



CITY OF OREM
CITY COUNCIL MEETING
56 North State Street, Orem, Utah
October 17, 2017

*This meeting may be held electronically
to allow a Councilmember to participate.*

3:30 P.M. WORK SESSION – PUBLIC SAFETY TRAINING ROOM

1. **DISCUSSION – Summerfest Planning (30 min)**
Presenters: Reed Price
2. **REPORT – OPD Victim Assistance Program (5 min)**
Presenters: Renee Flitton
3. **UPDATE – Orem Centennial Committee (15 min)**
Presenters: Ryan Clark and Kathi Beckett
4. **LEGISLATIVE UPDATE (45 min)**
Presenters: Rep. Keven Stratton

5:00 P.M. STUDY SESSION – PUBLIC SAFETY TRAINING ROOM

PREVIEW UPCOMING AGENDA ITEMS

5. **Staff will present to the City Council a preview of upcoming agenda items.**

AGENDA REVIEW

6. **The City Council will review the items on the agenda.**

CITY COUNCIL - NEW BUSINESS

7. **This is an opportunity for members of the City Council to raise issues of information or concern.**

6:00 P.M. REGULAR SESSION - COUNCIL CHAMBERS

CALL TO ORDER

INVOCATION/INSPIRATIONAL THOUGHT: Tiffany Dewitt

FLAG CEREMONY/PLEDGE OF ALLEGIANCE: Packs 1243 & 454

**THE PUBLIC IS INVITED TO PARTICIPATE IN ALL CITY COUNCIL MEETINGS.
If you need a special accommodation to participate in the City Council Meetings and Study Sessions,
please call the City Recorder's Office at least 3 working days prior to the meeting.
(Voice 229-7074)**

This agenda is also available on the City's Internet webpage at orem.org

APPROVAL OF MINUTES

8. MINUTES of Joint Orem City Council/ASD Meeting – September 20, 2017

MAYOR’S REPORT/ITEMS REFERRED BY COUNCIL

9. **UPCOMING EVENTS**

PERSONAL APPEARANCES – 15 MINUTES

10. **Time has been set aside for the public to express their ideas, concerns, and comments on items not scheduled as public hearings on the Agenda. Those wishing to speak are encouraged to show respect for those who serve the city. Comments should focus on issues concerning the city. Those wishing to speak should have signed in before the beginning of the meeting. (Please limit your comments to 3 minutes or less.)**

CONSENT ITEMS

11. **There are no Consent Items.**

SCHEDULED ITEMS

- 6:00 P.M. PUBLIC HEARING – Business Loans of Utah**
12. **RESOLUTION – Authorizing participation in the small business loan program administered by the Business Loans of Utah (BLU) and finding that the appropriation of money to the BLU Fund meets the requirements of Utah Code § 10-8-2**

PRESENTER: Ryan Clark and Heather Schriever

POTENTIALLY AFFECTED AREA: Citywide

BACKGROUND: Non-predatory lending opportunities are very limited for emerging Orem small businesses to expand. The BLU Fund is an economic development tool that allows local municipalities and counties to provide local small businesses not considered “bankable” by traditional lending institutions, with the financing they need to succeed.

The purpose of the BLU Fund is as follows:

- a. To strengthen small businesses, create and retain jobs, and provide economic opportunities by improving access to small business financing.
- b. To provide loans to small businesses unable to acquire financing from traditional financial institutions, but whom BLU deems otherwise creditworthy.
- c. To stimulate the redevelopment and utilization of deteriorated commercial and industrial property.

- d. To provide cities and counties with opportunities to increase economic development in their areas by accessing BLU funds made available for small business loans.

Economic Development staff is often asked: “What is Orem willing to do for small businesses?” The BLU Fund is an answer to that question and is another tool to foster small business growth. BLU will complement the existing Revolving Loan Fund (RLF), which is also a program for small businesses that are not considered “bankable.” It is difficult to qualify for a RLF loan due to Federal requirements regarding job creation and matching equity funds. Applicants that do not qualify for the RLF may now take advantage of the BLU Fund which doesn’t contain the same types of requirements.

BLU will lend \$50,000 to \$200,000 to applicants that qualify after a rigorous loan qualification review and loan approval from the City. Small businesses may use the BLU Fund loans for building and site improvements, real estate, equipment, working capital, accounts receivable, and refinancing of high interest loans. The City of Orem Economic Development Strategic Plan dated December 2014 Goals 3 and 4 discuss the need to develop a loan fund to assist in the retrofitting of buildings to improve their appearance as part of improving the visual and physical appearance of State Street and to create a civic center at Center Street. Participation in the BLU Fund will help meet these goals.

Fiscal Impact:

- Zions Bank will initially contribute \$7,000,000 to the BLU Fund as a Community Reinvestment Act (CRA) investment.
- Utah Small Business Growth Initiative, LLC (USBGI) will contribute \$600,000 to the BLU Fund.
- Each dollar contributed to the BLU Fund by the City will enable the BLU Fund to lend seven dollars to Orem businesses.
- Orem has set aside \$100,000 to contribute to the BLU Fund, using the general fund.
 - Orem’s initial contribution will enable the BLU Fund to lend \$700,000 to local expanding Orem small businesses.
- USBGI will continue to find additional CRA lenders, like Zions Bank, to contribute to the BLU Fund as the loan pool grows.
- If needed, the City will have the opportunity to make additional contributions to the BLU Fund, to continue to provide additional opportunities to local small businesses to expand.
- When an Orem loan is funded, the City will earn interest based on the note rate of interest, as the loan is repaid, resulting in additional loan funds available to Orem businesses through the BLU Fund.
- Other loan fund members are anticipated to include Provo City, Ogden City, Spanish Fork City, Box Elder County, and Weber County.

Utah Code § 10-8-2 – Appropriations Study:

Utah Code § 10-8-2 permits the City to appropriate money for corporate purposes. Corporate purposes include any purpose that, in the judgment of the Orem City Council, provides for the safety, health, prosperity, moral well-being, peace, order, comfort or convenience of the inhabitants of the municipality if the City receives value for the appropriation. A Business Loans of Utah Appropriation Study analyzing the benefits of

BLU Fund participation (the “Appropriation Study”) has been completed. The Appropriation Study establishes that:

1. The City will receive the following benefits and value by participating in the BLU Fund:
 - Exponential increase in resources available to Orem businesses for economic development;
 - Return of interest on money loaned to small businesses through the BLU Fund;
 - An increase in the property and sales tax base through the growth of small businesses located in the City; and
 - Realization of other associated economic benefits including new business and employee expenditures within the City and construction expenditures.
2. The purpose for the appropriation is to strengthen small businesses, create and retain jobs, provide economic opportunities through access to financing, and stimulate redevelopment.
3. The appropriation is necessary and appropriate to accomplish reasonable goals and objectives in the area of economic development, job creation because it will jumpstart new private development within the City and provide access to much needed development funds that would otherwise not be available to small businesses within the City.

Based on these demonstrated findings, there is an adequate basis for the City Council to find that the appropriation of money to the BLU Fund meets the requirements of Utah Code § 10-8-2.

RECOMMENDATION: The Economic Development Division Manager recommends the City Council of the City of Orem, by resolution, authorize participation in the small business loan program administered by the Business Loans of Utah (BLU) and find that the appropriation of money to the BLU Fund meets the requirements of Utah Code § 10-8-2.

6:00 P.M. PUBLIC HEARING – Street Vacation – 750 East between 800 & 900 South
13. ORDINANCE – Vacating approximately 0.69 acres of 750 East Street located between 800 South and 900 South

PRESENTER: Jason Bench

REQUEST: University Mall LC and Catania SFH, LLC request that the City Council vacate a portion of 750 East between 800 South and 900 South.

POTENTIALLY AFFECTED AREA: Hillcrest Neighborhood

BACKGROUND: Currently, 750 East is a dead end street without a connection to 800 East. The existing homes on both sides have been purchased by University Mall Shopping Center, LC and Catania SFH, LLC which are partnering to re-develop this area.

University Mall and Catania SFH, LLC now request that the City vacate 750 East from 800 South to 900 South. Typically, upon the vacation of a public street, half the street area

reverts to the property on one side and the other half reverts to the property on the other side.

University Mall LC and Catania SFH propose to use the vacated street area for future development in the PD-34 zone.

The City Council may vacate the portion of 750 East Street between 800 South and 900 South if it finds (1) there is good cause for the vacation, and (2) the vacation will not be detrimental to the public interest. The applicants should be required to record a subdivision plat that combines the area of the vacated street with the rest of their property and includes public utility easements in a portion of the vacated street. The applicants should also be required to disconnect the existing water main in the vacated street at 800 South and 900 South and plug the existing sewer main in the vacated street at 800 South in accordance with City specifications within two years.

RECOMMENDATION: The Department of Development Services recommends that the City Council, by ordinance, vacate approximately 0.69 acres of 750 East Street located between 800 South and 900 South.

6:00 P.M. PUBLIC HEARING – Quarterly Budget Amendment

15. ORDINANCE – Amending the Current Fiscal Year 2017-2018 Budget

PRESENTER: Richard Manning and Brandon Nelson

POTENTIALLY AFFECTED AREA: Citywide

BACKGROUND: The Fiscal Year 2017-2018 City of Orem budget has many adjustments that occur throughout the fiscal year. These adjustments include grants and donations received from Federal, State, and other governmental or private entities/organizations; additional funds received for the Well #10 construction project; adding additional project funds due to interest earnings on the Siemens energy savings improvement lease escrow account unspent funds; adjusting CARE Tax accounts due to reconciling FY 2016-2017 to actual taxes received; and various other smaller technical corrections or minor budget adjustments that need to be made.

RECOMMENDATION: The City Manager recommends the City Council hold a public hearing to discuss amending the current Fiscal Year 2017-2018 Budget and, by ordinance, amend Fiscal Year 2017-2018 Budget.

COMMUNICATION ITEMS

16. There are no Communication Items.

CITY MANAGER INFORMATION ITEMS

- 17. This is an opportunity for the City Manager to provide information to the City Council. These items are for information and do not require action by the City Council.**

ADJOURNMENT

DRAFT

1 OREM CITY COUNCIL/ALPINE SCHOOL DISTRICT
2 SPECIAL JOINT MEETING
3 56 North State, Orem, Utah
4 September 20, 2017
5

6 *This meeting was for discussion purposes only. No official action was taken.*
7

8 CONDUCTING Mayor Richard F. Brunst
9
10 OREM ELECTED OFFICIALS Councilmembers Debby Lauret, Sam Lentz, Tom
11 Macdonald, Mark Seastrand, David Spencer, and
12 Brent Sumner
13
14 OREM STAFF Jamie Davison, City Manager; Brenn Bybee,
15 Assistant City Manager; Steven Downs, Assistant to
16 the City Manager; Karl Hirst, Recreation
17 Department Head; Gary Giles, Police Chief; and
18 Donna Weaver, City Recorder
19
20 ALPINE BOARD OF EDUCATION John Burton, Mark Clement, Sarah Hacken, Paula
21 Hill, and JoDee Sundberg
22
23 ALPINE SCHOOL DISTRICT ADMIN. Sam Jarman, Superintendent; Rob Smith, Assistant
24 Superintendent; and Jess Christen, Assistant
25 Superintendent; John Patten, Assistant
26 Superintendent
27
28 INVOCATION Councilmember Spencer
29

30 Mayor Brunst called the meeting to order at 12:05 p.m.
31

32 Mayor Brunst welcomed the public, noting that this was public meeting but not a public hearing,
33 so no public comment would be accepted. He reviewed a number of public meetings the District
34 would be hosting to discuss the proposed school closures.
35

36 **Items of Common Interest**

37 DISCUSSION

38
39
40 Superintendent Jarman expressed appreciation to the City for working so hard to complete the
41 street construction around Orem Elementary before the start of school.
42

43 He then reviewed the history of the current discussion about the potential of consolidation/new
44 construction/new boundaries for some Orem schools. He noted that during a period of time
45 where the plan was being formulated for future discussion with the public some of the
46 information was released publicly, before it was ready, so there is now a perception that it was a
47 “done deal” and that public trust had been compromised, which was unfortunate.

DRAFT

1 Superintendent Jarman said they were at the point where they were ready to discuss the concept
2 at community input meetings. A survey had been posted online and the input would be taken into
3 consideration at the appropriate time. It would be open to the public until Thursday,
4 September 21, 2017, to give time for District staff to summarize the results before the next board
5 meeting. The survey opened on Monday.

6
7 Mr. Christen reviewed a handout that detail Orem's declining enrollment which had has
8 triggered a need to evaluate leaving all schools open. Some schools needed to be either upgraded
9 for seismic standards or to build new schools.

10
11 Superintendent Jarman said the older buildings had "unreinforced masonry." They could do
12 some things to improve the buildings but the masonry would still be unreinforced. In the event of
13 a catastrophic earthquake, those buildings were the most likely to collapse.

14
15 Mr. Davidson noted that prior to the late 1970s there were no seismic standards.

16
17 Mrs. Hacken referenced the earthquake in Mexico and the images of dead children being pulled
18 from collapsed buildings. She said that was the kind of thing that gave her nightmares. She had
19 spoken recently with an earthquake specialist. The Wasatch Fault had five faults and any of them
20 could shift independent of the others.

21
22 Mr. Spencer noted that Hillcrest had already been remodeled. Mr. Christen reviewed the things
23 done to that school, noting that only a couple of the classrooms were impacted by the remodel.

24
25 The Council, Board, and staff touched on the following issues:

- 26 • Losing federal funding as a Title 1 because of how student population.
- 27 • Specialty programs, such as language immersion, included out-of-area students and
28 student participation was dependent on interest. Sometimes participation in such program
29 grew while other times they decreased.
- 30 • Orem could help with student population by revitalizing neighborhoods to encourage
31 young families to move there.
- 32 • The District had invested a lot of money in improving Orem schools, including
33 \$4 million to replace Timpanogos High School's roof, redo the parking lot, redo the
34 sound system and phone system, etc.
- 35 • Student population estimates were based upon a rolling five-year prediction, based upon
36 current enrollment, census, building permits, etc.
- 37 • In spite of Orem's increase in population, the birth rates in many areas in the district had
38 declined significantly.

39
40 Mayor Brunst noted that his children had attended Northridge Elementary, and they were moved
41 to Orchard Elementary. It was not an easy change, but they learned to love the new school.

42
43 Mr. Davidson said when they had talked last there had been some concern about Vineyard
44 Elementary School crossing. There was a signal crossing. His hope was that they were not
45 hearing from moms and dads worrying about pedestrian safety. Mr. Davidson said they were also
46 looking at other opportunities to calm traffic in the area.

DRAFT

1 Mrs. Sundberg noted that the problem was not just at Vineyard Elementary but the entire way up
2 400 South because that was the was the outlet for Vineyard.

3
4 Mr. Davidson said they were having a conversation with Vineyard about that. Much of their
5 development to the south congregated at 400 South. They were trying to create new outlets onto
6 Geneva Road. One of the challenges was the railroad. They did not permit at-grade crossings.

7 8 **Set Date and Time for Next**

9
10 The next meeting was scheduled for November 15, 2017, at noon in the Orem City Council
11 Chambers.

12 13 **Adjournment**

14
15 Mr. Spencer **moved** to adjourn the meeting. Mr. Lentz **seconded** the motion. The motion **passed**
16 **unanimously**.

17
18 The meeting adjourned at 12:53 p.m.
19

CITY OF OREM
CITY COUNCIL MEETING
 OCTOBER 17, 2017



REQUEST:	6:00 P.M. PUBLIC HEARING – BUSINESS LOANS OF UTAH RESOLUTION – Authorizing participation in the small business loan program administered by the Business Loans of Utah (BLU) and finding that the appropriation of money to the BLU Fund meets the requirements of Utah Code § 10-8-2
APPLICANT:	Economic Development Division Manager
FISCAL IMPACT:	\$100,000

NOTICES:

- Posted in 2 public places
- Posted on City webpage
- Posted on the State noticing website
- Faxed to newspapers
- E-mailed to newspapers
- E-mailed Neighborhood Chair

SITE INFORMATION:

- General Plan Designation:
N/A
- Current Zone:
N/A
- Acreage:
N/A
- Neighborhood:
City wide
- Neighborhood Chair:
N/A

PREPARED BY:
 Ryan Clark
 Economic Development
 Division Manager

RECOMMENDATION:

The Economic Development Division Manager recommends the City Council of the City of Orem, by resolution, authorize participation in the small business loan program administered by the Business Loans of Utah (BLU) and find that the appropriation of money to the BLU Fund meets the requirements of Utah Code § 10-8-2.

BACKGROUND:

Non-predatory lending opportunities are very limited for emerging Orem small businesses to expand. The BLU Fund is an economic development tool that allows local municipalities and counties to provide local small businesses not considered “bankable” by traditional lending institutions, with the financing they need to succeed.

The purpose of the BLU Fund is as follows:

- a. To strengthen small businesses, create and retain jobs, and provide economic opportunities by improving access to small business financing.
- b. To provide loans to small businesses unable to acquire financing from traditional financial institutions, but whom BLU deems otherwise creditworthy.
- c. To stimulate the redevelopment and utilization of deteriorated commercial and industrial property.
- d. To provide cities and counties with opportunities to increase economic development in their areas by accessing BLU funds made available for small business loans.

Economic Development staff is often asked: “What is Orem willing to do for small businesses?” The BLU Fund is an answer to that question and is another tool to foster small business growth. BLU will complement the existing Revolving Loan Fund (RLF), which is also a program for small businesses that are not considered “bankable.” It is difficult to qualify for a RLF loan due to Federal requirements regarding job creation and matching equity funds. Applicants that do not qualify for the RLF may now take advantage of the BLU Fund which doesn’t contain the same types of requirements.

BLU will lend \$50,000 to \$200,000 to applicants that qualify after a rigorous loan qualification review and loan approval from the City. Small businesses may use the BLU Fund loans for building and site improvements, real estate, equipment, working capital, accounts receivable, and refinancing of high interest loans. The City of Orem Economic Development Strategic Plan dated December 2014 Goals 3 and 4 discuss the need to develop a loan fund to assist in the retrofitting of buildings to improve their appearance as part of improving the visual and physical appearance of State Street and to create a civic center at Center Street. Participation in the BLU Fund will help meet these goals.

Fiscal Impact:

- Zions Bank will initially contribute \$7,000,000 to the BLU Fund as a Community Reinvestment Act (CRA) investment.
- Utah Small Business Growth Initiative, LLC (USBGI) will contribute \$600,000 to the BLU Fund.
- Each dollar contributed to the BLU Fund by the City will enable the BLU Fund to lend seven dollars to Orem businesses.
- Orem has set aside \$100,000 to contribute to the BLU Fund, using the general fund.
 - Orem’s initial contribution will enable the BLU Fund to lend \$700,000 to local expanding Orem small businesses.
- USBGI will continue to find additional CRA lenders, like Zions Bank, to contribute to the BLU Fund as the loan pool grows.
- If needed, the City will have the opportunity to make additional contributions to the BLU Fund, to continue to provide additional opportunities to local small businesses to expand.
- When an Orem loan is funded, the City will earn interest based on the note rate of interest, as the loan is repaid, resulting in additional loan funds available to Orem businesses through the BLU Fund.
- Other loan fund members are anticipated to include Provo City, Ogden City, Spanish Fork City, Box Elder County, and Weber County.

Utah Code § 10-8-2 – Appropriations Study:

Utah Code § 10-8-2 permits the City to appropriate money for corporate purposes. Corporate purposes include any purpose that, in the judgment of the Orem City Council, provides for the safety, health, prosperity, moral well-being, peace, order, comfort or convenience of the inhabitants of the municipality if the City receives value for the appropriation. A Business Loans of Utah Appropriation Study analyzing the benefits of BLU Fund participation (the “Appropriation Study”) has been completed. The Appropriation Study establishes that:

1. The City will receive the following benefits and value by participating in the BLU Fund:
 - Exponential increase in resources available to Orem businesses for economic development;

- Return of interest on money loaned to small businesses through the BLU Fund;
 - An increase in the property and sales tax base through the growth of small businesses located in the City; and
 - Realization of other associated economic benefits including new business and employee expenditures within the City and construction expenditures.
2. The purpose for the appropriation is to strengthen small businesses, create and retain jobs, provide economic opportunities through access to financing, and stimulate redevelopment.
 3. The appropriation is necessary and appropriate to accomplish reasonable goals and objectives in the area of economic development, job creation because it will jumpstart new private development within the City and provide access to much needed development funds that would otherwise not be available to small businesses within the City.

Based on these demonstrated findings, there is an adequate basis for the City Council to find that the appropriation of money to the BLU Fund meets the requirements of Utah Code § 10-8-2.

The Economic Development Division Manager recommends that the City Council adopt the resolution (1) finding that the allocation of City funds to the BLU Fund benefits the inhabitants of the City and meets the requirements of Utah Code § 10-8-2, and (2) authorizing participation in the Small Business Loan Program administered by the Business Loans of Utah (BLU). The activities, services, and events that are funded by BLU are vital to the promotion and growth of the small businesses in Orem.

DRAFT

RESOLUTION NO. _____

A RESOLUTION OF THE OREM CITY COUNCIL AUTHORIZING PARTICIPATION IN THE SMALL BUSINESS LOAN PROGRAM ADMINISTERED BY THE BUSINESS LOANS OF UTAH (BLU) AND FINDING THAT THE APPROPRIATION OF MONEY TO THE BLU FUND MEETS THE REQUIREMENTS OF UTAH CODE § 10-8-2

WHEREAS the City of Orem (“City”) has considered current economic conditions in the City and has deemed it desirable to appropriate funds to assist in the growth of small businesses by participating in the small business loan program administered by the Utah Small Business Growth Initiative, LLC “USBGI”, dba Business Loans of Utah (“BLU”) as described in Attachment A (the “BLU Fund”); and

WHEREAS the City is authorized to appropriate money for any purpose that, in its judgment, provides for the prosperity and economic wellbeing of city inhabitants pursuant to Utah Code § 10-8-2; and

WHEREAS the local expansion of small businesses is hampered by limited funding sources; and

WHEREAS the City’s participation in the BLU Fund, provides additional funds for the purpose of small business growth and expansion; and

WHEREAS participation in the BLU Fund provides an opportunity to strengthen small businesses, create and retain jobs, provide economic opportunities, and stimulate the redevelopment and utilization of commercial and industrial property; and

WHEREAS the City’s participation in the BLU Fund multiplies the amount available to small businesses while limiting the risk to the City; and

WHEREAS the Orem City Council has received and reviewed a study (Attachment B) identifying the benefits to the safety, health, prosperity, moral well-being, peace, order, comfort, or convenience of the inhabitants of the City’s participation in the BLU Fund; and

WHEREAS the Orem City Council finds that participation in the BLU Fund is necessary and appropriate to accomplish the reasonable goals and objectives of the City to increase economic development and job creation by small businesses located in the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF OREM, UTAH, as follows:

1. The City is authorized to participate in the BLU Fund.
2. The City is authorized to contribute \$100,000 to the BLU Fund.
3. The City is authorized to execute an agreement in conjunction with the BLU Fund substantially in the form attached hereto as Attachment C.

DRAFT

4. This Resolution is effective immediately upon adoption by the Orem City Council.
PASSED and APPROVED this 17th day of **October** 2017.

Richard F. Brunst, Jr., Mayor

ATTEST:

Donna R. Weaver, City Recorder

COUNCIL MEMBERS VOTING "AYE"

COUNCIL MEMBERS VOTING "NAY"

DRAFT

EXHIBIT A

BUSINESS LOANS OF UTAH (BLU) GUIDELINES

I. PURPOSE

- a. To strengthen small businesses, create and retain jobs, and provide economic opportunities by improving access to small business financing.
- b. To provide loans to small businesses unable to acquire financing from traditional financial institutions, but whom BLU deems otherwise creditworthy.
- c. To stimulate the redevelopment and utilization of deteriorated commercial and industrial property.
- d. To provide cities and counties with opportunities to increase economic development in their areas by accessing BLU funds made available for small business loans.

II. BLU PRODUCTS

The anticipated loan products include:

- a. Equipment Loans
- b. Working Capital Loans
- c. Refinance High Interest Loans
- d. Accounts Receivable Loans
- e. Unsecured Loans
- f. Real Estate Loans

III. MEMBERS

The BLU membership classes include:

- a. Government Entities – cities and counties that participate in BLU will have access to the loan fund. The amount of access will be determined based on the amount of loan loss that contribute to the fund. For each \$100,000 that the government entity provides in loan loss reserve, they will have access to \$700,000 in loan funds. The loan loss reserve provided by each governmental entity will be allocated for those loan originated in the entity's target area.
- b. Lenders – lenders are expected to provide \$7MM in debt to the fund. The lenders will have a seat on the loan committee and a majority of the lenders will have to approve each loan.
- c. USBGI – Utah Small Business Growth Initiative, LLC dba Business Loans of Utah (USBGI) will provide \$600,000 in general loss reserves. USBGI will have one vote on the loan committee and will serve as the fund manager.

IV. TERM

- a. The anticipated BLU term is 7 years. There will be a 2-year draw down period followed by a 5-year repayment period.
- b. Individual loans made by the fund cannot exceed 5 years.
- c. Loans are anticipated to be renewed by the lenders each year for one additional year.
- d. Any lender that does not renew the loan each year will still be required to fund during the remaining draw down period.

DRAFT

V. FUND & LOAN LOSS RESERVE (LLR)

- a. BLU has initiated this fund by using public resources as loan loss reserve for Community Reinvestment Act (CRA) qualifying loans from private financial institutions.
- b. The initial loan fund is anticipated to be \$7MM with a total loss reserve of 20% or \$1.4MM.
- c. USBGI will provide a general LLR of \$600,000.
- d. The USBGI LLR will be general LR
- e. The governmental entities will provide a total LLR of \$1MM.
- f. The governmental LLR must be from nonfederal funds and will be in the first lost position on loans financed for use in the governmental entity's target market.
- g. Governmental entities will provide \$100,000 in LLR for each \$700,000 of loan funds available to them. The \$100,000 will be paid up front.
- h. Participating governmental entities will be required to provide at least \$50,000 in LLR to participate in BLU.

DRAFT

EXHIBIT B

10-8-2 Analysis

BLU Small Business Loan Fund Appropriation Study

In Compliance with Utah Code Annotated Sections
10-8-2 (Cities) & 17-50-302 (Counties)



October 2, 2017

Business Loans of Utah Appropriation Study

The City of Orem (“Orem”) desires to appropriate funds to invest in the growth of small businesses by participating in the small business loan fund (the “Fund”) administered by Business Loans of Utah (“BLU”).¹ The Fund’s purpose is to provide critical access to investment capital for underserved city and county businesses. Under UCA §§ 10-8-2² (cities) and 17-50-302 (counties), a study must be conducted identifying the anticipated benefits and value of proposed appropriations (the “Appropriations Study”). In compliance with the applicable statutes, this Appropriations Study on Orem’s participation in the BLU Fund was prepared in consideration of the following factors:

1. The benefit and value expected to be received in return for money or resources appropriated;
2. The purpose for the appropriation, including an analysis of the way the appropriation will be used to enhance the safety, health, prosperity, moral well-being, peace, order, comfort, or convenience of residents; and
3. Whether the appropriation is necessary and appropriate to accomplish reasonable goals and objectives in the area of economic development, job creation, affordable housing, blight elimination, job preservation, the preservation of historic structures and property, and any other public purpose.

