



City of Grand Island

Tuesday, May 11, 2021

Council Session

Item E-3

Public Hearing on Industrial Development Revenue Bonds – Tabitha Grand Island Project

Council action will take place under Resolutions item I-1.

Staff Contact: Jerry Janulewicz

Council Agenda Memo

From: Jerry Janulewicz, City Administrator

Meeting: May 11, 2021

Subject: A Resolution Authorizing the Issuance of Revenue Bonds
(Tabitha Grand Island Project), Series 2021

Presenter(s): Jerry Janulewicz, City Administrator
Colleen Duncan, Bond Counsel

Background

Tabitha Grand Island, Inc. a Nebraska non-profit corporation, is requesting that the City Council of the City of Grand Island adopt its Resolution authorizing the issuance of revenue bonds, not to exceed \$13,950,000, for the purpose of financing or reimbursing a portion of the costs of constructing and equipping a new senior living campus and associated site improvements in the City of Grand Island. Art. XIII, Sec. 4 of the Constitution of Nebraska and Nebraska Revised Statutes Sec. 13-1101 to 13-1110 authorizes the issuance of revenue bonds by a county, city, or village in order to acquire, own, develop, and lease or finance real and personal property to be used by a nonprofit enterprises or for the purpose of defraying the cost of acquiring and developing or financing such property by construction, purchase, or otherwise. Issuance of such bonds does not create a financial obligation of the municipality or county except with respect to the application of the revenue from the project to repayment of the bond. The revenue bond is not a pecuniary liability or a charge upon its general credit or against its taxing powers of the county or municipality. Neb. Rev. Stat. § 13-1104.

Under the United States Tax Code and IRS Regulations, bonds such as this may qualify for favorable tax treatment of the interest paid on the debt if it is “bank qualified”. Governmental entities may issue up to \$10,000,000 per calendar year as “bank qualified debt.” Thus, a part of the debt issued as authorized by the resolution could be denominated by the City as bank qualified debt. Although City administration recommends approval of the Resolution, administration does not recommend denominating any part of the issue as “bank qualified debt” until late in the calendar year as between now and the end of the calendar year there may be a need for the City to issue “bank qualified debt” for its own purposes. Because of this potential need of the City, the Resolution would require the City to take action at a future meeting in 2021 or 2022 to delegate its “bank qualification” to Tabitha Grand Island.

Discussion

The proposed construction of the new senior living campus in Grand Island will support the economic health and vitality of the City, will provide additional living resources and care

opportunities for our senior citizens, and will contribute to the further development of the city's medical community.

The bond will contain the following terms:

The Bonds, when issued, will be a special, limited revenue obligation of the Issuer payable solely from the loan repayments and certain other amounts under a liquidity support agreement from an affiliate of Borrower, and shall not be a general liability of the Issuer or a charge against its general credit. The Bonds will not be a debt of the State, or any city, village, county or political subdivision of the State, and none of the State or any city, village, county or political subdivision of the State shall be liable on the Bonds. The Bonds shall not constitute a debt within the meaning of any constitutional or statutory debt limitation of the State. The Issuer's taxing power is not pledged for repayment of the Bonds.

City's basic role and function will be to serve as a conduit in a financial transaction. Pursuant to a loan agreement between the City, Pinnacle Bank, and Tabitha Grand Island, the City will issue a bond that will be purchased by Pinnacle Bank. Proceeds from the sale of the bond will be loaned to Tabitha Grand Island for financing or reimbursing a portion of the costs of constructing and equipping the new senior living campus and associated site improvements. Loan payments will be made by Tabitha Grand Island to Pinnacle Bank and applied to the principal and interest due on the bond.

Conclusion

City staff recommend the resolution be approved.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue.

Sample Motion

Move to approve the resolution.

LOAN AGREEMENT

Among

**PINNACLE BANK,
Lender,**

and

**CITY OF GRAND ISLAND, NEBRASKA,
Issuer,**

and

**TABITHA GRAND ISLAND, INC.,
Borrower**

Dated as of May 1, 2021

relating to

**Not to Exceed \$[13,950,000]
REVENUE BOND (TABITHA GRAND ISLAND PROJECT)
SERIES 2021B**

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Schedule 1.01(q) - Permitted Encumbrances

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LOAN AGREEMENT

This **LOAN AGREEMENT**, dated as of May 1, 2021 (the “**Loan Agreement**”), is among **PINNACLE BANK** (the “**Lender**”), the **CITY OF GRAND ISLAND, IN THE STATE OF NEBRASKA** (the “**Issuer**”), and **TABITHA GRAND ISLAND, INC.** (the “**Borrower**”).

RECITALS

1. The Issuer is authorized under Sections 13-1101 to 13-1110, Reissue Revised Statutes of Nebraska, as amended, (the “**Act**”), to issue revenue bonds and loan the proceeds of such bonds for the purposes of financing and refinancing the acquisition, construction, improvement, renovation and equipping of projects of a “nonprofit enterprise” as defined by the Act.

