

LOAN AGREEMENT

between

**BRIARGATE CENTER BUSINESS IMPROVEMENT DISTRICT
COLORADO SPRINGS, COLORADO**

and

U. S. BANK NATIONAL ASSOCIATION
as Lender

relating to:

**[\$3,544,500]
LIMITED TAX GENERAL OBLIGATION
REFUNDING LOAN 2018**

Dated as of December ___, 2018

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LOAN AGREEMENT

THIS LOAN AGREEMENT (this “Agreement”) is made and entered into as of this ___ day of December, 2018, by and between **BRIARGATE CENTER BUSINESS IMPROVEMENT DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”), and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, in its capacity as lender (the “Bank”).

WITNESSETH:

WHEREAS, the District is a quasi-municipal corporation and political subdivision of the State of Colorado, duly organized and existing as a business improvement district formed by the City of Colorado Springs, Colorado (the “City”) pursuant to Ordinance No. 02-24 adopted by the City Council of the City on February 12, 2002 and Section 31-25-1201 et seq., C.R.S. (the “Business Improvement District Act”) (all capitalized terms used and not otherwise defined herein shall have the respective meanings assigned in Article I hereof); and

WHEREAS, the District was created for the purpose of providing certain public improvements to and for the benefit of the properties within [and without] the boundaries of the District, all in accordance with the Business Improvement District Act; and

WHEREAS, at the direction of the Board of Directors of the District (the “Board”) pursuant to Section 31-25-1221, C.R.S., the District is authorized to incur indebtedness for the acquisition, construction, installation or completion of any improvements or facilities to carry out the purposes of the District; and

WHEREAS, at a special election of the qualified electors of the District, duly called and held on May 8, 2012, (the “Election”), in accordance with law and pursuant to due notice, a majority of those qualified to vote and voting at the Election voted in favor of, inter alia, the issuance of up to \$19,475,000 in debt, to be repaid from ad valorem property tax revenue of the District, for the purposes of financing the construction or acquisition of capital improvements; and

WHEREAS, the District previously issued its Limited Tax General Obligation Bonds, Series 2002A (the “Prior 2002A Bonds”) for the purpose of paying the costs of certain infrastructure; and

WHEREAS, for the purpose of refunding the Prior 2002A Bonds and financing the reimbursement of certain developer public improvement costs, the District incurred debt in the original principal amount of \$4,335,000 in the form of a loan (the “2012 Loan”) from U.S. Bank National Association (in such capacity, the “2012 Lender”), which loan was made pursuant to the terms of that certain Loan Agreement dated July 9, 2012 (the “2012 Loan Agreement”); and

WHEREAS, the Board of Directors of the District (the “Board”) has determined that it is in the best interests of the District, its inhabitants and taxpayers, to refund all of the outstanding 2012 Loan and, for such purpose, the District has requested that the Bank make a loan to the District; and

WHEREAS, the Bank has agreed, subject to the terms and conditions of this Agreement and the other Financing Documents, to make a loan in the original principal amount of \$[3,544,500] (the “Loan”) for such refunding purpose; and

WHEREAS, the 2012 Loan matures on July 9, 2019; and

WHEREAS, the 2012 Loan Agreement provides that if the 2012 Loan is not fully paid at maturity, the outstanding amount thereof will bear interest at a variable annual rate of interest equal to the sum of LIBOR (as defined in the 2012 Loan Agreement) plus 6.00%; and

WHEREAS, such variable rate of interest was capped at the rate of 5.50% per annum (the “Cap Rate”) pursuant to an Interest Rate Cap Agreement (the “Interest Rate Cap Agreement”) entered into between the District and U.S. Bank National Association, as the counterparty thereto, commencing on July 19, 2019; and

WHEREAS, the interest rate on the Loan shall be a fixed rate of interest of _____% per annum, which rate is lower than the Cap Rate which would otherwise take effect absent the refinancing of the 2012 Loan; and

WHEREAS, Article X, Section 20 of the Colorado Constitution provides that voter approval in advance is required for the creation of any district direct or indirect debt or other multiple fiscal year financial obligation whatsoever except for refinancing district debt at a lower interest rate; and

[WHEREAS, the Loan represents a refinancing of District debt at a lower interest rate and therefore, additional voter approval is not required under Article X, Section 20 of the Colorado Constitution for the issuance of the Loan; and]

WHEREAS, pursuant to Section 11-56-104(1)(c), C.R.S., the issuance of the Loan will reduce the total interest payable over the life of the obligations currently represented by the 2012 Loan, by issuing indebtedness at a lower net interest cost; and

WHEREAS, the Loan shall be issued pursuant to the provisions of Title 11, Article 56, C.R.S., and all other laws thereunto enabling; and

WHEREAS, the Board specifically elects to apply the provisions of Title 11, Article 57, Part 2, C.R.S., to the Loan; and

WHEREAS, the Loan shall be payable solely from the Pledged Revenue and the other Collateral (each, as defined herein).

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the parties hereto agree as follows.

ARTICLE I

DEFINITIONS

“*2012 Custodian*” has the meaning set forth in the Custodial Agreement.

“*2012 Custodial Agreement*” has the meaning set forth in the Custodial Agreement.

“*2012 Lender*” means U.S. Bank National Association, Denver, Colorado, in its capacity as lender of the 2012 Loan.

“*2012 Loan*” means the loan made by the 2012 Lender to the District in the original principal amount of \$4,335,000 pursuant to the 2012 Loan Agreement, which 2012 Loan is to be fully prepaid with the proceeds of the Loan.

“*2012 Loan Agreement*” means that certain Loan Agreement dated July 9, 2012 between the District and the 2012 Lender governing the terms and conditions of the 2012 Loan.

“*Agreement*” means this Loan Agreement, as amended or supplemented from time to time in accordance with the provisions hereof.

“*Authorizing Resolution*” means the resolution adopted by the Board on _____, 2018, authorizing the District to incur the indebtedness of the Loan and to execute, deliver and perform its obligations under the Note, this Agreement, and the other Financing Documents.

“*Bank*” means U.S. Bank National Association, a national banking association, Denver, Colorado, in its capacity as lender of the Loan.

“*Bond Counsel*” means Kline Alvarado Veio, P.C., Denver, Colorado.

“*Business Day*” means any day of the week on which the Bank is conducting its banking operations nationally and on which day the Bank’s offices are open for business in Denver, Colorado.

“*Certified Public Accountant*” means an independent certified public accountant within the meaning of Section 12-2-115, C.R.S., and any amendment thereto, licensed to practice in the State of Colorado.

“*City*” means the City of Colorado Springs, Colorado.

“*Closing*” means the concurrent execution and delivery of the Note, this Agreement, and the other Financing Documents by the respective parties thereto and the issuance and disbursement of the Loan and application of the proceeds thereof in accordance with the provisions hereof and the Closing Memorandum.

“*Closing Date*” means date on which the Closing occurs, estimated to be on or about December ___, 2018.

“*Closing Memorandum*” has the meaning set forth in the Custodial Agreement.

“*Collateral*” means (a) the Pledged Revenue and (b) all amounts from time to time credited to the Pledged Revenue Fund, the Loan Payment Fund, the Reserve Fund, and all other funds and accounts established and maintained under the Custodial Agreement in which moneys representing Pledged Revenue are held, including all accounts within such funds and investment earnings thereon.

“*Costs of Issuance Fund*” means the fund by that name established pursuant to the provisions of the Custodial Agreement to be administered and maintained by the Custodian in the manner and for the purposes described therein.

“*C.R.S.*” means the Colorado Revised Statutes, as amended and supplemented as of the date hereof.

“*Custodial Agreement*” means the Custodial Agreement, dated as of December ___, 2018, by and between the District and the Custodian, as amended or supplemented from time to time in accordance with the provisions hereof and thereof.

“*Custodian*” means U.S. Bank National Association, and its successors and assigns, in its capacity as custodian under the Custodial Agreement.

“*Debt*” means, without duplication, all of the following obligations of the District for the payment of which the District has promised or is required to impose an ad valorem property tax levy and/or impose fees: (a) borrowed money of any kind; (b) obligations evidenced by bonds, debentures, notes or similar instruments; (c) obligations upon which interest charges are customarily paid; (d) obligations under conditional sale or other title retention agreements relating to property or assets purchased by the District; (e) obligations issued or assumed as the deferred purchase price of property or services; (f) obligations in connection with indebtedness of others secured by (or which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any lien or other encumbrance on property owned or acquired by the District, whether or not the obligations secured thereby have been assumed (only to the extent of the fair market value of such asset if such indebtedness has not been assumed by the District); (g) obligations arising from guarantees made by the District; (h) obligations evidenced by capital leases; (i) obligations as an account party in respect of letters of credit and bankers’ acceptances or similar obligations issued in respect of the District; and (j) obligations evidenced by any interest rate exchange agreement; provided that notwithstanding the foregoing, the term “*Debt*” does not include obligations issued for any purpose, the repayment of which is contingent upon the District’s annual determination to appropriate moneys therefor, other than capital leases as set forth in (h) above, so long as (i) such obligations are payable only to the extent the District has excess moneys on hand, (ii) such obligations are payable in any Fiscal Year only after the last scheduled payment of principal or interest on the Loans in such Fiscal Year, and (iii) the District makes no promise to impose any tax, fee, or other governmental charge for the payment of such obligations.

“*Default*” means an event, act or occurrence which, with the giving of notice or the lapse of time (or both), would become an Event of Default.

“*Default Interest Rate*” means an interest rate of ____% per annum, being a per annum rate of interest equal to the annual fixed interest rate on the Loan set forth in Section 2.02(a) hereof of ____% plus 4.00%.

“*District Accountant*” means a Certified Public Accountant designated by the District to act as the District’s accountant.

“*Event of Default*” has the meaning set forth in Section 7.01 hereof.

“*Financing Documents*” means this Agreement, the Note, the Authorizing Resolution, the Custodial Agreement, and any other document or instrument required or stated to be delivered hereunder or thereunder, all in form and substance satisfactory to the Bank.

“*Fiscal Year*” means the 12 month period commencing January 1 of any year and ending December 31 of such year.

“*General Counsel*” means Collins, Cockrel & Cole, P.C., Lakewood, Colorado, or any successor General Counsel designated in writing by the District.

“*Initial Money Market Rate*” means the rate per annum, determined solely by the Bank, on the first day of the term of the Loan or the Maturity Date or as mutually agreed upon by District and the Bank, as the rate at which the Bank would be able to borrow funds in Money Markets for the amount of the Loan and with an interest payment frequency and principal repayment schedule equal to the Loan and for a term as may be arranged and agreed upon by the District and the Bank, adjusted for any reserve requirement and any subsequent costs arising from a change in government regulation. The District acknowledges that the Bank is under no obligation to actually purchase and/or match funds for the Initial Money Market Rate of the Loan.

“*Interest Differential*” has the meaning set forth in Section 2.02(m) hereof.

“*Interest Payment Date*” is defined in Section 2.02(d) hereof.