Background

In the United States, 99.7 percent of all employers are small businesses and small businesses employ over 56 million people (or 48.7 percent of private sector employees) in the nation.³

Non-predatory lending opportunities are very limited for emerging Orem small businesses to expand. The BLU Fund is an economic development tool that allows local municipalities and counties to provide local small businesses not considered “bankable” by traditional lending institutions, with the financing they need to succeed.

Economic Development staff is often asked: “What is Orem willing to do for small businesses?” The BLU program is an answer to that question and is another tool to foster small business growth. BLU will complement the existing Revolving Loan Fund (RLF), which is also a program for small businesses that are not considered “bankable.” It is difficult to qualify for an RLF loan due to Federal requirements regarding job creation and matching equity funds. Applicants that do not qualify for the RLF may now take advantage of the BLU program which doesn’t contain the same types of requirements.

BLU will lend \$50,000 to \$200,000 to applicants that qualify after a rigorous loan qualification review. Small businesses may use the BLU Fund loans for building and site

¹ The Fund is administered by Utah Small Business Growth Initiative, LLC d/b/a Business Loans of Utah.

² <https://le.utah.gov/xcode/Title10/Chapter8/10-8-S2.html>

³ https://www.sba.gov/sites/default/files/Small_Business_Advocate_Feb_2015.pdf

improvements, real estate, equipment, working capital, accounts receivable, and refinancing of high interest loans. The City of Orem Economic Development Strategic Plan dated December 2014 Goals 3 and 4 discuss the need to develop a loan fund to assist in the retrofitting of buildings to improve their appearance as part of improving the visual and physical appearance of State Street and to create a civic center at Center Street. Participation in the BLU Fund will help meet these goals.

Benefits to Cities & Counties

1. Exponential Increase in Resources for Economic Development

a. 7-to-1

Every \$1 appropriated by Orem to the BLU Fund will yield \$7 for Orem to lend to small businesses in its area. This 7-to-1 structure allows Orem to effectively appropriate seven times the funds in its budget to economic development. Not only is this accomplished without raising taxes but it allows Orem to significantly increase the benefits taxpayers enjoy for the taxes they are already paying.

b. Returns on Investment

Cities and counties will receive interest on the loans extended to small businesses in their geographic locations. Orem will earn interest on subordinated debt at the current rate of LIBOR + 350. This rate is subject to change based on market conditions and the term of the small business loan. Interest paid will be held by BLU for cities and counties and will be available for reinvestment in the Fund upon full repayment of the small business loan.

2. Tax Base

a. Property Tax

Small business growth and development will result in higher taxable values of the commercial properties improved or built using BLU loan funds. Such development, and the reduction of blight, will incrementally increase the property tax revenue realized by local taxing authorities.

b. Sales Tax

Vacant, undeveloped, and underutilized properties capable of being used for small businesses represent potential sales tax revenue that could be recovered by participating in the BLU Fund. Sales tax revenue will increase as the number of small businesses and the economic strength of existing businesses increase.

c. Other Revenues

In addition to property and sales tax revenues, the small business development possible through the BLU Fund will generate other revenues such as business license fees, charges for services, municipal energy (“franchise”) fees, and one-time fees like building permit and impact fees.

3. Associated Economic Activity

a. Business and Employee Expenditures

It is anticipated that small businesses will directly and indirectly purchase local goods, services, and labor related to their operations from local or regional sources. These purchases will likely increase employment opportunities in the related businesses of restaurants, utility services, equipment sales and repair, retail, professional services, financial services, etc. The resulting impacts to the community will include:

- Encouragement of economic development and the creation of additional jobs in the community.
- An increase in direct purchases within the city/county.
- Economic diversification within the city/county.
- Strengthening of existing businesses and industries located within city/county by providing new employees likely to live, shop, and pay taxes in the city/county and region.

b. Construction Expenditures

Loans used to fund construction activities associated with building, expanding, and renovating commercial space for small businesses will stimulate growth and employment of construction contractors, suppliers, and laborers. A portion of the labor costs associated with these construction activities will be spent in the community by laborers for convenience goods and services (e.g., lunch, fuel, personal services, etc.).

c. Neighborhood Benefits

The loan funds used to build new commercial space, and improve existing buildings, will reduce blight and spur additional redevelopment in surrounding areas. Residents of adjacent neighborhoods and nearby commercial properties will benefit from the private investment in the form of accessible, local commercial services, and from the increased safety, rising property values, and renewed vitality that come from development and blight reduction.

Purpose for the Appropriation

The purposes for making appropriations to the BLU Fund include:

- To strengthen small businesses, create and retain jobs, and provide economic opportunities by improving access to small business financing.
- To provide loans to small businesses unable to acquire financing from traditional financial institutions, but whom BLU deems otherwise creditworthy.
- To stimulate the redevelopment and utilization of vacant commercial and industrial property.
- To provide cities and counties with opportunities to increase economic development in their areas by accessing BLU funds made available for small business loans.

Necessary & Appropriate to Accomplish Orem's Goals and Objectives

This appropriation is necessary and appropriate to accomplish the reasonable goals and objectives of Orem in the area of economic development, job creation, affordable housing, blight elimination, job preservation, and any other public purposes.

A. Necessary

This proposed public investment in the BLU Fund and small business is an opportunity to “jumpstart” new interest and private development in the immediate area. Except for the use of public investment in the form of the proposed appropriation, it is reasonably expected that, due to market constraints and lack of interest because of risk, the desired expansion and growth of the area would not occur or would occur in an undesirable manner. Working together with private lenders and BLU will ensure that the proposed appropriation will have an immediate leveraged impact on the area, will bring about the greatest value, and help ensure economic development is accomplished in a comprehensive manner.

B. Appropriate

Appropriations to the BLU Fund are appropriate given the potential for exponential growth and development of small businesses, job creation, and the general economic improvement. The risk-managed structure of the fund limits the exposure to losses and provides unrivaled leveraging of resources.

To meet public notice requirements, this study has been available for public review since October 2, 2017. The legislative body will hold a public hearing on whether to adopt the resolution at issue. The public hearing will be held October 17, 2017, at 6:00 p.m. at the Orem City Council Chambers located at 56 North State Street, Orem, Utah.

DRAFT

EXHIBIT C

Credit Agreement

CREDIT AGREEMENT

among

UTAH SMALL BUSINESS GROWTH INITIATIVE LLC, DBA BUSINESS LOANS OF UTAH
as Borrower,

and

UTAH SMALL BUSINESS GROWTH INITIATIVE LLC, DBA BUSINESS LOANS OF UTAH,
as Administrative Agent,

and

ZB, N.A., DBA ZIONS FIRST NATIONAL BANK,
as Class A Lender,

and

BOX ELDER COUNTY, CITY OF OREM, OGDEN CITY CORPORATION,
PROVO CITY, SPANISH FORK CITY, AND WEBER COUNTY,
as Class B Lenders,

and

UTAH SMALL BUSINESS GROWTH INITIATIVE LLC, DBA BUSINESS LOANS OF UTAH
as Class C Lender.

Dated as of October _____, 2017

TABLE OF CONTENTS

	Page
ARTICLE I LOANS TO BORROWER	1
Section 1.1 Making of Loans	1
Section 1.2 The Lenders.....	3
Section 1.3 Origination of Project Loans	4
Section 1.4 Funding Requests	5
Section 1.5 Borrowing Funding	6
Section 1.6 Records of Lenders	7
Section 1.7 Notes; Principal and Interest	7
Section 1.8 Characterization of Loans	9
Section 1.9 Increased Costs; Increased Capital; Taxes Error! Bookmark not defined.	
Section 1.10 Payments in Full; Taxes	11
Section 1.11 Sharing of Payments	12
Section 1.12 CRA Sub-Allocation	12
ARTICLE II PROJECT LOAN DOCUMENTS	12
Section 2.1 Project Loan Documentation	12
Section 2.2 Required Project Loan Documents	12
Section 2.3 Servicing of Project Loans	13
Section 2.4 Required Deliveries to Servicer	13
ARTICLE III CLOSING PROCESS AND PROCEDURES	13
Section 3.1 Timing of Closings.....	13
Section 3.2 Conditions Precedent to Effectiveness of the Agreement.....	14
Section 3.3 Conditions Precedent to each Draw	14
ARTICLE IV REPRESENTATIONS AND WARRANTIES	15
Section 4.1 Status; Ownership; Single Purpose Entity	15
Section 4.2 Authorization.....	15
Section 4.3 Litigation	15
Section 4.4 Regulation U	16
Section 4.5 Binding Obligations	16

Section 4.6	No Debt	16
Section 4.7	Not on Government Lists	16
Section 4.8	No Borrower Material Adverse Effect	16
Section 4.9	Consents	16
Section 4.10	Additional Representations and Warranties	16
Section 4.11	Representations and Warranties Regarding the Project Loans	17
Section 4.12	No “accumulated funding deficiency”	18
ARTICLE V COVENANTS.....		18
Section 5.1	Enforcement of Project Loans.....	18
Section 5.2	Accounting and Tax Reporting	18
Section 5.3	Equity Investments.....	18
Section 5.4	Exercise of Rights with Respect to Servicer	18
Section 5.5	Increases in Fees to Any Person.....	18
Section 5.6	Intentionally Omitted	18
Section 5.7	Preservation of Business	18
Section 5.8	Credit Manual and Underwriting Guidelines	19
Section 5.9	Deposits into Borrower Operating Account.....	19
Section 5.10	Guarantees.....	19
Section 5.11	Other Indebtedness.....	19
Section 5.12	Amendment of Organizational Documents.....	19
Section 5.13	Change of Control	19
Section 5.14	Additional Covenants.....	19
Section 5.15	Delivery of Original Project Notes, Project Loan Agreements and Project Guarantees	20
Section 5.16	Delinquent Loans	20
Section 5.17	No Pledges	21
Section 5.18	Change in Management.....	21
Section 5.19	Financial Covenants	21
Section 5.20	Sunshine Requirements	21
ARTICLE VI THE ADMINISTRATIVE AGENT		21
Section 6.1	Authorization and Action.....	21
Section 6.2	Administrative Agent’s Reliance, Etc.....	22

Section 6.3	USBGI and Affiliates	22
Section 6.4	Lender Credit Decision	23
Section 6.5	Indemnification; General Immunity.....	23
Section 6.6	Successor Administrative Agent	23
Section 6.7	Disclosures	24
Section 6.8	Compensation.....	24
Section 6.9	Additional Services	25
Section 6.10	Beneficiaries.....	25
Section 6.11	Financial Covenants.	25
Section 6.12	Grant of Security Interests.	25
ARTICLE VII EVENTS OF DEFAULT AND REMEDIES		27
Section 7.1	Events of Default.....	27
Section 7.2	Remedies	29
Section 7.3	Waiver of Defaults and Other Actions.....	30
Section 7.4	Remedies are Cumulative	30
Section 7.5	Set-Off.....	30
Section 7.6	Application of Proceeds	31
ARTICLE VIII FEES AND EXPENSES		31
Section 8.1	Expenses Generally	31
Section 8.2	Claims Against Lenders	31
ARTICLE IX INDEMNITIES; LIMITATIONS OF LIABILITY		32
Section 9.1	Indemnity	32
Section 9.2	No Liability on Part of Any Indemnified Party	32
Section 9.3	No Joint Venture, Etc.....	32
ARTICLE X BORROWER ACCOUNTS; APPLICATION OF PROJECT LOAN PROCEEDS		33
Section 10.1	Borrower Accounts	33
Section 10.2	Application of Project Loan Proceeds.....	33
Section 10.3	Sharing of Project Loan Losses.....	35
Section 10.4	35	
Section 10.5	Full Release Upon Repayment.....	35
ARTICLE XI REPORTING REQUIREMENTS		35

Section 11.1	Financial Statements and Information; Annual Portfolio Management Reports	35
Section 11.2	Quarterly and Monthly Reports	36
Section 11.3	Notices of Default; Material Adverse Change	37
Section 11.4	Litigation	37
Section 11.5	Charge-Offs or Write-Downs.....	37
Section 11.6	Other.....	38
ARTICLE XII OBLIGATIONS OF JUNIOR LENDERS		38
Section 12.1	Bankruptcy	38
ARTICLE XIII COMMITTEES		39
Section 13.1	Credit Committee	39
Section 13.2	Advisory Committee	39
Section 13.3	Pricing Committee	39
ARTICLE XIV MISCELLANEOUS		39
Section 14.1	Further Assurances.....	39
Section 14.2	Examination of Records.....	40
Section 14.3	Amendments and Waivers	40
Section 14.4	GOVERNING LAW	41
Section 14.5	CONSENT TO JURISDICTION AND VENUE; WAIVER OF JURY TRIAL	41
Section 14.6	Headings.....	42
Section 14.7	Integration	42
Section 14.8	Notices.....	42
Section 14.9	Assignments	44
Section 14.10	Disgorgement	45
Section 14.11	Conclusiveness of Statements by Lenders	45
Section 14.12	Severability	45
Section 14.13	Counterparts	45
Section 14.14	Survival	45
Section 14.15	Consent.....	45
Section 14.16	No Strict Construction	46

EXHIBITS

EXHIBIT A	Definitions
EXHIBIT B	Form of Facility Note
EXHIBIT C	Form of Borrowing Request
EXHIBIT D	Form of Portfolio Report
EXHIBIT E	Form of Covenant Compliance Certificate
EXHIBIT F	Loan Originating and Servicing Manual
EXHIBIT G	Form of Approval Package
EXHIBIT H	Underwriting Guidelines for Project Loans including requirements of the Lenders
EXHIBIT I	Conflict of Interest Policy
EXHIBIT J	Project Underwriting Checklist
EXHIBIT K	Intentionally Omitted
EXHIBIT L	Intentionally Omitted
EXHIBIT M	Form of Project Commitment Letter
EXHIBIT N	Insurance Requirements
EXHIBIT O	Form of Credit Memorandum
EXHIBIT P	Form of Class A Joinder Agreement
EXHIBIT Q	Form of Class B Lender Joinder Agreement

CREDIT AGREEMENT

THIS AGREEMENT is made as of October ____ 2017, among (i) **Utah Small Business Growth Initiative, LLC**, a Utah limited liability company, dba Business Loans of Utah (the “**Borrower**”), (ii) **Utah Small Business Growth Initiative, LLC**, a Utah limited liability company, dba Business Loans of Utah (“**USBGI**”), in its capacity as the Administrative Agent for the Lenders (in such capacity, the “**Administrative Agent**”), (iii) **ZB, N.A.**, dba Zions First National Bank, in its capacity as the Class A Lender, (iv) **Box Elder County**, a body corporate and politic of the State of Utah, **City of Orem**, a municipal corporation and political subdivision of the State of Utah, **Ogden City Corporation**, a Utah municipal corporation, also known and referred to as Ogden City or the City of Ogden, **Provo City**, a municipal corporation and political subdivision of the State of Utah, **Spanish Fork City**, a body corporate and politic of the State of Utah, and **Weber County**, a body corporate and politic of the State of Utah, in their capacities as Class B Lenders (in such capacity, each a “**Class B Lender**”); and (v) **USBGI** in its capacity as the Class C Lender (in such capacity, the “**Class C Lender**”). Capitalized terms used herein shall, unless otherwise expressly defined in the text of this Agreement, have the meanings assigned to them in **Exhibit A** hereof.

WITNESSETH

WHEREAS, Borrower is engaged in the business of originating Project Loans;

WHEREAS, Borrower wishes to obtain loans from the Lenders to enable Borrower to originate Project Loans which Project Loans comply with the requirements of this Agreement as to, among other matters, amount, term, use of proceeds and time of origination;

WHEREAS, but for the execution and delivery by the Borrower of this Agreement the Class A Lender, the Class B Lenders, and the Class C Lender would not enter into this Agreement or make the Loans to the Borrower; and

WHEREAS, the Lenders have indicated to Borrower their willingness to lend funds to Borrower on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the promises hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE I LOANS TO BORROWER

Section 1.1 **Making of Loans.**

(a) Subject to the terms and conditions set forth in this Agreement, including without limitation, the limitations set forth in this Section 1.1, the Class A Lender and the Class B Lenders agree to make Loans to Borrower during the period commencing on the date of this Agreement and terminating on the Borrowing Termination Date, in an aggregate principal amount at any one time outstanding not to exceed the Class A Total Loan Amount and the Class B Total Loan Amount, respectively. In no event shall any advance of funds be made with

respect to any Loan, other than a Project Loan Protective Advance, after 12:00 noon Mountain Time on that date which is the last Business Day preceding the Borrowing Termination Date.

(b) Except for Project Loan Protective Advances, Borrower shall use Loan proceeds only to make Project Loans in accordance with the terms of this Agreement, including, without limitation, Section 1.2.

(c) The portion of all Loans (including Project Loan Protective Advances) funded by the Class A Lender and the Class B Lenders shall not exceed the Class A Total Loan Amount and the Class B Total Loan Amount, respectively, without the consent of the Class A Lender, the Class B Lenders, and the Class C Lender, respectively, and, in no event shall the outstanding principal amount of the Loans (including Project Loan Protective Advances made by (i) a Class A Lender exceed such Class A Lender's Commitment, and (ii) a Class B Lender exceed the Class B Lender's Commitment. Once repaid, funds borrowed pursuant to this Agreement may be re-borrowed until the Borrowing Termination Date. Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, Borrower shall not make any Project Loan if the proposed outstanding principal balance of such proposed Project Loan would exceed the funding commitments available to the Borrower from the Class A Lender and the Class B Lender.

(d) The Administrative Agent may from time to time request that the Lenders fund a Project Loan Protective Advance to protect any Collateral securing the Project Loan. Project Loan Protective Advances must be approved by Lenders and upon approval, shall be funded by the Lenders participating in a Project Loan as follows: (i) the first portion of the Project Loan Protective Advance shall be funded by any amount available under the subject Class B Lender Top Loss, (ii) if the subject Class B Lender Top Loss fails to pay the Project Loan Protective Advance, the balance thereof shall be funded by the Class A Lender; provided, however, no Lender shall be required to participate to the extent such participation requires a Lender to exceed its Commitment. Each Project Loan Protective Advance shall (i) bear interest at a rate per annum equal at all times to the Default Interest Rate, and (ii) be repaid in the priority set forth in Article X, as applicable.

(e) The Facility shall have a twenty-four (24) month draw period ending on the Borrowing Termination Date and each Project Loan shall have up to a five (5) year term from the date of initial draw, but in no case shall the term of any Project Loan have a maturity date beyond October 30, 2024 (subject to approved extensions as described herein). Not earlier than fourteen (14) months and not later than sixty (60) days prior to the end of the Borrowing Termination Date then in effect, the Administrative Agent may request an extension of the Borrowing Termination Date for an additional year. The Administrative Agent shall provide due diligence materials, including financial statements, internal portfolio performance reports and organizational information reasonably required to support such request. Within sixty (60) days after receipt of the notice and due diligence materials, each Lender shall notify the Administrative Agent whether or not it will agree to extend the Borrowing Termination Date, which decision shall be made in the sole and absolute discretion of each such Lender. In the event that a Lender does not notify the Administrative Agent of its consent to the extension of the Borrowing Termination Date, such Lender shall be deemed to have objected to and withheld consent from such extension and will not be obligated to make additional loans after the current

Borrowing Termination Date. If the Borrowing Termination Date is extended, the Facility Maturity Date then in effect will also be extended for an additional year; provided, however, an extension of the Facility Maturity Date shall not automatically extend the maturity of a Project Loan.

(f) The Administrative Agent may request that the Credit Committee extend the maturity of a Project Loan and the Credit Committee shall have the power in its discretion to extend such maturity; provided however, any extension of a Project Loan maturity date that would exceed the Facility Maturity Date, or the extended Facility Maturity Date provided by any Senior Lender, that is not in connection with an approved Work-Out Plan, shall require the approval of all of the Senior Lenders participating in such Project Loan.

Section 1.2 The Lenders.

(a) The Class A Lender commits to loan funds to Borrower, subject to the terms and conditions set forth in this Agreement, in aggregate amounts as set forth next to its signature block on its signature page hereto and including any additional amount it may agree to make in accordance with the terms of this Agreement (the “**Class A Lender Commitment**”). The Administrative Agent shall utilize funds from Class A Lender Commitment to fund Project Loans which conform to the Credit Manual attached hereto as **Exhibit F** and the terms and conditions herein.

(b) Each Class B Lender commits to fund loan loss reserves for Project Loans, subject to the terms and conditions set forth in this Agreement, in aggregate amounts as set forth next to its signature block on its respective signature page hereto and including any additional amount it may agree to make in accordance with the terms of this Agreement (the “**Class B Lender Commitment**”). The Administrative Agent shall utilize funds from Class B Lender Commitment to fund loan loss reserves for Project Loans.

(c) The Class C Lender commits to fund loan loss reserves for Project Loans, subject to the terms and conditions set forth in this Agreement, in aggregate amount as set forth next to its signature block on its respective signature page hereto and including any additional amount it may agree to make in accordance with the terms of this Agreement (the “**Class C Lender Commitment**”). The Administrative Agent shall utilize funds from Class C Lender Commitment to fund loan loss reserves for Project Loans.

(d) Any Lender may agree to increase its Commitment by executing an amendment to this Agreement and its Facility Note with the consent of the Borrower and the Administrative Agent on behalf of the other Lenders. In addition, an Eligible Institution may become a Class A Lender by executing the Class A Lender Joinder Agreement in the form attached as Exhibit P with the consent of the Borrower, the Administrative Agent, and the Class A Lender. In addition, a county, city or town in the State of Utah, or such other entity as approved by a majority of the Class A Lenders, a majority of the Class B Lenders, and the Class C Lender, may become a Class B Lender by executing the Class B Lender Joinder Agreement in the form attached as Exhibit Q with the consent of the Borrower, the Administrative Agent and the Class A Lender.

(e) Subject to the terms and conditions set forth in this Agreement, including without limitation, the limitations set forth in this Section 1.2, the Lenders agree to provide funding for the Facility during the period commencing on the date of this Agreement and terminating on the Borrowing Termination Date, in an aggregate principal amount at any one time outstanding not to exceed the Commitments. In no event shall any Advance of funds be made under the Facility, other than a Project Loan Protective Advance, after 12:00 noon Mountain Time on that date which is the last Business Day preceding the Borrowing Termination Date.

(f) Any Lender may agree to increase its Commitment by executing an amendment to this Agreement and its Facility Note with the consent of the Borrower and the Administrative Agent on behalf of the other Lenders. In addition, an Eligible Institution may become a Class A Lender by executing the Joinder Agreement in the form attached as Exhibit P with the consent of the Borrower, the Administrative Agent and the Class A Lenders. In either event described in this Section 1.2(f), the Administrative Agent is authorized to amend Schedule 1 to reflect such increased Commitment or new Class A Lender and the definition of "Class A Total Loan Amount" will be automatically amended to reflect those amendments to Schedule 1.

Section 1.3 Origination of Project Loans

(a) The Administrative Agent shall underwrite each proposed Project Loan in accordance with the Credit Manual. Each Project Loan shall be funded by the Class A Lender.

(b) The Class B Lender in whose Geographical Area a Project Loan has been approved by the Credit Committee will fund a portion of the Project Loan equal to 14.2857% thereof or such greater amount as may be required by the Credit Committee in its reasonable discretion ("**Class B Lender Top Loss**"). If the Credit Committee determines the Class B Lender Top Loss for a Project Loan should be greater than 14.2857% of the Project Loan and the subject Class B Lender fails to increase its Class B Lender Top Loss for the Project Loan, the Credit Committee may in its discretion reduce the amount of the Project Loan. In such a case, the subject Class B Lender may withdraw its approval of the subject Project Loan and, if such approval is withdrawn, the subject Project Loan will not be made. The Class B Lender Top Loss reserve will be held by the Administrative Agent or its designee. Any loss incurred under a Project Loan shall first be paid by the Class B Lender Top Loss to the extent it is available.

(c) The Class C Lender shall initially fund a total of \$600,000.00 for loan loss reserves for Project Loans made under this Agreement ("**Class C Lender Top Loss**"). The Class C Lender Top Loss reserve will be held by the Administrative Agent or its designee. Any loss incurred under a Project Loan in excess of the Class B Lender Top Loss shall first be paid by the Class C Lender Top Loss to the extent it is available.

(d) Any loss incurred under a Project Loan in excess of the Class B Lender Top Loss and the Class C Lender Top Loss shall be incurred by the Class A Lender.

(e) Notwithstanding anything to the contrary contained in this Agreement, if at any time during the term of this Agreement, an amount equal to twenty-five percent (25%) of the Class A Lender Commitment exceeds the sum of the Class B Lender Commitment and the

Class C Lender Commitment (“**Total Top Loss**”), then the Excess Spread shall be contributed to the Class C Lender Top Loss until an amount equal to twenty-five percent (25%) of the Class A Lender Commitment is less than or equal to the Total Top Loss, at which time the Administrative Agent shall be entitled to the Excess Spread.

(f) The Administrative Agent shall deliver to the Credit Committee all of the information and documents listed on **Exhibit G** hereto (the “**Approval Package**”). The Approval Package shall state whether the proposed Project Loan is a Conforming Loan as defined in the Credit Manual. If the Administrative Agent determines such proposed Project Loan is not a Conforming Loan, the Approval Package shall include an analysis of the risks associated with the characteristics of the proposed Project Loan that make it a non-Conforming Loan. Following submission of any Approval Package with respect to any Project Loan, the Administrative Agent shall promptly provide to the Credit Committee such additional information with respect to such proposed Project Loan as the Credit Committee may reasonably request. The parties acknowledge and agree, and the Administrative Agent hereby covenants that the proceeds of any Project Loan made shall be used only in accordance with Schedule I attached hereto.

The Administrative Agent shall schedule meetings on a monthly basis for the Credit Committee, either in person or by teleconference (each, a “**Credit Committee Meeting**”). Approval Packages for proposed Project Loans shall be provided by the Administrative Agent to each member of the Credit Committee no later than five (5) days prior to the Credit Committee Meeting. After receipt of Approval Packages, members of the Credit Committee may correspond with the Administrative Agent to ask for more information and/or ask clarifying questions about each proposed Project Loan. At the Credit Committee Meeting, each Credit Committee member entitled to vote shall vote (either in-person or by proxy) to approve or disapprove the proposed Project Loan. Determinations made by the Credit Committee shall require a majority of the members of the full Credit Committee and shall include, without limitation, the interest rate, term, and amount of Project Loans.

(g) The Administrative Agent shall charge the Project Borrowers an Origination Fee of 2.0% of the principal amount of the Project Loan (the “**Origination Fee**”), which may be paid from the proceeds of such Project Loan. Any changes must be approved by the Credit Committee. The Administrative Agent may be entitled to other fees or reimbursement of expenses incurred in accordance with the Credit Manual.