2. The Borrower will construct and equip a full-continuum senior living community in Grand Island, Nebraska to be owned and operated by the Borrower (the “**Facilities**”).

3. The Borrower requested the assistance of the Issuer and the Lender in providing funds to finance and reimburse a portion of the costs of the Project (as hereinafter defined) for the use of the Borrower through the issuance of the Bond (as hereinafter defined) by the Issuer to the Lender pursuant to the Act and the lending of the proceeds of the Bond to the Borrower as evidenced by the Note (as hereinafter defined).

4. The Issuer proposes to assign all of its rights under this Loan Agreement and the Note to the Lender for repayment of the Bond.

5. The Borrower proposes to borrow the proceeds received by the Issuer from the issuance of the Bond upon the terms and conditions set forth in this Loan Agreement and the Note.

6. The Borrower shall make Loan Payments (hereinafter defined) on the Note directly to the Lender, as assignee of the Issuer, pursuant to the terms set forth in this Loan Agreement, to effect repayment of the Issuer’s obligations under the Bond.

7. Contemporaneously with the execution and delivery of the Bond, Note and this Loan Agreement, the Issuer, Lender and Borrower are entering into a separate County Loan Agreement (as defined herein) in connection with the issuance by The County of Hall, Nebraska, of the County Bond (as defined herein) to finance a portion of the Project, and the Borrower is delivering its County Note (as defined herein) in connection therewith.

8. To secure its obligations under this Loan Agreement and the County Loan Agreement and to induce the Issuer to issue the Bond and the County Bond, the Borrower is willing to execute and deliver to the Lender the Deed of Trust (as hereinafter defined) for the benefit of the Lender, and to cause the Borrower’s affiliate, Tabitha Foundation, to deliver a Limited Guaranty Agreement (as hereinafter defined) with respect to the repayment of Borrower’s Obligations under the Loan Agreement.

NOW, THEREFORE, in consideration of the payments to be made in accordance with this Loan Agreement and the representations, covenants and agreements contained herein, the Lender, the Issuer and the Borrower agree as follows:

ARTICLE I DEFINITIONS AND EXHIBITS

Section 1.01. Definitions. The following terms used herein will have the meanings indicated below unless the context clearly requires otherwise:

“Additional Payments” means the amounts, other than Loan Payments, payable by the Borrower pursuant to this Loan Agreement, including the fees pursuant to **Section 2.09**.

“Amortization Commencement Date” means _____, 202__.

“Assignment of Architecture Contract” means the Assignment of Architecture Contract to be executed by Borrower and delivered to Lender pursuant to **Article 3**, as amended, restated or otherwise modified from time to time.

“Assignment of Construction Contract” means the Assignment of Construction Contract to be executed by Borrower and delivered to Lender pursuant to **Article 3**, as amended, restated or otherwise modified from time to time.

“Bond” means the Issuer’s Revenue Bond (Tabitha Grand Island Project), Series 2021B, dated the date of delivery (_____, 2021) thereof, issued in the original principal amount not to exceed \$[13,950,000] to finance a portion of the costs of the Project for the Borrower pursuant to this Loan Agreement, in substantially the form set forth in **Exhibit B**.

“Bond Counsel” means Gilmore & Bell, P.C., or any other counsel nationally recognized on the subject of municipal bonds acceptable to the Issuer.

“Bond Proceeds” means the proceeds from the sale of the Bond to the Lender.

“Borrower” means Tabitha Grand Island, Inc., a nonprofit corporation duly organized and validly existing under the laws of the State, and its successors.

“Borrower Documents” means this Loan Agreement, the Note, the Deed of Trust, the Assignment of Architecture Contract, the Assignment of Construction Contract, the Disbursement Agreement and the Tax Compliance Agreement, each as amended, restated or otherwise modified from time to time.

“Business Day” means any day (other than Saturday, Sunday or a legal holiday) on which banks in Grand Island, Nebraska are open for commercial business.

“Capital Lease” means any lease of (or other agreement conveying the right to use) any real or personal property by Borrower that, in conformity with GAAP, is accounted for as a capital lease on the balance sheet of Borrower.

“County” means The County of Hall, in the State of Nebraska, a political subdivision duly organized and existing under the laws of the State.

“County 2021A Bond” means the County’s Revenue Bond (Tabitha Grand Island Project), Series 2021A, dated the date of delivery (_____, 2021) thereof, issued in the original principal amount not to exceed \$[10,000,000].

“County 2021B Bond” means the County’s Revenue Bond (Tabitha Grand Island Project), Series 2021B, dated the date of delivery (_____, 2021) thereof, issued in the original principal amount not to exceed \$[10,000,000].

“County Bond” means collectively the County 2021A Bond and the County 2021B Bond, issued to finance a portion of the costs of the Project for the Borrower pursuant to the County Loan Agreement.

“County Loan Agreement” means the loan agreement among the County, Lender and Borrower executed and delivered in connection with the issuance of the County Bond and execution and delivery of the County Note.