“*Loan*” means the loan made by the Bank to the District in the original principal amount of \$[3,544,500] as evidenced by the Note and made in accordance with the terms and provisions of this Agreement.

“*Loan Amount*” means [Three Million Five Hundred Forty Four Thousand Five Hundred] and 00/100 U.S. Dollars (\$[3,544,500]).

“*Loan Payment Fund*” means the fund by that name established by the provisions of the Custodial Agreement to be held and administered by the Custodian pursuant to the provisions of the Custodial Agreement for the purposes set forth therein.

“*Loan Year*” means the period commencing December 2 of any calendar year through and including December 1 of the immediately succeeding calendar year.

“*Manager*” means PM Lifestyle Shopping Centers, LLC.

“*Maturity Date*” means October 1, 2028.

“*Money Market Rate At Prepayment*” means that zero-coupon rate, calculated on the Prepayment Date, and determined solely by the Bank, as the rate at which the Bank would be able to borrow funds in Money Markets for the prepayment amount matching the maturity of a specific prospective Loan payment or the Maturity Date, adjusted for any reserve requirement and any subsequent costs arising from a change in government regulation. A separate Money Market Rate at Prepayment will be calculated for each prospective interest and/or principal payment date.

“*Money Markets*” means one or more wholesale funding markets available to and selected by the Bank, including negotiable certificates of deposit, commercial paper, Eurodollar deposits, bank notes, federal funds, interest rate swaps or others.

“*Net Present Value*” means the amount which is derived by summing the present values of each prospective payment of principal and interest which, without such full or partial prepayment, could otherwise have been received by the Bank over the shorter of the remaining contractual life of the Loan or the Maturity Date if the Bank had instead initially invested the Loan proceeds at the Initial Money Market Rate. The individual discount rate used to present value each prospective payment of interest and/or principal shall be the Money Market Rate at Prepayment for the maturity matching that of each specific payment of principal and/or interest.

“*Note*” means the Promissory Note evidencing the Loan issued in the original principal amount of the Loan Amount, dated of even date hereof, from the District, as maker, to the Bank, as payee, in substantially the form attached as Exhibit A hereto.

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

“*Person*” means an individual, a corporation, a partnership, an association, a joint venture, a trust, an unincorporated organization or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

“*Pledged Revenue*” means all revenue derived from the following sources, net of any costs of collection:

- (a) the Required Mill Levy;
- (b) the Specific Ownership Tax allocable to the Required Mill Levy; and
- (c) any other legally available moneys which the District determines, in its absolute discretion, to transfer to the Custodian for application as Pledged Revenue.

“*Pledged Revenue Fund*” means the fund by that name established by the provisions of the Custodial Agreement to be held and administered by the Custodian pursuant to the provisions of the Custodial Agreement for the purposes set forth therein.

“*Prepayment Date*” has the meaning set forth in Section 2.02(f) hereof.

“*Prepayment Fee*” has the meaning set forth in Section 2.02(f) hereof.

“*Principal Payment Date*” has the meaning set forth in Section 2.02(e) hereof.

“*Refunded Loan*” means the 2012 Loan.

“*Required Mill Levy*” means:

(a) Subject to paragraph (c) below (and, solely in levy year 2027, paragraph (b) below), an ad valorem mill levy (a mill being equal to 1/10 of 1 cent) imposed upon all taxable property of the District each year in an amount sufficient to fund the Loan Payment Fund for the relevant Loan Year and pay the Loan as it comes due and, if necessary, an amount sufficient to replenish the Reserve Fund to the amount of the Reserve Requirement, but not in excess of 50 mills; *provided however*, that in the event the method of calculating assessed valuation for commercial property in the State of Colorado is changed on or after November 6, 2018 (being the date of the 2018 Colorado General Election), such maximum mill levy shall be increased or decreased to reflect such changes, such increases or decreases to be determined by the Board in good faith (such determination to be binding and final) so that to the extent possible, the actual tax revenues generated by the mill levy, as adjusted, are neither diminished nor enhanced as a result of such changes. For purposes of the foregoing, a change in the ratio of assessed valuation to actual valuation shall be deemed to be a change in the method of calculating assessed valuation.

(b) *Solely in levy year 2027* (for collection in 2028), when certifying the Required Mill Levy pursuant to the provisions of paragraph (a) above, the District may take into account the amount in the Reserve Fund which is anticipated to be applied to payment of the Loan on the Maturity Date, *provided that*, when combined with such amount in the Reserve Fund, the District has (or will on the Maturity Date have) sufficient legally available moneys to fully pay all outstanding principal of and interest on the Loan on the Maturity Date.

(c) Notwithstanding anything herein to the contrary, in no event may the Required Mill Levy be established at a mill levy rate which would cause the District to derive tax revenue in any year in excess of the maximum tax increases permitted by the District’s electoral authorization, and if the Required Mill Levy as calculated pursuant to the foregoing would cause the amount of taxes collected in any year to exceed the maximum tax increase permitted by the District’s electoral authorization, the Required Mill Levy shall be reduced to the point that such maximum tax increase is not exceeded.

“*Reserve Fund*” means the fund by that name established by the provisions of the Custodial Agreement to be held and administered by the Custodian pursuant to the provisions of the Custodial Agreement for the purposes set forth therein.

“*Reserve Requirement*” means \$80,000.

“*Specific Ownership Tax*” means the specific ownership tax which is collected by the county and remitted to the District pursuant to Section 42-3-107, C.R.S., or any successor statute.

“*Supplemental Public Securities Act*” means Title 11, Article 57, C.R.S.

ARTICLE II

LOAN

Section 2.01. Term Loan.

(a) ***Agreement to Make Loan.*** The Bank hereby agrees to extend the Loan to the District in the aggregate principal amount of \$[3,544,500] (as previously defined, the “Loan Amount”) subject to the terms and conditions of this Agreement. The indebtedness of the Loan shall be evidenced by the Note.

(b) ***Application of Loan Proceeds.*** On the Closing Date, the Bank will disburse the proceeds of the Loan, and the Custodian shall apply such proceeds on behalf of the District in accordance with the Closing Memorandum, which will include the following:

(i) \$ _____, representing the prepayment price of the Refunded Loan, shall be internally transferred by the Bank to the 2012 Lender for application to the prepayment in full of the Refunded Loan;

(ii) \$ _____, representing the estimated costs of the issuance of the Loan and the prepayment of the Refunded Loan, shall be disbursed to the Custodian for credit to the Costs of Issuance Fund.

(c) ***Funding of Reserve Fund.*** The District shall cause the 2012 Custodian to internally transfer the amount of \$80,000 from the reserve fund established under the 2012 Custodial Agreement for the Refunded Loan to the Custodian for credit to the Reserve Fund to be held under the Custodial Agreement.

Section 2.02. Interest Rate; Interest Payments; Principal Payments.

(a) ***General.*** All interest due and payable under this Agreement and the Note shall be calculated on the basis of a 360-day year and actual number of days elapsed in any applicable period. The Lender’s internal records of applicable interest rates and the calculation of interest due on any date shall be determinative in the absence of manifest error.

(b) ***Fixed Interest Rate.*** Subject to the provisions of Section 2.02((b) hereof, the unpaid principal balance of the Loan will bear interest at a fixed rate of _____% per annum.

(c) ***Default Interest Rate.*** Immediately upon the occurrence of an Event of Default, interest shall immediately begin to accrue and compound semi-annually on June

1 and December 1 each year on the unpaid principal balance of the Loan at the Default Interest Rate for so long as such Event of Default continues and remains uncured to the satisfaction of the Bank through and including the Maturity Date.

(d) **Interest Payments.** Interest payments on the Loan shall be due on each June 1 and December 1, commencing on December 1, 2018, and on the Maturity Date (each, an “Interest Payment Date”).

(e) **Principal Payments.** Unpaid principal of the Loan shall be due and payable on December 1 each year, commencing December 1, 2018 and on each December 1 thereafter through and including December 1, 2027, and on the Maturity Date (each, a “Principal Payment Date”), in the amounts set forth below.

Payment Date	Principal Amount Due
December 1, 2018	
December 1, 2019	
December 1, 2020	
December 1, 2021	
December 1, 2022	
December 1, 2023	
December 1, 2024	
December 1, 2025	
December 1, 2026	
December 1, 2027	
October 1, 2028	

(f) **Optional Prepayment.** Subject to the last sentence of this Section 2.02(f), upon prepayment prior to the Maturity Date of all or any portion of the outstanding principal of the Loan, the District shall be required to pay to the Bank a prepayment fee (a “Prepayment Fee”) equal to the greater of (i) zero or (ii) that amount, calculated on any date of prepayment (a “Prepayment Date”), which is derived by subtracting: (A) the outstanding Loan principal (or the Loan principal to be prepaid on such Prepayment Date if such prepayment is a partial prepayment) from (B) the Net Present Value of the Loan (or that portion of the Loan to be prepaid on such Prepayment Date if such prepayment is a partial prepayment); provided, however, that the Prepayment Fee may not exceed the maximum prepayment fee permitted by applicable law, and in the event the Prepayment Fee as calculated above exceeds the amount permitted by law, the District shall not be authorized to prepay the Loan. In calculating the amount of the Prepayment Fee, the Bank is hereby authorized by the District to make such assumptions regarding the source of funding, redeployment of funds and other related matters, as the Bank may deem appropriate. Any prepayment of principal shall be accompanied by a payment of all interest accrued to date thereon; and said prepayment shall be applied to the principal installments of the Loan in the inverse order of their due dates, commencing with the Loan principal due and owing on the Maturity Date. All prepayments shall be in an

amount of at least \$100,000 in Loan principal or, if less, the remaining entire principal balance of the Loan. No Prepayment Fee shall be due if the Loan is prepaid in full within 14 days of the Maturity Date.

(g) ***Obligations Unconditional.*** The District's obligation to repay the Loan hereunder and all of its other obligations under this Agreement shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment which the District may have against the Bank, any Participant, or any other Person, including, without limitation, any defense based on the failure of any nonapplication or misapplication of the proceeds of the Loan hereunder, and irrespective of the legality, validity, regularity or enforceability of all or any of the Financing Documents, and notwithstanding any amendment or waiver of (other than an amendment or waiver signed by the Bank explicitly reciting the release or discharge of any such obligation), or any consent to, or departure from, all or any of the Financing Documents or any exchange, release, or nonperfection of any Collateral securing the obligations of the District hereunder and any other circumstances or happening whatsoever, whether or not similar to any of the foregoing; provided, however, that nothing contained in this Section 2.02(g) shall abrogate or otherwise affect the rights of the District pursuant to Section 8.15 hereof.