(h) Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, the Administrative Agent shall not submit an Approval Package for a proposed Project Loan that would cause the sum of (i) the proposed outstanding principal balance of all outstanding previously approved proposed Project Loans and (ii) the proposed outstanding principal balance of such proposed Project Loan, to exceed the remaining funding commitments available to the Borrower from the Class A Lender, the Class B Lenders, and the Class C Lender to originate all of such proposed Project Loans set forth in clauses (i) and (ii) of this sentence.

Section 1.4 Funding Requests.

(a) Each Draw (other than a Loan for a Project Loan Protective Advance shall be requested by a Borrowing Request, substantially in the form of **Exhibit C** given by the Borrower to the Lenders not later than 12:00 noon (Mountain Time) five (5) Business Days prior to the proposed Funding Date. Not later than 12:00 noon (Mountain Time) on the proposed Funding Date and no earlier than the Business Day before the proposed Funding Date the Class A Lender and the Class B Lenders, as applicable, shall transfer to the Borrower Operating Account, by wire transfer in same day funds, the amount of their respective shares of such Borrowing. Notwithstanding the foregoing, a Lender may elect to fund its portion of a Loan earlier than the Business Day before the Funding Date provided that no interest shall accrue on such portion of the Loan until the Business Day before the Borrowing Date. Upon receipt of all such funds, the Administrative Agent, the Class A Lender, the Class B Lenders, and the Class C Lender, as applicable, shall be deemed to have authorized the release of such funds from the Borrower Operating Account to originate the Project Loans. The Class C Lender Top Loss shall be funded upon the closing of this Agreement.

(b) Funding requests may be made to the Lenders not more often than twice monthly and shall be in a principal amount of not less than \$10,000 for each Project Loan in the aggregate based on projected lending activity during the period prior to the Borrowing Termination Date.

Section 1.5 Borrowing Funding.

(a) Each Loan (other than a Loan for a Project Protective Advance) shall be used by the Borrower to fund Project Loan(s).

(b) Except as otherwise provided below, each Borrowing will be funded as set forth in Section 1.3(a), provided, that after giving effect to such Borrowing, the aggregate principal amount of all Loans made by (i) the Class A Lender (including Loans for a Project Protective Advance) shall not exceed the Class A Lender's Commitment, (ii) the Class B Lender (including Loans for a Project Protective Advance) shall not exceed such Class B Lender's Commitment, and (iii) the Class C Lender (including Loans for a Project Protective Advance) shall not exceed the Class C Lender's Commitment.

(c) The size of a Project Loan shall be limited as follows:

(i) The amount of a Project Loan shall not exceed twenty-five percent (25%) of the applicable Class B Lender's Commitment unless approved by all members of the Credit Committee having a vote on the proposed subject Project Loan.

(ii) The amount of a Project Loan shall not exceed ten percent (10%) of the Total Loan Amount unless approved by all members of the Credit Committee having a vote on the proposed subject Project Loan.

(iii) The amount of a Project Loan shall not be less than \$50,000 unless approved by all members of the Credit Committee having a vote on the proposed subject Project Loan.

Section 1.6 **Records of Lenders.** The records of a Lender shall be presumptive proof (absent manifest error) of the amount of the indebtedness of Borrower to such Lender hereunder and under the applicable Facility Note. Borrower hereby authorizes the Lenders to endorse each Facility Note at any time with appropriate notations evidencing the date and the principal amount borrowed or repaid in accordance with the Lenders' records. At Borrower's request, Administrative Agent shall provide a monthly accounting of all unpaid and accrued interest under each Loan.

Section 1.7 **Notes; Principal and Interest.**

(a) The Loans shall be evidenced by the Facility Note received by each Lender. Each Facility Note shall be substantially in the form of **Exhibit B** annexed hereto.

(b) Facility Notes.

(i) Interest.

A. Borrower shall pay interest on the unpaid principal amount thereof advanced thereunder from the date of such borrowing under the Facility Note until payment in full at an interest rate equal to the Interest Rate.

B. Each Facility Note that is not amortized shall accrue interest on a 365/360 basis; that is, by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under such a Facility Note shall be computed using this method. This calculation method results in a higher effective interest rate than the numeric interest rate stated in such Note.

C. Each Facility Note that is amortized shall accrue interest on the basis of a 360-day year consisting of twelve 30-day months, compounded monthly, and shall be payable for the actual number of days elapsed in any period. **[OPEN ISSUE UNDER THIS PARAGRAPH CONCERNING COMPOUNDING, PARAGRAPH SUBJECT TO REVISION]**

D. The Interest Rate under a Facility Note may be fixed or variable as set forth in the following two subparagraphs:

- Variable Interest Rate language:

3 Month LIBOR RATE. The interest rate on a Facility Note shall be subject to change from time to time based on changes in an independent index which shall be the 3 Month LIBOR rate plus the applicable percentage points. The LIBOR rate shall be strictly interpreted and shall not be intended to serve any purpose other than providing an index to determine the Interest Rate used under a Facility Note. The LIBOR rate may not necessarily be the same as the quoted offered side in the Eurodollar time deposit market by any particular institution or service applicable to any interest period. As used herein, the LIBOR rate shall mean the rates per annum quoted by ZB, N.A., dba Zions First National Bank as its 3 Month LIBOR rate based upon quotes from the London Interbank Offered Rate from the ICE

Benchmark Administration Interest Settlement Rates, as quoted for U.S. Dollars by Bloomberg, or other comparable services selected by the Lender (the "Index"). The Index is not necessarily the lowest rate charged by ZB, N.A., dba Zions First National Bank on its loans. If the Index becomes unavailable during the term of this Agreement, ZB, N.A., dba Zions First National Bank may designate a substitute index after notifying Borrower. ZB, N.A., dba Zions First National Bank will apprise Borrower of the current Index rate upon Borrower's request. The interest rate change will not occur more often than each once each month and will be the rate on the day which is two (2) business days prior to the first (1st) day of each month. NOTICE: Under no circumstances will the interest rate on this Note be more than the maximum rate allowed by applicable law.

- Fixed Interest Rate language:

LIBOR/Swap Rate. The interest rate on a Facility Note shall be subject to change from time to time based on changes in an independent index which is the 1,2,3,4, or 5 year LIBOR/Swap rate plus the applicable percentage points. The LIBOR/Swap rate shall be strictly interpreted and shall not be intended to serve any other purpose other than providing an index to determine the interest rate used herein. The LIBOR/Swap rate may not necessarily be the same as the quoted offer side in the Eurodollar time deposit market by any particular institution or service applicable to any interest period. As used herein, the LIBOR/Swap rate shall mean the rate per annum quoted by ZB, N.A., dba Zions First National Bank as its 1,2,3,4, or 5 year LIBOR/Swap rate based upon the US Swap Rate for the applicable period rate as quoted to ZB, N.A., dba Zions First National Bank for U.S. Dollars by Bloomberg or other comparable pricing services selected by ZB, N.A., dba Zions First National Bank (the "LIBOR Index"). The LIBOR Index shall not necessarily be the lowest rate charged by ZB, N.A., dba Zions First National Bank on its loans. If the LIBOR Index is unavailable, ZB, N.A., dba Zions First National Bank may designate a substitute index after notifying Borrower. ZB, N.A., dba Zions First National Bank will apprise Borrower of the current LIBOR Index rate upon Borrower's request. NOTICE: Under no circumstances will the interest rate on a Facility Note be more than the maximum rate.

E. Whenever increases occur in the interest rate, Lender, at its option, may do one or more of the following: increase Borrower's payments to ensure Borrower's loan will pay off by its original final maturity date, increase Borrower's payments to cover accruing interest, increase the number of Borrower's payments, and continue Borrower's payments at the same amount and increase Borrower's final payment.

F. Notwithstanding any language to the contrary contained in this Agreement, Borrower shall only be required to pay principal or interest payments under a Facility Note to the extent Borrower receives such principal payments or interest payments on the Underlying Project Loans, unless such principal payments or interest payments on underlying Project Loans are more than thirty (30) days late. In such a case, the ZB, N.A., dba Zions First National Bank may debit an amount equal to such late payments from the Class B Lender Top Loss held in the Restricted Account to the extent such funds are available, provided the ZB, N.A., dba Zions First National Bank notifies Borrower of such debit when it is made.

(ii) Each Facility Note shall mature on the applicable Facility Maturity Date and the Borrower shall pay the unpaid principal amount and any accrued but unpaid interest of such Facility Note on such Facility Maturity Date.

(iii) Each Facility Note shall be pre-payable in whole or in part without penalty, provided that, Borrower shall give the Administrative Agent no less than five (5) Business Days' notice of such prepayment. In the event of any prepayment of a Facility Note, whether voluntary or involuntary and whether or not due to acceleration of the maturity of such Facility Note or the Underlying Project Loan or any other reason whatsoever, such prepayment shall be accompanied by all interest accrued on the amount prepaid through such Prepayment Date. Until the expiration of the Borrowing Termination Date, Borrower shall have the right to reborrow funds that have been previously prepaid in accordance with Section 1.5 hereof at any time prior to the Borrowing Termination Date.

(iv) In addition to all other rights and remedies of any Lender under this Agreement or any other Loan Document, in the event that Borrower shall fail to make any payment due under the terms of a Facility Note after the expiration of any applicable grace periods or upon the occurrence of any other Event of Default under this Agreement, the outstanding principal amount of such Facility Note, shall bear interest at the Default Interest Rate.

(v) Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, the interest paid or agreed to be paid under the Loan Documents to any Lender shall not exceed the Maximum Rate. If any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal amount of such Lender's Facility Note, or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by any Lender exceeds the Maximum Rate, the Lenders may, to the extent permitted by any applicable law, rule or regulation (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the obligations hereunder.

Section 1.8 **Characterization of Loans.** Each of the parties hereto agrees that the Loans made hereunder shall be treated as debt and agree not to challenge such characterization of the Loans as debt. Each of the parties hereto agrees that there are no participations created in the Loans or any other debt under this Agreement except as permitted or contemplated by this Agreement.

Section 1.9 Increased Costs; Increased Capital; Taxes.

(a) Increased Costs. If (i) there shall be any increase in the cost to any Affected Party of agreeing to make or making, funding or maintaining the Lenders' Commitment, including, without limitation, due to a Change in Law, or (ii) any reduction in any amount receivable in respect thereof or otherwise under this Agreement, and such increased cost or reduced amount receivable is due to either:

(i) the introduction of or any change (including, without limitation, any change by way of imposition or increase of reserve requirements) in the interpretation of any law or regulation after the date hereof; or

(ii) the compliance with any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law),

then from time to time, such Affected Party may request that Borrower pay such Affected Party additional amounts sufficient to compensate such Affected Party for such increased cost or reduced amount receivable, including, without limitation, all interest and penalties thereon or with respect thereto, and all out of pocket expenses (including the reasonable fees and expenses of counsel in defending against the same), as reasonably determined by such Affected Party. Promptly, but in any event, within five (5) Business Days after receiving such request, Borrower will pay such additional amounts to such Affected Party.

(b) Increased Capital. If after the date hereof any Lender determines that (i) the adoption or implementation of or any change in or in the interpretation or administration of any law or regulation or any guideline or request from any central bank or other Governmental Authority or quasi-governmental authority exercising jurisdiction, power or control over such Lender or banks or financial institutions generally (whether or not having the force of law), compliance with which affects or would affect the amount of capital required or expected to be maintained by such Lender or any entity controlling such Lender and (ii) the amount of such capital is increased by or based upon the making or maintenance by such Lender of its Loans or the existence of such Lender's obligation to make Loans, then, in any such case, upon written demand by such Lender, Borrower agrees immediately to pay to such Lender, from time to time as specified by such Lender, additional amounts sufficient to compensate such Lender or such entity therefor. Such demand shall be accompanied by a statement as to the amount of such compensation and include a summary of the basis for such demand with detailed calculations. Such statement shall be conclusive and bind for all purposes, in the absence of manifest error.

(c) Taxes.

(i) Any and all payments made by Borrower to any Lender under this Agreement or under such Lender's Facility Note or any other Loan Document shall be made free and clear of, and without reduction for or on account of, any and all present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority, excluding net income taxes and franchise taxes or any other tax based upon net income, profits and/or gain imposed on an Affected Party as a result of a present or former connection between

such Affected Party and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision or taxing authority thereof or therein (other than any such connection arising solely from such Affected Party having executed, delivered, registered or performed its obligations or received a payment under, or enforced, this Agreement). If any such non-excluded taxes, levies, imposts, duties, charges, fees, deductions or withholdings (“**Non-Excluded Taxes**”) are required to be withheld from any amounts payable to such Affected Party hereunder, the amounts so payable to such Affected Party shall be increased to the extent necessary to yield to such Affected Party (after payment of all Non-Excluded Taxes) a payment equal to the amount that would have been paid but for the Non-Excluded Tax; *provided, however,* that Borrower shall not be required to increase any such amounts payable to any Affected Party that is not organized under the laws of the United States of America or a state thereof if such Affected Party fails to comply with the requirements of this Section 1.9(c). Whenever any Non-Excluded Taxes are payable by Borrower, as promptly as possible thereafter, Borrower shall send to the affected Lender for its own account or for the account of such Affected Party, as the case may be, a certified copy of an original official receipt received by Borrower showing payment thereof. If Borrower fails to pay any Non-Excluded Taxes when due to the appropriate taxing authority or fails to remit to such affected Lender the required receipts or other required documentary evidence, Borrower shall indemnify the applicable Affected Party for any incremental taxes, interest or penalties that may become payable by such Affected Party as a result of any such failure.

(ii) Each Affected Party shall deliver to Borrower (A) if such Affected Party is not a “United States person” within the meaning of Section 7701(a)(30) of the Code, or is a “disregarded entity” within the meaning of Treasury Regulation 301.7701-2 owned by an Affected Party which is not a “United States person” within the meaning of Section 7701(a)(30) of the Code, two (2) duly completed copies of Internal Revenue Service Form W 8BEN indicating that no United States withholding tax is due on any payment to such Affected Party pursuant to this Agreement or W 8ECI, as applicable, or the applicable successor form, or (B) otherwise, two (2) duly completed copies of Internal Revenue Service Form W 9, or the applicable successor form, as the case may be.

(d) Notification. In the event that any Affected Party becomes aware that any amounts are or will be owed to it pursuant to this Section 1.9, then it shall promptly notify Borrower as soon as possible thereafter. Such Affected Party shall submit to Borrower a certificate indicating the amount owing to it and the calculation thereof in reasonable detail. The amounts set forth in such certificate shall, in the absence of demonstrable error, be conclusive and binding. Subject to Article X hereof, promptly, but in any event within ten (10) Business Days after receiving such request, Borrower will pay such amounts to such Affected Party.

(e) Survival. Without prejudice to the survival of any other agreement of Borrower hereunder, the agreements and obligations of Borrower contained in this Section 1.9 shall survive the termination of this Agreement.

Section 1.10 Payments in Full; Taxes. All sums payable by Borrower hereunder shall be paid in full, free of any deductions or withholdings. Borrower shall pay directly to the appropriate taxing authority or reimburse the Lenders for any and all present and future taxes and charges relating to this transaction, except for taxes which are imposed on or measured by any

Lender's net income, profits and/or gain, or the execution, delivery, performance and enforcement of the Loan Documents and all taxes on such payments and reimbursements.

Section 1.11 **Sharing of Payments.** If any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of principal of or interest on any of its Loans to Borrower or other Obligations of Borrower hereunder (other than pursuant to Section 1.7) in excess of its ratable share of such payments (as determined pursuant to Article X or Article VII, in the case following an Event of Default and the exercise of remedies as contemplated thereby), such Lender shall forthwith purchase from the other Lenders such participations in the Loans made by them or such other Obligations as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of such other Lenders, *provided, however*, that if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from each Lender shall be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid for such participation to the extent of such recovery together with an amount equal to such Lender's ratable share (according to the proportion of (i) the amount of such Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any principal, interest or other Obligations paid or payable by the purchasing Lender in respect of the total amount so recovered. The Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 1.11 may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation.

Section 1.12 **CRA Sub-Allocation.** Each Class A Lender may receive credit for Community Reinvestment Act purposes in accordance with the amount respective Percentage Interest of such Lenders in each of the Project Loan.

ARTICLE II PROJECT LOAN DOCUMENTS

Section 2.1 **Project Loan Documentation.** The Borrower will use standard Project Loan documents provided by the Servicer to make Project Loans. Borrower shall make available upon request by any Lender copies of duly, properly and fully executed copies of all of the Required Loan Documentation and the documents described in Section 2.2, all of which shall be materially in the form of the Project Loan Documentation.

Section 2.2 **Required Project Loan Documents.** The Administrative Agent shall, concurrently with each Borrowing used to fund such Underlying Project Loan (other than Borrowings constituting Loans for Project Loan Protective Advances) deliver to the Lenders copies of the following documents:

(a) A copy of (i) all fully executed Required Loan Documentation, which shall include a personal guaranty from each person owning, directly or indirectly, twenty percent (20%) or more of the Project Borrower;

(b) Copies of policies or certificates of insurance, wherein Borrower shall be named as an additional insured and as additional payee to the extent required pursuant to the Credit Manual, from an insurance rated “A/X” or better by Best and otherwise acceptable to the Administrative Agent and in a form acceptable to the Administrative Agent and in an amount required under the Credit Manual.

(c) Conformed copies of filed UCC financing statements given to the Borrower as secured party, by the applicable Project Borrower;

(d) The payment schedule for each Project Loan;

(e) Conformed copies of resolutions of the Project Borrower’s board of directors or other comparable documents for a Project Borrower that is, or its controlling entity is, a partnership or limited liability company authorizing entering into and executing the Project Loan Agreement, the other Project Loan Documentation and all agreements and other documents in connection therewith, certified by the secretary or an assistant secretary or other authorized officer of such Project Borrower to be a true copy of resolutions or comparable documents duly adopted, unmodified and in full force and effect;

(f) A copy of a title insurance policy, if applicable;

(g) Intentionally deleted;

(h) Intentionally deleted;;

(i) Any other deliverables specified in the Credit Manual; and

(j) Such reports and accountings as required by Lenders reconciling how payments of principal and interest will be applied and allocated to the Lenders participating in such Project Loan.

Section 2.3 **Servicing of Project Loans.** Borrower shall enter into a Servicing Agreement with Servicer requiring Servicer to service each Project Loan in the manner required thereby and in accordance with this Agreement and Borrower’s governing documents, in form and substance acceptable to each of Lenders.

Section 2.4 **Required Deliveries to Servicer.** In connection with the security described in Section 2.1 and in order to permit Servicer to service each Project Loan, Borrower shall, concurrently with the funding of each Loan (other than Loans for Project Loan Protective Advances) deliver to Servicer a copy of all Required Project Loan documents identified in Section 2.2.

ARTICLE III CLOSING PROCESS AND PROCEDURES

Section 3.1 **Timing of Closings.**

(a) The obligation of the Class A Lender and the Class B Lenders to lend any funds to Borrower shall be subject to compliance, on the Funding Date with the conditions set forth in Article I, Article II and Sections 3.2 and 3.3 hereof, on which date the Class A Lender the Class B Lenders shall fund the Loans in accordance with Section 1.4 hereof. The Class C Lender Top Loss shall be funded upon the closing of this Agreement.

(b) The Borrower shall originate and fully fund Project Loans in its own name prior to the Borrowing Termination Date and on or prior to the applicable Loan Settlement Date, as applicable.

Section 3.2 **Conditions Precedent to Effectiveness of the Agreement.**

Prior to or concurrent with the Effective Date of this Agreement, Borrower shall:

(a) Execute and deliver to the Administrative Agent and/or any of the Lenders fully executed original sets of all Loan Documents, other documents, instruments and forms of evidence or other materials reasonably requested by the Administrative Agent and the Lenders, under the terms of this Agreement or any of the other Loan Documents; and

(b) Deliver to the Lenders a certificate from an Authorized Officer of the Administrative Agent (including in its capacity as the Member) dated as of the Effective Date certifying that attached thereto are (i) true and correct copies of Borrower's and Administrative Agent's certificate of formation, certificate of incorporation, operating agreement, bylaws or other governing documents, (ii) good standing certificates of Borrower and Administrative Agent, (iii) true and correct copies of the resolutions (which certificate shall state that such resolutions have been duly adopted, unmodified and in full force and effect as of the Effective Date) of (A) Borrower and the Administrative Agent authorizing Borrower to execute all of the applicable Loan Documents to which it is a party and (B) the board of directors, or other governing body, of Administrative Agent authorizing Administrative to execute all applicable Loan Documents to which it is a party, and (iv) such other items as may be reasonably requested by the Lenders;

(c) Deliver to the Lenders, in form satisfactory to each of them, an opinion of counsel to Borrower, addressed to the Administrative Agent and the Lenders, covering such matters as reasonably requested by the Administrative Agent and/or any of the Lenders, including, without limitation, opinions as to the due formation and valid existence of Borrower, authority to execute, deliver and perform under the Loan Documents then executed, and the binding, valid and enforceable nature of the Loan Documents then executed.

Section 3.3 **Conditions Precedent to each Draw.** In addition to the satisfaction of all conditions set forth in Articles I and II hereof and concurrently with and as a condition precedent to each Draw:

(a) Except in the case of Project Loan Protective Advances, Borrower shall:

(i) reaffirm to each Lender providing a Draw that the representations and warranties contained in Article IV of this Agreement shall be true in all material respects on and as of each date of funding of such Loan hereunder;

(ii) represent to each Lender providing a Draw that there exists no Event of Default and that no event has occurred or failed to occur as of any such date which with the passage of time or the giving of notice, or both, would constitute an Event of Default; and

(iii) represent to each Lender providing a Draw that no Borrower Material Adverse Effect shall have occurred since the Effective Date.

(b) No Event of Default or Unmatured Event of Default shall have occurred and be continuing.

ARTICLE IV REPRESENTATIONS AND WARRANTIES

In order to induce the Administrative Agent and the Lenders to enter into this Agreement and to make the Loans, Borrower represents and warrants to each of the Lenders and the Administrative Agent the following, and further covenants and agrees that if it shall hereafter make any request for a Loan that the acceptance of funding of such request shall be deemed to be a reaffirmation by Borrower that such representations and warranties are then still true, accurate and complete in all material respects:

Section 4.1 Status; Ownership; Single Purpose Entity.

(a) Borrower is a limited liability company, duly formed, validly existing and in existence to do the business contemplated in this Agreement under the laws of the State of Utah, is not in violation of any provision of its organizational documents and has the power to own its property and assets, to carry on its activities as now being conducted by it, to execute, deliver and perform this Agreement and the other Loan Documents, to borrow hereunder and to consummate all of its transactions contemplated herein and thereby.

(b) Intentionally Omitted.

(c) The sole member of Borrower is recognized by the Internal Revenue Service as tax-exempt under Section 501(c)(3) of the Code, and because Borrower is a disregarded entity for federal income tax purposes, Borrower is also tax-exempt.

Section 4.2 Authorization. Borrower has taken all necessary limited liability company and legal action to authorize it to obtain the Loans and to originate or purchase Project Loans with the proceeds thereof; this Agreement and the other Loan Documents are or will be when executed and delivered duly authorized by all requisite action on the part of Borrower; and neither the execution and delivery of this Agreement nor any other Loan Document violates or will when executed and delivered violate any applicable provisions of law or any applicable order of any court or agency of government, or conflict with, result in the breach of, or constitute a default under, the certificate of formation or operating agreement of Borrower or (with due notice or lapse of time or both) any indenture, agreement or other instrument to which Borrower is party or by which it is bound.

Section 4.3 Litigation. Except with respect to any act, event or occurrence described in this Section 4.3 that would not have a Borrower Material Adverse Effect, there are

no actions or proceedings pending or, to Borrower's knowledge, threatened by or against Borrower before any court or administrative agency and Borrower has no knowledge of any pending, threatened, or imminent litigation, governmental investigations or claims, complaints, actions, prosecutions, judgments or orders involving it. If any of the foregoing arise prior to termination of this Agreement, Borrower shall notify the Administrative Agent and Lenders in writing within ten (10) Business Days of obtaining knowledge thereof.

Section 4.4 **Regulation U.** Borrower is not engaged principally or as one of its important activities in the business of extending credit for the purpose of purchasing or carrying margin stock (in each case within the meaning of Regulation U of the Board of Governors of the Federal Reserve) and no part of the proceeds of any Loan hereunder will be used to purchase or carry margin stock or for the purpose of extending credit to any other person or entity for purchasing or carrying margin stock.

Section 4.5 **Binding Obligations.** This Agreement and the other Loan Documents to which it is a party constitute or, when executed and delivered, shall constitute, the legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and subject to general rules of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

Section 4.6 **No Debt.** Borrower has no Debt except pursuant to Section 5.11 hereof.

Section 4.7 **Not on Government Lists.** The Borrower is not now, nor has it ever been (i) listed on any Government Lists, (ii) a person who has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC or in any enabling legislation or other Presidential Executive Orders in respect thereof, (iii) indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense, or (iv) under investigation by any Governmental Authority for alleged criminal activity.

Section 4.8 **No Borrower Material Adverse Effect.** Since the date of the last financial statement delivered pursuant to Section 12.1 hereof, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Borrower Material Adverse Effect.

Section 4.9 **Consents.** No consent of any other party and no consent, license, approval or authorization of, exemption by or registration or declaration with, any governmental instrumentality, domestic or foreign, is required to be obtained by Borrower in connection with the execution, delivery or performance of this Agreement or any of the other Loan Documents.

Section 4.10 **Additional Representations and Warranties.**

(a) All financial statements and related financial information heretofore and hereafter delivered to any Lender or the Administrative Agent by Borrower, including, without

limitation, information relating to the financial condition of Borrower fairly and accurately represent the financial condition of the subject thereof and have been prepared (except as noted therein) in accordance with generally accepted accounting principles consistently applied.

(b) Borrower is in compliance in all material respects with, or exempt from, all applicable laws, rules, regulations and orders applicable to it, including without limitation all applicable labor, environmental, tax and employment laws, and has obtained all licenses and permits required under any such laws.

(c) Borrower has paid and discharged before the same has become delinquent all applicable taxes for which Borrower is liable or to which its income or property is subject, except any taxes the validity or amount of which is being contested in good faith by Borrower in appropriate proceedings with provision having been made to the satisfaction of Administrative Agent for the payment thereof in the event the contest is determined adversely to Borrower. Borrower is not subject to, nor are there pending, any tax audits.

(d) Borrower is not the subject of any pending, or to Borrower's knowledge threatened, bankruptcy, receivership, insolvency or creditors' rights Proceedings, whether voluntary or involuntary.

(e) Borrower is not an "investment company" as that term is defined in, and is not otherwise subject to regulation under, the Investment Company Act of 1940, as amended, and Borrower is not a "holding company" as that term is defined in, and is not otherwise subject to regulation under, the Public Utility Holding Company Act of 1935, as amended.

(f) Neither the Borrower nor any of the Borrower's Affiliates has any outstanding publicly-traded Debt or equity.