“County Note” means the promissory note delivered by the Borrower to evidence its obligation to repay the amounts borrowed pursuant to the County Loan Agreement.

“Closing Date” means the date of the original issuance and delivery of the Bond, which shall be the date the Initial Advance is made available to the Borrower pursuant to this Loan Agreement.

“Code” means the Internal Revenue Code of 1986, as amended, and the United States Treasury regulations promulgated thereunder.

“Completion Account” means the account established by the Borrower with the Lender prior to the Closing Date and subject to the control of Lender, and otherwise in accordance with **Section 2.04** hereof, which funds therein shall be disbursed according to the Construction Advance Rider and Disbursement Agreement.

“Construction” means, with respect to the Project, the purchase, construction, extension, improvement and equipping of the Project.

“Construction Advance Rider” means the Construction Advance Rider between Borrower and Lender attached hereto as **Exhibit G**.

“Contractor” or **“Contractors”** means any contractor providing labor, materials, services, and/or equipment for the Construction of the Project.

“Conversion Date” has the meaning set forth in **Section 3.04** hereof.

“Cumulative Outstanding Principal Amount” has the meaning set forth in **Section 5.03** hereof.

“Days Cash on Hand” means the amount determined by dividing (1) the aggregate unrestricted cash and liquid investment balances of the Borrower as of a particular date (including liquid board-designated funds) by (2) the quotient derived by dividing (a) the Borrower’s total operating expenses (less depreciation and amortization and other non-cash items, including, without limitation, losses on refinancing of debt, non-cash termination value of any hedging derivative, interest rate exchange or similar contract, non-cash pension expense, other non-cash expenses, and any one-time charges in connection with development projects that have been abandoned by the Borrower) for the most recent preceding fiscal year for which audited financial statements are available, by (b) the number of days in such fiscal year.

“Debt Service Coverage Ratio” means, for any historical period of time, the ratio determined by dividing (a) a numerator equal to the Net Income Available for Debt Service for that period by (b) a denominator equal to the Debt Service Requirements for such period.

“Debt Service Requirements” means, for any period of time for which calculated, the aggregate of the payments required to be made during such period in respect of principal (whether at maturity, as a result of scheduled mandatory redemption, scheduled mandatory prepayment or otherwise) and interest on Indebtedness with respect to which calculated; provided that:

- (a) such payments (or portions thereof) may be excluded from Debt Service Requirements to the extent that cash or defeasance obligations are on deposit in an irrevocable escrow or trust account and such amounts (including, where appropriate, the earnings or other increment to accrue thereon) are required to be applied to pay such principal or interest (or portions thereof) and are sufficient to pay such principal or interest (or portions thereof);
- (b) such payments may be excluded from Debt Service Requirements to the extent such principal or interest was paid or is to be paid from the proceeds of the applicable Indebtedness; and
- (c) such payments may be excluded from Debt Service Requirements to the extent such principal or interest is part of the \$1,500,000 aggregate principal amount outstanding incurred pursuant to the provisions of **Section 6.13** hereof.

“Deed of Trust” means the Combination Deed of Trust, Security Agreement, Fixture Financing Statement and Assignment of Leases and Rents executed by Borrower for the benefit of Lender to secure the Borrower’s obligations under this Loan Agreement, the Borrower Documents, the County Loan Agreement and the County Note, as amended, restated or otherwise modified from time to time.

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

“Default Rate” means ___% per annum over the Specified Interest Rate, or, if lower, the maximum rate permitted under applicable law.

“Determination of Taxability” means a determination that the interest income on any Bond that has been issued as a Tax-Exempt Bond is included in gross income for federal income tax purposes, which determination shall be deemed to have been made upon the occurrence of the first to occur of the following:

- (a) the day on which the Borrower is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that, based upon any filings of the Borrower, or upon any review or audit of the Borrower, or upon any other grounds whatsoever, the interest on the Bond is includable for federal income tax purposes in the gross income of the Lender as the holder of the Bond;
- (b) the day on which the Borrower receives notice from the Lender that the Lender has been advised in writing that the Internal Revenue Service has issued a statutory notice of deficiency or similar notice to the Lender (a copy of such notice shall be included in the Lender’s notice to Borrower) which asserts in effect that the interest on the Bond received by the Lender is includable in the gross income of the Lender;

(c) the day on which the Borrower is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that there has been issued a public or private ruling of the Internal Revenue Service or a technical advice memorandum issued by the national office of the Internal Revenue Service that the interest on the Bond is includable for federal income tax purposes in the gross income of the Lender;

(d) the day on which the Borrower is advised in writing that a final determination, from which no further right of appeal exists, has been made by a court of competent jurisdiction in the United States of America in a proceeding with respect to which the Borrower has been given written notice and an opportunity to participate and defend that the interest on the Bond is includable in the gross income of the Lender; or