(h) ***Waivers, Etc.*** To the full extent permitted by law: (i) the District hereby waives (A) presentment, demand, notice of demand, protest, notice of protest, notice of dishonor and notice of nonpayment; (B) to the extent the Bank is not in default hereunder, the right, if any, to the benefit of, or to direct application of, any security hypothecated to the Bank until all obligations of the District to the Bank hereunder, howsoever arising, has been paid; (C) the right to require the Bank to proceed against the District hereunder, or against any Person under any guaranty or similar arrangement, or under any agreement between the Bank and any Person or to pursue any other remedy in the Bank's power; (D) all statutes of limitation; and (E) any defense arising out of the election by the Bank to foreclose on any security by one or more non-judicial or judicial sales; (ii) the Bank may exercise any other right or remedy, even though any such election operates to impair or extinguish the District's right to repayment from, or any other right or remedy it may have against, any Person, or any security; and (iii) the District agrees that the Bank may proceed against the District or any Person directly and independently of any other, and that any forbearance, change of rate of interest, or acceptance, release or substitution of any security, guaranty, or loan or change of any term or condition thereunder or under any Financing Document (other than by mutual agreement between the District and the Bank) shall not in any way affect the liability of the District hereunder.

(i) ***Taxes, Increased Costs and Reduced Return.***

(i) To the extent permitted by law any and all payments by the District hereunder or with respect to the Note shall be made, in accordance with Section 2.02(g), free and clear of and without deduction for any and all taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding taxes imposed on the overall net income of the Bank

(and franchise taxes imposed in lieu of net income taxes) by the jurisdiction of the Bank's applicable lending office or any political subdivision thereof (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as "Taxes"). If the District shall be required by law to withhold or deduct any Taxes from or in respect of any sum payable hereunder or with respect to the Note then, to the extent permitted by law, (A) the sum payable shall be increased as may be necessary so that after making all required withholdings or deductions (including those Taxes payable solely by reason of additional sums payable under this Section 2.02(i)) the Bank receives an amount equal to the sum it would have received had no such withholdings or deductions been made, (B) the District shall make such withholdings or deductions, and (C) the District shall pay the full amount withheld or deducted to the relevant taxing authority or other authority in accordance with applicable law.

In addition, to the extent permitted by law, the District agrees to pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies that arise under the laws of the United States or the State from any payment made hereunder or with respect to the Note or otherwise with respect to this Agreement or the Note (hereinafter referred to as "Other Taxes").

If the District fails to pay Taxes and/or Other Taxes (including Taxes imposed by any jurisdiction on amounts payable under this Section 2.02(i)(i)) required to be paid by the District pursuant to the preceding two paragraphs in accordance with applicable law, then the District shall, to the extent permitted by law, indemnify and hold harmless the Bank, and reimburse the Bank, as applicable, for the full amount of Taxes and Other Taxes (including, without limitation, any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section 2.02(i)(i)) paid by the Bank or any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted. The District shall have the right to contest the imposition of Taxes and/or Other Taxes that the District believes, in good faith, were incorrectly or illegally asserted; however, such right shall not affect the obligation of the District to indemnify and hold harmless the Bank as provided in this Section. Payments by the District pursuant to this Section shall be made within 30 days from the date the Bank makes written demand therefor which demand shall be accompanied by a certificate describing in reasonable detail the basis thereof.

Within 30 days after the date of any payment of Taxes by the District, the District shall furnish to the Bank, at its address referred to in Section 8.05 hereof, the original or a certified copy of a receipt evidencing payment thereof. The District shall compensate the Bank for all reasonable losses and expenses sustained by the Bank as a result of any failure by such party to so furnish such copy of such receipt.

Any amounts paid by the District to the Bank pursuant to this Section 2.02(i)(i) which are subsequently recovered by the Bank from any taxing agency shall be repaid to the District within 30 days of receipt thereof by the Bank.

Without prejudice to the survival of any other agreement of the District hereunder, the agreements and obligations contained in this Section 2.02(i)(i) shall survive the payment in full of all amounts owing to the Bank hereunder.

(ii) (A) If, on or after the date of this Agreement, the adoption of any law or any governmental or quasi-governmental rule, regulation, policy, guideline or directive (whether or not having the force of law), or any change in the interpretation, promulgation, implementation or administration thereof by any governmental or quasi-governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, including, notwithstanding the foregoing, all requests, rules, guidelines or directives in connection with the Dodd-Frank Wall Street Reform and Consumer Protection Act regardless of the date enacted, adopted or issued, or compliance by the Bank or any Participant with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency:

(1) subjects the Bank or any Participant to any Taxes, or changes the basis of taxation of payments (other than with respect to taxes imposed on the overall net income of the Bank or such Participant) to the Bank or any Participant in respect of the Loan or participations therein; or

(2) imposes or increases or deems applicable any reserve, assessment, insurance charge, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, the Bank or any Participant; or

(3) imposes any other condition the result of which is to increase the cost to the Bank or any Participant of issuing or participating in the Loan, or reduces any amount receivable by the Bank or any Participant in connection with the Loan or participations therein, or requires the Bank or any Participant to make any payment calculated by reference to the amount of the Loan or participations therein held or interest or fees received by it, by an amount deemed material by the Bank or such Participant, as the case may be, and the result of any of the foregoing is to increase the cost to the Bank or such Participant, as the case may be, of issuing or participating in the Loan or to reduce the return received by the Bank or such Participant, as the case may be, attributable to the Post-Maturity Interest Rate charged in connection with the Loan or participations therein, then, within 15 days after demand by the Bank, the District shall pay the Bank

such additional amount or amounts as will compensate the Bank or such Participant, as the case may be, for such increased cost or reduction in amount received.

(B) If after the effective date of this Agreement there shall occur any enactment, promulgation, imposition, implementation, interpretation or administration of, or change to, any Regulation, whether such Regulation was created before or after the date of this Agreement, which shall have the effect of imposing on the Bank (or through the Bank's holding company) any tax (excluding taxes on its overall net income and franchise taxes), charge, fee, assessment or deduction of any kind whatsoever, additional reserve or capital adequacy requirements, special deposits or similar requirements against credit extended by the Bank, assets of, deposits with or for the account of Bank or any other conditions affecting the extensions of credit under this Agreement, then the District shall pay to the Bank such additional amount as the Bank deems necessary to compensate the Bank for any increased cost to the Bank attributable to the extension(s) of credit under this Agreement and/or for any reduction in the rate of return on the Bank's capital and/or the Bank's revenue attributable to such extension(s) of credit, attributable to any calendar year. As used above, the term "Regulation" shall include any federal, state or international law, governmental or quasi-governmental rule, regulation, policy, guideline or directive (including but not limited to the Dodd-Frank Wall Street Reform and Consumer Protection Act and enactments, issuances or similar pronouncements by the Bank for International Settlements, the Basel Committee on Banking Regulations and Supervisory Practices or any similar authority and any successor thereto) that applies to the Bank. Any amount payable to the Bank under this paragraph shall be paid upon demand by the Bank pursuant to Section 2(c)(ii)(C) of the Custodial Agreement. In addition, if the Bank determines that such cost or reduction will be ongoing or recurring, the Bank may by notice to the District elect to require payment of such amounts with regularly scheduled payments under the Loan. The Bank's method of determining any amount payable to the Bank under this paragraph shall be substantially the same as that method utilized by the Bank in implementing similar provisions for similarly situated borrowers and extensions of credit. The Bank's determination of such additional amount shall be determinative in the absence of manifest error.

Without prejudice to the survival of any other agreement of the District hereunder, the agreements and obligations contained in this Section 2.02(i)(ii) shall survive the payment in full of all amounts owing to the Bank hereunder.

(j) ***Manner of Payments.*** All interest, fees, and other payments to be made hereunder and under the Custodial Agreement by or on behalf of the District to the Bank shall be made, and shall not be considered made until received, in United States dollars in

immediately available funds. The District shall cause the Custodian to make each payment hereunder in the manner and at the time necessary so that each such payment is received not later than 2:00 p.m., New York time, on the day when due in lawful money of the United States of America in immediately available funds. Any payment received after 2:00 p.m., New York time, shall be deemed made on the next succeeding Business Day. All payments made hereunder by or on behalf of the District to the Bank may be applied to such amounts due hereunder and under the Financing Documents in such order as the Bank shall elect.

(k) ***Calculation of Interest and Fees.*** All interest and fees due and payable under this Agreement shall be calculated on the basis of a 360-day year and actual number of days elapsed in any applicable period. Any sum due to the Bank and not paid when due and any sum due to the Bank upon the occurrence or during the continuance of any Event of Default hereunder shall bear interest and compound semi-annually on June 1 and December 1 each year at the Default Interest Rate.

(l) ***Written Statements; Debits from Funds and Accounts.*** The Bank agrees to send, at the times and in the manner customary for the Bank, written statements or bills itemizing all amounts due hereunder to the District at the address set forth in Section 8.05 hereof or at such other address as the District might specify to the Bank in writing.

(m) ***Maximum Interest Rate.*** If the interest due and payable on any obligation hereunder computed at the rate as provided in Section 2.02(c) hereof is in excess of the maximum net effective interest rate of 18% per annum authorized pursuant to the District's voted debt authorization (the "Maximum Rate"), the difference between what would have been the interest payable on such amounts had they accrued interest at the rate provided in Section 2.02(c) and the Maximum Rate (the "Interest Differential") shall remain an obligation of the District. Notwithstanding anything herein or in the Financing Documents to the contrary, if at any time there is an Interest Differential owed to the Bank, any reduction in interest rate that would result from the application of the Maximum Rate to the Default Interest Rate, shall not reduce the rate of interest below the Maximum Rate until the total amount due has been paid to the Bank as if the applicable rate computed as provided in Section 2.02(c) hereof had at all times been utilized. It is acknowledged by the Bank that the obligations of the District hereunder are limited by the District's voted debt authorization with respect to principal amount, maximum net effective interest rate of 18% per annum, maximum repayment cost, and maximum annual tax increases, and that, notwithstanding anything herein to the contrary, the District is not authorized and is not obligating itself with respect to the foregoing obligations in excess of that which is permitted under the terms of the District's voted debt authorization.

Section 2.03. Costs, Expenses and Taxes. The District agrees to pay all reasonable costs and expenses of the Bank (including, without limitation, the fees of the Bank's outside legal counsel which, as of the Closing Date, shall not exceed \$35,000) in connection with (a) the preparation, execution and delivery of this Agreement or any other documents, including the other Financing Documents, which may be delivered by any party in connection with this Agreement and the other Financing Documents; (b) the filing, recording, administration (other

than normal, routine administration), enforcement, transfer, amendment, maintenance, renewal or cancellation of this Agreement and all amendments or modifications thereto (or supplements hereto), including, without limitation, the reasonable fees and out-of-pocket expenses of counsel for the Bank and the allocated cost of in-house counsel and legal staff and independent public accountants and other outside experts retained by the Bank in connection with any of the foregoing; and (c) the fees and expenses of the Custodian or any other custodian appointed by the Bank to hold any Collateral securing the obligations of the District hereunder. In addition, the District agrees to pay promptly all costs and expenses of the Bank, including, without limitation, the fees and expenses of external counsel and the allocated cost of in-house counsel, for (i) any and all amounts which the Bank has paid relative to the Bank's curing of any Event of Default under this Agreement or any of the Financing Documents; (ii) the enforcement of this Agreement or any of the Financing Documents; or (iii) any action or proceeding relating to a court order, injunction, or other process or decree restraining or seeking to restrain the Bank from paying any amount hereunder. Without prejudice to the survival of any other agreement of the District hereunder, the agreements and obligations contained in this Section 2.03 shall survive the payment in full of all amounts owing to the Bank hereunder.