Section 4.11 Representations and Warranties Regarding the Project Loans.

The Borrower hereby represents and warrants to the Lenders and the Administrative Agent with respect to each Project Loan originated by the Borrower, unless otherwise disclosed in writing to the Lenders, that:

(a) Such Project Loan will be a legal, valid and binding full recourse obligation of the Project Borrower thereunder and any other obligor thereunder (i.e., guarantor), enforceable in accordance with the written terms of the related Project Loan Documents.

(b) To the Borrower's knowledge, the transaction evidenced by such Project Loan is and the Project Loan Documents are in conformity with all applicable statutes, laws, rules and regulations and fully enforceable in accordance therewith.

(c) There will be only one original executed Project Note evidencing such Project Loan.

(d) Such Project Loan will be originated in compliance with the Credit Manual, and the Underwriting Guidelines.

Section 4.12 **No “accumulated funding deficiency”**. No “accumulated funding deficiency” (as defined in Section 302 of ERISA) exists with respect to any “employee pension benefit plan,” as such term is defined in Section 3(2) of ERISA, maintained by Borrower or any of its ERISA Affiliates.

ARTICLE V COVENANTS

Borrower covenants and agrees that, unless otherwise agreed to in writing by the Lenders, until each of the Obligations shall have been paid in full and the Lenders’ Commitments have terminated, as follows:

Section 5.1 **Enforcement of Project Loans**. Subject to the terms of this Agreement and the Servicing Agreement, Borrower shall at all times diligently, expeditiously and in a commercially reasonable manner, pursue and enforce Borrower’s rights as owner of the Project Loans, *provided, however*, that no member of Borrower shall be required to contribute funds for the purpose of satisfying any of the obligations imposed on Borrower pursuant to this Section 5.1.

Section 5.2 **Accounting and Tax Reporting**. Borrower shall not make any change (a) in accounting treatment and reporting practices except as permitted or required by generally accepted accounting principles or (b) in tax reporting treatment except as permitted or required by law.

Section 5.3 **Equity Investments**. Borrower will make no equity investments in any other person or entity, including partnerships and joint ventures.

Section 5.4 **Exercise of Rights with Respect to Servicer**. Borrower will not replace the Servicer, or amend, modify or terminate the Servicing Agreement, without the prior unanimous written approval of the Disinterested Lenders; *provided, however*, that no such approval shall be required to terminate the Servicer if such termination or replacement is in accordance with the Servicing Agreement.

Section 5.5 **Increases in Fees to Any Person**. Notwithstanding any provision of this Agreement to the contrary, Borrower will not agree to any increase in the amount of, nor any acceleration of the payment of, any fees payable by Borrower to the Administrative Agent, the Servicer or any other Person without the prior written unanimous consent of the Disinterested Lenders.

Section 5.6 **Intentionally Deleted**.

Section 5.7 **Preservation of Business**. Borrower shall preserve, renew and keep in full force and effect its limited liability company existence and take all reasonable action to maintain and conduct its business and shall not, without the prior written consent of all of the Lenders enter into any merger, consolidation or amalgamation or liquidate, wind up or dissolve itself.

Section 5.8 **Credit Manual and Underwriting Guidelines.** Borrower shall comply in all material respects with the Credit Manual and the Underwriting Guidelines when financing new Project Loans.

Section 5.9 **Deposits into Borrower Operating Account.** The Borrower shall cause each Project Borrower to remit all payments with respect to each Project Loan solely to the Borrower Operating Account and shall deposit all collections received by the Borrower or any Affiliate of the Borrower in respect of a Project Loan into the Borrower Operating Account within two (2) Business Days of receipt thereof. Borrower shall instruct each Project Borrower to clearly identify the Underlying Project Loan as to which each payment is being made.

Section 5.10 **Guarantees.** Borrower shall not guaranty or become liable in any way as a surety, endorser (other than as endorser of negotiable instruments in the ordinary course of business) or accommodation endorser or otherwise for debt or obligations of any other person or entity.

Section 5.11 **Other Indebtedness.**

(a) Borrower shall not create, incur, assume or permit to exist any Debt or liabilities resulting from borrowings, loans or advances, by guaranty or otherwise, whether secured or unsecured, except for customary trade payables in the ordinary course of the Borrower's business and the liabilities of Borrower to the Lenders for money borrowed hereunder.

(b) Borrower shall not make loans, advances or investments to or in any person or entity except Project Loans originated or purchased by Borrower.

Section 5.12 **Amendment of Organizational Documents.** Borrower shall not materially amend or permit the amendment of, any of the organizational documents of Borrower (including Borrower's Operating Agreement), and shall not make any change in the objectives of the Borrower, without the prior unanimous consent of the Disinterested Lenders.

Section 5.13 **Change of Control.** Borrower shall not cause or permit the occurrence of a Change of Control. Borrower shall promptly deliver notice to Lenders should the Managing Member cease to be recognized by the Internal Revenue Service as tax-exempt under Section 501(c)(3) of the Code.

Section 5.14 **Additional Covenants.** Borrower additionally covenants and agrees that it shall:

(a) Comply in all material respects with all applicable federal, state and local laws, rules and regulations necessary for the transaction of its business, including without limitation all applicable labor, environmental, tax and employment laws, and shall obtain and maintain all licenses and permits required under any such laws which, if not obtained or maintained, could cause Borrower to be in breach in any material respect of any of the foregoing laws, rules and regulations or otherwise result in a Borrower Material Adverse Effect;

(b) Pay and discharge before the same shall become delinquent all applicable taxes for which Borrower is liable or to which its income or property is subject, except any taxes the validity or amount of which is being contested in good faith by Borrower in appropriate proceedings with provision having been made to the satisfaction of the Administrative Agent for the payment thereof in the event the contest is determined adversely to Borrower;

(c) Use (or cause to be used) the proceeds of the Loans solely to originate Project Loans or, as provided in Section 1.3, fund advances for Project Loan Protective Advances to the extent permitted hereunder;

(d) Maintain (or cause to be maintained) with respect to all of its properties and operations policies of insurance carried with responsible companies in such amounts and covering all such risks as shall be reasonably satisfactory to the Administrative Agent, and furnish to the Administrative Agent upon request of any Lender certificates of insurance or duplicate policies evidencing such coverage;

(e) Maintain separate complete books of account and other records for disbursement and use of the Loans, and the same shall be available for inspection and copying by any Lender, upon request of such Lender, at any time, upon reasonable prior notice, except that no such prior notice shall be required following the occurrence of an Event of Default or Unmatured Event of Default; and

(f) Comply with the Conflict of Interest Policy attached as **Exhibit I**.

Section 5.15 Delivery of Original Project Notes, Project Loan Agreements and Project Guarantees. The Borrower shall deliver to the Administrative Agent (i) the originals of the Project Note, the Project Loan Agreement and the Project Guaranty, as applicable, with respect to each Project Loan originated under the Facility on the Loan Settlement Date and (ii) if applicable, a copy of the final a title insurance policy, if applicable, with respect to each Loan and Project Loan originated under the Facility promptly upon its receipt thereof.

Section 5.16 Delinquent Loans.

(a) Within 15 days from the date on which any Project Loan becomes a Delinquent Loan, the Administrative Agent shall provide notice to the Lenders. Within thirty (30) days from the date on which any Project Loan becomes a Delinquent Loan, the Borrower, the Administrative Agent and the Servicer shall work with the Project Borrower to expeditiously develop a work-out plan (“**Work-Out Plan**”) in accordance with the Credit Manual. If there is no Work-Out-Plan in effect within 75 days [**CORRESPONDING CHANGE TO BE MADE IN THE CREDIT MANUAL**] after a Project Loan becomes a Delinquent Loan, the Borrower will pursue its legal remedies to collect payment under the Project Loan documents. A Work-Out-Plan will not be implemented unless approved by the Credit Committee.

(b) On the Facility Maturity Date, Borrower shall assign all Delinquent Loans and/or Defaulted Loans funded with Loan proceeds hereunder and remaining outstanding on such date to Administrative Agent and the Administrative Agent shall thereafter manage such Delinquent Loans (including the liquidation thereof) for the benefit of the Lenders in accordance with the provisions of this Agreement.

Section 5.17 **No Pledges.** Borrower will not create, incur, assume, or suffer to exist any lien, security interest, pledge or other encumbrance on any of its property, including, without limitation, the Project Notes and any collateral securing the obligations of such Project Notes, whether now owned, or hereafter acquired, without the prior written consent of the Lenders holding a Majority-in-Interest.

Section 5.18 **Change in Management.** Borrower shall give (or cause to be given) to the Lenders five (5) days' advance notice of any change in the President, Chief Financial Officer, or Executive Director of USBGI.

Section 5.19 **Financial Covenants.**

(a) Beginning on the earlier to occur of December 31, 2018, or the Closing of five (5) Project Loans, the total principal amount of all Project Loans delinquent for sixty days or longer must not exceed 12% of the total principal amount of all outstanding Project Loans.

(b) Borrower shall at all times maintain a ratio of Current Assets to Current Liabilities of greater than 1.0:1.0. This ratio will be calculated at the end of each reporting period for which Lenders require financial statements, using the results of that reporting period.

Section 5.20 **Sunshine Requirements.** Borrower and its subsidiaries, if any, shall comply with applicable local, state and federal laws and regulations, to include without limitation, environmental laws and regulations and the Community Reinvestment Act "Sunshine Requirements" set forth in 12 U.S.C. § 1831y, and shall notify Lender of the institution or threatened institution of any action, suit, investigation or proceeding against or affecting the Borrower or any of its subsidiaries, including any such investigation or proceeding by any governmental authority or private party with respect to any of their respective properties, or, to Borrower's knowledge, against any person or entity to whom any of Borrower's or its subsidiaries' loans are outstanding or with respect to any of such person's or entity's properties securing such loan, except for such action, suit, investigation or proceeding which if adversely determined would not have a Borrower Material Adverse Effect.

ARTICLE VI
THE ADMINISTRATIVE AGENT

Section 6.1 **Authorization and Action.**

(a) Each Lender hereby appoints and authorizes the Administrative Agent as its representative to take such action as agent on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Administrative Agent by the terms hereof, together with such powers as are reasonably incidental thereto. As to any matters not expressly provided for by this Agreement and the other Loan Documents, the Administrative Agent, acting in such capacity, shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of Lenders holding a Majority-in-Interest (or other required voting interests as set forth herein), and such instructions shall be binding upon all Lenders of such Loan; *provided, however*, that the Administrative Agent shall not be required to take any action which is contrary to this Agreement or applicable law. The Administrative

Agent agrees to give to each Lender prompt notice of each notice given to it by the Borrower pursuant to the terms of this Agreement.

(b) Notwithstanding the use of the defined term “**Administrative Agent**,” it is expressly understood and agreed that the Administrative Agent shall not have any fiduciary responsibilities to any Lender by reason of this Agreement or any other Loan Document and that the Administrative Agent is merely acting as the contractual representative of the Lenders with only those duties as are expressly set forth in this Agreement and the other Loan Documents. In its capacity as the Lenders’ contractual representative, the Administrative Agent (i) does not hereby assume any fiduciary duties to any of the Lenders, (ii) is a “representative” of the Lenders within the meaning of the term “secured party” as defined in the UCC and (iii) is acting as an independent contractor, the rights and duties of which are limited to those expressly set forth in this Agreement and the other Loan Documents.

Section 6.2 **Administrative Agent’s Reliance, Etc.** Neither the Administrative Agent nor any of its directors, officers, agents or employees shall be liable for any action taken or omitted to be taken by it or them under or in connection with this Agreement or any other Loan Document, except for its or their own gross negligence or willful misconduct. Without limiting the generality of the foregoing, the Administrative Agent, acting in such capacity: (i) may consult with legal counsel (including counsel for the Borrower), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts; (ii) except as expressly provided herein, makes no warranty or representation to any Lender and shall not be responsible to any Lender for any statements, warranties or representations (whether written or oral) made in or in connection with this Agreement or any other Loan Document; (iii) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or any other Loan Document on the part of the Borrower or any Lender or to inspect the property (including the books and records) of the Borrower or any Lender; (iv) shall not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document or any other instrument or document furnished pursuant hereto or thereto; and (v) shall incur no liability under or in respect of this Agreement by acting upon any notice, consent, certificate or other instrument or writing (which may be by registered or certified mail or electronic mail) believed by it to be genuine and signed or sent by the proper party or parties.

Section 6.3 **USBGI and Affiliates.** With respect to its Commitment as a Class C Lender and the advances made by it, USBGI shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though it were not the Administrative Agent; and the term “**Lender**” or “**Lenders**” shall, unless otherwise expressly indicated, include USBGI in its individual capacity, as applicable. USBGI and its Affiliates may accept deposits from, lend money to, act as trustee under indentures of, and generally engage in any kind of business with, the Borrower or any Lender, any of their respective Affiliates and any Person who may do business with or own securities of the Borrower or any Lender or any such Affiliate, all as if USBGI were not the Administrative Agent and without any duty to account therefor to the Lenders.

Section 6.4 **Lender Credit Decision.** Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender received and reviewed such documents and information as it has deemed appropriate, and made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement.

Section 6.5 **Indemnification; General Immunity.**

(a) The Lenders agree to indemnify the Administrative Agent (to the extent not indemnified by the Borrower pursuant to Section 9.1 of this Agreement or reimbursed by the Borrower pursuant to Section 10.2 and without any prejudice to the Lenders' ability to seek contribution, indemnity or reimbursement from the Borrower for the same under Section 9.1 of this Agreement), ratably according to their respective Commitment Percentages, and not to exceed, each Lender's respective unfunded portion of the Commitment, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against the Administrative Agent in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted by the Administrative Agent under this Agreement or any other Loan Document, provided that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Administrative Agent's gross negligence or willful misconduct and provided further that the Administrative Agent shall have exhausted all recourse against Borrower before seeking indemnification from the Lenders. Without limitation of the foregoing, each Lender agrees to reimburse the Administrative Agent promptly upon demand for its ratable share according to their respective Commitment Percentages, at the time of determination, of any reasonable out-of-pocket expenses (including counsel fees) incurred by the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement or any other Loan Document, to the extent that the Administrative Agent is not reimbursed for such expenses by the Borrower. The Administrative Agent shall use its best efforts to provide Lenders with notice of expenses incurred by it pursuant to this Section 6.5, and, to the extent reasonably possible, seek the prior approval of the Lenders prior to incurring such expenses.

(b) Neither the Administrative Agent nor any of its directors, officers, agents or employees shall be liable to the Borrower, the Lenders or any Lender for any action taken or omitted to be taken by it or them in good faith hereunder or under any other Loan Document or in connection herewith or therewith except to the extent such action or inaction is determined in a final non-appealable judgment by a court of competent jurisdiction to have arisen from the gross negligence or willful misconduct of such Person.

Section 6.6 **Successor Administrative Agent.** The Administrative Agent may resign at any time by giving no less than sixty (60) days' prior written notice thereof to the Lenders and the Borrower and, (a) in the event that the Administrative Agent breaches its

obligations hereunder, or (b) the Class A Lender otherwise determines, in its reasonable discretion exercised in good faith, that such removal is necessary, then the Administrative Agent may be removed by the vote of the Class A Lender. Upon any such notice of resignation or removal, a successor Administrative Agent shall be selected and appointed by at least two thirds (2/3) of the Class A Lenders and two thirds (2/3) of the Class B Lenders. The resignation of the Administrative Agent shall take effect upon the acceptance by a successor Administrative Agent of appointment under this Section 6.6 or as otherwise provided herein. If no successor Administrative Agent shall have been so appointed, and shall have accepted such appointment, within thirty (30) days after the retiring Administrative Agent's giving of notice of resignation or the removal of the retiring Administrative Agent, then the Class A Lender may elect to appoint itself or one of its Affiliates, to perform the Administrative Agent's duties until a successor Administrative Agent is appointed, such appointment to be made promptly in accordance with the terms of this Section 6.6, or if the Class A Lender is elected to perform such duties, the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent. In the event that a successor Administrative Agent has not been appointed and has not accepted its appointment within sixty (60) days after the retiring Administrative Agent's giving of notice of resignation, the Borrower shall petition a court of competent jurisdiction to appoint any established financial institution having a net worth of not less than \$500,000,000, and experience in performing the duties of an administrative and collateral agent for credit facilities involving multiple lenders and of similar size as the Loan. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations under this Agreement. After any retiring Administrative Agent's resignation or removal hereunder as Administrative Agent, the provisions of this Article VI shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement. In the event that Administrative Agent fails to perform its duties hereunder, and does not cure such failure within thirty (30) days of notice thereof from the Class A Lender, or during any period before a replacement Administrative Agent is appointed following the removal of the Administrative Agent in accordance with this Section 6.6, the Class A Lender, or its Affiliates, may perform all or certain of such Administrative Agent duties until either the Administrative Agent properly performs its duties as determined by the Class A Lender in its reasonable discretion exercised in good faith, or a replacement Administrative Agent is appointed, as applicable.

Section 6.7 **Disclosures.** The Borrower and each Lender hereby acknowledge and agree that Administrative Agent and the Class C Lender, is the sole member of the Borrower and that USBGI will have certain rights as a Lender limited hereunder. USBGI shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though it were not the sole member of the Borrower or Administrative Agent, and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated, include USBGI. Notwithstanding the foregoing, all matters requiring the approval of the Lenders shall include the approval of the Class A Lender.

Section 6.8 **Compensation.** The parties hereto agree that the Origination Fee is commercially reasonable compensation for the services performed by the Administrative Agent hereunder, similar to compensation that would be agreed upon by unrelated third parties.

Section 6.9 **Additional Services.** The Administrative Agent may, at the request of the Borrower, perform such other services as may be mutually agreeable to the Administrative Agent and the Borrower; provided that such services are upon terms that are (i) arm's length, (ii) relate to financial services and receive the consent of a Majority In Interest of the Disinterested Lenders.

Section 6.10 **Beneficiaries.** Except as expressly provided herein, the provisions of this Article VI are solely for the benefit of the Administrative Agent and the Lenders, and the Borrower shall have no right to rely on or enforce any of the provisions hereof.

Section 6.11 **Financial Covenants.**

(a) Beginning on the earlier to occur of December 31, 2018, or the Closing of five (5) Project Loans, the total principal amount of all Project Loans delinquent for sixty days or longer must not exceed 20% of the total principal amount of all outstanding Project Loans.

(b) Administrative Agent shall at all times maintain a ratio of Current Assets to Current Liabilities of greater than 1.0:1.0. This ratio will be calculated at the end of each reporting period for which Lenders require financial statements pursuant to Section 11.1, using the results of that reporting period.

(c) The Administrative Agent's average change in net assets (determined in accordance with GAAP) for a trailing three (3) year period, as reflected in the financial statements to be delivered pursuant to Section 11.1, must at all times be greater than \$0.

Section 6.12 **Grant of Security Interests.**

(a) Borrower hereby grants to Lenders, to secure the payment and performance in full of all of the Obligations under this Agreement and the Facility Notes, a security interest in and so pledges and assigns to Lenders the following: (i) all of the Project Loans, the Project Notes, Project Note, the Project Loan Agreements, the Project Guaranties, as applicable, with respect to each Project Loan originated under the Facility; (ii) all accessions, additions, and substitutions of any of the foregoing; and (iii) all proceeds of any of the foregoing, whether any of the foregoing is owned now or acquired later; all accessions, additions, and substitutions of any of the foregoing; and all proceeds of any of the foregoing (all of the same being hereinafter called the "**Facility Collateral**"), and all insurance claims and other proceeds or products thereof, whether now owned or existing or hereafter acquired or arising, wherever located and whether in Borrower's possession and control or in the possession and control of a third party.

(b) Borrower hereby irrevocably authorizes Lenders, or the Administrative Agent on behalf of the Lenders, at any time and from time to time to file in any filing office in any Uniform Commercial Code jurisdiction any amendments to any previously filed financing statements and file such additional financing statements and amendments thereto that (a) indicate the Facility Collateral, and (b) provide any other information required by Article 9a of the Uniform Commercial Code, for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether Borrower is an organization, the type of

organization and any organizational identification number issued to Borrower. Borrower agrees to furnish any such information to Lenders promptly upon Lenders' request.

(c) To further the attachment, perfection and first priority of, and the ability of Lenders to enforce, Lenders' security interest in the Facility Collateral, and without limitation on Borrower's other obligations in this Agreement, Borrower agrees, in each case at Borrower's expense, to take the following actions with respect to the following Facility Collateral:

(i) If any Facility Collateral is at any time in the possession of a bailee, Borrower shall promptly notify Lenders, or the Administrative Agent on behalf of the Lenders, thereof and, at Lenders' request and option, shall promptly obtain an acknowledgement from the bailee, in form and substance satisfactory to Lenders, that the bailee holds such Facility Collateral for the benefit of Lenders, and that such bailee agrees to comply, without further consent of Borrower, with instructions from Lenders as to such Facility Collateral. Lenders agrees with Borrower that Lenders shall not give any such instructions unless an Event of Default has occurred and is continuing or would occur after taking into account any action by Borrower with respect to the bailee.

(ii) Borrower further agrees, at the request and option of Lenders, to take any and all other actions Lenders may determine to be necessary or useful for the attachment, perfection and first priority of, and the ability of Lenders to enforce, Lenders' security interest in any and all of the Facility Collateral, including, without limitation, (a) executing, delivering and, where appropriate, filing financing statements and amendments relating thereto under the Uniform Commercial Code, to the extent, if any, that Borrower's signature thereon is required therefor, (b) causing Lenders' name to be noted as Lenders on any certificate of title for a titled good if such notation is a condition to attachment, perfection or priority of, or ability of Lenders to enforce, Lenders' security interest in such Facility Collateral, (c) complying with any provision of any statute, regulation or treaty of the United States as to any Facility Collateral if compliance with such provision is a condition to attachment, perfection or priority of, or ability of Lenders to enforce, Lenders' security interest in such Facility Collateral, (d) obtaining governmental and other third party waivers, consents and approvals in form and substance satisfactory to Lenders, including, without limitation, any consent of any licensor, lessor or other person obligated on Facility Collateral, (e) obtaining waivers from mortgagees and landlords in form and substance satisfactory to Lenders and (f) taking all actions under any earlier versions of the Uniform Commercial Code or under any other law, as reasonably determined by Lenders to be applicable in any relevant Uniform Commercial Code or other jurisdiction, including any foreign jurisdiction.

(b) Borrower further represents and warrants to Lenders as follows: (a) Borrower is or will be the owner of or has other rights in or power to transfer the Facility Collateral, free from any right or claim or any person or any adverse lien, security interest or other encumbrance, except for the security interest created by this Agreement and other liens permitted by the Loan Agreement and (b) the security interests granted herein are perfected and are of first priority.

(c) Borrower covenants with Lenders as follows: (a) the Facility Collateral, to the extent not delivered to Lenders pursuant to Section 2.2, will be promptly delivered upon

request, (b) except for the security interest herein granted and liens permitted by the Loan Documents, Borrower shall be the owner of or have other rights in the Facility Collateral free from any right or claim of any other person, lien, security interest or other encumbrance, and Borrower shall defend the same against all claims and demands of all persons at any time claiming the same or any interests therein adverse to Lenders, (c) Borrower shall not pledge, mortgage or create, or suffer to exist any right of any person in or claim by any person to the Facility Collateral, or any security interest, lien or encumbrance in the Facility Collateral in favor of any person, other than Lenders, except for liens permitted by the Loan Documents, (d) Borrower will pay promptly when due all taxes, assessments, governmental charges and levies upon the Facility Collateral or incurred in connection with the use or operation of such Facility Collateral or incurred in connection with this Agreement, and (e) Borrower will not sell or otherwise dispose, or offer to sell or otherwise dispose, of the Facility Collateral or any interest therein.

(d) The powers conferred on Lenders hereunder are solely to protect its interests in the Facility Collateral and shall not impose any duty upon it to exercise any such powers. Lenders shall be accountable only for the amounts that it actually receives as a result of the exercise of such powers, and neither it nor any of its officers, directors, employees or agents shall be responsible to Borrower for any act or failure to act, except for Lenders' own gross negligence or willful misconduct.

ARTICLE VII EVENTS OF DEFAULT AND REMEDIES

Section 7.1 **Events of Default.** The occurrence of any of the following events shall be an Event of Default hereunder:

(a) Failure by Borrower to pay any (i) principal or interest that is due and payable on any Facility Note pertaining to a Project Loan payment actually made by a Project Borrower to Borrower, which failure shall remain unremedied for ten (10) days after written notice thereof has been provided by any Lender to Borrower, or (ii) other amount required to be paid hereunder or under one or more of the Loan Documents (that Borrower has received from a Project Borrower with respect to the underlying Project Loan other than principal or interest on any Facility Note), which failure shall remain unremedied for thirty (30) days after written notice thereof has been provided by any Lender to Borrower. Borrower will no longer be entitled to either such ten (10) or thirty (30) day cure period after the first two (2) such failures). Notwithstanding any language to the contrary contained in this Agreement, Borrower shall only be required to pay principal or interest payments under a Facility Note to the extent the Class C Lender Top Loss has not already been depleted. **[ISSUE REGARDING LOSS PRIORITY WITH CLASS B LENDERS]**

(b) Borrower shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any Proceeding shall be instituted by or against Borrower seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of

an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property and, in the case of any such Proceeding instituted against it (but not instituted by it), either such Proceeding shall remain undismissed or unstayed for a period of sixty (60) days, or any of the actions sought in such Proceeding (including, without limitation, the entry of an order for relief against, or the appointment of a receiver, trustee, custodian or other similar official for, it or for any substantial part of its property) shall occur; or Borrower shall take any action to authorize any of the actions set forth above in this subsection (b); or

(c) Borrower shall fail to pay any principal of or premium or interest on any Debt (but excluding Debt evidenced by any Facility Note or by a Project Loan Protective Advance, which is separately addressed by clause (a) above) of Borrower when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Debt; or any such Debt shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), redeemed, purchased or defeased, or an offer to prepay, redeem, purchase or defease such Debt shall be required to be made, in each case prior to the stated maturity thereof; or

(d) Borrower fails to comply with or perform as and when required or to observe any of the material terms, conditions or covenants contained in this Agreement; or

(e) If Borrower shall fail to perform or observe any other material term, covenant or agreement to be performed or observed by such Person contained herein or in any other Loan Document to which it is a party (except for any term or covenant which is the subject of another subsection of this Section 7.1), in each case, if such failure shall remain unremedied for thirty (30) days after notice from the Administrative Agent or any Lender with respect thereto; or

(f) (i) Any uninsured judgment or order for the payment of money in excess of \$250,000 shall be rendered against Borrower and (ii) (A) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (B) there shall be any period of thirty (30) consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(g) Any Change of Control shall occur; or

(h) Any provision of this Agreement, any Facility Note, or any other Loan Document shall for any reason cease to be valid and binding on Borrower or the Administrative Agent (as the case may be), or Borrower or the Administrative Agent shall so state in writing; or

(i) Any representation, warranty, certification or statement made in writing by Borrower (i) made herein or in any other Loan Document or (ii) made in any certification or documentation required to be provided by any of such parties during the term of the Facility and/or in connection with any borrowing, shall prove to have been incorrect in any material respect when made or deemed made.

