect, and Borrower agrees to pay with such payment a “late charge” of five percent (5%) of any overdue amount or \$5.00, whichever is greater, as liquidated damages for the additional expense of handling such delinquent payments. Such late charge represents the reasonable estimate by the parties of a fair average compensation due to the failure of the undersigned to make timely payments. Such late charge shall be paid without prejudice to the rights of Lender hereof to collect any other amounts provided to be paid or to declare a default hereunder or under the Loan Documents.

8. Costs and Expenses

(a) In the event that the Borrower defaults with respect to any payment herein provided for or in case of an Event of Default under the Loan Documents, the Lender shall have the right, at the Borrower’s expense, to consult an attorney or collection agency to make any demand, enforce any remedy, or otherwise protect its rights under this A Note and the Loan Documents. The Borrower hereby promises to pay (or cause to be paid) all costs, fees, and expenses so incurred by the Lender, including without limitation reasonable attorney fees (with or without litigation), court costs, collection agency charges, notice expenses, and title search expenses, and the failure of the defaulting Borrower to pay (or cause to be paid) the same shall, in itself, constitute a further and additional default. In the event that suit or action is instituted by the Lender to enforce this A Note or rights under the Loan Documents, the Borrower hereby promises to pay (or cause to be paid), in addition to costs and expenses provided by statute or otherwise, such sums as the court may adjudge reasonable as attorney fees in such proceeding and on any appeals from any judgment or decree entered therein and the costs and attorney fees for collection of the amount due therein.

(b) The Borrower further agrees to pay (or cause to be paid) immediately upon demand all costs and expenses of the Lender including reasonable attorney fees (i) if the Lender seeks to have property securing the Loan abandoned by any estate in Bankruptcy; (ii) if the Lender attempts to have any stay or injunction prohibiting the enforcement or collection of the A Note, prohibiting the foreclosure of any pledge and/or security agreement, or prohibiting the enforcement of any pledge and/or security agreement or any other Loan Document lifted by any Bankruptcy or other court; (iii) if the Lender participates in any subsequent proceedings or appeals from any order or judgment entered in any such proceeding; (iv) if the Lender deems it appropriate to file a proof of claim or in any other manner participate in any Bankruptcy or similar proceedings; (v) if the Lender retains legal counsel in connection with amendments or modifications to this A Note requested by Borrower or any other Loan Document; or (vi) if the Lender participates in any mediation or arbitration proceeding to enforce its rights under any of the Loan Documents.

9. Non-Waiver; Miscellaneous

(a) Wherever possible each provision of this A Note shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this A Note shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or remaining provisions of this A Note. No delay or failure on the part of Lender in the

exercise of any right or remedy hereunder shall operate as a waiver thereof, nor as acquiescence in any default, nor shall any single or partial exercise by Lender of any right or remedy preclude any other right or remedy. Lender, at its option, may enforce its rights against any collateral securing this A Note without enforcing its rights against Borrower or any other property or indebtedness due or to become due to Borrower. Borrower agrees that, without releasing or impairing Borrower's liability hereunder, Lender may at any time release, surrender, substitute or exchange any collateral securing this A Note and may at any time release any party primarily or secondarily liable for the indebtedness evidenced by this A Note.

(b) Any notice to be given pursuant to this A Note shall be given as provided in the Loan Agreement. Time is of the essence. All reimbursements and payments required by this A Note (other than the scheduled payments of principal or interest) shall be immediately due and payable on demand. Borrower agrees that it has received valuable consideration hereunder, that it signs this A Note as maker and not as surety, and that any and all suretyship defenses are hereby waived. The Borrower for itself and all drawers and endorsers severally waives presentment for payment, protest, notice of protest, and notice of nonpayment of this A Note. This A Note is governed by the laws of the state of Utah without regard for conflict of laws principles; provided, however, that to the extent the Lender of this A Note has greater rights or remedies under federal law, this provision shall not be deemed to deprive the Lender of such rights and remedies as may be available under federal law.