Section 2.04. Pledge. The District hereby pledges, assigns and grants to the Bank a first priority security interest in the Pledged Revenue and the other Collateral to secure its obligations to the Bank hereunder and under the other Financing Documents. The lien of the Bank on the Pledged Revenue and the other Collateral hereunder and under the Custodial Agreement is, as of the date hereof, subject to no other liens or encumbrances. The District represents and warrants that the Pledged Revenue and the other Collateral shall not be subject to any other lien or encumbrance without the prior written consent of the Bank.

Section 2.05. Conditions to Closing. The funding by the Bank of the Loan is conditioned upon the satisfaction of each of the following:

(a) all Financing Documents and other instruments applicable to the Loan are in form and content satisfactory to the Bank and have been duly executed and delivered in form and substance satisfactory to the Bank and shall have not been modified, amended or rescinded, shall be in full force and effect on and as of the Closing Date and the executed original Note and executed original or certified copies of such other documents and instruments shall have been delivered to the Bank;

(b) the Bank shall have received a certified copy of the Authorizing Resolution of the District, which shall be in form and content satisfactory to the Bank and authorize the District to obtain the Loan and perform all acts contemplated by this Agreement and all other Financing Documents, and a certified copy of all other ordinances, resolutions and proceedings taken by the District authorizing the District to obtain the Loan and the execution, delivery and performance of this Agreement and the other Financing Documents and the transactions contemplated hereunder and thereunder, together with such other certifications as to the specimen signatures of the officers of the District authorized to sign this Agreement and the other Financing Documents to be delivered by the District hereunder and as to other matters of fact as shall reasonably be requested by the Bank;

(c) the District shall have provided to the Bank a certificate certifying that on the Closing Date each representation and warranty on the part of the District contained in this Agreement and in any other Financing Document is true and correct and no Default or Event of Default has occurred and is continuing and no default exists under any other Financing Documents, or under any other agreements by and between the District and the Bank and certifying as to such other matters as the Bank might reasonably request;

(d) the Bank shall have received the opinion of Bond Counsel dated as of the Closing Date and addressed to the Bank (or, in lieu thereof, a reliance letter addressed to the Bank with respect to such opinion of Bond Counsel), to the effect that (i) the Loan as evidenced by the Note is a valid and binding limited tax general obligation of the District; (ii) the District is obligated to exercise its ad valorem taxing power upon all taxable property of the District in the amount of the Required Mill Levy for the purpose of paying the Loan when due; (iii) the Note, the Authorizing Resolution and, assuming the due execution of the Loan Agreement by the Bank and the Custodial Agreement by the Bank and the Custodian, the Loan Agreement and the Custodial Agreement constitute valid and binding obligations of the District, legally enforceable against the District in accordance with their terms; and (iv) otherwise as reasonably satisfactory to the Bank;

(e) the Bank shall have received an opinion of general counsel to the District dated as of the Closing Date and addressed to the Bank, with respect to such matters as the Bank may require, including opinions as to the validity of the District's organization and existence; to the effect that all governmental approvals, if any, necessary for the District to issue the Note and to execute, deliver and perform its obligations under this Agreement and the other Financing Documents have been duly obtained; that any conditions precedent to the issuance of the Loan imposed by the City have been satisfied; that the Authorizing Resolution was duly and properly adopted, is in full force and effect, and has not been rescinded as of the Closing Date; that this Agreement and the other Financing Documents to which the District is a party have been duly authorized, executed, and delivered by the District; and otherwise in form and substance acceptable to the Bank;

(f) the Refunded Loan shall have been fully paid on the Closing Date;

(g) all proceedings taken in connection with the transactions contemplated by this Agreement, and all instruments, authorizations and other documents applicable thereto, are satisfactory to the Bank and its counsel;

(h) the Custodian shall be U.S. Bank National Association;

(i) the Bank shall have received a certificate of an authorized representative of the Custodian certifying as to the authority of the authorized representatives of the Custodian and certifying as to such other matters as the Bank might reasonably request;

(j) no law, regulation, ruling or other action of the United States, the State of Colorado or any political subdivision or authority therein or thereof shall be in effect or

shall have occurred, the effect of which would be to prevent the District from fulfilling its obligations under this Agreement or the other Financing Documents;

(k) all Bank counsel fees and any other fees and expenses due and payable in connection with the execution and delivery of this Agreement shall have been paid by the District;

(l) the Bank shall have been provided with the opportunity to review all pertinent financial information regarding the District, agreements, documents, and any other material information relating to the District or the Pledged Revenue or any other component of the Collateral securing the obligations of the District hereunder;

(m) all information provided by the District to the Bank is accurate in all respects;

(n) the District is not in violation or breach of any other agreement with the Bank of any type or amount or of any third-party obligation in excess of \$10,000;

(o) the Reserve Fund shall be funded in the amount of the Reserve Requirement;

(p) the Interest Rate Cap Agreement shall have been duly and properly terminated in the opinion of the Bank, in its capacity as counterparty thereto;

(q) due authorization and proper execution of the Bank loan documentation detailing the terms and conditions of the Loan, all in form and substance satisfactory to the Bank and its internal and external counsel;

(r) if applicable, execution of a fixed rate lock-in agreement satisfactory to the Bank;

(s) the Bank shall have received such other certificates, approvals, filings, opinions and documents as shall be reasonably requested by the Bank; and

(t) all other legal matters pertaining to the execution and delivery of this Agreement and the other Financing Documents shall be reasonably satisfactory to the Bank.

ARTICLE III

FUNDS AND ACCOUNTS

Section 3.01. Acknowledgement of Funds. Pursuant to the Custodial Agreement, the District has directed the Custodian to create and establish the following funds and accounts, which shall be held and administered by the Custodian in accordance with the provisions hereof and of the Custodial Agreement:

(a) the Pledged Revenue Fund;

- (b) the Loan Payment Fund;
- (c) the Reserve Fund; and
- (d) the Costs of Issuance Fund.

Section 3.02. Application of Pledged Revenue. Following issuance of the Loan, the District shall transfer all amounts comprising Pledged Revenue to the Custodian as soon as may be practicable after the receipt thereof, but no later than 10 Business Days after such receipt and in no case less frequently than monthly, for application by the Custodian in accordance with the Custodial Agreement.

Section 3.03. Pledged Revenue Fund. The Pledged Revenue Fund shall be held and administered by the Custodian in accordance with the terms of the Custodial Agreement. Moneys in the Pledged Revenue Fund shall be applied by the Custodian only as set forth in the Custodial Agreement and the Pledged Revenue Fund is pledged to the payment of the Loan.

Section 3.04. Loan Payment Fund. The Loan Payment Fund shall be held and administered by the Custodian in accordance with the terms of the Custodial Agreement. Moneys in the Loan Payment Fund shall be applied by the Custodian only as set forth in the Custodial Agreement and the Loan Payment Fund is pledged to the payment of the Loan.

Section 3.05. Reserve Fund. The Reserve Fund shall be held and administered by the Custodian in accordance with the terms of the Custodial Agreement. Moneys in the Reserve Fund shall be applied by the Custodian only as set forth in the Custodial Agreement and the Reserve Fund is pledged to the payment of the Loan. All amounts on deposit in the Reserve Fund on the Maturity Date shall be used for payment of the Loan and shall be applied in any order of priority as determined by the Bank.

Section 3.06. Costs of Issuance Fund. The Costs of Issuance Fund shall be held and administered by the Custodian in accordance with the terms of the Custodial Agreement. Moneys in the Costs of Issuance Fund shall be applied by the Custodian only as set forth in the Custodial Agreement. The amounts on deposit in the Costs of Issuance Fund are not pledged to the payment of the Loan; however, the Custodial Agreement provides that all amounts remaining in the Costs of Issuance Fund on the date which is 90 days after the Closing Date shall be transferred to the Loan Payment Fund.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE DISTRICT

While any obligations hereunder or under any of the other Financing Documents are unpaid or outstanding, the District continuously represents and warrants to the Bank as follows:

Section 4.01. Due Organization. The District is a quasi-municipal corporation and political subdivision of the State of Colorado duly organized and validly existing under the laws of the State of Colorado.

Section 4.02. Power and Authorization. The District has all requisite power and authority to own and convey its properties and to carry on its business as now conducted and as contemplated to be conducted under the Financing Documents; to execute, deliver and to perform its obligations under this Agreement and the other Financing Documents; and to cause the execution, delivery and performance of the Financing Documents.

Section 4.03. No Legal Bar. The District is not in violation of any of the provisions of the laws of the State of Colorado or the United States of America or any of the provisions of any order of any court of the State of Colorado or the United States of America which would affect its existence or its powers referred to in the preceding Section 4.02. The execution, delivery and performance by the District of this Agreement and of the other Financing Documents (a) will not violate any provision of any applicable law or regulation or of any order, writ, judgment or decree of any court, arbitrator or governmental authority; (b) will not violate any provisions of any document constituting, regulating or otherwise affecting the operations or activities of the District; and (c) will not violate any provision of, constitute a default under, or result in the creation, imposition or foreclosure of any lien, mortgage, pledge, charge, security interest or encumbrance of any kind other than liens created or imposed by the Financing Documents, on any of the revenues or other assets of the District which could have a material adverse effect on the assets, financial condition, business or operations of the District, on the District's power to cause the Financing Documents to be executed and delivered, or its ability to pay in full in a timely fashion the obligations of the District under this Agreement or the other Financing Documents.

Section 4.04. Consents. The District has obtained all consents, permits, licenses and approvals of, and has made all registrations and declarations with any governmental authority or regulatory body required for the execution, delivery and performance by the District of this Agreement and the other Financing Documents.

Section 4.05. Litigation. There is no action, suit, inquiry or investigation or proceeding to which the District is a party, at law or in equity, before or by any court, arbitrator, governmental or other board, body or official which is pending or, to the best knowledge of the District, threatened in connection with any of the transactions contemplated by this Agreement or against or affecting the assets of the District, nor, to the best knowledge of the District, is there any basis therefor, wherein an unfavorable decision, ruling or finding (a) would adversely affect the validity or enforceability of, or the authority or ability of the District to perform its obligations under, the Financing Documents; (b) would, in the reasonable opinion of the District, have a materially adverse effect on the ability of the District to conduct its business as presently conducted or as proposed or contemplated to be conducted; or (c) would adversely affect the exclusion of interest on the Loan from gross income for federal income tax purposes or the exemption of such interest from State of Colorado personal income taxes.

Section 4.06. Enforceability. This Agreement and each other Financing Document constitutes the legal, valid and binding obligation of the District, enforceable against the District in accordance with its terms (except as such enforceability may be limited by bankruptcy, moratorium or other similar laws affecting creditors' rights generally and provided that the application of equitable remedies is subject to the application of equitable principles).