Section 7.2 Remedies. If an Event of Default shall occur and be continuing then, in addition to all other rights the Lenders may have under this Agreement, the other Loan Documents and any other applicable laws (including, without limitation the imposition of the Default Interest Rate with respect to the Obligations in accordance with Section 1.7(b)(v)), the Administrative Agent (with the permission or at the direction of Disinterested Lenders holding a Majority-in-Interest) may, without notice to Borrower (which notice is hereby expressly waived by Borrower):

(a) declare the Commitment and the obligation of the Lenders to make Loans to be terminated, whereupon the same shall forthwith terminate; and

(b) declare the Facility Notes, all interest thereon and all other Obligations payable under this Agreement to be forthwith due and payable, whereupon the Facility Notes, all such interest and all such other Obligations shall become and be forthwith due and payable, without presentment, demand, protest, or further notice of any kind, all of which are hereby expressly waived by Borrower;

(c) Upon the occurrence and during the continuance of an Event of Default, generally to sell, transfer, pledge, make any agreement with respect to or otherwise dispose of or deal with any of the Facility Collateral in such manner as is consistent with the Uniform Commercial Code and as fully and completely as though Lenders were the absolute owner thereof for all purposes, and to do, at Borrower's expense, at any time, or from time to time, all acts and things which Lenders deem necessary or useful to protect, preserve or realize upon the Facility Collateral and Lenders' security interest therein, in order to effect the intent of this Agreement, all at least as fully and effectively as Borrower might do, including, without limitation, (i) the transfer of the Project Loans, Project Notes, and Project Loan Documentation to Lenders and (ii) the execution, delivery and recording, in connection with any sale or other disposition of any Facility Collateral, of the endorsements, assignments or other instruments of conveyance or transfer with respect to such Facility Collateral; and

(d) to the extent that Borrower's authorization given in this Agreement is not sufficient, to file such financing statements with respect hereto, with or without Borrower's signature, or a photocopy of this Agreement in substitution for a financing statement, as Lenders may deem appropriate and to execute in Borrower's name such financing statements and amendments thereto and continuation statements which may require Borrower's signature.

(e) Lenders shall not be deemed to have waived any of their rights or remedies in respect of the Obligations or the Facility Collateral unless such waiver shall be in writing and signed by Lenders. No delay or omission on the part of Lenders in exercising any right or remedy shall operate as a waiver of such right or remedy or any other right or remedy. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion. All rights and remedies of Lenders with respect to the Obligations or the Facility Collateral, whether evidenced hereby or by any other instrument or papers, shall be cumulative and may be exercised singularly, alternatively, successively or concurrently at such time or at such times as Lenders deems expedient.

(f) Borrower waives demand, notice, protest, notice of acceptance of this Agreement, notice of loans made, credit extended, Facility Collateral received or delivered or other action taken in reliance hereon and all other demands and notices of any description. With respect to both the Obligations and the Facility Collateral, Borrower assents to any extension or postponement of the time of payment or any other indulgence, to any substitution, exchange or release of or failure to perfect any security interest in any Facility Collateral, to the addition or release of any party or person primarily or secondarily liable, to the acceptance of partial payment thereon and the settlement, compromising or adjusting of any thereof, all in such manner and at such time or times as Lenders may deem advisable. Lenders shall have no duty as to the collection or protection of the Facility Collateral or any income therefrom, the preservation of rights against prior parties, or the preservation of any rights pertaining thereto beyond the safe custody thereof as set forth in this Agreement. Borrower further waives any and all other suretyship defenses.

Section 7.3 Proceeds of Dispositions; Expenses. Borrower shall pay to Lenders on demand any and all expenses, including reasonable attorneys' fees and disbursements, incurred or paid by Lenders in protecting, preserving or enforcing Lenders' rights and remedies under or in respect of any of the Obligations or any of the Facility Collateral. After deducting all of said expenses, the residue of any proceeds of collection or sale or other disposition of the Facility Collateral shall, to the extent actually received in cash, be applied to the payment of the Obligations in such order or preference as Lenders may determine, proper allowance and provision being made for any Obligations not then due. Upon the final payment and satisfaction in full of all of the Obligations and after making any payments required by Sections 9-608(a)(1)(C) or 9a-615(a)(3) of the Uniform Commercial Code, any excess shall be returned to Borrower. In the absence of final payment and satisfaction in full of all of the Obligations, Borrower shall remain liable for any deficiency; *provided, however*, that upon the occurrence of an Event of Default described in Subsection 7.1(b) whether or not a notice of such default is issued by the Administrative Agent, (A) the Commitment and the obligations of the Lenders to make Loans shall automatically be terminated and (B) the Loans, the Facility Notes, all such interest, accruing at the Default Interest Rate, and all such Obligations shall automatically become and be due and payable, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by Borrower.

Section 7.3 Waiver of Defaults and Other Actions. If an Event of Default shall occur and be continuing, the Administrative Agent may, and at the direction of the Disinterested Lenders holding a Super Majority-in-Interest shall, waive such Event of Default.

Section 7.4 Remedies are Cumulative. All remedies afforded to the Lenders pursuant to this Agreement are separate and cumulative remedies and it is agreed that no one of such remedies, whether or not exercised by the Lenders shall be deemed to be an exclusion of any of the other remedies available to the Lenders and shall not limit or prejudice any other legal or equitable remedy which the Lenders may have.

Section 7.5 Set-Off. Upon the occurrence and during the continuance of any Event of Default, each Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set-off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other amounts at any time owing by such

Lender to or for the credit or the account of the Borrower (including, without limitation, any indebtedness or grants to be made by such Lender to the Borrower) against any and all of the obligations of the Borrower now or hereafter existing under any Loan Document, whether or not such Lender shall have made any demand under such Loan Document and although such obligations may be unmatured. The Lenders and the Administrative Agent agree that all set-offs and other recoveries from the Borrower shall be shared among the Lenders and the Administrative Agent in accordance with the provisions of Section 1.11 (it being understood that such amounts will be applied in accordance with the priorities set forth in Section 7.6). Each Lender agrees promptly to notify the Borrower after any such set-off and application, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Lenders under this Section 7.5 are in addition to other rights and remedies (including, without limitation, other rights of set-off) which the Lenders may have.

Section 7.6 **Application of Proceeds.** From and after the date on which the Administrative Agent has taken action pursuant to Section 7.2 and until all of the Obligations of Borrower have been paid in full, any and all proceeds received by the Administrative Agent from the exercise of any remedy by the Administrative Agent against the Borrower shall be applied as follows:

(a) First, to reimburse the Administrative Agent and the Lenders for out-of-pocket costs, expenses and disbursements, including reasonable attorneys' fees and legal expenses, incurred by the Administrative Agent or the Lenders in connection with the collection of any Obligations, and the exercise of any remedies contemplated hereby or under the Loan Documents; *provided that* any such reimbursements owed to any Senior Lender shall be paid prior to any Junior Lender; and

(b) Second, in accordance with section 10.2.

ARTICLE VIII FEES AND EXPENSES

Section 8.1 **Expenses Generally.** All reasonable third party out-of-pocket expenses, including but not limited to, reasonable attorneys' fees and expenses, recording fees, mortgage fees, wiring charges, and postage incurred by or on behalf of Administrative Agent relating to the negotiation, documentation and closing of this credit facility, the administration hereof, or the extension, amendment or other modification hereof or of any of the other Loan Documents and payment for which is not otherwise provided for under this Agreement will be paid by Borrower within five (5) Business Days of Administrative Agent's written request therefor, which shall include documentation substantiating such request.

Section 8.2 **Claims Against Lenders.** If a claim or action is ever made upon or commenced against Administrative Agent or any Lender for repayment or recovery of any amount or amounts received by such Person in payment or on account of any of the Obligations of Borrower due under this Agreement or any of the Facility Notes or other Loan Documents, including, but not limited to, a preference action pursuant to 11 U.S.C. §§547 and 550, and such Person repays all or part of said amount by reason of (a) any judgment, decree or order of any court or administrative body, or (b) any settlement or compromise of any such claim effected by

such Person with any such claimant (including Borrower), then and in such event Borrower agrees that any such judgment, decree, order, settlement or compromise shall be binding upon Borrower, notwithstanding any revocation hereof, or the return, release, or cancellation of this Agreement or the cancellation of any note or other instrument evidencing any liability of Borrower, and Borrower shall be and remain liable and obligated to indemnify such Person for its reasonable attorneys' fees incurred in defending against such claim or action and for the amount so repaid or recovered to the same extent as if such amount had never originally been received by such Person.

ARTICLE IX INDEMNITIES; LIMITATIONS OF LIABILITY

Section 9.1 **Indemnity**. Borrower will indemnify, defend and hold harmless each of the Indemnified Parties from and against all losses, costs, claims, suits, actions, fines, penalties, expenses, liabilities and damages and related expenses relating to a breach by the Borrower of its obligations hereunder, including without limitation reasonable attorney's fees and disbursements, arising under the Facility, the Loan Documents, any Loan or Project Loan, the use of the proceeds thereof, and the transactions contemplated hereunder or thereunder, except to the extent such loss, cost, claim, suit, action, fine, penalty, expense, liability or damage is determined by a court of competent jurisdiction in a final non-appealable judgment to have been caused by any of Indemnified Parties' gross negligence or willful misconduct in such Person's performance under this Agreement; *provided, however*, that no Indemnified Party shall be deemed responsible for, or not entitled to the foregoing indemnity by reason of another Person's gross negligence or willful misconduct. Indemnified Parties, at their option, may undertake and conduct through counsel of their collective choice as designated by such Indemnified Parties, at the expense of the Borrower, the settlement or defense of any such action or proceeding. Notice of any claim and/or action or proceeding instituted against Borrower shall be promptly given to each Indemnified Party and each Indemnified Party shall have the right, at such Person's own cost and expense, to join in the defense of any such action or proceeding.

Section 9.2 **No Liability on Part of Any Indemnified Party**. No Indemnified Party by its acceptance of this Agreement, the Facility Notes and any payments on account thereof, shall be deemed to have assumed or to have become liable for any obligations or liabilities of Borrower.

Section 9.3 **No Joint Venture, Etc.** Borrower hereby acknowledges and agrees that:

(a) No Indemnified Party has any fiduciary relationship with or duty to Borrower arising out of or in connection with this Agreement, and the relationship between Indemnified Party and Borrower in connection herewith is solely that of debtor and creditor; and

(b) No joint venture or partnership is created hereby or otherwise exists by virtue of the transactions contemplated hereby between any Indemnified Party and Borrower.

ARTICLE X
BORROWER ACCOUNTS; APPLICATION OF PROJECT LOAN PROCEEDS

Section 10.1 **Borrower Accounts.** On or before the Effective Date, Borrower shall establish (and at all times thereafter shall maintain) with Borrower Account Bank the Borrower Operating Account. The Borrower agrees that it will use its best efforts to deposit, all amounts received by it, to the Borrower Operating Account on the same Business Day that such amounts are received and no later than two (2) Business Days after receipt. The Borrower shall administer the Borrower Operating Account in accordance with this Article X.

(a) All interest earned on each Borrower Operating Account shall be deposited (or caused to be deposited) by the Borrower Account Bank into such Borrower Operating Account.

(b) Borrower Operating Account may be maintained as separate subaccounts on the books and records of the Borrower. The funds attributable to such subaccounts may be deposited in one or more general bank accounts and need not be physically segregated from any other funds in such general bank account so long as the requirements of this Section 10.1 are met.

(c) The Administrative Agent shall permit Borrower to withdraw amounts from the Borrower Operating Account sufficient to pay for costs, fees and expenses of the Borrower and to reimburse the Administrative Agent for any such amounts paid by the Administrative Agent; provided, that Borrower shall not be permitted to withdraw any amounts from the Borrower Operating Account consisting of proceeds of recoveries with respect to Underlying Project Loans pursuant to Section 10.3(b) held in such Borrower Operating Account, if applicable.

Section 10.2 **Application of Project Loan Proceeds.**

(a) On each Payment Date and to the extent Borrower has received principal payments, interest payments, or amortized principal and interest payments on an Underlying Project Loan, Project Loan Proceeds for each Underlying Project Loan shall be disbursed from the Borrower Operating Account and applied in the following order of priority (it being understood that Project Loan Proceeds relating to an Underlying Project Loan shall only be applied to the items in this Section 10.2 relating to such Underlying Project Loan or the out-of-pocket costs, fees and expenses in this Section 10.2):

(i) First, to pay the Administrative Agent any reasonable out-of-pocket costs then owed to the Administrative Agent hereunder;

(ii) Second, to the extent the Project Loan Proceeds with respect to such Underlying Project Loan remain after any prior payments on such Payment Date, to the Class A Lender in the following order: (a) first, all accrued interest due (calculated on the basis of the Class A Lender's Spread and the outstanding principal balance of the Underlying Project Loan) and owing to the Class A Lender hereunder with respect to the Loan made by the Class A Lender in connection with Underlying Project Loan; and (b) second, to outstanding principal on the

subject Loan made by the Class A Lender to Borrower under this Agreement with respect to the Underlying Project Loan, until the unpaid principal amounts thereof have been reduced to zero;

(iii) Third, to the extent the Project Loan Proceeds with respect to such Underlying Project Loan remain after any prior payments on such Payment Date, to the Class B Lender in the following order: (a) first, all accrued interest due (calculated on the basis of the Class B Lender's Spread and the outstanding principal balance of the Underlying Project Loan) and owing to the Class B Lender hereunder with respect to the Loan made by the Class B Lender in connection with Underlying Project Loan; and (b) second, to outstanding principal on the subject Loan made by the Class B Lender to Borrower under this Agreement with respect to the Underlying Project Loan, until the unpaid principal amounts thereof have been reduced to zero;

(iv) Fourth, to the extent the Project Loan Proceeds with respect to such Project Loan remain after any prior payments on such Payment Date, all accrued interest due (calculated on the basis of the Administrative Agent's Spread and outstanding principal balance of the Underlying Project Loan) and owing to Administrative Agent hereunder to pay the Administrative Agent;

(v) Fifth, to the extent the Project Loan Proceeds with respect to such Project Loan remain after any prior payments on such Payment Date, all accrued interest due (calculated on the basis of the Excess Spread and outstanding principal balance of the Underlying Project Loan) and owing to Administrative Agent hereunder to pay the Administrative Agent; provided, however, that if the 25% of the Class A Lender Commitment exceeds the Total Top Loss multiplied, the Excess Spread shall be contributed to the Class C Lender Top Loss until 25% of the Class A Lender Commitment is equal to or exceeds the Total Top Loss; and

(vi) Sixth, to the extent the Project Loan Proceeds with respect to such Project Loan remain after any prior payments on such Payment Date, the amount of any reasonable (to be determined by the Administrative Agent in its discretion) costs, fees and expenses then owed to or by (as the case may be) to the Borrower.

(b) Notwithstanding any language to the contrary contained in this Agreement, Borrower shall only be required to pay principal or interest payments under a Facility Note to the extent Borrower receives such principal payments or interest payments on the Underlying Project Loans, unless such principal payments or interest payments on underlying Project Loans are more than thirty (30) days late. In such a case, ZB, N.A., dba Zions First National Bank may debit an amount equal to such late payments from the Class B Lender Top Loss held in the Restricted Account to the extent such funds are available and apply such amount toward amounts owed under the subject Facility Note, provided ZB, N.A., dba Zions First National Bank notifies Borrower of such debit when it is made.

(c) For the avoidance of doubt it is agreed that all provisions in this Section 10.2 permitting proceeds to be applied to Loans made in connection with Underlying Project Loans shall refer strictly to those specific Loans which were used to originate the applicable Underlying Project Loan and not Loans used for the origination of any other Underlying Project Loan.

Section 10.3 Sharing of Project Loan Losses.

(a) To the extent that any of the Class A Lender, the Class B Lenders or the Class C Lender incur any loss that is unable to be reimbursed with the proceeds received on account of any recovery with respect to an Underlying Project Loan under Section 10.2, the Facility Note with respect to such Lender shall be permanently reduced in an amount equal to such loss.

(b) Notwithstanding the foregoing or any other provision contained herein, to the extent there is a recovery with respect to an Underlying Project Loan for which a loss is incurred pursuant to Section 10.3(a) hereof, the proceeds of such recovery shall be distributed in the following order of priority:

(i) first, to Borrower in the amount of all reasonable out-of-pocket costs, fees and expenses incurred in connection with such recovery;

(ii) thereafter, in accordance with Section 1.3 of this Agreement.

Section 10.4 Intentionally Deleted.

Section 10.5 Full Release Upon Repayment. Upon the full payment, performance, satisfaction and discharge of all of the Obligations and the payments of all other amounts which may be due to the Administrative Agent and Lenders under the terms of this Agreement, the Administrative Agent and Lenders shall execute such instruments as Borrower may reasonably require in order to effect a release of the remaining Collateral held by the Administrative Agent and Lenders, to anyone entitled to receive the same, all of which instruments shall be executed by any Administrative Agent and such Lender, without representation or warranty by or recourse against the Administrative Agent and such Lender, whereupon this Agreement shall terminate and be of no further force or effect except for such terms that expressly survive termination of this Agreement.

**ARTICLE XI
REPORTING REQUIREMENTS**

Within the below specified time frames, Borrower shall furnish to the Administrative Agent and each of the Lenders, and Administrative Agent shall furnish to each of the Lenders, the following:

Section 11.1 Financial Statements and Information; Annual Portfolio Management Reports.

(a) Within the earlier of (i) one hundred eighty (180) days after the end of each fiscal years of Borrower and of Administrative Agent, respectively, or (ii) thirty (30) days after delivered to Administrative Agent's board of directors, each of Borrower and Administrative Agent shall deliver its audited financial statements, which financial statements shall be in accordance with GAAP and in all other respects in form and substance reasonably satisfactory to Administrative Agent and the Lenders and shall contain (except for standard qualifications) an unqualified (or otherwise reasonably satisfactory to the Lenders) opinion of the

audited organization's certified public accountant, which certified public accountant's name shall have been provided in advance to Administrative Agent and the Lenders and shall be reasonably acceptable to Administrative Agent and the Lenders;

(b) Within forty-five (45) days after the end of each fiscal quarter, each of Borrower and Administrative Agent shall deliver its self-prepared unaudited quarterly financial statements, including a balance sheet (or statement of financial position) and statement of income or loss (or statement of activities), and statement of cash flows, each certified by an Authorized Officer of Borrower and Administrative Agent, each setting forth the financial condition of Borrower and of Administrative Agent, respectively, in accordance with GAAP;

(c) As soon as practicable and in any event within ten (10) days after delivery to Borrower or to Administrative Agent, respectively, a copy of any letter issued by Borrower's independent public accountants or other management consultants with respect to its financial or accounting systems or controls, including all so-called "management letters."

Section 11.2 Quarterly and Monthly Reports.

(a) Within forty (45) days after the end of each fiscal quarter of Borrower the Administrative Agent shall provide a written summary of the status of Borrower's Project Loan portfolio, which such summary shall include, without limitation, the following information:

(i) a Portfolio Report in a form approved by Administrative Agent and Lenders holding a Majority-in Interest, which report shall (x) summarize all Project Loans then outstanding, setting forth for such Project Loans details regarding location, risk rating, maturity, amortization and interest rate and other relevant information set forth in **Exhibit D**, (y) provide a statement of all funds then on deposit in each Borrower Account and a calculation by Borrower of the then unfunded portion of the Class A Total Loan Amount, the Class B Total Loan Amount, and the Class C Lender Top Loss, and (z) report outstanding maturities for Project Loans and proposed renewal activities, as well as report all Project Loans repaid since the prior quarterly report;

(ii) a "**Default Certificate**" providing a delinquency report with respect to any Delinquent or Defaulted Loans;

(iii) a "Covenant Compliance Certificate" in the form attached as **Exhibit E**;

(iv) an account statement for each Borrower Account; and

(v) notices of any changes to the Credit Manual.

(b) Within ten (10) days after the end of calendar month, the Administrative Agent shall provide a written summary of the status of Borrower's Project Loan portfolio, which such summary shall include, without limitation, the following information:

- (i) the unpaid principal balance and accrued but unpaid interest for each of the Project Loans;
- (ii) the balance between long-term (five (5) years) and short term (one (1) to three (3) years) Project Loans held by the Borrower;
- (iii) the loan-to-value ratio for each Project Loan as determined at the application Loan Settlement Date;
- (iv) the mix of loan types as well as a listing of any and all Project Loans repaid during the preceding fiscal year;
- (v) the mix of asset classes represented;
- (vi) the diversification by location of the underlying Project;
- (vii) the diversification of the Project Loan borrowing entities and ultimate Project Loan borrowers;
- (viii) the reconciliation of the payments made by the Borrower on the Advances with the payments received by the Borrower on the underlying loans;
- (ix) the gross annual revenue of each Project Borrower; and
- (x) the address, for Community Reinvestment Act purposes, of each Project Borrower.

Section 11.3 **Notices of Default; Material Adverse Change.** As soon as practicable and in any event within two (2) Business Days after Borrower's knowledge thereof, Borrower shall provide the Administrative Agent and the other Lenders notice of (a) the occurrence of any Event of Default or Unmatured Event of Default and/or, after receiving notice thereof, any default or event of default under any Underlying Project Loan, or (b) the occurrence of any Borrower Material Adverse Effect.

Section 11.4 **Litigation.** As soon as practicable and in any event within five (5) Business Days after Borrower's knowledge thereof, notice of the institution of any litigation or proceedings against Borrower before any court, arbitrator or governmental department, commission, board, bureau, agency or instrumentality in an amount in excess of \$100,000, in each case together with the amount of contingent liability, if any, if such amount is ascertained and such other supporting or evidencing documentation as shall be required by Administrative Agent or any Lender in order to evaluate the notice provided.

Section 11.5 **Charge-Offs or Write-Downs.** Notice in writing of any charge-off or write-down of a Project Loan in accordance with this Agreement and the Credit Manual as soon as possible after approval by the Administrative Agent and Lenders holding a Majority-in-Interest of the Loans to conduct such charge-off or write-down, but in any event within five (5) Business Days after recordation of same in Borrower's financial record.

Section 11.6 **Other.** Borrower shall promptly provide to each Lender such additional information with respect to each Project Loan financed under the Facility as such Lender may reasonably request. Such other information respecting the condition or operations, financial or otherwise, of Borrower as any Lender may from time to time specifically and reasonably request in writing to Borrower (including, without limitation more frequent reporting of the yearly and monthly reports described in this Article XI).

ARTICLE XII OBLIGATIONS OF JUNIOR LENDERS

Section 12.1 **Bankruptcy.**

(a) Each Junior Lender agrees that neither Administrative Agent nor the Senior Lender owes any fiduciary duty to such Junior Lender in connection with the administration of the Facility and the Loan Documents and such Junior Lender agrees not to assert any such claim.

(b) The provisions of this Article XII shall be applicable both before and after the commencement, whether voluntary or involuntary, of any Proceeding. For as long as the Facility shall remain outstanding, unless Junior Lenders shall have first obtained the consent of the Senior Lender, Junior Lenders, in their capacity as Junior Lenders, and shall not solicit any Person to, direct or cause Borrower to: (i) commence any Proceeding; (ii) institute proceedings to have Borrower adjudicated a bankrupt or insolvent; (iii) consent to, or acquiesce in, the institution of bankruptcy or insolvency proceedings against Borrower; (iv) file a petition or consent to the filing of a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief by or on behalf of Borrower; (v) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for Borrower; (vi) make an assignment for the benefit of any creditor of Borrower; (vii) seek to consolidate any other assets of Borrower with any other Person in any proceeding relating to bankruptcy, insolvency, reorganization or relief of debtors; or (viii) take any action in furtherance of any of the foregoing.

(c) In any Proceeding the Administrative Agent, Borrower and each Lender hereby agrees that: (i) each Lender shall be permitted to file proofs of claim and/or where necessary to (x) file any necessary responsive or defensive pleadings in opposition to any motion, claim adversary proceedings or other pleadings made by a Person objecting to otherwise seeking disallowance of the claims of a Junior Lender or (y) prevent the running of any statute of limitations or similar restrictive claims of the Junior Lenders or to assert a compulsory cross-claim or counter claim against a Loan Party; (ii) each Junior Lender shall retain the right in its sole and absolute discretion to, among other things, vote on a plan of reorganization or arrangement with respect to Borrower; and (iii) each Junior Lender shall retain the right to otherwise participate in such Proceeding; provided that, in each case, such participation or plan or arrangement does not adversely impact or challenge the rights of the Senior Lender or priority of payments set forth in this Agreement as between the Senior Lender and the Junior Lenders, and, except as set forth in Section 7.6(b), the Junior Lenders shall not be entitled to receive any payments until the Senior Lender is fully paid.

ARTICLE XIII COMMITTEES

Section 13.1 **Credit Committee.** The Administrative Agent shall establish a Credit Committee (the “**Credit Committee**”) including one representative for each Class A Lender, one (1) representative from each Class B Lender, and one (1) representative from the Administrative Agent. Notwithstanding anything to the contrary contained in this Agreement, only the Class B Lender representative from the Geographic Area where the Project Loan is proposed to be made will have the right to vote in connection with such proposed Project Loan. The Class A Lenders will have a minimum of three (3) votes on the Credit Committee. If there are less than three Class A Lenders, each Class A Lender will have at least one vote and the additional vote will belong to the Class A Lender with the largest Class A Lender Commitment. If there are three (3) or more Class A Lenders, each one will have one vote. For the avoidance of doubt, initially there will be one Class A Lender, ZB, N.A. dba Zions First National Bank, which will have three votes on the Credit Committee. Each member of the Credit Committee will have a term of three (3) years, which term may be renewed by the party which appointed such member. The Credit Committee shall meet monthly to make Determinations on proposed Project Loans as set forth in Section 1.3 herein. In addition, the Credit Committee shall have the authority to recommend and approve changes to the Credit Manual and Underwriting Guidelines which are not inconsistent with the terms of this Agreement.

Section 13.2 **Advisory Committee.** An advisory committee may be established at the discretion of the Administrative Agent.

Section 13.3 **Pricing Committee.** The Administrative Agent shall establish a pricing committee comprised of the Administrative Agent and one representative appointed by each Class A Lender, one representative appointed by the Class B Lenders, and one representative appointed by the Class C Lender. The pricing committee will meet quarterly (or as otherwise determined necessary) at the direction of the Administrative Agent and shall be responsible for setting rate and fee levels for its products based upon current cost of funds, market conditions and other factors that may vary over time and impact facility pricing. However, only the representative from the Class A Lender shall have the right to vote on and determine the Class A Lender’s Spread, subject to the terms of the Credit Manual.