10. Jury Waiver

TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, EACH OF THE BORROWER AND THE LENDER HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION BASED UPON OR ARISING UNDER THIS A NOTE OR ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DISCUSSIONS, DEALINGS, OR ACTIONS OF THE PARTIES TO THIS AGREEMENT OR EITHER OF THEM (WHETHER ORAL OR WRITTEN) WITH RESPECT THERETO, OR TO THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREINAFTER ARISING, AT LAW OR IN EQUITY, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. EACH OF THE BORROWER AND THE LENDER HEREBY CONSENTS AND AGREES THAT ANY SUCH CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION SHALL BE DECIDED BY A TRIAL COURT WITHOUT A JURY, AND THAT EITHER PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY HEREOF WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE BORROWER AND THE LENDER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY. THE BORROWER AND THE LENDER EACH ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION (AND EACH OTHER PROVISION OF THIS AGREEMENT AND

EACH OTHER DOCUMENT TO WHICH IT IS A PARTY) AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE LENDER IN MAKING THE FUND LOAN. THE BORROWER AND THE LENDER EACH FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

11. Setoff

As additional security for the payment of the obligations described in the Loan Documents and any other obligations of the Borrower to the Lender of any nature whatsoever (collectively the "*Obligations*"), the Borrower hereby grants to the Lender a security interest in, a lien on and an express contractual right to set off against all depository account balances, cash and any other property of the Borrower now or hereafter in the possession of the Lender and the right to refuse to allow withdrawals from any account (collectively "*Setoff*"). At Lender's option, the Lender may, at any time upon the occurrence of a default hereunder (notwithstanding any notice requirements or grace/cure periods under this or other agreements between the Borrower and the Lender) Setoff against the Obligations whether or not the Obligations (including future installments) are then due or have been accelerated, all without any advance or contemporaneous notice or demand of any kind to the Borrower, such notice and demand being expressly waived.

12. Purpose

Borrower acknowledges that this Loan is primarily for investment, business or commercial purposes and not primarily for personal, family, household or agricultural purposes.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Borrower has caused this A Note to be duly executed as of the day and year first above written.

BORROWER:

UTAH SHAKESPEARE FESTIVAL FOUNDATION,
a Utah nonprofit corporation

By: _____
Name: _____
Title: _____

4832-2992-3609, v. 1

April 21, 2014

MEMORANDUM

TO: Executive Committee of the Board of Regents

FROM: David L. Buhler

SUBJECT: Southern Utah University – New Markets Tax Credit Financing for the Shakespeare Festival Project

Issue

At the November 2013 Board of Regents meeting, Southern Utah University (SUU) officials updated the Board on a New Market Tax Credit (NMTC) financing option that SUU intends to use to procure approximately \$3.4 million of capital funding for the Shakespeare Festival Project. This project is a component of the Board approved Southern Utah Center for the Arts Project. SUU is now seeking approval to proceed with this previously introduced financial proposal.

Background

The specific opportunity available to SUU for the new Shakespeare Festival facility involves a \$5,000,000 investment by U.S. Bancorp (USB) which, after payment of fees and expenses required by CDFA (a Utah nonprofit corporation authorized to allocate tax credits from the U.S. Department of Treasury) and the compliance costs of the NMTC program, will leave a balance of approximately \$3.4 million. When combined with \$10,149,500 of SUU project funds, this creates a \$13.5 million fund for construction of the facility.

The primary elements of the proposal are:

- Under the IRS regulations that are specific to NMTC programs, the borrower may be a nonprofit corporation, but not a government entity. To meet this requirement, the Utah Shakespeare Festival Foundation (USFF) organization documents were amended so that a majority of USFF's board is independent of SUU. The board's membership now includes two members appointed by SUU and three members who are independent community members. The facility will be built under the direct supervision of DFCM and under the terms specified in the Development Services Agreement to be executed.
- A **ground lease** with USFF for 40 years at \$1.00 per year for the ground on which the facility is to be built. Upon any termination date of the lease the unencumbered title to all improvements, furnishings, fixtures, and equipment shall transfer to the University.

- A **building lease** wherein USFF leases the facility to SUU for 20 years with one five-year renewal at the amounts specified in the contract. Upon termination of the lease the unencumbered title to all improvements, furnishings, fixtures, and equipment transfer to SUU.
- A key document in the arrangement is the Investment Put and Call Agreement which will be exercised at the end of seven years when U.S. Bancorp will have received all of the applicable tax credits. At that time, U.S. Bancorp will most likely exercise the “Put” provision. SUU will then pay the “Put” price of \$1,000 to purchase the investor’s interest in the investment fund. This transaction will terminate the notes and leases and the complete and unencumbered title of the facility will revert to SUU. If, for any reason, the “Put” is not executed, SUU, by exercise of the “Call” provision, can purchase from the lender all of its remaining interest and ownership in the QEI fund for an amount equal to the fair market value of the Investor’s interest in the fund at the “Call” date. Although this projected amount is difficult to calculate, SUU has estimated that it may have to pay up to \$200,000 should this unlikely circumstance occur.