Section 4.07. Changes in Law. To the best knowledge of the District, there is not pending any change of law which, if enacted or adopted could have a material adverse effect on the assets, financial condition, business or operations of the District, on the District's power to issue or its ability to pay in full in a timely fashion the obligations of the District under this Agreement or the other Financing Documents.

Section 4.08. Financial Information and Statements. The financial statements and other information previously provided to the Bank or provided to the Bank in the future are or will be complete and accurate and prepared in accordance with generally accepted accounting principles. There has been no material adverse change in the District's financial condition since such information was provided to the Bank.

Section 4.09. Accuracy of Information. All information, certificates or statements given to the Bank pursuant to this Agreement and the other Financing Documents will be true and complete when given.

Section 4.10. Financing Documents. Each representation and warranty of the District contained in any Financing Document is true and correct as of the Closing Date.

Section 4.11. Regulations U and X. The District is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U or X issued by the Board of Governors of the Federal Reserve System); and no proceeds of the Loan will be or have been used to extend credit to others for the purpose of purchasing or carrying any margin stock.

Section 4.12. Default, Etc. The District is not in default in the performance, observance, or fulfillment of any of the obligations, covenants or conditions contained in any Financing Document or other resolution, agreement or instrument to which it is a party which would have a material adverse effect on the ability of the District to perform its obligations hereunder or under the other Financing Documents, or which would affect the enforceability hereof or thereof.

Section 4.13. Sovereign Immunity. Except for actions that lie or would lie in tort, the District does not enjoy any rights of immunity on the grounds of sovereign immunity in respect of its obligations under this Agreement or any of the other Financing Documents.

Section 4.14. No Filings. No filings, recordings, registrations or other actions are necessary to create and perfect the pledges provided for herein and in the Custodial Agreement; all obligations of the District hereunder are secured by the lien and pledge provided for herein and in the Custodial Agreement; and the liens and pledges provided for herein and in the Custodial Agreement constitute valid prior liens subject to no other liens.

Section 4.15. Outstanding Debt. On the Closing Date, after issuance of the Loan and the application of the proceeds thereof to the full prepayment of the Refunded Loan, the District shall have no Debt outstanding other than the Loan. The District represents and warrants that it will incur additional Debt only in accordance with the provisions of Section 5.10 of this Agreement.

Section 4.16. Appropriation. No portion of the Pledged Revenue or any other component of the Collateral securing the obligations of the District hereunder is subject to appropriation by any other Person.

ARTICLE V

COVENANTS OF THE DISTRICT

While any obligations hereunder or under any of the other Financing Documents are unpaid or outstanding, the District continuously warrants and agrees as follows:

Section 5.01. Performance of Covenants, Authority. The District covenants that it will faithfully perform and observe at all times any and all covenants, undertakings, stipulations, and provisions contained in the Authorizing Resolution, this Agreement, the Note, the other Financing Documents and all its proceedings pertaining thereto as though such covenants, undertakings, stipulations, and provisions were set forth in full herein (for the purpose of this provision the Financing Documents shall be deemed to continue in full force and effect notwithstanding any earlier termination thereof so long as any obligation of the District under this Agreement shall be unpaid or unperformed). The District covenants that it is duly authorized under the constitution and laws of the State of Colorado, including, particularly and without limitation, the Special District Act, to issue the Loan and to execute and deliver the Note, this Agreement, and the other Financing Documents, and that all action on its part for the issuance of the Loan and the execution and delivery of the Note, this Agreement, and the other Financing Documents has been duly and effectively taken and will be duly taken as provided herein, and that the Loan, the Note, this Agreement, and the other Financing Documents are and will be valid and enforceable obligations of the District according to the terms hereof and thereof.

Section 5.02. Laws, Permits and Obligations. The District will comply in all material respects with all applicable laws, rules, regulations, orders and directions of any governmental authority and all agreements and obligations binding on the District, noncompliance with which would have a material adverse effect on the District, its financial condition, assets or ability to perform its obligations under this Agreement and/or the other Financing Documents; provided that the District may in good faith contest such laws, rules, regulations, orders and directions and the applicability thereof to the District to the extent that such action would not be likely to have a material adverse effect on the District's ability to perform its obligations hereunder.

Section 5.03. Bonding and Insurance. The District shall carry general liability coverage, workers' compensation, public officials' liability, and such other forms of insurance on insurable District property upon the terms and conditions, and issued by recognized insurance companies, as in the judgment of the District would ordinarily be carried by entities having similar properties of equal value, such insurance being in such amounts as will protect the District and its operations. In addition, each District official or other Person having custody of any District funds or responsible for the handling of such funds, shall be bonded or insured against theft or defalcation at all times.

Section 5.04. Other Liabilities. The District shall pay and discharge, when due, all of its liabilities, except when the payment thereof is being contested in good faith by appropriate procedures which will avoid financial liability and with adequate reserves provided therefor.

Section 5.05. Proper Books and Records. The District shall keep or cause to be kept adequate and proper records and books of account in which complete and correct entries shall be made with respect to the District, the Pledged Revenue and all of the funds and accounts established or maintained pursuant to any of the Financing Documents. The District shall (a) maintain accounting records in accordance with generally recognized and accepted principles of accounting consistently applied throughout the accounting periods involved; (b) provide the Bank with such information concerning the business affairs and financial condition (including insurance coverage) of District as the Bank may request; and (c) without request, provide the Bank with the information set forth in Section 5.06 below.

Section 5.06. Reporting Requirements.

(a) The District shall notify the Bank promptly of all interim litigation or administrative proceedings, threatened or pending, against the District which would, if adversely determined, in District's reasonable opinion, have a material effect on the District's financial condition arising after the date hereof.

(b) The District shall provide the following to the Bank at the times and in the manner provided below:

(i) as soon as available, but not later than 270 days following each Fiscal Year, the District shall furnish to the Bank its audited financial statements prepared in accordance with generally accepted accounting principles consistently applied, in reasonable detail and audited by a firm of independent Certified Public Accountants selected by the District and satisfactory to the Bank;

(ii) not later than 270 days following each Fiscal Year, the District shall furnish to the Bank a certificate of an authorized representative of the District evidencing the District's continuing compliance with Sections 5.09, 5.10, 5.11 and 5.15 of this Agreement, and stating whether there exists on the date of such certificate any Default or Event of Default and, if any Default or Event of Default then exists, setting forth the details thereof and the actions which the District is taking or proposes to take with respect thereto;

(iii) as soon as available, but in no event later than January 31 of each Fiscal Year, the District shall furnish to the Bank the District's annual budget prepared by the District Accountant for such Fiscal Year and, as soon as available, shall furnish a copy of any proposed amendments thereto, which budget shall include as separate line items all projected Pledged Revenue expected to be received in such Fiscal Year;

(iv) promptly upon certification of the Required Mill Levy by the District to the county each year but in no event later than January 31 of each Fiscal Year, the District shall furnish to the Bank a certificate of an authorized

officer of the District setting forth the amount of such Required Mill Levy so certified;

(v) as soon as available, but in no event later than September 30 of each year, the District shall furnish to the Bank the preliminary certified “actual value” and assessed valuation of all property subject to the Required Mill Levy (including taxable property within the District and excluded property subject to the Required Mill Levy) for such calendar year;

(vi) as soon as available, but in no event later than January 31st of each year, the District shall use its best efforts to cause the Manager to deliver to the Bank an annual rent roll with lease expirations and vacancies as percentage of total retail square feet within the District;

(vii) as soon as available, but in no event later than December 31 of each year, the District shall furnish to the Bank the final certified assessed valuation of all property subject to the Required Mill Levy (including taxable property within the District and excluded property subject to the Required Mill Levy), as calculated, recorded and certified by the county assessor on or before December 10 of such calendar year; and

(viii) promptly upon request of the Bank, the District shall furnish to the Bank such other reports or information regarding the Collateral securing the obligations of the District hereunder or the assets, financial condition, business or operations of the District, as the Bank may reasonably request.

(c) The District shall promptly notify the Bank of any Default or Event of Default of which the District has knowledge, setting forth the details of such Default or Event of Default and any action which the District proposes to take with respect thereto.

(d) The District shall immediately notify the Bank of any resignation of the Custodian.

(e) The District shall notify the Bank as soon as possible after the District acquires knowledge of the occurrence of any event which, in the reasonable judgment of the District, is likely to have a material adverse effect on the financial condition of the District or affect the ability of the District to perform its obligations under this Agreement or under any other Financing Documents.

Section 5.07. Visitation and Examination. Unless otherwise prohibited by law, the District will permit any Person designated by the Bank to visit any of its offices to examine the District’s books and financial records, and make copies thereof or extracts therefrom, and to discuss its affairs, finances and accounts with its principal officers, all at such reasonable times and as often as the Bank may reasonably request.

Section 5.08. Further Assurances. The District shall do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged and delivered, such indentures supplemental hereto and such further acts, instruments, and transfers as the Bank may reasonably

require for the better assuring, transferring, and pledging unto the Bank the Pledged Revenue; provided, however, that the District shall not be obligated to incur in excess of nominal expenses in complying with this covenant.

Section 5.09. Covenant to Impose Required Mill Levy. The District hereby covenants as follows:

(a) For the purpose of paying the principal of and interest on the Loan and, if necessary, replenishing the Reserve Fund to the Reserve Requirement, there shall be levied on all taxable property of the District, in addition to all other taxes, direct annual taxes in the amount of the Required Mill Levy, such Required Mill Levy to be imposed in each of the years 2018 through and including 2027 (for collection in years 2019 through 2028) and, to the extent necessary to repay any unpaid principal or interest due on the Loan, in each year thereafter until the principal of and interest on the Loan is fully paid, satisfied, and discharged. The District shall, in certifying annual levies for general ad valorem taxes, take into account any deficiencies and defaults of prior years with respect to the Loan and the obligations of the District under the Note, this Agreement and the Custodial Agreement. Nothing herein shall be construed to require the District to levy an ad valorem property tax in excess of the Required Mill Levy.

(b) The foregoing provisions of this Agreement are hereby declared to be the certificate of the Board to the Board of County Commissioners of each county in which taxable real or personal property of the District is located (including property located outside the boundaries of the District subject to the Required Mill Levy), showing the amount of taxes to be levied from time to time, as required by law, for the purpose of paying the Loan when due and, if necessary, replenishing the Reserve Fund to the Reserve Requirement, subject to the limitations and in accordance with the requirements of the Required Mill Levy.

(c) The amounts necessary to pay all costs and expenses incidental to the issuance of the Loan, to pay the principal of and interest on the Loan when due, and to replenish the Reserve Fund to the Reserve Requirement are hereby appropriated for said purposes, and such amounts as appropriate for each year shall be included in the annual budget and the appropriation resolutions to be adopted and passed by the Board in each year, respectively, until the Loan has been fully paid, satisfied, and discharged and no amounts are due and owing to the Bank hereunder or under any other Financing Document.