ARTICLE XIV MISCELLANEOUS

Section 14.1 **Further Assurances.** Until all of the Facility Notes have been paid in full, Borrower shall, promptly upon the request of any Lender or Administrative Agent, execute and/or deliver to such Lender or Administrative Agent such other additional documents in Borrower’s possession as are reasonably necessary to carry out the purposes of this Agreement and the other Loan Documents, without cost or expense to such Lender or Administrative Agent; provided that such Lender hereby agrees not to disclose any confidential information or documents received pursuant hereto, unless such information is or becomes publicly available without fault on the part of Lender or is demanded by a valid court order or subpoena, or disclosure of which is required under applicable law or regulation.

Section 14.2 **Examination of Records.** Upon five (5) days' prior written notice, Borrower shall permit officers and employees of the Administrative Agent and the Lenders and representatives of the Administrative Agent and the Lenders to audit and examine and take extracts from the books and records of Borrower at any time and from time to time during normal business hours. The Borrower agrees to reimburse the Administrative Agent and the Lenders, promptly after the Administrative Agent's or a Lender's request therefor, for the expenses of the Administrative Agent or the Lender incurred in conducting such audit and examination in an amount equal to the Administrative Agent's or the Lender's then reasonable and customary charges for each person employed to perform such audit or analysis, plus all costs and expenses (including without limitation, travel expenses) incurred by the Administrative Agent or the Lender in the performance of such audit or examination; *provided, however*, that unless an Event of Default has occurred and is continuing, Borrower shall only be responsible for the cost and expense of the first such examination in any calendar year.

Section 14.3 **Amendments and Waivers.** Unless otherwise specified herein, none of the terms or provisions of this Agreement may be waived, altered, modified, amended or discharged, except by an instrument in writing signed a Super Majority-in-Interest; provided that no agreement, waiver, alteration, modification, amendment or consent may be made without the consent of all of the Lenders which would:

(a) increase the amount of the Commitment of any Lender without the consent of such Lender;

(b) whether or not any Loans are outstanding, change the Facility Maturity Date or the time for payment of principal or interest on any Loan or any other fee payable to any Lender, or change the principal amount of or the rate of interest borne by any Loan or reduce any fee payable to any Lender without the consent of each Lender directly affected thereby;

(c) modify, amend, or alter the priority payment provisions set forth in Article X of this Agreement or the provisions of Article XIII of this Agreement without the consent of the Lender directly affected thereby;

(d) amend the provisions of Section 1.11 of this Agreement or this Section 14.3;

(e) alter any provision regarding the pro rata treatment of the Lenders; or

(f) change the definition of "Majority-in-Interest" or "Super Majority-in-Interest" or "Disinterested Lenders" or change any requirement providing for the Lenders or "Majority-in-Interest" or "Super Majority-in-Interest" or other similar requirement set forth in this Agreement for purposes of taking any action hereunder without the consent of all the Lenders (or Disinterested Lenders where applicable).

No failure on the part of Administrative Agent or any Lender to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by Administrative Agent or any Lender of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedy available to Administrative Agent or any Lender at

law or in equity. Administrative Agent shall not release any guaranty securing the Obligations without the prior written consent of each Lender that is a Beneficiary thereof.

Section 14.4 **GOVERNING LAW.** THIS AGREEMENT AND THE FACILITY NOTES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF UTAH (WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES).

Section 14.5 **CONSENT TO JURISDICTION AND VENUE; WAIVER OF JURY TRIAL.**

(a) EXCLUSIVE JURISDICTION. EXCEPT AS PROVIDED IN SUBSECTION (b), EACH OF THE PARTIES HERETO AGREES THAT ALL DISPUTES AMONG THEM ARISING OUT OF, CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED AMONG THEM IN CONNECTION WITH, THIS AGREEMENT, OR ANY OF THE OTHER LOAN DOCUMENTS WHETHER ARISING IN CONTRACT, TORT, EQUITY, OR OTHERWISE, SHALL BE RESOLVED EXCLUSIVELY BY STATE OR FEDERAL COURTS LOCATED IN SALT LAKE CITY, BUT THE PARTIES HERETO ACKNOWLEDGE THAT ANY APPEALS FROM THOSE COURTS MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE OF SALT LAKE CITY. EACH OF THE PARTIES HERETO WAIVES IN ALL DISPUTES BROUGHT PURSUANT TO THIS SUBSECTION (a) ANY OBJECTION THAT IT MAY HAVE TO THE LOCATION OF THE COURT CONSIDERING THE DISPUTE.

(b) OTHER JURISDICTIONS. BORROWER AGREES THAT ANY LENDER OR ADMINISTRATIVE AGENT SHALL HAVE THE RIGHT TO PROCEED AGAINST BORROWER OR ITS PROPERTY IN A COURT IN ANY LOCATION TO ENABLE SUCH LENDER OR ADMINISTRATIVE AGENT TO (1) OBTAIN PERSONAL JURISDICTION OVER BORROWER OR (2) ENFORCE A JUDGMENT OR OTHER COURT ORDER ENTERED IN FAVOR OF SUCH LENDER OR ADMINISTRATIVE AGENT. BORROWER AGREES THAT IT WILL NOT ASSERT ANY PERMISSIVE COUNTERCLAIMS IN ANY PROCEEDING BROUGHT BY ANY LENDER TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF SUCH LENDER OR ADMINISTRATIVE AGENT. BORROWER WAIVES ANY OBJECTION THAT IT MAY HAVE TO THE LOCATION OF THE COURT IN WHICH ANY LENDER OR ADMINISTRATIVE AGENT HAS COMMENCED A PROCEEDING DESCRIBED IN THIS SUBSECTION (b).

(c) VENUE. BORROWER IRREVOCABLY WAIVES ANY OBJECTION (INCLUDING, WITHOUT LIMITATION, ANY OBJECTION OF THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS) WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith IN ANY JURISDICTION SET FORTH ABOVE.

(d) SERVICE OF PROCESS. BORROWER FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY UNITED STATES REGISTERED MAIL, POSTAGE PREPAID, TO SUCH BORROWER IN ACCORDANCE WITH SECTION 14.8 HEREOF. THE FOREGOING, HOWEVER, SHALL NOT LIMIT THE RIGHT OF ANY LENDER OR ADMINISTRATIVE AGENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE ANY LEGAL ACTION OR PROCEEDING OR TO OBTAIN EXECUTION OF JUDGMENT IN ANY APPROPRIATE JURISDICTION.

(e) WAIVER OF JURY TRIAL. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, ARISING OUT OF, CONNECTED WITH, RELATED TO OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED AMONG THEM IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith. EACH OF THE PARTIES HERETO AGREES AND CONSENTS THAT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT ANY PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

(f) ADVICE OF COUNSEL. EACH OF THE PARTIES REPRESENTS TO EACH OTHER PARTIES HERETO THAT IT HAS DISCUSSED THIS AGREEMENT AND, SPECIFICALLY, THE PROVISIONS ON INDEMNIFICATION AND SECTION 15.4 AND THIS SECTION 14.5, WITH ITS COUNSEL.

Section 14.6 Headings. The titles of the articles and the paragraph headings of this Agreement are for convenience only and shall not affect the construction of this Agreement.

Section 14.7 Integration. This Agreement supersedes all other conversations and prior agreements with respect to the subject matter hereof.

Section 14.8 Notices. All notices, demands, requests, consents, approvals or other communications required, permitted, or desired to be given hereunder shall be in writing sent by facsimile (with receipt by the sender of a confirmation of successful transmission) or by registered or certified mail, postage prepaid, return receipt requested, or delivered by hand or reputable overnight courier addressed to the party to be so notified at its address hereinafter set forth, or to such other address as such party may hereafter specify in accordance with the provisions of this Section 15.8. Any such notice, demand, request, consent, approval or other communication shall be deemed to have been received (a) upon delivery on a Business Day if sent by mail, hand-delivery or courier or (b) on the date of sending with confirmed receipt if sent by facsimile, in each case addressed to the party for whom it is intended

at that party's address set forth below, or to such other address as that party may hereafter designate in writing to the other party hereto:

Borrower: **Utah Small Business Growth Initiative, LLC**
6880 South 700 West, 2nd Floor
Midvale, Utah 84047
Attention: Michael Plaizier

Administrative Agent: **Utah Small Business Growth Initiative, LLC**
6880 South 700 West, 2nd Floor
Midvale, Utah 84047
Attention: Michael Plaizier

With a copy to: **Kirton McConkie**
50 East South Temple, Suite 400
Salt Lake City, Utah 84111
Attn: John B. Lindsay

Class A Lender: **Zions First National Bank**
Corporate Banking Division
One South Main Street, Suite 300
Salt Lake City UT 84133
Attention Andrew M. Larsen

Class B Lender: **Box Elder County**
01 South Main, Suite 20
Brigham City, Utah 84302
Attention: Mitch Zundel

With a copy to: **Box Elder County Attorney**
81 North Main, Suite 102
Brigham City, Utah 84302
Attention: Stephen Hadfield

Class B Lender: **City of Orem**
c/o City of Orem Economic Development
56 North State Street
Orem, UT 84057
Attention: Ryan Clark

Class B Lender: **Ogden City Corporation**
2549 Washington Blvd., Suite 420
Ogden, UT 84401
Attention: Tom Christopoulos

and

Ogden City Corporation
2549 Washington Blvd., Suite 420
Ogden, UT 84401
Attention: Melven Smith

Class B Lender:

Provo City
c/o Provo City Economic Development
351 West Center Street
Provo, UT 84601
Attention: Dixon Holmes

With a copy to:

Provo City Legal Department
351 West Center Street
Provo, UT 84601
Attention: Camille Williams

Class B Lender:

Spanish Fork City
c/o Spanish Fork City Attorney
789 W. Center Street
Spanish Fork, UT 84660
Attention: Junior Baker

Class B Lender:

Weber County
c/o Weber Economic Development Partnership
2380 Washington Blvd., Suite 250
Ogden, Utah 84401
Attention: Douglas S. Larsen

With a copy to:

Weber County Attorney
2380 Washington Blvd., Suite 230
Ogden, Utah 84401
Attention: Christopher Allred

Class C Lender:

Utah Small Business Growth Initiative, LLC
c/o Utah Center for Neighborhood Stabilization
6880 South 700 West, 2nd Floor
Midvale, Utah 84047
Attention: Michael Plaizier

Section 14.9 **Assignments.**

(a) This Agreement may not be assigned by Borrower. Subject to the foregoing, this Agreement shall be binding upon, and inure to the benefit of the parties hereto and their respective successors and assigns.

(b) With written notice to Borrower provided within 5 Business Days after such assignment, each of the Lenders may assign all, but not a portion, of its rights and obligations hereunder and under the other Loan Documents (including, without limitation, its Commitment, all Loans owing to it, and its interest in all rights of Borrower assigned, pledged or granted to such Lender pursuant to the Loan Documents).

(c) Notwithstanding any other provision of this Section 14.9, any Lender may at any time assign, as collateral or otherwise, all or any portion of its rights (including, without limitation, rights to payment of interest and repayment of Loans) under this Agreement to any Federal Reserve Bank or similar or successor federal agency, without notice to or consent of Borrower.

Section 14.10 Disgorgement. Should any Lender or the Administrative Agent be obligated by any bankruptcy or other law to repay to Borrower or to any trustee, receiver or other representative of Borrower, any amounts previously paid in respect of and/or pursuant to this Agreement, such Lender's Facility Note and/or the other Loan Documents, then this Agreement and such Lender's Facility Note shall be reinstated to include the amount of such repayment. None of the Lenders or Administrative Agent shall be required to litigate or otherwise dispute its obligation to make such repayments if it, in good faith and on the advice of counsel, believes that such obligation exists.

Section 14.11 Conclusiveness of Statements by Lenders. Any statement of account relating to Borrower signed as correct by any Authorized Officer of any Lender shall be conclusive evidence against Borrower of the indebtedness of Borrower to such Lender absent manifest error.

Section 14.12 Severability. If any term contained in this Agreement shall be invalid, illegal or unenforceable in any respect under any applicable law, the remaining terms hereof shall not in any way be affected or impaired. Anything in this Agreement to the contrary notwithstanding, the obligation of Borrower to pay interest on the principal amount of any Loan shall be subject to the limitation that no payment of such interest shall be required to the extent that receipt of such payment would be contrary to the applicable usury laws.

Section 14.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed originals.

Section 14.14 Survival. All representations, warranties, agreements and covenants made by Borrower in this Agreement shall survive the execution and delivery hereof and shall continue in full force and effect until all the Facility Notes are paid, satisfied and discharged in full.

Section 14.15 Consent. Unless otherwise expressly stated herein to the contrary, where the consent or approval of any Lender is required, such consent or approval may be given or withheld in such Person's sole and absolute discretion.

Section 14.16 **No Strict Construction**. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

[remainder of page intentionally left blank]

[signature page next page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

BORROWER:

**UTAH SMALL BUSINESS GROWTH
INITIATIVE, LLC,**
a Utah limited liability company
dba BUSINESS LOANS OF UTAH

By: Utah Center for Neighborhood Stabilization,
a Utah nonprofit corporation
Its: Sole Member

By: _____
Michael Plaizier
Its: Executive Director

CLASS A LENDER:

Commitment: [\$_____]

ZB, N.A.
dba Zions First National Bank

By: _____
Name: _____
Title: _____

CLASS B LENDERS:

Commitment: [\$_____]

**BOARD OF COUNTY COMMISSIONERS OF
BOX ELDER COUNTY**

By: _____
Name: Jeffrey Hadfield, Chair

Attest:

By: _____
Name: Marly Young, Box Elder County
Clerk

Commitment: [\$_____]

CITY OF OREM

By: _____
Name: James P. Davidson, City Manager

Attest:

By: _____
Name: Donna Weaver, City Recorder

OGDEN CITY,
a municipality and political subdivision of the
State of Utah

Commitment: [\$_____]

By: _____
Name: Michael P. Caldwell, Mayor

Attest:

By: _____
Ogden City Recorder's Office

CITY OF PROVO

Commitment: [\$_____]

By: _____
Name: Wayne Parker, City Administrator

Attest:

By: _____
Name: Provo City Recorder

SPANISH FORK CITY

Commitment: [\$_____]

By: _____
Name: Steve Leifson, Mayor

Attest:

By: _____
Name: Kent R. Clark, City Recorder

**BOARD OF COUNTY COMMISSIONERS OF
WEBER COUNTY**

Commitment: [\$_____]

By: _____
Name: Charles J. Ebert, Chair

Attest:

By: _____
Name: Ricky Hatch, CPA, Weber County

CLASS C LENDER:

Commitment: [\$_____]

**UTAH SMALL BUSINESS GROWTH
INITIATIVE, LLC,**
a Utah limited liability company
dba BUSINESS LOANS OF UTAH

By: Utah Center for Neighborhood Stabilization,
a Utah nonprofit corporation

Its: Sole Member

By: _____

Michael Plaizier

Its: Executive Director

ADMINISTRATIVE AGENT:

**UTAH SMALL BUSINESS GROWTH
INITIATIVE, LLC,
a Utah limited liability company
dba BUSINESS LOANS OF UTAH**

By: Utah Center for Neighborhood Stabilization,
a Utah nonprofit corporation
Its: Sole Member

By: _____
Michael Plaizier
Its: Executive Director

SCHEDULE I

LOAN TYPES AND COMMITMENTS

EXHIBIT A

DEFINITIONS

For purposes of this Agreement, the following terms shall have the following meanings:

“**Administrative Agent**” is defined in the preamble to this Agreement.

“**Administrative Agent’s Spread**” means the portion of interest calculated on the outstanding principal balance of a Project Loan at the rate of one and five tenths percent (1.5%) per annum.

“**Affected Party**” means Administrative Agent, any Lender or any of their Affiliates.

“**Affiliate**” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person. A Person shall be deemed to control another Person if the controlling Person is the “beneficial owner” (as defined in Rule 13d-3 under the Securities Exchange Act of 1934) of greater than nine and nine-tenths percent (9.90%) or more of any class of voting securities (or other voting interests) of the controlled Person or possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of the controlled Person, whether through ownership of capital stock, by contract or otherwise.

“**Agreement**” shall mean this Credit Agreement as dated on or about the Effective Date among the Borrower, the Administrative Agent, the Class A Lender, the Class B Lenders, and the Class C Lender, as amended, restated, supplemented or otherwise modified from time to time in accordance with the provisions of the Loan Documents, together with all exhibits and/or schedules.

“**Approval Package**” is defined in Section 1.3(f) of this Agreement.

“**Authorized Officer**” means, with respect to any Person, the President, Vice President or other officer duly authorized in accordance with the governing documents of such Person.

“**Borrower**” is defined in the preamble to this Agreement.

“**Borrower Account Bank**” means Zions Bank, and its successors.

“**Borrower Material Adverse Effect**” means a material adverse effect on or material adverse change to (i) the business, assets, financial condition or operations of Borrower, (ii) the ability of Borrower to duly and punctually to pay its debts as they come due and perform its obligations under any Loan Document, (iii) the legality, validity or enforceability of any Loan Document or (iv) the ability of the Administrative Agent and the Lenders to enforce their legal remedies pursuant to this Agreement or any other Loan Document.

“**Borrowing**” means disbursements of one or more Loans hereunder to Borrower to fund the origination or purchase of a Project Loan.

“**Borrowing Date**” means, with respect to any Borrowing, the date on which such Borrowing is funded.

“**Borrowing Request**” means a request for borrowing substantially in the form of **Exhibit C** to the Agreement.

“**Borrowing Termination Date**” shall mean October __, 2019, which date may be extended on an annual basis in accordance with Section 1.1(e).

“**Business Day**” shall mean any day other than (i) a Saturday or Sunday or (ii) a day on which banking institutions in the State of New York or the State of Delaware are required or authorized by law or executive order to be closed.

“**Change in Law**” means, the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“**Change of Control**” means, (i) with respect to the Borrower, USBGI ceases to own 100% of the membership interests or any other equity interests in the Borrower, and (ii) with respect to USBGI, that such entity ceases to be recognized by the Internal Revenue Service as tax-exempt under Section 501(c)(3) of the Code.

“**Class A Lender**” is defined in the preamble of the Agreement.

“**Class A Lender Commitment**” is defined in Section 1.2(a) of this Agreement.

“**Class A Lender’s Spread**” means the portion of interest calculated on the outstanding principal balance of a Project Loan at the rate LIBOR (or the FHLB Rate if applicable) plus 3.5% per annum, which amount is subject to change by the Pricing Committee.

“**Class A Total Loan Amount**” shall mean \$_____.

“**Class B Lenders**” is defined in the preamble of this Agreement.

“**Class B Lender Commitment**” is defined in Section 1.2(b) of this Agreement.

“**Class B Total Loan Amount**” shall mean the amount provided to the Class B Lenders expected to be up to \$1,000,000, as such number may be adjusted in accordance with the provisions of this Agreement.

“**Class B Lender Top Loss**” is defined in Section 1.3(b) of this Agreement.

“**Class C Lender**” is defined in the preamble of this Agreement.

“**Class C Lender Top Loss**” is defined in Section 1.3(c) of this Agreement and shall initially be \$600,000, which amount may be adjusted in accordance with the provisions of this Agreement and be subject to increase in accordance with Section 1.3(e).

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

“**Collateral**” shall mean, as to each Project Loan, Project Loan Proceeds and the collateral for such Project Loan.

“**Commitment**” means the obligations of the Class A Lender and the Class B Lenders, individually, to make Loans this Agreement in an amount not to exceed, in aggregate, the Class A Lender Total Loan Amount and the Class B Total Loan Amount, respectively; *provided, however,* that the Commitment for any the Class A Lender and any Class B Lender shall not exceed the amount listed opposite its name on the signature pages hereto.

“**Conforming Loan**” shall mean a Project Loan that satisfies the requirements set forth in the Credit Manual.

“**Covenant Compliance Certificate**” has the meaning assigned to such term in Section 12.2.

“**Credit Agreement Closing Date**” shall mean October __, 2017.

“**Credit Committee**” has the meaning set forth in section 13.1.

“**Credit Committee Meeting**” has the meaning set forth in section 1.3(f).

“**Credit Manual**” means guidelines for the originating, underwriting and servicing of Project Loans annually reviewed and approved by the Credit Committee substantially in the form contained of **Exhibit F** to this Agreement

“**Current Assets**” means cash and cash equivalents, accounts receivable, inventory and prepaid expenses, but excluding (a) deferred tax assets, and (b) receivables from any Affiliates, directors, employees, officers or stockholders and any of their respective Affiliates, determined in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuations and estimation methodologies that were used in the preparation of the audited financial statements for the most recent fiscal year end as if such accounts were being prepared and audited as of a fiscal year end.

“Current Liabilities” means accounts payable, accrued taxes and accrued expenses, but excluding payables to any Affiliates, directors, employees, officers or stockholders and any of their respective Affiliates, deferred tax liabilities and the current portion of long term debt, determined in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the audited financial statements for the most recent fiscal year end as if such accounts were being prepared and audited as of a fiscal year end.

“Debt” means (i) indebtedness for borrowed money, (ii) obligations evidenced by bonds, debentures, notes or other similar instruments, (iii) obligations to pay the deferred purchase price of property or services (other than customary billing arrangements whereby goods and services are paid for in arrears over the period of a service contract in the ordinary course of business), (iv) obligations as lessee under leases which shall have been or should be, in accordance with generally accepted accounting principles, recorded as capital leases, and (v) obligations under direct or indirect guaranties in respect of, and obligations (contingent or otherwise) to purchase or otherwise acquire, or otherwise to assure a creditor against loss in respect of, indebtedness or obligations of others of the kinds referred to in clause (i) through (iv) above.

“Default Certificate” has the meaning assigned to such term in Section 11.2.

“Default Interest Rate” means a rate per annum equal at all times to 5% above the Interest Rate.

“Defaulted Loan” shall mean a Delinquent Loan that is past due for more than ninety (90) days, unless a Work-Out Plan is being developed in accordance with Section 5.16, in which case a Delinquent Loan shall not be deemed a Defaulted Loan until it is one hundred fifty (150) days past due.

“Delinquent Loan” shall mean each Underlying Project Loan that (i) has become more than fifteen (15) days past due or (ii) is in any way in material default under any Project Loan Document after giving effect to any applicable cure periods.

“Determination” shall mean the written determination, provided by the Credit Committee to the Administrative Agent of whether to approve the origination of a particular Project Loan with such approval based on the approval of the Credit Committee to originate such Project Loan in accordance with Section 1.5.

“Disinterested Lenders” means all Lenders, other than USBGI with respect to decisions pertaining to the Administrative Agent and the Servicer.

“Draw” shall mean any funding of the Loan in accordance with Section 1.4.

“Effective Date” shall mean _____, 2017.

“Eligible Account” means an account which is either: (1) a segregated account maintained with a federal or state-chartered depository institution or trust company, whose deposits are insured by the Federal Deposit Insurance Corporation and which is an Eligible

Institution or (2) a segregated trust account maintained with the corporate trust department of a federal depository institution or state-chartered depository institution subject to regulations regarding fiduciary funds on deposit similar to Title 12 of the Code of Federal Regulations Section 9.10(b) which is an Eligible Institution acting in its fiduciary capacity.

“**Eligible Institution**” means any financial institution: (1) with a capital and surplus of not less than \$250,000,000, (2) whose commercial paper, short-term debt obligations or other short-term deposits are rated at least “A-1” (or the equivalent) by a nationally recognized statistical rating organization and (3) whose long-term unsecured debt obligations are rated at least “A” (or the equivalent) by a nationally recognized statistical rating organization.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**ERISA Affiliate**” means, with respect to any Person, (i) any corporation which is a member of the same controlled group of corporations (within the meaning of Section 414(b) of the Code) as such Person, (ii) any partnership or other trade or business (whether or not incorporated) under common control (within the meaning of Section 414(c) of the Code) with such Person, or (iii) any member of the same affiliated service group (within the meaning of Section 414(m) of the Code) as such Person, any corporation described in clause (i) above or any partnership or trade or business described in clause (ii) above.

“**Escrow Instructions**” means a closing instruction letter, escrow letter or other written closing instructions delivered in connection with the closing of a Project Loan.

“**Event of Default**” shall mean the occurrence of any event listed in Section 7.1 of the Agreement.

“**Excess Spread**” means any portion of interest calculated on the outstanding principal balance of a Project Loan that is in excess of the sum of the Class A Lender’s Spread and the Administrative Agent’s Spread.

“**Facility**” means the lending facility described in this Agreement consisting of the Lenders’ Commitment to make Loans under this Agreement up to the Class A Total Loan Amount, the Class B Total Loan Amount, and the Class C Lender Top Loss.

“**Facility Collateral**” is defined in Section 6.12(a) of this Agreement.

“**Facility Maturity Date**” means with respect to each Lender’s Facility Note, _____, which date shall be extended on an annual basis in accordance with Section 1.1(e).

“**Facility Note**” shall mean a promissory note of Borrower issued to each Lender evidencing the Loans made by such Lender to Borrower.

“**FLHB Rate**” means the Federal Home Loan Bank rate based upon the FHLB Des Moines rate for Fixed-Rate Advances for the _____ (Term to be the same as LIBOR’s) term as quoted on the FHLB Des Moines internet web site at www.fhlbdm.com.

“**Fitch**” means Fitch, Inc. (or its successors in interest).

“**Funding Date**” means the date requested for funding the Loan in accordance with Section 1.4.

“**GAAP**” means generally accepted accounting principles, consistently applied, that are in effect from time to time.

“**Geographical Area**” means geographic boundaries or corporate limits of the Class B Lenders.

“**Government Lists**” means (i) the Specially Designated Nationals and Blocked Persons Lists maintained by OFAC, (ii) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC that Lender notified Borrowers in writing is now included in “Government Lists,” or (iii) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other Governmental Authority or pursuant to any Executive Order of the President of the United States of America that Administrative Agent notified Borrowers in writing is now included in “Government Lists.”

“**Governmental Authority**” means the United States of America, any state or other political subdivision thereof, any court and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

“**Indemnified Parties**” means, collectively, each of the Lenders and the Administrative Agent and their shareholders, partners, directors, officers, managers, members, employees, agents, affiliates (except in the case of the USBGI, as Administrative Agent), representatives, counsel and advisors and any one of the foregoing may be referred to herein as an “Indemnified Party.”

“**Interest Rate**” means the rate determined by the Administrative Agent as the daily floating LIBOR rate (or the FHLB Rate if applicable), *plus* _____% or the fixed interest rate with respect to any Facility Note.

“**Junior Lender**” means any Lender that receives a lower priority in the distribution rights under Section 10.2 *vis-à-vis* another Lender. The Class B Lenders and the Class C Lender shall be a Junior Lender *vis-à-vis* the Class A Lender. The Class A Lender will not be a Junior Lender.

“**Lenders**” means the Class A Lender, the Class B Lenders, and the Class C Lender.