(e) the date specified in a written opinion to the Borrower from Bond Counsel as the day on which such interest on the Bond first became or will become includable in the gross income of the Lender; provided, however, that (1) for purposes of this Loan Agreement, no Determination of Taxability shall occur if the Taxability Event is caused by the gross negligence or willful misconduct of the Lender (as determined by a court of competent jurisdiction in a final non-appealable judgment); and (2) no Determination of Taxability shall occur under subparagraph (a), (b), (c) or (e) of this paragraph unless the Borrower has been afforded the opportunity, at its expense, to contest any such conclusion and/or assessment after furnishing the Lender and the Issuer, within thirty (30) days after the occurrence of an event described in subparagraph (a), (b), (c) or (e) of this paragraph, with an opinion of Bond Counsel to the effect that there is a reasonable basis that the Borrower will prevail in such contest, and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined. The Borrower shall promptly notify the Lender and the Issuer of any event described in subparagraph (a), (b), (c), (d) or (e) of this paragraph and shall further promptly notify the Lender and the Issuer of any final determination if the Borrower has contested under subparagraph (a), (b), (c) or (e) of this paragraph. The Borrower shall be deemed to have been afforded the opportunity to contest the occurrence of a Determination of Taxability if it shall have been permitted to commence and maintain any action in the name of the Lender to judgment and through any appeals therefrom or other proceedings related thereto. Wherever in this definition of Determination of Taxability there shall be a reference to “the interest on the Bond is includable in the gross income of the Lender or holder of the Bond” such reference shall implicitly include any act or circumstances under which the Bond is no longer determined to be “qualified tax-exempt obligations” within the meaning of Section 265(b)(3) of the Code. The determination that the Bond is no longer “qualified tax-exempt obligations” shall be made in the same manner as provided for in (a) through (e) hereinabove and shall be subject to the rights of Borrower as provided in this paragraph.

["Disbursement Agreement"] means the Construction Loan Disbursement Agreement dated as of the Closing Date by and among the Borrower, the Lender and _____, as escrow agent, as amended, restated or otherwise modified from time to time.]

“Disbursement Request” means a disbursement request for an advance pursuant to the Disbursement Agreement, in the form required by the Disbursement Agreement.

“ERISA” shall have the meaning set forth in **Section 4.02(i)** hereof.

“Event of Default” means any of the events described as such in **Section 10.01**.

“Expenses” means, for any period of time for which calculated, the total of all operating and non-operating expenses or losses incurred during such period by the Borrower, determined in accordance with GAAP, other than (a) interest expense included in Debt Service Requirements, (b) depreciation and amortization, (c) unrealized losses on investments, investment contracts or interest rate swaps and hedge

agreements, or changes in value of split interest gifts or adjustments of actuarial liabilities for annuity obligations, (d) losses resulting from the early extinguishment of debt, costs associated with the issuance of indebtedness, termination of interest rate swaps and hedge agreements, termination of pension plans, the sale or other disposition of assets not in the ordinary course of business or any reappraisal, revaluation or write-down of assets other than bad debts, and any other extraordinary, unusual, or non-recurring losses or expenses, and (e) other expenses not requiring the payment of cash in any period.

“Facilities” means a full-continuum senior living community in Grand Island, Nebraska to be constructed, owned, and operated by the Borrower, and shall include the Project.

“GAAP” means the generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant portion of the accounting profession, which are applicable to the circumstances as of any date of determination.

“Indebtedness” means, collectively, but without duplication with respect to the Borrower, (a) indebtedness or liability for borrowed money or the deferred purchase price of property or services; (b) obligations as lessee under leases that are, should be or should have been, reported as Capital Leases in accordance with GAAP; (c) any guaranty and any contingent obligation to purchase, to provide funds for payment, to supply funds, to invest in any person or entity or otherwise to assure a creditor against loss; and (d) all other items or obligations which in accordance with GAAP would be included in determining total liabilities on the balance sheet of the Borrower.

“Initial Advance” shall have the meaning set forth in **Section 2.02** hereof.

“Issuer” means the City of Grand Island, in the State of Nebraska, a political subdivision duly organized and existing under the laws of the State.

“Issuer Documents” means this Loan Agreement, the Bond, the Tax Compliance Agreement and the Issuer’s endorsement to the Note, each as amended, restated or otherwise modified from time to time.

“Laws” means all applicable federal, state and local constitutions, statutes, ordinances, codes, rules, regulations and court and administrative decisions, determinations and orders.

“Lender” means (a) Pinnacle Bank, Grand Island, Nebraska, a state chartered bank duly organized and existing under the laws of the State of Nebraska, (b) its successors, and (c) except where the context requires otherwise, any assignee(s) of the Lender.

“Lien” means any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to property.

“Limited Guarantor” means Tabitha Foundation, a nonprofit corporation duly organized and validly existing under the laws of the State, and its successors.

“Limited Guarantor Documents” means the Limited Guaranty Agreement as amended, restated or otherwise modified from time to time.

“Limited Guaranty Agreement” means the Limited Guaranty Agreement dated as of May 1, 2021, by and between the Limited Guarantor and the Lender.

“Loan” means the loan from the Issuer to the Borrower pursuant to this Loan Agreement.