(d) It shall be the duty of the Board, annually, at the time and in the manner provided by law for levying other District taxes, to ratify and carry out the provisions of this Section 5.09 with reference to the levying of taxes; and the Board shall levy and certify said taxes in the manner provided by law for the purposes aforesaid.

(e) Said taxes shall be levied, assessed, collected, and enforced at the time and in the form and manner and with like interest and penalties as other general taxes in the State of Colorado and, when collected, said taxes shall be paid to the District. The Board

shall take all necessary and proper steps to enforce promptly the payment of taxes levied pursuant to this Agreement.

(f) In the event any ad valorem taxes are not paid when due, the District shall diligently cooperate with the Arapahoe County Treasurer to enforce the lien of such unpaid taxes against the property for which the taxes are owed.

(g) Such taxes, when received by the District, shall be transferred to the Custodian for credit as provided in the Custodial Agreement.

(h) No statutory or constitutional provision enacted after the Closing Date shall in any manner be construed as limiting or impairing the obligation of the District to levy ad valorem taxes on the taxable property of the District in accordance with the requirements of the Required Mill Levy to pay the principal of and interest on the Loan when due and replenish the Reserve Fund to the Reserve Requirement.

Section 5.10. No Additional Debt. The District covenants not to issue any additional Debt without the prior written consent of the Bank.

Section 5.11. Continued Existence. The District shall maintain its existence and shall not merge or otherwise alter its corporate structure in any manner or to any extent as might reduce the security provided for the payment of the Loan, and will continue to operate and manage the District and its facilities in an efficient and economical manner in accordance with all applicable laws, rules and regulations.

Section 5.12. Restructuring. In the event the Pledged Revenue is insufficient or is anticipated to be insufficient to pay the principal of and interest on the Loan when due, the District shall use its best efforts to refinance, refund, or otherwise restructure the Loan so as to avoid such a default.

Section 5.13. District Operations. The District shall manage its finances and day to day operations in an economical and efficient manner and in accordance with all applicable laws, rules and regulations.

Section 5.14. Enforcement and Collection. The District shall diligently collect all Pledged Revenue and shall take all necessary action to enforce such collection.

Section 5.15. Material Adverse Action. The District shall not take any action nor consent to any action that would materially adversely affect any portion of the Pledged Revenue or any other component of the Collateral securing the obligations of the District hereunder.

Section 5.16. No Change in Financing Documents. The District shall not cancel, terminate, amend, supplement, modify or waive any of the provisions of the Financing Documents to which it is party or consent to any such cancellation, termination, amendment, supplement, modification or waiver, without the prior written consent of the Bank. The District shall take no action, nor shall it cause the Custodian to take any action under any of the Financing Documents inconsistent with the rights of the Bank under this Agreement including, without limitation, its obligations to make payments to the Bank hereunder.

Section 5.17. Removal or Appointment of Agents. The Custodian shall not be removed, and no successor Custodian shall be appointed by the District without the prior written consent of the Bank.

Section 5.18. References to Bank. The District shall not refer to the Bank in any official statement, offering memorandum, or private placement memorandum without the Bank's prior written consent thereto.

Section 5.19. Termination of Agreement. So long as the District's obligations hereunder remain unpaid or unperformed, the District shall not terminate this Agreement.

Section 5.20. No Exclusion of Property. The District shall not take any action to exclude any property from its boundaries nor shall it consent to any action that could have the effect of excluding property from the District without the prior written consent of the Bank.

Section 5.21. Tax-Exempt/Taxable Property. The District shall not take any action nor consent to any action that could have the effect of causing any taxable property of the District to become exemption from ad valorem property taxation. The District shall not acquire any real property which is subject to the Required Mill Levy as of the Closing Date if such acquisition would cause such real property to be exempt from the application of the Required Mill Levy, nor will the District transfer, sell, convey or otherwise dispose of any taxable property within the District in any manner which would cause such property, following such transfer, sale, conveyance, or other disposition, to be exempt from ad valorem property taxation without the prior written consent of the Bank; provided, however, that if the market value of such property is less than \$25,000 in the aggregate, then no consent of the Bank shall be required.

Section 5.22. No Other Lien or Claim. The District shall not grant or permit to be granted any priority, parity or subordinate lien on or security interest in and to any portion of the Pledged Revenue or any other component of the Collateral.

Section 5.23. Use of Proceeds. The District will use or cause to be used the proceeds of the Loan in accordance with Section 2.01(b) hereof.

ARTICLE VI

RESERVED

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

Section 7.01. Events of Default. The occurrence of any one or more of the following events or the existence of any one or more of the following conditions shall constitute an Event of Default under this Agreement (whatever the reason for such event or condition and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree, rule, regulation or order of any court or any administrative or governmental body):

(a) the District fails or refuses to impose the Required Mill Levy or to apply the Pledged Revenue as required by this Agreement;

(b) the District fails to pay the principal of or interest on the Loan or any other amount payable to the Bank hereunder when due unless the Required Mill Levy has been imposed and the Pledged Revenue has been applied as required by this Agreement, in which case no Event of Default shall be deemed to have occurred;

(c) (i) the District fails to observe or perform any of the covenants, agreements or conditions in Sections 5.03, 5.09, 5.10, 5.14, 5.15, 5.16, 5.17, 5.18, 5.19, 5.20, 5.21 or 5.22 hereof or in the Authorizing Resolution; or (ii) the District fails to observe or perform any other of the covenants, agreements or conditions on the part of the District in this Agreement, the Note, or the Authorizing Resolution, and, solely in the case of this clause (ii), the District fails to remedy the same within 30 days after the Bank has provided the District with notice thereof;

(d) any representation or warranty made by the District in this Agreement or in any other Financing Document or any certificate, instrument, financial or other statement furnished by the District to the Bank, proves to have been untrue or incomplete in any material respect when made or deemed made;

(e) the occurrence and continuance of an event of default or an event of nonperformance under the Custodial Agreement or any of the other Financing Documents after the expiration of any grace period;

(f) default in the payment of principal of or interest when due on any financial obligation of the District and continuance of such default beyond any grace period;

(g) the pledge of the Collateral or any other security interest created hereunder or under the Custodial Agreement fails to be fully enforceable with the priority required hereunder or thereunder;

(h) any judgment or court order for the payment of money exceeding any applicable insurance coverage by more than \$50,000 in the aggregate is rendered against the District and the District fails to vacate, bond, stay, contest, pay or satisfy such judgment or court order for 60 days (such satisfaction shall include, but not be limited to, compliance with the provisions of §24-10-113(3) C.R.S. or §13-60-101 C.R.S.);

(i) the District shall initiate, acquiesce or consent to any proceedings to dissolve the District or to consolidate the District with other similar entities into a single entity or the District shall otherwise cease to exist;

(j) a change occurs in the financial or operating conditions of the District, or the occurrence of any other event that, in the Bank's reasonable judgment, will have a materially adverse impact on the ability of the District to generate Pledged Revenue sufficient to satisfy the District's obligations under this Agreement or its other

obligations, and the District fails to cure such condition within six months after receipt by the District of written notice thereof from the Bank;

(k) (i) the District shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it or seeking to adjudicate it insolvent or a bankrupt or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts; or (B) seeking appointment of a receiver, trustee, custodian or other similar official for itself or for any substantial part of its property, or the District shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against the District any case, proceeding or other action of a nature referred to in clause (k)(i) above and the same shall remain undismissed; or (iii) there shall be commenced against the District any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its property which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal, within 60 days from the entry thereof; or (iv) the District shall take action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii) or (iii) above; or (v) the District shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

(l) this Agreement, the Custodial Agreement or any other Financing Document, or any material provision hereof or thereof, (i) ceases to be valid and binding on the District or is declared null and void, or the validity or enforceability thereof is contested by the District (unless being contested by the District in good faith), or the District denies it has any or further liability under any such document to which it is a party; or (ii) any pledge or security interest created hereunder or under the Custodial Agreement fails to be fully enforceable with the priority required hereunder or thereunder;

(m) the District's auditor delivers a qualified opinion with respect to the District's status as a going concern;

(n) the Reserve Fund is not replenished to the Reserve Requirement on or before the date which is one calendar year from the date a draw is made thereon; or

(o) any funds or investments on deposit in, or otherwise to the credit of, any of the funds or accounts established hereunder or under the Custodial Agreement shall become subject to any writ, judgment, warrant or attachment, execution or similar process.

Section 7.02. Remedies. Upon the occurrence and during the continuance of any Event of Default, the Loan shall bear interest at the Default Interest Rate until such Event of Default is cured to the satisfaction of the Bank through and including the Maturity Date, and the Bank at its option, may do any one or more of the following:

- (a) exercise any and all remedies available under the Loan Agreement, including, but not limited to, causing the imposition of the Required Mill Levy at its maximum amount;
- (b) exercise any and all remedies available under the Custodial Agreement; or
- (c) take any other action or remedy available under the other Financing Documents or any other document, or at law or in equity.

Section 7.03. Notice to Bank of Default. Notwithstanding any cure period described above, the District will immediately notify the Bank in writing when the District obtains knowledge of the occurrence of any Event of Default or any event which would, with the passage of time or the giving of notice, constitute an Event of Default.

Section 7.04. Additional Bank Rights. Upon the occurrence of an Event of Default the Bank may at any time (a) Setoff (as defined below), and/or (b) take such other steps to protect or preserve the Bank's interest in the Pledged Revenue.

Section 7.05. Credit Balances; Setoff. As additional security for the payment of the obligations described in the Financing Documents (collectively the "Obligations"), the District hereby grants to the Bank 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 District now or hereafter in the possession of the Bank and the right to refuse to allow withdrawals from any account (collectively, "Setoff"). The Bank may, at any time upon the occurrence of an Event of Default hereunder Setoff against the Obligations whether or not the Obligations (including future payments to be made) are then due, all without any advance or contemporaneous notice or demand of any kind to the District, such notice and demand being expressly waived.

Section 7.06. Delay or Omission No Waiver. No delay or omission of the Bank to exercise any right or power accruing upon any default shall exhaust or impair any such right or power or shall be construed to be a waiver of any such default, or acquiescence therein; and every power and remedy given by this Agreement may be exercised from time to time and as often as may be deemed expedient.

Section 7.07. No Waiver of One Default to Affect Another; All Remedies Cumulative. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other then existing Event of Default or shall impair any rights or remedies consequent thereon. All rights and remedies of the Bank provided herein shall be cumulative and the exercise of any such right or remedy shall not affect or impair the exercise of any other right or remedy.

Section 7.08. Other Remedies. Nothing in this Article VII is intended to restrict the Bank's rights under any of the Financing Documents or at law or in equity, and the Bank may exercise all such rights and remedies as and when they are available.

ARTICLE VIII

MISCELLANEOUS

Section 8.01. Loan Agreement and Relationship to Other Documents. The warranties, covenants and other obligations of the District (and the rights and remedies of the Bank) that are outlined in this Agreement and the other Financing Documents are intended to supplement each other. In the event of any inconsistencies in any of the terms in the Financing Documents, all terms will be cumulative so as to give the Bank the most favorable rights set forth in the conflicting documents, except that if there is a direct conflict between any preprinted terms and specifically negotiated terms (whether included in an addendum or otherwise), the specifically negotiated terms will control.