The attached letter from SUU provides additional information about the multiple contractual agreements that are required to complete this rather complex arrangement. They involve a combination of leases and agreements among multiple entities, all of which have been reviewed by attorneys from the Office of the Attorney General for compliance with state laws and by the law firm of Jones, Waldo, Holbrook, & McDonough, P.C., appointed by the Attorney General’s Office to provide the necessary legal services to SUU and the Regents in arranging for, negotiating, and preparing the documents required for this transaction, including assurance of compliance with federal laws. Letters from both the Office of the Attorney General and Jones Waldo are included in this packet.

The letter from Mr. Thomas Berggren, attorney with Jones Waldo, confirms that he and his team of lawyers *“are not aware of any federal laws or regulations, including without limitation those relating to the NMTC Program, that would prohibit SUU from entering into any of the Documents”* of the proposal.

Mr. Kevin Olsen, Assistant Attorney General assigned to the Board of Regents, states in his letter that based on his review of the documents, he is “satisfied that SUU’s proposal to enter into this transaction...is within the State Board of Regents authority to approve under current statute” based on the assumptions that the Board “(1) will determine that there are specific and unusual circumstances that clearly warrant this nontraditional arrangement in compliance with its policy stated in R712.3; and (2) will find and declare by resolution that this nontraditional arrangement is preferable to the issuance of revenue bonds by the Board as required by Utah Code Ann. §53B-21-108(1).”

Also attached is an “Approving Resolution” drafted by Kevin Olsen, Assistant Attorney General spelling out the terms and conditions of the transaction. The key elements related to this resolution are:

1. By adopting the Approving Resolution the Board acknowledges that the requirements of Board Policy R712 noted above have been met.
2. Acknowledgement that other requirements of R712 have been satisfied including:
 - a. the Board has found that there are adequate provisions for quality control in the design and construction of the project; that there is provision to ensure compliance with

appropriate state or local construction codes; that there is design provision for life-cycle costing criteria; that verification has been made by analysis of revenues and expenses, taking all costs of both methods into consideration, that the proposed arrangement can be expected to provide an equivalent facility at less total cost to SUU than by use of a revenue bond issue with project construction managed by DFCM; and that verification has been made that the proposed arrangements set forth in the necessary contractual documents (1) are financially feasible for SUU, and (2) adequately protect the interests of SUU regarding termination, extension, or renewal of the lease, resolution of other eventualities that reasonably can be foreseen, and ultimate ownership of the facility; and

- b. the Board has found that the arrangement provides significant benefits to the program, students, faculty, or staff of SUU; the proposed outside developer and the proposed use of the facility are proper and appropriate for the image and environment of SUU or serves a broad public interest that could not be served as well any other way; compensation to SUU, either in cash or in kind (or a combination), is adequate to justify any financial considerations provided by SUU; and that is preferable to construct a portion of the Shakespeare Festival Centre through the proposed arrangement rather than through the issuance of revenue bonds by the Board and that the proposed arrangements set forth in the documents (1) are financially feasible for SUU; and (2) adequately protect the interests of SUU regarding its initial relationship with USFF, the resolution of eventualities that can reasonably be foreseen, SUU's right to control appearance of the facility, external remodeling/additions, level of building and landscape maintenance, parking rights, exterior graphics, access to institutional utility systems and access roads, and termination, extension, or renewal of the lease, and ultimate ownership of the facility.
3. Board authorization to SUU to execute its call option in the Investment Put and Call Agreement if and when it desires without obtaining further approval from the Board, subject to the Attorney General's Office having first approved the document as to form and legal authority.
 4. Authorization to SUU to execute the final documents in substantially the same form, with substantially the same content as the form of the draft documents before the Board at this meeting with any such alterations, changes or additions as may be authorized by Section 15 of the resolution and with the Attorney General's Office having first approved the documents as to form and legal authority.

The following documents are attached for your review prior to the meeting:

- SUU Request Letter
- SUU "Q&A" Responses to the Transaction
- Letter from Kevin Olsen, Assistant Attorney General
- Letter from Thomas Berggren, Attorney with Jones, Waldo, Holbrook, & McDonough, P.C.
- Draft of Approving Resolution
- Regents Policy R712, Nontraditional Arrangements for Development of Facilities on Campuses

Officials from SUU and Kevin Olsen, Assistant Attorney General, will be in attendance at the meeting to present this proposal and respond to questions.

Commissioner's Recommendation

The Commissioner recommends that the Executive Committee of the Board, if satisfied that the required conditions have been met, authorize SUU to execute the final documents of the NMTC funding proposal for the new Shakespeare Festival Facility.



David L. Buhler
Commissioner of Higher Education

DLB/GLS/WRH
Attachment