“Loan Agreement” means this Loan Agreement, including all exhibits hereto, as supplemented or amended from time to time in accordance with the terms hereof.

“Loan Amount” means the aggregate principal amount not to exceed \$[13,950,000].

“Loan Payments” means the loan payments payable by the Borrower pursuant to this Loan Agreement, which shall be in the same amounts as the payments of principal of and interest on the Bond and shall be due at the same times as those payments.

“Maturity Date” has the meaning set forth in **Section 2.01(a)** hereof.

“Net Income Available for Debt Service” means, for any period of calculation, the excess of Revenues over Expenses.

“Net Proceeds” means the amount remaining from the gross proceeds of any insurance claim or condemnation award or sale under threat of condemnation after deducting all expenses (including

“Note” means the Borrower’s Promissory Note, dated the Closing Date, issued in the principal amount not to exceed \$[13,950,000] to evidence the Borrower’s obligations to repay the Loan to finance a portion of the costs of the Project for the Borrower pursuant to this Loan Agreement, in substantially the form set forth in **Exhibit D**, and all promissory notes given in exchange, renewal or substitution thereof.

“Occupancy Stabilization” means, for any fiscal year, the first year that the Borrower shall have achieved, on average across the various components of the Project, 90% occupancy or census, as the case may be.

“OFAC” shall have the meaning set forth in **Section 4.02(k)** hereof.

“Permitted Encumbrances” means the following:

(a) the liens and security interests created under this Loan Agreement, the Borrower Documents, the County Loan Agreement and the County Note, and any other liens or security interests in the Property that equally and ratably secures the obligations of Borrower under this Loan Agreement, the Borrower Documents, the County Loan Agreement and the County Note;

(b) liens for taxes, assessments, and other governmental charges not delinquent, or if delinquent that are being contested in good faith by appropriate proceedings and as to which the Borrower has set aside on its books adequate reserves with respect thereto;

(c) mechanic’s, laborer’s, materialman’s, supplier’s or vendor’s liens not filed of record and similar charges not delinquent, or if filed of record are being contested in good faith and have not proceeded to judgment and as to which the Borrower has set aside on its books adequate reserves with respect thereto, or, at the request of Lender, has provided a statutory bond resulting in the release of such lien;

(d) liens in respect of judgments or awards with respect to which the Borrower is in good faith currently prosecuting an appeal or proceedings for review, and with respect to which the Borrower has secured a stay of execution pending such appeal or proceedings for review, provided the Borrower has set aside on its books adequate reserves with respect thereto;

(e) utility, access and other easements and rights-of-way, restrictions, encumbrances and exceptions that do not materially affect the marketability of title to the property affected thereby and do not in the aggregate materially impair the use of that property for the purposes for which it is held by the Borrower;

(f) zoning laws, ordinances or regulations and similar restrictions that are not violated by the property affected thereby;

(g) statutory liens and rights of setoff granted to banks or other financial institutions with respect to funds on deposit in the ordinary course of business;

(h) all right, title and interest of the state, municipalities and the public in and to tunnels, bridges and passageways over, under or upon a public way;

(i) rights reserved to, or vested in, any municipality or governmental or other public authority by virtue of any franchise, license, contract or statute to control or regulate any property, or to use that property in any manner, or to purchase, or designate a purchaser of or order the sale of, any property of the Borrower upon payment of cash or reasonable compensation therefor, or to terminate any franchise, license or other rights;

(j) liens arising by reason of (1) good faith deposits with the Borrower in connection with tenders, leases of real estate, bids or contracts (other than contracts for the payment of money), (2) deposits by the Borrower to secure public or statutory obligations, or to secure, or in lieu of, surety, stay or appeal bonds, (3) deposits as security for the payment of taxes or assessments or other similar charges, and (4) deposits with, or the giving of any form of security to, any municipality or governmental or other public authority for any purpose at any time as required by law or governmental regulation as a condition to the transaction of any business or the exercise of any privilege or license, or to enable the Borrower to maintain self-insurance or to participate in any funds established to cover any insurance risks or in connection with workers' compensation, unemployment insurance, pensions or profit sharing plans or other social security plans or programs, or to share in the privileges or benefits required for corporations participating in such arrangements;

(k) restrictions on property received by the Borrower through gifts, grants, bequests, contributions or donations imposed by the donor or grantor of that property and which consist solely of restrictions on the use of that property or the income therefrom;

(l) liens on and security interests in the proceeds of Indebtedness permitted by this Loan Agreement prior to the application of those proceeds or any debt service fund, reserve fund, escrow fund or similar fund established to secure the payment of indebtedness;

(m) liens existing on property at the time of its acquisition by the Borrower through purchase, lease or otherwise, and any renewals thereof;

(n) leases, under which the Borrower is lessor, that relate to property that is of a type that is customarily the subject of such leases including leases of office space for physicians, food service facilities, parking facilities, day care centers, gift shops, barber shops, beauty shops, flower shops, radiology, pathology or other hospital-based specialty services, pharmacy and similar departments and any other leases entered into in accordance with the disposition of the Property provisions of this Loan Agreement;