Section 8.02. Assignments, Participations, etc. by the Bank. Any assignment or participation by the Bank is not subject to the District's consent. In connection with any such assignment or participation, the Bank may disclose to any proposed assignee or participant any information that the District discloses pursuant to this Agreement and the other Financing Documents. Any such assignment or participation is also subject to the following conditions:

(a) The rights, options, powers and remedies granted in this Agreement and the other Financing Documents will extend to the Bank and to its successors and assigns, will be binding upon the District and its successors and assigns and will be applicable hereto and to all renewals and/or extensions hereof.

(b) In addition, the Bank may collaterally assign and pledge, without the consent of the District, all or any portion of the obligations owing to it to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank; provided that any payment in respect of such assigned obligations made by the District to the Bank in accordance with the terms of this Agreement shall satisfy the District's obligations hereunder in respect of such assigned obligation to the extent of such payment. No such collateral assignment shall release the Bank from its obligations hereunder.

(c) The Bank may at any time, without the consent of the District, sell to one or more commercial banks or other Persons not affiliates of the District (a "Participant") participating interests in its rights and obligations hereunder or under the other Financing Documents; provided, however, that (i) the Bank's obligations hereunder shall remain unchanged, (ii) the Bank shall remain solely responsible for the performance of such obligations, and (iii) the participation of one or more Participants shall not reduce or alter the Bank's obligations hereunder or affect in any way the rights or obligations of the District hereunder and the District has the right to continue to deal solely with the Bank. The Bank will give notice of the sale of such participation and the name of the Participant to the District within 30 days of the date of such sale. In the case of any such participation, the Participant shall be entitled to the benefit of Sections 2.02(i) and 8.03 hereof as though it were also the Bank hereunder, and if amounts outstanding under this Agreement are due and unpaid, or has been declared or has become due and payable upon

the occurrence of an Event of Default, each Participant shall be deemed to have the right of setoff in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as the Bank under this Agreement.

Section 8.03. Litigation/Indemnification. The District agrees, to the extent permitted by law and as set forth herein, to completely indemnify and hold harmless the Bank and its officers, directors, employees, advisors, agents, affiliates and controlling Persons, together with any Participant and its officers, directors, employees, advisors, agents, affiliates and controlling Persons (hereinafter collectively referred to in this Section 8.03 as the “Indemnitees”) from and against any and all claims, damages, liabilities, settlements, judgments, losses, legal fees and costs or expenses incurred (including all reasonable fees and disbursements of the Indemnitees’ legal counsel and allocated cost of in-house counsel and staff and all of the Indemnitees’ reasonable travel and other out-of-pocket expenses incurred in connection with the investigation of and preparation for any such pending or threatened claims and any litigation and other proceedings arising therefrom) arising out of or based upon (a) the Loan and the Financing Documents; (b) the holding or owning by the Bank, the Participant, or their respective nominees of any Collateral securing the obligations of the District hereunder; or (c) any matters for which neither the Bank nor any Participant has any liability as set forth under Section 8.15 of this Agreement; provided, however, that the District shall not be required to indemnify the Indemnitees pursuant to Section 8.03(c) above for any claims, damages, losses, liabilities, settlements, judgments, legal fees or costs or expenses to the extent proven to be caused by the Bank’s willful or grossly negligent failure to make lawful payment under the Loan. Nothing in this Section 8.03 is intended to limit the District’s obligations contained in Article II hereof.

If any action, lawsuit or claim shall be brought or asserted against the Indemnitees in respect of which indemnity may be sought by the Indemnitees from the District under this Section 8.03, the Indemnitees shall promptly notify the District in writing, and the District shall promptly assume the defense thereof, including, but not limited to, the employment of counsel (the selection of which has been approved by the Indemnitees and such approval shall not be unreasonably withheld), the payment of all legal fees and expenses and the right to negotiate and consent to settlement; provided, however, that the District shall not settle any such action which may adversely affect the Bank without the Bank’s written consent, which consent shall not be unreasonably withheld.

In the event that the Indemnitees shall be advised by counsel experienced in matters of banking or securities laws that the Indemnitees have defenses or causes of action separate from those of the District, or that there is otherwise a conflict of interest, the Indemnitees has the right to employ their own counsel (“Independent Counsel”) to defend the Indemnitees against such action at the expense of the District, who shall pay all legal fees and expenses incurred by such Independent Counsel. The Indemnitees’ selection of Independent Counsel shall be approved by the District, and such approval shall not be unreasonably withheld. With respect to claims against the Indemnitees defended by Independent Counsel, the Indemnitees has the right to negotiate settlement of any such claims; provided, however, that the District shall not be liable for any such settlement effected by the Indemnitees without the written consent of the District, which consent shall not be unreasonably withheld.

with copies to: Kline Alvarado Veio, P.C.
1775 Sherman Street, Suite 1790
Denver, Colorado 80203
Telephone: (720) 697-7513
Attention: Donald R. Bieber, Esq.
E-mail: dbieber@kvfirm.com

to Bank: U.S. Bank National Association
950 17th Street, 8th Floor
Denver, Colorado 80202
Telephone: (303) 585-4873
Attention: Jason Edrington/Commercial Banking
E-mail: jason.edrington@usbank.com

to Custodian: U.S. Bank National Association
DN-CO-T12CT
950 17th Street, 12th Floor
Denver, Colorado 80202
Attention: Kathleen Connelly/Corporate Trust Services
Telephone: (303) 585-4591
E-mail: kathleen.connelly@usbank.com

Section 8.06. Payments. Payments due on the Loan shall be made in lawful money of the United States. All payments may be applied by the Bank to principal, interest and other amounts due under the Note and this Agreement in any order which the Bank elects.

Section 8.07. Applicable Law and Jurisdiction; Interpretation; Severability. This Agreement and all other Financing Documents will be governed by and interpreted in accordance with the internal laws of the State of Colorado, except to the extent superseded by Federal law. Invalidity of any provisions of this Agreement will not affect any other provision. THE DISTRICT AND THE BANK HEREBY CONSENT TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT SITUATED IN DENVER, COLORADO, AND WAIVE ANY OBJECTIONS BASED ON *FORUM NON CONVENIENS*, WITH REGARD TO ANY ACTIONS, CLAIMS, DISPUTES OR PROCEEDINGS RELATING TO THIS AGREEMENT, THE NOTE, THE PLEDGED REVENUE, ANY OTHER FINANCING DOCUMENT, OR ANY TRANSACTIONS ARISING THEREFROM, OR ENFORCEMENT AND/OR INTERPRETATION OF ANY OF THE FOREGOING. Nothing in this Agreement will affect the Bank's rights to serve process in any manner permitted by law. This Agreement, the other Financing Documents and any amendments hereto (regardless of when executed) will be deemed effective and accepted only at the Bank's offices, and only upon the Bank's receipt of the executed originals thereof. Invalidity of any provision of this Agreement shall not affect the validity of any other provision.

Section 8.08. Copies; Entire Agreement; Modification. The District hereby acknowledges the receipt of a copy of this Agreement and all other Financing Documents.

IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING, EXPRESSING CONSIDERATION AND SIGNED BY THE PARTIES ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. THE TERMS OF THIS AGREEMENT MAY ONLY BE CHANGED BY ANOTHER WRITTEN AGREEMENT. THIS NOTICE SHALL ALSO BE EFFECTIVE WITH RESPECT TO ALL OTHER CREDIT AGREEMENTS NOW IN EFFECT BETWEEN THE DISTRICT AND THE BANK. A MODIFICATION OF ANY OTHER CREDIT AGREEMENT NOW IN EFFECT BETWEEN THE DISTRICT AND THE BANK, WHICH OCCURS AFTER RECEIPT BY THE DISTRICT OF THIS NOTICE, MAY BE MADE ONLY BY ANOTHER WRITTEN INSTRUMENT. ORAL OR IMPLIED MODIFICATIONS TO ANY SUCH CREDIT AGREEMENT IS NOT ENFORCEABLE AND SHOULD NOT BE RELIED UPON.

Section 8.09. Waiver of Jury Trial. THE DISTRICT AND THE BANK HEREBY JOINTLY AND SEVERALLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO ANY OF THE FINANCING DOCUMENTS, THE OBLIGATIONS THEREUNDER, ANY COLLATERAL SECURING THE OBLIGATIONS, OR ANY TRANSACTION ARISING THEREFROM OR CONNECTED THERETO. THE DISTRICT AND THE BANK EACH REPRESENTS TO THE OTHER THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY GIVEN.

Section 8.10. Attachments. All documents attached hereto, including any appendices, schedules, riders and exhibits to this Agreement, are hereby expressly incorporated by reference.

Section 8.11. No Recourse Against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Public Securities Act, if a member of the Board, or any officer or agent of the District, acts in good faith in the performance of his duties as a member, officer, or agent of the Board or the District and in no other capacity, no civil recourse shall be available against such member, officer or agent for payment of the principal of and interest on the Loan. Such recourse shall not be available either directly or indirectly through the Board or the District, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the delivery of the Note evidencing the Loan and as a part of the consideration for such transfer, the Bank and any Person purchasing or accepting the transfer of the obligation representing the Loan specifically waives any such recourse. This Section 8.11 shall not limit recourse against any Person guarantying payment of the Loan, in his capacity as guarantor, whether or not such Person is also a member or officer of the Board or the District.

Section 8.12. Conclusive Recital. Pursuant to Section 11-57-210 of the Supplemental Public Securities Act, this Agreement is entered into pursuant to certain provisions of the Supplemental Public Securities Act. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of this Agreement after delivery for value.

Section 8.13. Limitation of Actions. Pursuant to Section 11-57-212 of the Supplemental Public Securities Act, no legal or equitable action brought with respect to any

legislative acts or proceedings in connection with the authorization or issuance of the Loan shall be commenced more than 30 days after the authorization of the Loan.

Section 8.14. Pledge of Revenues. The creation, perfection, enforcement, and priority of the pledge of revenues and other Collateral to secure or pay the Loan provided herein shall be governed by Section 11-57-208 of the Supplemental Public Securities Act, this Agreement, the Note, the Custodial Agreement and the Authorizing Resolution. The Collateral pledged to the payment of the Loan shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge shall have a first priority. The lien of such pledge shall be valid, binding, and enforceable as against all Persons having claims of any kind in tort, contract, or otherwise against the District irrespective of whether such Persons have notice of such liens.