“**LIBOR**” means the London-Interbank Offered (Maturity) Rate. Notwithstanding any other provision in this Agreement, if the adoption of any applicable law, rule, or regulation, or any change therein, or any change in the interpretation or administration thereof by any governmental authority, central bank, or comparable agency charged with the interpretation or administration thereof, or compliance by Administrative Agent with any request or directive (whether or not having the force of law) of any such authority, central bank, or comparable agency shall make it unlawful or impossible for Administrative Agent to maintain or fund

advances based on LIBOR, then upon notice to the Lenders, LIBOR shall be converted to the Federal Home Loan Bank rate (“FLHB Rate”). The FLHB Rate is to be strictly interpreted and is not intended to serve any purpose other than providing an index to determine the interest rate used in this Agreement. In addition, notwithstanding anything to the contrary herein, if Administrative Agent reasonably determines that quotations of interest rates referred to in the definition of LIBOR are not being provided in the relevant amounts or for the relevant maturities for purposes of Administrative Agent determining LIBOR, then Administrative Agent shall give notice thereof to Lenders, whereupon until Administrative Agent notifies Lenders that the circumstances giving rise to such suspension no longer exist, the Interest Rate hereunder shall be converted to the FHLB Rate.

“**Loan**” shall mean as to each Lender the disbursements under Facility Notes that the Class A Lender, the Class B Lenders, and the Class C Lender make to Borrower pursuant to the provisions of this Agreement to (i) fund the origination or purchase of an Underlying Project Loan or (ii) make Project Loan Protective Advances for such Underlying Project Loan.

“**Loan Closing Date**” shall mean, with respect to a Project Loan originated by the Borrower the date such Project Loan is funded.

“**Loan Documents**” shall mean this Agreement, the Facility Notes and all other documents delivered in connection with this Agreement.

“**Loan Settlement Date**” shall mean, with respect to a Project Loan, the date such Project Loan is originated or purchased under this Facility.

“**Majority-in-Interest**” means greater than fifty percent (50%) of each Class of Lenders (other than USBGI in the case where the Majority-in-Interest is to be calculated with respect to the Disinterested Lenders only). If there are two Class A Lenders, a Majority-in-Interest requires the approval, consent, or vote, as applicable, of both Class A Lenders.

“**Managing Member**” means USBGI and its successors and assigns.

“**Maximum Rate**” shall mean the maximum rate of non-usurious interest permitted by any applicable law, rule or regulation.

“**Moody’s**” means Moody’s Investors Service, Inc. (or its successors in interest).

“**Mountain Time**” shall mean the time in the Mountain time zone according to Mountain Standard Time.

“**Non-Excluded Taxes**” has the meaning assigned to such term in Section 1.9(a) hereof.

“**Obligations**” means, collectively, (i) all unpaid principal of and accrued and unpaid interest on (including, without limitation, any interest accruing subsequent to the commencement of a bankruptcy, insolvency or similar proceeding with respect to Borrower, whether or not such interest constitutes an allowed claim in such proceeding) the Loans and (ii) all other obligations of Borrower to Administrative Agent and Lenders under each Loan Document, in each case, whether now existing or hereafter arising, whether direct or indirect, matured or unmatured,

contingent or otherwise, including without limitation, all debts, liabilities, indemnities, fees, costs, expenses and other obligations of the Borrower to the Administrative Agent, any Lender or any Indemnified Party hereunder or thereunder (whether or not such amounts are liquidated or determinable), and all covenants and duties regarding such amounts, of any kind or nature, present or future, whether or not evidenced by any note, agreement or other instrument.

“**OFAC**” means the U.S. Department of Treasury’s Office of Foreign Assets Control.

“**Origination Fee**” as the meaning assigned to such term in Section 1.3(g) hereof.

“**Patriot Act**” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) of 2001, as the same may be amended from time to time, and corresponding provisions of future laws.

“**Patriot Act Offense**” means (i) any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (A) the criminal laws against terrorism, (B) the criminal laws against money laundering, (C) the Bank Secrecy Act, as amended, (D) the Money Laundering Control Act of 1986, as amended, or (E) the Patriot Act or (ii) any crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense described in clause (i).

“**Payment Date**” means the eighth (8th) day of each calendar month, or if such day is not a Business Day, then the next succeeding Business Day. **[TO CONFIRM]**

“**Percentage Interest**” means, with respect to each Lender, the percentage of each Borrowing that is funded with proceeds from such Lender’s commitment as determined by the Administrative Agent and approved by the Credit Committee.

“**Permitted Investments**” means any investment, which is one or more of the following:

- (i) direct obligations of, or obligations fully guaranteed as to principal and interest by, the United States or any agency or instrumentality thereof, provided such obligations are backed by the full faith and credit of the United States;
- (ii) certificates of deposit, time deposits, demand deposits and bankers’ acceptances of any bank or trust company incorporated under the laws of the United States or any State thereof or the District of Columbia, provided that the short term commercial paper of such bank or trust company (or, in the case of the principal depository institution in a depository institution holding company, the long term unsecured debt obligations of the depository institution holding company) at the date of acquisition thereof has been rated by Moody’s and S&P in their highest short term rating category, and if rated by Fitch, in its highest short term rating category; and
- (iii) money market accounts at an FDIC-insured financial institution.

“**Person**” means any individual, corporation, firm, enterprise, partnership, trust, incorporated or unincorporated association, joint venture, joint stock company, limited liability company or other entity of any kind, or any government or political subdivision or any agency, department or instrumentality thereof.

“**Portfolio Report**” means a report with respect to the Project Loans financed by the Facility in substantially the form contained in **Exhibit D**.

“**Prepayment Date**” shall mean the date of prepayment, in whole or in part, of a Facility Note.

“**Proceeding**” shall mean any case, proceeding or other action against or by Borrower under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors, including without limitation any voluntary or involuntary petition filed pursuant to 11 U.S.C. 101 et seq.

“**Project**” shall mean the uses for which financing is provided through a Project Loan.

“**Project Borrower**” shall mean each borrower under a Project Loan, which shall be an individual, partnership, limited partnership, limited liability company, corporation, or other business entity acceptable to the Credit Committee.

“**Project Collateral**” shall mean the collateral, acceptable to the Loan Committee, to secure a Project Loan.

“**Project Guaranty**” shall mean a guaranty with respect to a Project Loan executed by the parties thereto.

“**Project Loan**” shall mean a business loan or other loan products as described in the Credit Manual made by the Borrower to a Project Borrower for the purpose of financing a small business in the Geographical Area of a Class B Lender.

“**Project Loan Agreement**” shall mean a loan agreement entered into in connection with a Project Loan.

“**Project Loan Documentation**” means the form of promissory note, loan agreement, guaranty, mortgage or deed of trust, loan commitment, assignment of rents, security agreement, guaranty, UCC financing statement and other documentation with respect to Project Loans consistent with the Credit Manual. Any one of the foregoing items may be referred to herein as a “Project Loan Document.”

“**Project Loan Proceeds**” shall mean any and all payments received by Borrower from Project Borrowers or otherwise (including, without limitation, any funds on deposit in the Borrower Operating Account pursuant to Section 5.10(b), all proceeds of the repurchase of any Project Loan received by the Borrower, collections as a result of insurance proceeds and collections as a result of liquidation of or foreclosure on Collateral), with respect to the Project Loans.

“**Project Loan Protective Advance**” shall mean any additional Loan funded in order to pay encumbrances, taxes, liens, insurance premiums or other charges necessary to protect any Collateral securing a Project Loan.

“**Project Note**” shall mean a promissory note evidencing a Project Loan.

“**Required Loan Documentation**” means, with respect to any Project Loan, a loan commitment, if needed, the loan agreement, promissory note payable (or endorsed) to Borrower, mortgage or deed of trust (to the extent applicable), title insurance policy (to the extent applicable), assignment of rents (to the extent applicable), security agreement (to the extent applicable), financing statements (to the extent applicable), guaranties (to the extent applicable), UCC financing statements (to the extent applicable), and other documents, instruments or agreements executed and delivered to evidence, secure and or support a Project Loan. Any one of the foregoing items may be referred to herein as a “Required Loan Document.”

“**Restricted Account**” means the restricted deposit account established at Z.A. dba Zions First National Bank at the closing of this Agreement, into which the Class C Lender Top Loss shall be deposited. [ZIONS TO PROVIDE ADDITIONAL LANGUAGE]

“**S&P**” means Standard & Poor’s Ratings Group, a division of The McGraw-Hill Companies, Inc. (or its successors in interest).

“**Scheduled Monthly Payment**” shall have the meaning give to it in Section 10.2(v).

“**Senior Lender**” means the Class A Lender that is entitled to a higher priority in the distribution rights under Section 10.2 *vis-à-vis* than the Junior Lender.

“**Servicer**” means USBGI.

“**Servicing Agreement**” means that certain Agreement between the Borrower and Servicer dated of even date herewith.

“**State**” means one of the fifty states of the United States or the District of Columbia.

“**Sub-Servicer**” means the sub-servicer as allowed under the Credit Manual.

“**Sub-Servicing Agreement**” means that certain Agreement between the Borrower and Sub-Servicer dated of even date herewith.

“**Super Majority-in-Interest**” means, with respect to the period from the date of this Agreement through the Borrowing Termination Date, at least two thirds (2/3) of each Class of Lenders.

“**Total Loan Amount**” means the Class A Total Loan Amount.

“**Total Top Loss**” is defined in Section 1.3(e) of this Agreement.

“**UCC**” shall mean the applicable Uniform Commercial Code.

“**USBGI**” means the Utah Small Business Growth Initiative, LLC, a Utah limited liability company, dba Business Loans of Utah.

“**Underlying Project Loan**” shall mean, for each Loan, the Project Loan originated with the proceeds of such Loan.

“**Underwriting Guidelines**” shall mean the guidelines for making Project Loans, attached hereto as **Exhibit H**, which set forth the Project Loan types and terms necessary to draw upon the Class A Lender’s Commitment.

“**United States**” means the United States of America.

“**Unmatured Event of Default**” means the occurrence of any event or condition that with the passage of time or the giving of notice or both will constitute an Event of Default.

“**Work-Out Plan**” has the meaning assigned to such term in Section 5.16.

EXHIBIT B

FORM OF FACILITY NOTE

\$_[_____]

Dated: October __, 2017

FOR VALUE RECEIVED, the undersigned, UTAH SMALL BUSINESS GROWTH INITIATIVE, LLC, a Utah limited liability company, dba BUSINESS LOANS OF UTAH (the "Borrower"), HEREBY PROMISES TO PAY to the order of _____, as a [Class A Lender][Class B Lender][Class C Lender] (the "Lender") the principal amount of _____ (\$ _____) or, if less, the aggregate principal amount of all Loans made by or on behalf of the Lender to the Borrower pursuant to the "Credit Agreement" (as hereinafter defined) outstanding on the Facility Maturity Date (as defined in the Credit Agreement), or earlier to the extent required by and in accordance with the terms of the Credit Agreement. Unless defined elsewhere herein, capitalized terms used in this Facility Note shall have the meanings assigned to such terms in the Credit Agreement referred to below.

The Borrower promises to pay interest on the principal amount of each Loan from the date of such Loan until such principal amount is paid in full, at the applicable interest rate and payable at such times, as are specified in the Credit Agreement referred to below.

Both principal and interest are payable in lawful money of the United States of America to the Lender as described in the Credit Agreement in same day funds. Each Loan made by the Lender to the Borrower and the maturity thereof, and all payments made on account of the principal amount thereof, shall be recorded by the Lender on the grid attached hereto which is a part of this Promissory Note, or, at its option, on its books and records.

This Facility Note is one of the Facility Notes referred to in, and is entitled to the benefits of, the Credit Agreement dated as of ____, 2017 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the Borrower, Utah Small Business Growth Initiative, LLC, a Utah limited liability company, dba Business Loans of Utah, as Administrative Agent and the Class A Lender, Class B Lenders, and Class C Lender as parties thereto, and the other Loan Documents referred to therein and entered into pursuant thereto. The Credit Agreement, among other things, (i) provides for the making of Loans by or on behalf of the [Class A Lender][Class B Lenders][Class C Lender] to the Borrower from time to time, in an aggregate principal amount not to exceed the [Class A Total Loan Amount][Class B Total Loan Amount][Class C Lender Top Loss]and the indebtedness of the Borrower resulting from each such Loan being evidenced by a Facility Note, (ii) contains provisions for payments of principal hereof prior to the maturity hereof and for re-drawing funds previously prepaid upon the terms and conditions therein specified, (iii) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events therein specified and (iv) contains provisions regarding the relative priority of payments by the Borrower to the Lenders.

The Loans made by the Lender to the Borrower pursuant to the Credit Agreement and this Facility Note shall be treated as debt. There are no participations (other than as permitted by

Section 14.9 of the Credit Agreement) created in the Loans or any other debt under the Credit Agreement.

TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING AND/OR HEARING ON ANY MATTER WHATSOEVER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS FACILITY NOTE, THE CREDIT AGREEMENT, OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY LAW, STATUTE, OR REGULATION. NEITHER PARTY WILL SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY HAS BEEN WAIVED, WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. EACH PARTY HAS RECEIVED THE ADVICE OF COUNSEL WITH RESPECT TO THIS WAIVER.

All parties hereto, whether as makers, endorsers or otherwise, severally waive presentment for payment, demand, protest and notice of dishonor.

This Facility Note shall be governed by, and construed in accordance with, the laws of the State of Utah (without regard to conflict of laws principles).

**UTAH SMALL BUSINESS GROWTH
INITIATIVE, LLC,**
a Utah limited liability company
dba BUSINESS LOANS OF UTAH

By: Utah Center for Neighborhood Stabilization,
a Utah nonprofit corporation
Its: Sole Member

By: _____
Michael Plaizier
Its: Executive Director

LOANS

Date	Amount of Loan	Amount of Principal Loan	Unpaid Principal Balance	Notation Made By	Maturity Date

EXHIBIT C

FORM OF BORROWING REQUEST

[Date]

To: [CLASS ___ LENDER]

Utah Small Business Growth Initiative, LLC,
dba Business Loans of Utah, as Administrative Agent

Attn: _____

Ladies and Gentlemen:

The undersigned, Utah Small Business Growth Initiative, LLC, a Utah limited liability company, dba Business Loans of Utah (the “**Borrower**”), refers to that certain Credit Agreement dated on or about August ___ 2017 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”) among the Borrower, the Class A Lender, Class B Lenders, and Class C Lender, (the “**Lenders**”) and Utah Small Business Growth Initiative, LLC, a Utah limited liability company, dba Business Loans of Utah, as Administrative Agent for the Lenders (the “**Agent**”) and certain other parties, and hereby gives you notice, irrevocably, pursuant to Section 1.3 of the Credit Agreement that the undersigned hereby requests a Borrowing under the Credit Agreement, and in that connection, sets forth below the information related to such Borrowing Request as required by Section 1.3 of the Credit Agreement. Capitalized terms used herein but not defined shall have the meanings given such terms in the Credit Agreement.

A. Summary Borrowing Request:

Borrowing Request Number: _____
Total Amount of the proposed Borrowing: \$ _____
Interest Calculation on Borrowing: _____

B. Representations and Warranties

The undersigned hereby represents and warrants that each of the following statements are true on the date hereof and will be true on the proposed Loan Settlement Date:

- (i) Each of the representations and warranties listed in Section 1.3 of the Credit Agreement are true as of the date of this Borrowing Request;

(ii) Each applicable condition precedent listed in Article I, II, and Section 3.3 of the Credit Agreement will be met on the proposed Loan Settlement Date; and

(iii) No Event of Default or Unmatured Event of Default has occurred and is continuing, or would result after giving effect to the Borrowing contemplated hereby or the application of the proceeds of the Borrowing as contemplated by the Credit Agreement.

**UTAH SMALL BUSINESS GROWTH
INITIATIVE, LLC,**
a Utah limited liability company
dba BUSINESS LOANS OF UTAH

By: Utah Center for Neighborhood Stabilization,
a Utah nonprofit corporation
Its: Sole Member

By: _____
Michael Plaizier
Its: Executive Director

EXHIBIT D
FORM OF PORTFOLIO REPORT

(attached)

EXHIBIT E
FORM OF COVENANT
COMPLIANCE CERTIFICATE

(attached)

EXHIBIT F
CREDIT MANUAL

(attached)

EXHIBIT G
FORM OF APPROVAL PACKAGE

(attached)

EXHIBIT G - 1

APPROVAL PACKAGE INFORMATION AND DOCUMENTS

APPROVAL PACKAGE DOCUMENTS:

EXHIBIT G - 2
APPROVAL PACKAGE CONTENTS

EXHIBIT H
UNDERWRITING GUIDELINES

(attached)

EXHIBIT I
CONFLICT OF INTEREST POLICY

EXHIBIT J
PROJECT UNDERWRITING CHECKLISTS

2. Acquisition

Loan Name: _____ **Loan #:** _____

3. Construction

Loan Name: _____ **Loan #:** _____

EXHIBIT K
APPRAISAL REQUIREMENTS

Comments: (Include explanation of how the cap rate was derived.)

Lender's Conclusion of Value:

\$ _____

EXHIBIT L
ENVIRONMENTAL REQUIREMENTS

EXHIBIT M
FORM OF LOAN COMMITMENT LETTER

(attached)

EXHIBIT N
INSURANCE REQUIREMENTS

EXHIBIT O
FORM OF CREDIT MEMORANDUM

(attached)

EXHIBIT P
FORM OF CLASS A LENDER JOINDER AGREEMENT

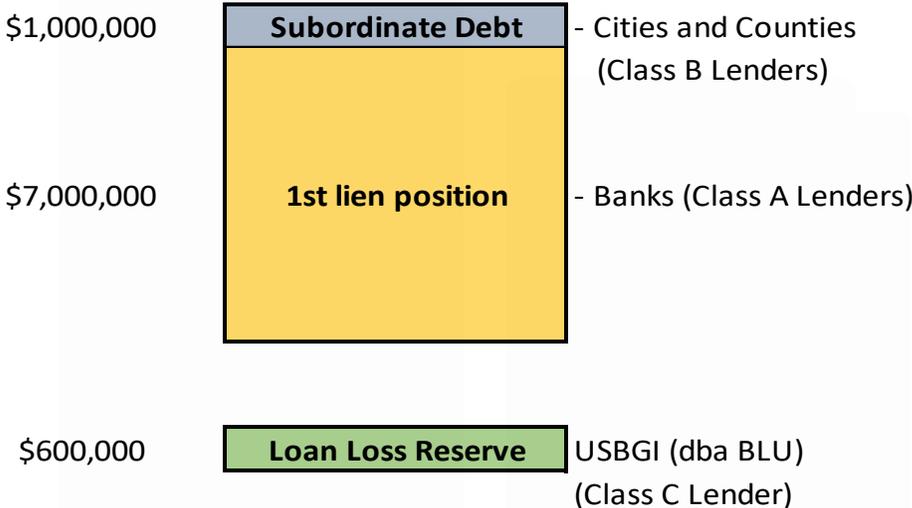
(attached)

EXHIBIT Q
FORM OF CLASS B LENDER JOINDER AGREEMENT

(attached)

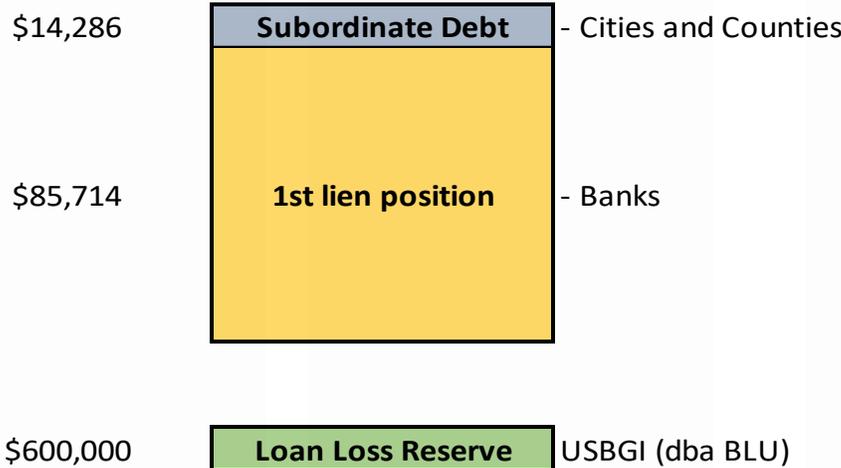
Utah Small Business Growth Initiative dba Business Loans of Utah (BLU) Fund Structure

Total Fund Size - \$8,000,000



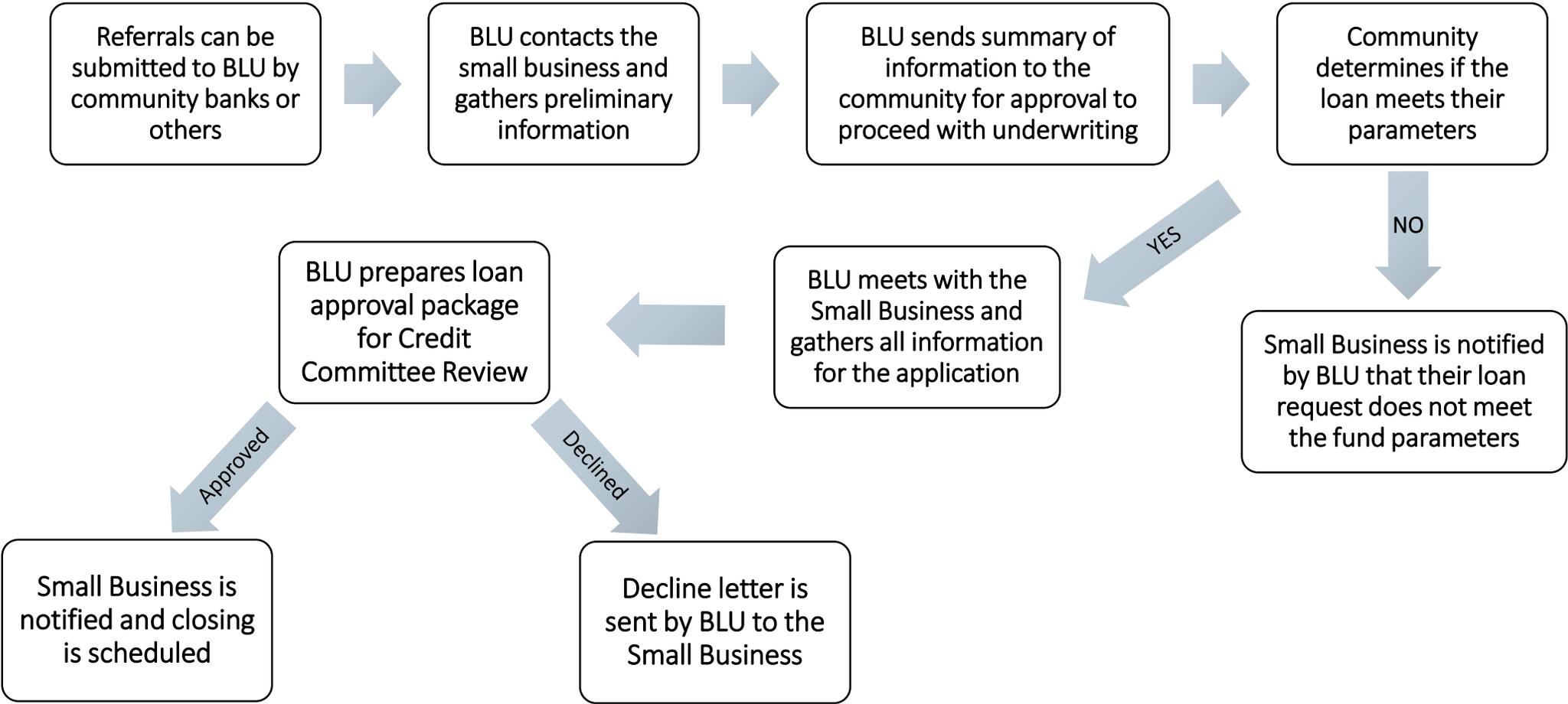
Cities and Counties will be allocated \$350,000 in loan funds, for every \$50,000 in Top Loss. The total fund size will be \$8,000,000. USBGI will provide a Loan Loss Reserve of \$600,000.

Sample Loan - \$100,000



Cities and Counties will fund a minimum of 1/7th (14.285%) of the loan amount as subordinate debt. This subordinate debt will be in Top Loss position. The Credit Committee may require additional subordinate debt. USBGI's Loan Loss Reserve of \$600,000 will be pooled for all loans and is in 2nd loss position.

Utah Small Business Growth Initiative dba Business Loans of Utah (BLU) Referral & Application Process



Utah Small Business Growth Initiative dba Business Loans of Utah (BLU) Payment and Loss Waterfall

PAYMENTS:

Monthly payments from the small businesses will be applied as follows:

	Principal	Interest Rate	Servicing Fee
Class A Lenders	All principal goes to reduce the Class A loan until it is paid off	LIBOR + 3.50% paid monthly.	N/A
Class B Lenders	Receives principal when the loan is paid off.	LIBOR + 3.50% paid when the loan is paid off.	N/A
USBGI	N/A	If the total Top Loss is full USBGI get the excess spread	1.5% of the loan balance.
Loan Loss Reserve	N/A	If the total Top Loss is not full, the excess spread goes to Loan Loss Reserve.	N/A

LOSSES:

	Loss Waterfall
Class B Lenders	The Class B subordinate loan will be in first loss position and the only funds at risk for Class B lenders.
Loan Loss Reserve	The USBGI loan loss reserve will cover losses over and above the subordinate loan.
Class A Lenders	Should the loan loss reserve become depleted, the Class A lender will cover any additional losses.
Example Loan Loss:	Assume that a \$100,000 loan (Class A \$85,714 and Class C \$14,286) defaults and the collateral is liquidated for \$20,000. The Class C lender would lose \$14,286 and the balance of \$65,714 would be covered by the loan loss reserve.

Utah Small Business Growth Initiative dba Business Loans of Utah (BLU) Shareholders

	Shareholders	Role	Amount	Credit Committee
Class A Lenders:	Currently the only Class A lender is Zions Bank. We anticipate that once the fund closes, additional lenders will be added as needed.	Provide the majority of the funding for the small business loans. Each loan must be approved by the majority of the Class A lenders.	\$7,000,000	Class A Lenders will each have 1 seat with a minimum of 3 total.
Class B Lenders:	Currently we anticipate six communities to be part of the initial fund closing. Those communities include, Box Elder County, Weber County, Ogden City, Orem, Provo, and Spanish Fork. We anticipate adding additional communities once the fund closes.	Provide top loss, subordinate loans of at least 14.2857% (1/7th) for loans in the community's target area. Class B lenders will take a preliminary look at each loan request in their area and give approval to proceed with underwriting. They will have 1 of at least 5 seats on committee.	\$50,000 for every \$350,000 in allocated funds or a 7 to 1 leverage of public funds.	Each Class B lender will have 1 seat. Only the community providing the subordinate loan will have a vote.
USBGI dba BLU:	Fund manager, administrative agent and servicer. Over the past 4 years USBGI administered the SSBCI program for the State of Utah. That program officially ended on 12/31/2016.	Provide \$600,000 in loan loss reserves. Originate and service the loans. Work with small businesses to help them prepare for traditional bank financing. They will collect payments and in the event of a default, pursue legal action and if necessary liquidate the collateral.	\$600,000 in loan loss reserve	One seat.
UCNS:	Parent organization of USBGI .	Utah Center for Neighborhood Stabilization stabilizes neighborhoods through its subsidiary organizations by providing single and multi-family affordable housing, neighborhood revitalization, foreclosure prevention, and small business lending and investing.	N/A	N/A

Utah Small Business Growth Initiative dba Business Loans of Utah (BLU) Frequently Asked Questions

Index of FAQ's

Application and approval process

- 1 - Who refers the loans?
- 2 - What is the process after a loan request is referred to BLU?
- 3 - Who underwrites the loans?
- 4 - Who determines the loan structure and terms?
- 5 - Who sets the interest rate?
- 6 - Who determines if the loan will meet the parameters set by the city or county councils?
- 7 - What types of loans can be financed with this fund?
- 8 - What are the maximum and minimum loan size?
- 9 - Who approves the loan?
- 10 - Who closes the loan?
- 11 - Who services the loan after closing?
- 12 - Can a community underwrite their own loans?
- 13 - Can a community approve their own loans?
- 14 - Can a community decline a loan?