(o) such minor defects and irregularities of title as normally exist with respect to property similar in character to the Property affected thereby and which do not materially affect the marketability of title to or value of such Property and do not materially impair the use of such Property for the purposes for which it is held by the Borrower;

(p) liens on moneys deposited by patients or others with the Borrower as security for or as prepayment of the cost of patient care, liens due to the rights of third party payors for recoupment of excess reimbursement paid to the Borrower, and liens of residents of life care, elderly housing or similar facilities on endowment or similar funds deposited by or on behalf of such residents;

(q) liens on the Property listed on **Schedule 1.01(q)**;

(r) purchase money mortgages, security interests, and liens securing purchase money Indebtedness for capital expenditures permitted by this Loan Agreement other than such expenditures required to complete the Project; and

(s) any other liens on Property expressly permitted by this Loan Agreement and approved in writing by the owner of the Bond.

“Person” means an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a joint venture, a trust, or an unincorporated organization.

“Plans and Specifications” has the meaning specified in the Construction Advance Rider.

“Prepayment Amount” means the amount that the Borrower may or is required to pay to the Lender as assignee of the Issuer to prepay all or part of the Loan, which amount shall equal (a) the principal amount of the Loan which is being prepaid, plus (b) the applicable Prepayment Penalty, plus (c) accrued interest thereon to the date of prepayment, plus (d) any other amounts then due to the Lender under this Loan Agreement.

“Prepayment Penalty” means, if, and only if, 100% of the outstanding principal amount of the Loan is being prepaid, a percentage of the principal of the Loan being prepaid based on the date of prepayment as set forth below:

<u>Prepayment date</u>	<u>Prepayment penalty</u>
Closing Date to 1 year following Closing Date	5%
1 to 2 years following Closing Date	4%
2 to 3 years following Closing Date	3%
3 to 4 years following Closing Date	2%
4 to 5 years following Closing Date	1%
5 years following Closing Date or thereafter	No prepayment penalty

“Prohibited Person” shall have the meaning set forth in **Section 4.02(k)** hereof.

“Project” means the construction, equipping and furnishing of a new senior living campus (expected to consist of 157 units providing a 200,000 square foot, full-continuum of senior housing and services) and associated site improvements as described on **Exhibit A**, together with all improvements, fixtures, modifications, additions, repairs, accessions and accessories incorporated therein or affixed to the Facilities, and all replacements and substitutions therefor pursuant to **Article VIII**.

“Project Costs” means all costs of the Construction of the Project, including, without limitation, the following: (a) the cost of construction, extension, improvement, repair and reconstruction; (b) the cost of acquisition, including rights in land and other property, both real and personal and improved and unimproved, and franchises, and disposal rights; (c) the cost of demolishing, removing or relocating any buildings or structures on lands so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated; (d) the cost of machinery and equipment, of engineering and architectural surveys and plans, and specifications and of transportation and storage until the Project is operational; (e) the cost of agents or consultants, including, without limitation, legal, financial, engineering, accounting and auditing, necessary or incident to the Project and of the determination as to the feasibility or practicability of undertaking the Project; (f) the cost of financing interest on the Bond allocable to the period prior to and during Construction of the Project and reserves for principal and interest; and (g) the cost of financing the Project.

“Property” shall have the meaning set forth in the Deed of Trust.

“Re-pricing Date” means the seventh (7th) anniversary of the Closing Date.

“Revenues” means, for any period of time for which calculated, the total of all operating and non-operating revenues or gains during such period of the Borrower, determined in accordance with GAAP, including (a) gross patient and resident service revenues less contractual allowances, free care and discounted care, plus (b) other operating revenues less applicable allowances such as sale discounts and sale returns, plus (c) non-operating revenues or gains, plus (d) gifts, grants, bequests and donations actually received during that period of time not otherwise included in Revenues if not required to be excluded from Revenues by the remainder of this definition, including formerly restricted gifts, grants and bequests whose restrictions have expired during the period; provided that no determination thereof shall take into account (i) unrealized gains on investments, investment contracts or interest rate swap or hedge agreements, or changes in value of split interest gifts or adjustments of actuarial liabilities for annuity obligations, (ii) gifts, grants, bequests or donations specifically restricted as to use by the donor or grantor for a purpose inconsistent with the payment of debt service or operating expenses of the Borrower, (iii) gifts, grants, bequests or donations pledged but not actually received during that period of time, (iv) other non-cash income, (v) income derived from defeasance obligations that are irrevocably deposited in escrow to pay the principal of or interest on indebtedness, (vi) gains resulting from the early extinguishment of debt, the sale, exchange or other disposition of property not in the ordinary course of business, or the reappraisal, reevaluation or write-up of assets, (vii) insurance (other than business interruption) and condemnation proceeds, and (viii) proceeds of borrowing. For purposes of any calculation made with reference to both Revenues and Expenses, any deduction or reduction from revenues otherwise required by the preceding provisions of this definition may not be made if and to the extent that the amount of such deduction is included in Expenses. At the option of the Borrower, when computing Revenue, net realized gains from the sale of investments may be included on the basis of the average annual amount of those gains and losses for the three fiscal years preceding the computation date in lieu of the actual amount of net realized gains from the sale of investments for the fiscal year for which the computation is being made.