Section 8.15. No Liability. Any action taken or omitted by the Bank under or in connection with the Financing Documents, if taken or omitted in good faith and without willful misconduct or gross negligence, shall be binding upon the District and shall not put the Bank under any resulting liability to the District. The Bank, including its agents, employees, officer's directors and controlling Persons, shall not have any liability to the District, and the District assumes all risk, responsibility and liability for (a) the form, sufficiency, correctness, validity, genuineness, falsification and legal effect of any demands and other documents, instruments and other papers relating to the Loan even if such documents, should prove to be in any or all respects invalid, insufficient, fraudulent or forged; (b) the general and particular conditions stipulated therein; (c) the good faith acts of any Person whatsoever in connection therewith; (d) failure of any Person (other than the Bank, subject to the terms and conditions hereof) to comply with the terms of the Loan; (e) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telex, telegraph, wireless or otherwise, whether or not they be in code; (f) errors in translation or errors in interpretation of technical terms; (g) for any other consequences arising from causes beyond the Bank's control; or (h) any use of which may be made of the proceeds of the Loan, except to the extent of any direct, as opposed to indirect, consequential, or special damages suffered by the District which direct damages are proven by the District to be caused by the Bank's willful or grossly negligent failure to make lawful payment under the Loan.

Section 8.16. No Waiver; Modifications in Writing. No failure or delay on the part of the Bank in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other right, power or remedy. The remedies provided for herein are cumulative and are not exclusive of any remedies that may be available to the Bank at law or in equity or otherwise. No amendment, modification, supplement, termination or waiver of or to any provision of this Agreement, nor consent to any departure by the District therefrom, shall be effective unless the same shall be in writing and signed by or on behalf of the Bank. Any amendment, modification or supplement of or to any provision of this Agreement, and any consent to any departure by the District from the terms of any provision of this Agreement, shall be effective only in the specific instance and for the specific purpose for which made or given. No notice to or demand on the District in any case shall entitle the District to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of the Bank to any other or further action

in any circumstances without notice or demand. The Bank shall notify the Custodian of each amendment to this Agreement.

Section 8.17. Payment on Non-Business Days. Whenever any payment hereunder shall be stated to be due on a day which is not a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of the amount due.

Section 8.18. Further Assurances. The District agrees to do such further acts and things and to execute and deliver to the Bank such additional assignments, agreements, powers and instruments as the Bank may reasonably require or deem advisable to carry into effect the purposes of this Agreement or to better assure and confirm unto the Bank its rights, powers and remedies hereunder and under the Financing Documents.

Section 8.19. Execution in Counterparts. This Agreement may be executed in counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Agreement.

Section 8.20. Severability. Any provision of this Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or nonauthorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

Section 8.21. Headings. Article and Section headings used in this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

Section 8.22. Waiver of Rules of Construction. The District hereby waives any and all provisions of law to the effect that an ambiguity in a contract or agreement should be interpreted against the party responsible for its drafting.

Section 8.23. Integration. This Agreement is intended to be the final agreement between the parties hereto relating to the subject matter hereof and this Agreement and any agreement, document or instrument attached hereto or referred to herein shall supersede all oral negotiations and prior writings with respect to the subject matter hereof.

Section 8.24. Patriot Act Notice. The Bank hereby notifies the District that pursuant to the requirements of the Patriot Act it is required to obtain, verify and record information that identifies the District, which information includes the name and address of the District and other information that will allow the Bank to identify the District in accordance with the Patriot Act. The District hereby agrees that it shall promptly provide such information upon request by the Bank.

Section 8.25. No Obligation of the City. The debt of the District created under this Agreement and represented by the Note is the sole obligation of the District and will not constitute a debt or obligation of the City in any manner. The full faith and credit of the City is not pledged for the repayment of the obligations created under this Agreement and the Note.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date set forth above.

U.S. BANK NATIONAL ASSOCIATION, a national banking association

By _____
Name _____
Title _____

BRIARGATE CENTER BUSINESS IMPROVEMENT DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado

By _____
President

[SEAL]

Attest:

By _____
Secretary

[Signature Page to Loan Agreement]

EXHIBIT A

FORM OF PROMISSORY NOTE

**UNITED STATES OF AMERICA
STATE OF COLORADO
CITY OF COLORADO SPRINGS**

**BRIARGATE CENTER BUSINESS IMPROVEMENT DISTRICT
\$[3,544,500]
LIMITED TAX GENERAL OBLIGATION
REFUNDING LOAN 2018**

PROMISSORY NOTE

US \$[3,544,500]

December __, 2018

FOR VALUE RECEIVED, **BRIARGATE CENTER BUSINESS IMPROVEMENT DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado, duly organized and existing as a business improvement district under the constitution and laws of the State of Colorado (hereinafter referred to as “Maker”), promises to pay to the order of **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, its successors and assigns (hereinafter referred to as “Payee”), at such place as Payee or its agent, designee, or assignee may from time to time designate in writing, the principal sum of **[THREE MILLION FIVE HUNDRED FORTY FOUR THOUSAND FIVE HUNDRED] AND NO/100 DOLLARS (US \$[3,544,500])** (this “Note”) pursuant to the terms of the Loan Agreement dated of even date herewith by and between Maker and Payee (the “Loan Agreement”), in lawful money of the United States of America.

This Note shall bear interest, be payable, and mature pursuant to the terms and provisions of the Loan Agreement. All capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed in the Loan Agreement.

This Note is solely the debt of the Maker, and does not constitute a debt or obligation of the City of Colorado Springs (the “City”) in any manner. The full faith and credit of the City is not pledged for the repayment of this Note by the District.

Amounts received by Payee under this Note shall be applied in the manner provided by the Loan Agreement. All amounts due under this Note shall be payable without setoff, counterclaim or any other deduction whatsoever by Maker.

Unless payments are made in the required amount in immediately available funds in accordance with the provisions of the Loan Agreement, remittances in payment of all or any part of the amounts due and payable hereunder shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Payee in funds immediately available at the place where this Note is payable (or any other place as Payee, in Payee's sole discretion, may have established by delivery of written notice thereof to Maker) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Payee of any payment in an amount less than the amount then due shall be deemed an acceptance on account only and any unpaid amounts shall remain due hereunder, all as more particularly provided in the Loan Agreement.

In the event of nonpayment of this Note, Payee shall be entitled to all remedies under the Loan Agreement and at law or in equity, and all remedies shall be cumulative.

It is expressly stipulated and agreed to be the intent of Maker and Payee at all times to comply with applicable state law and applicable United States federal law. If the applicable law (state or federal) is ever judicially interpreted so as to render usurious any amount called for under this Note or under the Loan Agreement, or contracted for, charged, taken, reserved or received with respect to the indebtedness evidenced by this Note, then it is Maker's and Payee's express intent that all excess amounts theretofore collected by Payee be credited on the principal balance of this Note (or, if this Note has been or would thereby be paid in full, refunded to Maker), and the provisions of this Note shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and under the Loan Agreement. All sums paid or agreed to be paid to Payee for the use, forbearance and detention of the indebtedness evidenced hereby and by the Loan Agreement shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such indebtedness until payment in full so that the rate or amount of interest on account of such indebtedness does not exceed the maximum rate permitted under applicable law from time to time in effect and applicable to the indebtedness evidenced hereby for so long as such indebtedness remains outstanding.

Maker and any endorsers, sureties or guarantors hereof jointly and severally waive presentment and demand for payment, protest and notice of protest and nonpayment, all applicable exemption rights, valuation and appraisal, notice of demand, and all other notices in connection with the delivery, acceptance, performance, default or enforcement of the payment of this Note and the bringing of suit and diligence in taking any action to collect any sums owing hereunder or in proceeding against any of the rights and Collateral securing payment hereof. Maker and any surety, endorser or guarantor hereof agree (a) that the time for any payments hereunder may be extended from time to time without notice and consent; (b) to the acceptance of further Collateral; (c) to the release of any existing Collateral for the payment of this Note; (d) to any and all renewals, waivers or modifications that may be granted by Payee with respect to the payment or other provisions of this Note; and/or (e) that additional makers, endorsers, guarantors or sureties may become parties hereto all without notice to them and without in any manner affecting their liability under or with respect to this Note. No extension of time for the

payment of this Note shall affect the liability of Maker under this Note or any endorser or guarantor hereof even though Maker or such endorser or guarantor is not a party to such agreement.

Failure of Payee to exercise any of the options granted herein to Payee upon the happening of one or more of the events giving rise to such options shall not constitute a waiver of the right to exercise the same or any other option at any subsequent time in respect to the same or any other event. The acceptance by Payee of any payment hereunder that is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the options granted herein or in the Loan Agreement to Payee at that time or at any subsequent time or nullify any prior exercise of any such option without the express written acknowledgment of Payee.

Maker (and the undersigned representative of Maker, if any) represents that Maker has full power, authority and legal right to execute, deliver and perform its obligations pursuant to this Note and this Note constitutes the legal, valid and binding limited tax general obligation of Maker.

All notices or other communications required or permitted to be given hereunder shall be given in the manner and be effective as specified in the Loan Agreement, directed to the parties at their respective addresses as provided therein.

This Note is governed by and interpreted in accordance with the internal laws of the State of Colorado, except to the extent superseded by federal law. Invalidity of any provisions of this Note will not affect any other provision.

Pursuant to Section 11-57-210 of the Colorado Revised Statutes, as amended, this Note is entered into pursuant to and under the authority of certain provisions of the Supplemental Public Securities Act, being Title 11, Article 57, of the Colorado Revised Statutes, as amended. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of this Note after delivery for value and shall conclusively impart full compliance with all provisions and limitations of said statutes, and this Note shall be incontestable for any cause whatsoever after delivery for value.

TO THE EXTEND PERMITTED BY LAW, MAKER HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT SITUATED IN DENVER, COLORADO, AND WAIVES ANY OBJECTION BASED ON FORUM NON CONVENIENS, WITH REGARD TO ANY ACTIONS, CLAIMS, DISPUTES OR PROCEEDINGS RELATING TO THIS NOTE, THE LOAN AGREEMENT, THE PLEDGED REVENUE, ANY OTHER FINANCING DOCUMENT, OR ANY TRANSACTIONS ARISING THEREFROM, OR ENFORCEMENT AND/OR INTERPRETATION OF ANY OF THE FOREGOING.

TO THE EXTEND PERMITTED BY LAW, MAKER HEREBY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO THIS NOTE, THE LOAN AGREEMENT, OR ANY OF THE OTHER FINANCING DOCUMENTS, THE OBLIGATIONS THEREUNDER, ANY COLLATERAL SECURING

THE OBLIGATIONS, OR ANY TRANSACTION ARISING THEREFROM OR CONNECTED THERETO. MAKER REPRESENTS TO PAYEE THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY GIVEN.

THE PROVISIONS OF THIS NOTE MAY BE AMENDED OR REVISED ONLY BY AN INSTRUMENT IN WRITING SIGNED BY MAKER AND PAYEE. THERE ARE NO ORAL AGREEMENTS BETWEEN MAKER AND PAYEE WITH RESPECT TO THE SUBJECT MATTER HEREOF.

IN WITNESS WHEREOF, an authorized representative of Briargate Center Business Improvement District, as Maker, has executed this Note as of the day and year first above written.

**BRIARGATE CENTER BUSINESS
IMPROVEMENT DISTRICT**, a
quasi-municipal corporation and political
subdivision of the State of Colorado

By _____
President

[SEAL]

Attest:

By _____
Secretary

[Signature Page to Promissory Note]