Fund Structure

- 15 - How big is the fund?
- 16 - Who are the members of the fund?
- 17 - How is the amount of funds allocated to each community determined?
- 18 - Can new members enter the fund after closing?
- 19 - What is the interest rate on the Class B subordinate loans?
- 20 - When is that interest paid to the lenders?
- 21 - How much is the total top loss?
- 22 - Who is in first loss position?
- 23 - How much subordinate debt is required on each loan?
- 24 - How is the \$600,000 loan loss used?
- 25 - Is the Class B lender's loss limited on each loan?
- 26 - Who collects the payments and services the loan?
- 27 - In the event of a default, who pursues legal action and liquidates the collateral?
- 28 - Can a Class B lender stop participating in the fund?

Application and approval process:

1. Who refers the loans?

Referrals can come from many sources. They can come from the cities and counties' Economic Development Department, local financial institutions or the small business owner may contact BLU directly or through their website www.utsbgi.com.

2. What is the process after a loan is referred to BLU?

When BLU receives the application, they will contact the small business and gather preliminary information. BLU then sends a summary of the information to the community where the small business is located.

The community determines if the small business meets their parameters and, if so, the community gives approval to proceed with the full underwriting.

BLU works with the small business to gather all the information required in the application.

3. Who underwrites the loans?

Once the application is complete, BLU will underwrite the loan and prepare a loan approval package for the BLU Credit Committee to review.

4. Who determine the loan structure and terms?

BLU will recommend a loan structure and loan terms to the Credit Committee. The Credit Committee may change or modify the recommended structure and terms.

5. Who sets the interest rate?

The interest rate is recommended by BLU based on the credit risk of the loan request. The minimum interest rate will be the maximum rate on an SBA loan and the maximum rate on the BLU loan will be 18%. The Credit Committee can change or modify the rate as part of the approval.

6. Who determines if the loan will meet the parameters set by the city or county council?

The city or county will have two opportunities to review the loan and determine if it meets the approved parameters. The first opportunity will be soon after the referral is received by BLU. Once the referral is received, a preliminary summary of the request will be prepared and sent to the community for their review and approval to proceed with the full underwriting.

The second opportunity will be at Credit Committee. When the loan is presented to the Credit Committee, the community will also be able to review the full approval package and if it is determined that the loan request does not meet the community parameters, the loan will not be approved.

7. What types of loans can be financed with the fund?

The loan products will be based on recommendations from USBGI and the lending needs in the markets of government members. The final loan products must be approved by the loan committee.

The loan products are anticipated to include the following:

- Equipment Loans
- Working Capital Loans
- Accounts Receivable Loans
- Unsecured Loans
- Real Estate Loans

8. What are the maximum and minimum loan amounts?

The minimum loan amount is \$50,000 and the maximum loan amount is the lesser of 10% of the total fund (\$700,000) or 25% of the funds allocated to the community that is providing the subordinated debt for the small business. For example, if the community committed \$100,000 in subordinate debt, they would be allocated \$700,000 in loan funds. The maximum loan for that community would be $\$700,000 \times 25\% = \$175,000$.

Exceptions to the maximum and minimum loan amounts can be approved by the Credit Committee.

9. Who approves the loan?

All loans will be approved by the BLU Credit Committee. Members of the committee will be representatives from the shareholders in the fund. Each Class A lender (financial institutions) will have one vote. If there are less than 3 Class A lenders, they will have a minimum of 3 votes total. The community that is providing the subordinated debt will have 1 vote and BLU will have 1 vote.

Credit Committee has the option to decline a loan, approve a loan as presented or approve the loan with additional conditions. Those conditions may include increasing the amount of subordinate debt.

10. Who closes the loan?

The loan will be closed by BLU.

11. Who services the loan after closing?

All servicing on the loan will be done by BLU. BLU will collect and process the payments, track loan balances, oversee all reporting requirements, troubleshoot problems and recommend solutions.

12. Can a community underwrite their own loan?

We will generally work with an experienced lender to underwrite the loans and prepare credit presentations for Credit Committee. A community may participate in that underwriting process and be compensated for their efforts, provided that they can demonstrate the ability to do so and follow the established BLU underwriting and presentation procedures.

13. Can a community approve their own loan?

Each community will have a representative on the Credit Committee. Communities will only be able to vote on loans for which they provide the subordinate debt. The Credit Committee will have representatives from each of the banks that participate in the fund and one representative from BLU. All loans will require approval by the Credit Committee.

14. Can a community decline a loan?

As part of the application and approval process, each community will receive preliminary information on each loan request in their geographical area. The community will approve BLU to proceed with underwriting, if the business and loan meet the parameters established by the community.

When the loan goes to Credit Committee, the community will be able to review the credit presentation after full underwriting and determine if the loan meets the community parameters. Also, should Credit Committee approve a loan with a requirement for a larger subordinate debt, the community may also decline the loan if they do not wish to fund additional subordinate debt.

Fund Structure

15. How big is the fund?

Initially the fund will have a total of \$8MM available for small business loans. Lenders will provide \$7MM in funding and cities and counties will provide \$1MM in subordinated debt. It is intended that additional lenders and cities and counties will be added after the fund's initial close.

16. Who are the members of the fund?

The fund will consist of three classes of members. The Class A lenders are financial institutions that provide most of the debt for the project. The initial Class A lender is Zions Bank. It is anticipated that additional Class A lenders will be added as the demand for small business loans grows.

Class B lenders are the cities and counties that participate in the fund. The Class B lenders provide a minimum of 14.29% of subordinated debt of each loan. It is

anticipated that the initial Class B lenders will be Box Elder County, Weber County, Ogden City, Orem, Provo and Spanish Fork. It is anticipated that additional Class B lender will be added after closing.

BLU is the Class C lender and will initially provide \$600,000 in loan loss reserve. The loan loss will be increased from the interest spread as additional Class A and B lenders join the fund.

17. How is the amount of funds allocated to each community determined?

Funds are allocated to cities and counties on a 1 to 7 ratio. For every \$1 that the community commits to fund as subordinate debt they are allocated \$7. The minimum commitment amount is \$50,000 in subordinate debt, which equates to \$350,000 in allocated funds.

18. Can new members be added after closing?

The fund is set up so that additional Class A and B lenders can be added at any time.

19. What is the interest rate on the Class B subordinate loans?

The current rate on the loans for Class A and Class B lenders is the LIBOR/Swap rate, plus 3.50%. The Credit Committee sets the final rate.

20. When is the interest paid to the lenders?

Interest is paid monthly by the borrowers. The Class A lenders will receive their interest as the payments are made monthly. The Class B lenders interest will be held in an account until the Class A lenders are repaid in full. When the Class A lender's portion of the loan is repaid, the community will be paid their interest.

21. How much is the total top loss?

Initially the total top loss will be a minimum of 14.2857% (1/7th) provided in the form of subordinate debt from the Class B lenders (cities and counties) and \$600,000 from USBGI in a loan loss reserve. Additional loan loss reserve will be collected from the excess spread, until the total top loss reaches 25% of the allocated funds.

22. Who is in first loss position?

The Class B lender's (cities and counties) subordinate loans will be in first loss position. For any losses greater than the subordinated loans, the loss will be paid from the BLU loan loss reserve, if the loan loss reserve is depleted, the Class A lender will lose money.

23. How much subordinate debt is required on each loan?

The required subordinate debt is determined by the Credit Committee and will be a minimum of 14.2857% (1/7th) of the total loan amount. The Credit Committee may require additional subordinated debt based on the risk profile of the loan.

24. How is the \$600,000 loan loss used?

The BLU loan loss reserve (initially \$600,000) will be used to cover losses greater than the subordinate debt. For example, assume that we make a \$100,000 loan (\$14,286 of subordinate debt and \$85,714 of lender debt) and that the loan goes into default and we must liquidate the collateral. If the total loss is \$50,000 then the \$14,286 in subordinate debt is not repaid. The remaining loss of \$35,714 would be paid from BLU loan loss reserve.

25. Is the Class B lender's loss limited on each loan?

Yes, the Class B lender's loss is limited by the amount of the subordinated debt.

26. Who collects the payments and services the loan?

BLU will collect payment and service the loans. Reporting will be sent by BLU to all lenders on a regular basis.

27. In the event of a default, who pursues legal action and liquidates the collateral?

All work out plans are approved by the Credit Committee. BLU would pursue any legal action and liquidate the collateral if that becomes necessary.

28. Can a Class B lender (city or county) stop participating in the fund?

A Class B lender may withdraw from the fund with 30 days notice. The Class B lender would be obligated to continue funding on any loan that had been approved and on any loans that were not yet totally funded. The Class B lender may also stop participating by withholding their approval to proceed with underwriting on any loan.

CITY OF OREM
CITY COUNCIL MEETING
 OCTOBER 17, 2017



REQUEST:	6:00 P.M. PUBLIC HEARING – STREET VACATION – 750 EAST BETWEEN 800 & 900 SOUTH ORDINANCE – Vacating approximately 0.69 acres of 750 East Street located between 800 South and 900 South
APPLICANT:	University Mall LC
FISCAL IMPACT:	None

NOTICES:

- Posted in 2 public places
- Posted on City webpage
- Posted on State noticing website
- Faxed to newspapers
- Emailed to newspapers

SITE INFORMATION:

- General Plan
 Regional Commercial
- Current Zone
 PD-34
- Acreage
 0.69 Acres
- Neighborhood
 Hillcrest
- Neighborhood Chair
 Dewon Holt

PREPARED BY:

Cliff Peterson
 Planner

REQUEST:

University Mall LC and Catania SFH, LLC request that the City Council vacate a portion of 750 East between 800 South and 900 South.

BACKGROUND:

Currently, 750 East is a dead end street without a connection to 800 East. The existing homes on both sides have been purchased by University Mall Shopping Center, LC and Catania SFH, LLC which are partnering to re-develop this area.

University Mall and Catania SFH, LLC now request that the City vacate 750 East from 800 South to 900 South. Typically, upon the vacation of a public street, half the street area reverts to the property on one side and the other half reverts to the property on the other side.

University Mall LC and Catania SFH propose to use the vacated street area for future development in the PD-34 zone.

The City Council may vacate the portion of 750 East Street between 800 South and 900 South if it finds (1) there is good cause for the vacation, and (2) the vacation will not be detrimental to the public interest. The applicants should be required to record a subdivision plat that combines the area of the vacated street with the rest of their property and includes public utility easements in a portion of the vacated street. The applicants should also be required to disconnect the existing water main in the vacated street at 800 South and 900 South and plug the existing sewer main in the vacated street at 800 South in accordance with City specifications within two years.

RECOMMENDATION:

Development Services recommends that the City Council, by ordinance, vacate approximately 0.69 acres of 750 East Street located between 800 South and 900 South.

DRAFT

ORDINANCE NO. _____

AN ORDINANCE OF THE OREM CITY COUNCIL VACATING A
PORTION OF 750 EAST STREET BETWEEN 800 SOUTH AND 900
SOUTH

WHEREAS University Mall LC has filed a petition requesting that the City Council vacate that portion of 750 East Street located between 800 South and 900 South; and

WHEREAS University Mall LC and Catania SFH, LLC currently own the land on both sides of that portion of 750 East that is proposed to be vacated; and

WHEREAS University Mall LC desires to include the vacated portion of 750 East as part of new development in the PD-34 zone; and

WHEREAS the City has provided written notice of its intent to vacate the above described street, and notice of the date and time of the public hearing during which the proposed vacation will be considered by the City Council, to all owners of record of land abutting the streets proposed to be vacated; and

WHEREAS the City has also published notice of the intent to vacate the above described street and notice of the date and time of the public hearing during which the proposed vacation will be considered by the City Council in a newspaper of general circulation in the City prior to the hearing date; and

WHEREAS the City Council held a public hearing on October 17, 2017 to consider the proposed vacation; and

WHEREAS the City Council finds that there is good cause for the vacation of that portion of 750 East Street located between 800 South and 900 South Streets which area is more particularly described in Exhibit "A" and the location of which is illustrated in Exhibit "B" both of which exhibits are attached hereto and incorporated herein by reference; and

WHEREAS the City Council finds that the vacation will not be detrimental to the public interest; and

WHEREAS the City Council has determined that it is in the best interest of the City to vacate the described portion of 750 East Street between 800 South and 900 South.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OREM, UTAH, as follows:

DRAFT

1. The City hereby vacates that portion of 750 East Street located between 800 South Street and 900 South Street which area is more particularly described in Exhibit “A” and the location of which is shown in Exhibit “B” subject to the following conditions and reservations:

A. The City reserves and retains a public utility easement over, under, across and through the entire area of the street vacation.

B. University Mall LC and Catania SFH, LLC, or the successor owner(s) of the property located at 772 E 750 East shall create and record a new subdivision plat that combines the vacated street area with the property located along the vacated 750 East Street.

C. Within two years after the date of this Ordinance, University Mall LC shall disconnect the existing water mains in 750 East at 800 South and 900 South and shall plug an existing sewer main at the manhole in 800 South in accordance with City specifications.

2. The City Manager is authorized to execute all documents related to vacating the described portion of 750 East Street and to carry out the intent of this ordinance.

3. All other ordinances, resolutions, and policies in conflict herewith, either in whole or in part, are hereby repealed.

4. If any part of this ordinance shall be declared invalid, such decision shall not affect the validity of the remainder of this ordinance.

5. This ordinance shall take effect immediately upon passage and publication in a newspaper of general circulation in the City.

PASSED, APPROVED and ORDERED PUBLISHED this 17th day of **October** 2017.

Richard F. Brunst, Jr., Mayor

ATTEST:

Donna R. Weaver, City Recorder

DRAFT

COUNCIL MEMBERS VOTING "AYE"

COUNCIL MEMBERS VOTING "NAY"

DRAFT

EXHIBIT A

750 East Right-of-Way From 800 South to 900 South Vacation Description

Beginning at a point on the southerly right of way line of 800 South Street; said point being North $89^{\circ}10'43''$ West, along the section line, 304.40 feet and South $00^{\circ}49'17''$ West, 33.00 feet from the East Quarter Corner of Section 23, Township 6 South, Range 2 East, Salt Lake Base and Meridian; and running thence South $00^{\circ}12'43''$ East, 604.17 feet to a point on the northerly line of 900 South Street; thence, West, along said northerly line of 900 South Street, 50.00 feet; thence North $00^{\circ}12'43''$ West, 294.16 feet; thence North $89^{\circ}10'43''$ West, 0.27 feet; thence North $00^{\circ}10'00''$ West, 83.97 feet; thence South $89^{\circ}10'55''$ East, 0.21 feet; thence North $00^{\circ}12'43''$ West, 86.76 feet; thence South $89^{\circ}10'43''$ East, 0.60 feet; thence North $00^{\circ}12'43''$ West, 139.99 feet to a point on said southerly right of way line of 800 South Street; thence South $89^{\circ}10'43''$, along said southerly right of way line of 800 South Street, 49.40 feet to the point of beginning.

Contains: 30,160 Sq. Ft. (or 0.69 Acres)

CITY OF OREM
CITY COUNCIL MEETING
 OCTOBER 17, 2017



REQUEST:	6:30 P.M. PUBLIC HEARING - QUARTERLY BUDGET AMENDMENT ORDINANCE - Amending the Current Fiscal Year 2017-2018 Budget
APPLICANT:	City Manager
FISCAL IMPACT:	\$666,035.62

NOTICES:

- Posted in 2 public places
- Posted on City webpage
- Posted on State Noticing Website
- Faxed to newspapers
- Emailed to newspapers
- Emailed Neighborhood Chair

SITE INFORMATION:

- General Plan Designation:
N/A
- Current Zone:
N/A
- Acreage:
N/A
- Neighborhood:
N/A
- Neighborhood Chair:
N/A

PREPARED BY:
 Richard B. Manning
 Admin. Services Dir.

RECOMMENDATION:

The City Manager recommends the City Council hold a public hearing to discuss amending the current Fiscal Year 2017-2018 Budget and, by ordinance, amend Fiscal Year 2017-2018 Budget.

BACKGROUND:

The Fiscal Year 2017-2018 City of Orem budget has many adjustments that occur throughout the fiscal year. These adjustments include grants and donations received from Federal, State, and other governmental or private entities/organizations; additional funds received for the Well #10 construction project; adding additional project funds due to interest earnings on the Siemens energy savings improvement lease escrow account unspent funds; adjusting CARE Tax accounts due to reconciling FY 2016-2017 to actual taxes received; and various other smaller technical corrections or minor budget adjustments that need to be made.

DRAFT

ORDINANCE NO. _____

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF OREM,
UTAH, AMENDING THE FISCAL YEAR 2017-2018 BUDGET

WHEREAS On June 13, 2017, the City Council adopted a final budget following State law; and

WHEREAS the City Council held a public hearing on October 17, 2017, to receive input from the public regarding proposed amendments to the Fiscal Year 2017-2018 budget; and

WHEREAS the budget has been revised as deemed appropriate to accommodate unexpected revenues and expenses.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OREM, UTAH, as follows:

1. The Council hereby amends the Fiscal Year 2017-2018 Budget as shown in Exhibit "A" which is attached hereto and incorporated herself.
2. The City Manager is directed to implement these budget amendments in accordance with State laws and appropriate City procedures.
3. This ordinance shall take effect immediately upon publication.

PASSED, APPROVED and ORDERED PUBLISHED this 17th day of **October** 2017.

Richard F. Brunst, Jr., Mayor

ATTEST:

Donna R. Weaver, City Recorder

COUNCIL MEMBERS VOTING "AYE"

COUNCIL MEMBERS VOTING "NAY"

DRAFT

DRAFT

EXHIBIT A

**BUDGET AMENDMENTS
FISCAL YEAR 2017-2018**

REVENUES

<u>Account Number</u>	<u>Note</u>	<u>Description</u>	<u>Previous Budget</u>	<u>Current Budget</u>
GENERAL FUND				
10-3316-001	1	Library - UAC Onstage Utah Grant	\$ -	\$ 2,000.00
10-3316-002	1	Library - Westaf - TourWest Grant	-	1,600.00
10-3316-005	1	Library - NASA@MyLibrary Grant - ALA	-	1,300.00
10-3318-023	1	State Asset Forfeiture Grant - CCJJ - FY 2018	-	1,250.00
10-3318-024	1	Internet Crimes Against Children Grant - ICAC	-	20,000.00
10-3341-002	1	Municipal Recreation Grant - Utah County	-	49,870.09
10-3690-003	1	Police Department Donations	-	1,069.75
10-3692-003		Library - Maker Space Supplies Fees	-	1,200.00
Total			<u>\$ -</u>	<u>\$ 78,289.84</u>
Net Fund Increase				<u><u>\$ 78,289.84</u></u>
CARE TAX SPECIAL REVENUE FUND				
21-3997-001	4	App. Surp - CARE Tax Grants	\$ -	\$ 4,000.00
Total			<u>\$ -</u>	<u>\$ 4,000.00</u>
Net Fund Increase				<u><u>\$ 4,000.00</u></u>
MAJOR CRIMES TASK FORCE (MCTF)				
25-3318-005-001	1	JAG Grants - SAFG/STFG - FY 2018	\$ 250,000.00	\$ 263,076.00
25-3424-004-001	1	MCTF - Forfeitures Revenues - Federal (Justice)	-	4,424.73
25-3424-004-002	1	MCTF - Forfeitures Revenues - Federal (Treasury)	-	20,000.00
25-3424-009	1	MCTF - Evidence Revenues	-	10,000.00
Total			<u>\$ 250,000.00</u>	<u>\$ 297,500.73</u>
Net Fund Increase				<u><u>\$ 47,500.73</u></u>
CAPITAL IMPROVEMENT PROJECT FUND				
45-3322	1	Grant - UOR - Bike-Skills Trails Park	\$ -	\$ 30,000.00
Total			<u>\$ -</u>	<u>\$ 30,000.00</u>
Net Fund Increase				<u><u>\$ 30,000.00</u></u>
CIP FUND - ENERGY LEASE				
48-3610	2	Interest Earnings - Energy Lease Escrow	\$ -	\$ 245.05
Total			<u>\$ -</u>	<u>\$ 245.05</u>
Net Fund Increase				<u><u>\$ 245.05</u></u>
WATER FUND				
51-3997-009	3	App. Surp - Metro Water - Well #10	\$ -	\$ 500,000.00
Total			<u>\$ -</u>	<u>\$ 500,000.00</u>
Net Fund Increase				<u><u>\$ 500,000.00</u></u>
SENIOR CITIZENS FUND				
76-3997-004	5	App. Surp - Operations - Exercise Equipment	\$ -	\$ 6,000.00
Total			<u>\$ -</u>	<u>\$ 6,000.00</u>
Net Fund Increase				<u><u>\$ 6,000.00</u></u>
Total City Funds			<u>\$ 250,000.00</u>	<u>\$ 916,035.62</u>
Net City Funds Increase				<u><u>\$ 666,035.62</u></u>

**BUDGET AMENDMENTS
FISCAL YEAR 2017-2018**

EXPENDITURES

<u>Account Number</u>	<u>Note</u>	<u>Description</u>	<u>Previous Budget</u>	<u>Current Budget</u>
GENERAL FUND				
Patrol Services				
10-6520-250-006	1	Equipment - SAFG Grant	\$ -	\$ 1,250.00
10-6520-450	1	Public Safety Supplies	10,799.55	11,869.30
Investigation Services				
10-6530-230-008	1	Employee Development - ICAC Grant	-	10,000.00
10-6530-250-008	1	Equipment - ICAC Grant	-	10,000.00
Recreation / Outdoor Programs				
10-8010-730-289	1	Splash Pad - Municipal Recreation Grant	-	49,870.09
Library Administration				
10-8510-230-011	1	Emp. Development - NASA@MyLibrary Grant	-	800.00
10-8510-310-001	1	Prof. & Technical Services - UAC Onstage Utah Grant	-	2,000.00
10-8510-310-002	1	Prof. & Technical Services - Westaf - TourWest Grant	-	1,600.00
10-8510-310-011	1	Prof. & Technical Services - NASA@MyLibrary Grant	-	300.00
10-8510-600-011	1	Misc Expenses - NASA@MyLibrary Grant	-	200.00
Reference & Collections Services				
10-8530-240-003		Supplies - Maker Space	-	1,200.00
Total			<u>\$ 10,799.55</u>	<u>\$ 89,089.39</u>
Net Fund Increase				<u>\$ 78,289.84</u>
CARE TAX SPECIAL REVENUE FUND				
21-8014-710-001	4	CARE Grants - Recreation	\$ -	\$ 2,000.00
21-8514-310	4	Professional & Technical Services	-	2,000.00
Total			<u>\$ -</u>	<u>\$ 4,000.00</u>
Net Fund Increase				<u>\$ 4,000.00</u>
MAJOR CRIMES TASK FORCE (MCTF)				
25-6531-230	1	Employee Development	\$ 16,000.00	\$ 26,000.00
25-6531-230-005	1	Employee Development - Forfeitures (Treasury)	-	20,000.00
25-6531-290-004	1	Maintenance & Repairs - Forfeitures (Justice)	-	4,424.73
25-6531-600-001	1	C.I. Funds - JAG Grant	65,850.00	78,926.00
Total			<u>\$ 81,850.00</u>	<u>\$ 129,350.73</u>
Net Fund Increase				<u>\$ 47,500.73</u>
CAPITAL IMPROVEMENT PROJECT FUND				
45-6034-732-879	1	Bike-Skills Trails Park - UOR Grant	\$ -	\$ 30,000.00
Total			<u>\$ -</u>	<u>\$ 30,000.00</u>
Net Fund Increase				<u>\$ 30,000.00</u>
CIP FUND - ENERGY LEASE				
48-6037-600	2	Miscellaneous Expenses - Energy Lease	\$ 3,240.49	\$ 3,485.54
Total			<u>\$ 3,240.49</u>	<u>\$ 3,485.54</u>
Net Fund Increase				<u>\$ 245.05</u>
WATER FUND				
51-7573-733-953	3	New Well #10	\$ 3,183,000.00	\$ 3,683,000.00
Total			<u>\$ 3,183,000.00</u>	<u>\$ 3,683,000.00</u>
Net Fund Increase				<u>\$ 500,000.00</u>
SENIOR CITIZENS FUND				
76-8097-743-001	5	Exercise Equipment	\$ -	\$ 6,000.00
Total			<u>\$ -</u>	<u>\$ 6,000.00</u>
Net Fund Increase				<u>\$ 6,000.00</u>
Total City Funds			<u>\$ 3,278,890.04</u>	<u>\$ 3,944,925.66</u>
Net City Funds Increase				<u>\$ 666,035.62</u>

**BUDGET AMENDMENTS
FISCAL YEAR 2017-2018**

NOTES

These notes are attached to the budget amendments summary to describe the more unusual or extraordinary amendments to the Fiscal Year 2017-2018 City of Orem Budget that have been necessitated to this point in the fiscal year. Many of the amendments listed in the summary are immaterial and/or are technical corrections that any organization of this size would expect to encounter during an operating year and therefore, no specific note has been given for these items. Please contact Brandon Nelson, Accounting Division Manager, at 801-229-7010, if you have any questions or concerns.

- 1) The City receives grant or donation funds during the year to aid many different operations such as the Police Department (Major Crimes Task Force Grants), Library Services (Utah Arts Council), Recreation Department (Municipal Recreation Grant), and the Public Works Department (Utah Outdoor Recreation Grant). The funds are received from Federal, State, and other governmental (or private) entities. These entries represent the adjustments necessary to adjust the appropriate budgets.
- 2) The escrow account for the Siemens energy savings improvements lease earns interest on any unused funds. Thus, these additional funds need to be added to the funds available for use on these energy saving improvement projects.
- 3) The City received a payment from the Metropolitan Water District of Orem for use on the construction of Well #10.
- 4) Since the Fiscal Year 2017-2018 budget is completed prior to all Fiscal Year 2016-2017 CARE tax revenues being accounted for, estimates are used in the budget process. This amendment adjusts the CARE tax accounts to the amounts actually received in the prior fiscal year.
- 5) The Senior Citizens Friendship Center will be purchasing exercise equipment using Senior Citizens Fund surplus funds.