“Solvent” shall have the meaning set forth in **Section 4.02(j)** hereof.

“Specified Interest Rate” means, for Bonds issued as Tax-Exempt Bonds, the Tax-Exempt Rate; and for Bonds issued as taxable bonds, the Taxable Rate.

“State” means the State of Nebraska.

“Subordinate Lender” means _____, a _____ organization, which pursuant to the terms of [Subordinate Loan Instrument] has loaned \$ _____ to the Borrower to be applied to the Project.

“Subordinate Loan Instrument” means _____.

“Taxability Event” means a final determination by the Internal Revenue Service that (a) interest on the Bond is not excludable from gross income for federal income tax purposes or (b) the Bond is not a “qualified tax-exempt obligation” as such term is defined in Section 265(b)(3)(B)(i) of the Code.

“Taxable Rate” means, from the Closing Date through and including the Re-pricing Date, a fixed rate of 3.45% per annum. After the Re-pricing Date, the Taxable Rate shall be the then-current weekly average of the 3-Year Constant Maturity US Treasury Rate, plus a margin of 2.75%, with a floor 3.25%. Initially, the Bond shall bear interest at the Taxable Rate.

“Tax Compliance Agreement” means the Tax Compliance Agreement in connection with the Bond dated the date hereof among the Borrower, the Issuer and the Lender, as the same may be amended from time to time in accordance with its terms.

“Tax-Exempt Bonds” means any Bond, the interest on which is excludable from gross income for Federal income tax purposes, and which has been designated as a “qualified tax-exempt obligation” within the meaning of Section 265(b)(3) of the Code.

“Tax-Exempt Organization” means an organization described in Section 501(c)(3) of the Code, which is exempt from federal income taxes under Section 501(a) of the Code, and is not a “private foundation” within the meaning of Section 509(a) of the Code, or corresponding provisions of federal income tax laws from time to time in effect.

“Tax-Exempt Rate” means, from the Closing Date through and including the Re-pricing Date, a fixed rate of 2.93% per annum. After the Re-pricing Date, the Tax-Exempt Rate shall be the then-current weekly average of the 3-Year Constant Maturity US Treasury Rate, plus a margin of 2.25%, with a floor of 2.75%.

“UCC” means the Uniform Commercial Code as adopted and in effect in the State.

“United States” means the United States of America.

Section 1.02. Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with GAAP consistent with those applied in the preparation of the financial statements referred to in **Section 4.02(e)** and **Section 6.01(a)**, and all financial data submitted pursuant to this Loan Agreement shall be prepared in accordance with such principles. Notwithstanding any other provision contained in this Loan Agreement or any of the other Borrower Documents, all terms of an accounting or financial nature used in this Loan Agreement or any of the other Borrower Documents shall be construed, and all computations of amounts and ratios provided for in this Loan Agreement or any of the other Borrower Documents shall be made, without giving effect to any election under Statement of Financial Accounting Standards 159 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of Borrower at “fair value,” as defined therein.

Section 1.03. Exhibits/Schedules. The following exhibits are attached hereto and made a part hereof:

Exhibit A:	The Project
Exhibit B:	Form of Bond
Exhibit C:	Form of Bond after the Conversion Date
Exhibit D:	Form of Note
Exhibit E:	Form of Investor’s Letter of Representation
Exhibit F:	Form of Completion Certificate
Exhibit G:	Construction Advance Rider
Schedule 1.01(q)	Permitted Encumbrances
Schedule 4.02(c)	Litigation

Section 1.04. Rules of Construction.

(a) The singular form of any word used herein, including the terms defined in **Section 1.01**, shall include the plural, and vice versa. The use herein of a word of any gender shall include correlative words of all genders.

(b) Unless otherwise specified, references to Articles, Sections and other subdivisions of this Loan Agreement are to the designated Articles, Sections and other subdivision of this Loan Agreement. The words “hereof,” “herein,” “hereunder” and words of similar import refer to this Loan Agreement as a whole.

(c) The headings or titles of the several articles and sections shall be solely for convenience of reference and shall not affect the meaning, construction or effect of the provisions of this Loan Agreement.

(d) Whenever an item or items are listed after the word “including,” such listing is not intended to be a listing to exclude items not listed.

(e) references to an agreement or instrument means that agreement or instrument and all schedules, exhibits, and appendices thereto, together with all extensions, renewals, modifications, substitutions and amendments thereof, subject to any restrictions thereon in that agreement or instrument or in the Borrower Documents.

(f) An “Event of Default which exists”, an “Event of Default which has occurred and is continuing”, “during the continuance of an Event of Default”, an “Event of Default which is continuing” or similar words refers to any Event of Default which has not been waived by Lender in writing or is not then subject to a written agreement by Lender to forebear exercise of its remedies as a result of such Event of Default.

ARTICLE II THE BOND AND THE LOAN

Section 2.01. Issuance of the Bond.

(a) The Issuer shall issue the Bond to obtain money to make the Loan to the Borrower. The Bond shall (1) be in the form set forth in **Exhibit B** in a stated principal amount of not to exceed \$[13,950,000]; (2) be dated the Closing Date; (3) be issued to the Lender and shall be outstanding in principal amounts advanced from time to time as provided herein; (4) be payable as to principal and interest (subject to prepayment as provided herein and in the Bond) as provided herein; and (5) have a final maturity of _____, 2031 (the “**Maturity Date**”).

(b) The purchase price to be paid for the issuance of the Bond shall be an amount equal to the principal amount of the Bond advanced pursuant to the provisions of this Loan Agreement from time to time. The Bond Proceeds shall be advanced as provided and subject to the limitations in **Section 5.03** hereof.

Section 2.02. Loan. Simultaneously with the advance by the Lender of any portion of the purchase price of the Bond in accordance with **Section 2.01**, the Issuer will lend to the Borrower an amount equal to such advance of the principal amount of the Bond, and the Borrower will borrow such amount from the Issuer. Notwithstanding anything in this Loan Agreement to the contrary, on the Closing Date, \$_____ shall be advanced under the Bond and the Note (the “**Initial Advance**”). The Issuer’s obligation to pay the principal and interest on the Bond and the Borrower’s obligation to repay the Loan shall commence, and interest shall begin to accrue, from the date of the Initial Advance.

Section 2.03. Interest. The principal amount of the Bond and the Loan advanced and outstanding from time to time shall bear interest (computed on the basis of a 360-day year and actual days elapsed) at the Specified Interest Rate; provided, however, whenever an Event of Default under **Section 10.01** has occurred and is continuing, from and after the time such Event of Default has been declared by the Lender, the principal amount of the Bond and the Loan outstanding shall bear interest at the Default Rate.

Section 2.04. Payments. The Issuer shall pay the principal of and interest on the Bond, but only out of the amounts paid to the Issuer by the Borrower pursuant to this Loan Agreement. The Borrower shall pay to the Lender, as assignee of the Issuer, interest only on the first day of each month on the outstanding principal amount of the Bond advanced from time to time in accordance with **Section 5.03** for the first thirty (30) months from the Closing Date. If, on the thirty-month anniversary of the Closing Date, Lender has not received a Completion Certificate pursuant to **Section 5.04** hereof, Lender shall advance and deposit the principal amount of the Loan less amounts outstanding, if any, on the thirty-month anniversary of the Closing Date, into the Completion Account. If any funds remain in the Completion Account on the third anniversary of the Closing Date, the Borrower hereby directs, and the Lender hereby agrees, that such funds in the Completion Account shall be applied on the third anniversary of the Closing Date to make a partial prepayment of the Loan. If the Lender has received a Completion Certificate pursuant to **Section 5.04** hereof prior to the thirty-month anniversary of the Closing Date, Lender shall not advance any additional funds hereunder.

[Commencing on the Amortization Commencement Date, and continuing on the [first] day of each calendar month thereafter, level monthly installments of principal and interest based on a 333 month amortization commencing on the Amortization Commencement Date shall be due and payable. A final installment representing the entire unpaid principal balance of the Bond, and all accrued and unpaid

interest thereon and all fees and charges in connection therewith, shall be due and payable on the Maturity Date.]

All amounts required to be paid by the Borrower hereunder shall be paid in lawful money of the United States of America in immediately available funds. As security for its obligation to pay the principal of and interest on the Bond, the Issuer assigns to the Lender all of the Issuer's right to receive Loan Payments hereunder, all of the Issuer's other rights under the Issuer Documents (except for the right to receive any Additional Payments and any other fees and expenses to the extent payable to the Issuer, any rights of the Issuer to indemnification and rights of notice, inspection and consent), and the Issuer appoints the Lender and any officer or agent of the Lender to collect the Loan Payments and any other payments due to the Lender (other than payments described in the preceding parenthetical), as the Issuer's assignee, under the Note or any Borrower Document and to sue in any court for such Loan Payments or other payments and to exercise all rights under Issuer Documents with respect to the Project and to withdraw or settle any claims, suits or proceedings pertaining thereto. Loan Payments and other payments shall be made by the Borrower directly to the Lender, as the Issuer's assignee, and shall be credited against the Borrower's obligations under the Note and the Issuer's payment obligations under the Bond and this Loan Agreement.

Any payment of principal, interest or other amounts payable under the Borrower Documents to the Lender, as assignee of the Issuer, which is not received within fifteen (15) days of the due date shall be subject to a late charge equal to 5% of the amount of the delinquent payment.

Section 2.05. Payment on Non-Business Days. Whenever any payment to be made hereunder shall be stated to be due on a day other than a Business Day, such payment may be made on the next succeeding Business Day and such extension of time shall in such case be included in the computation of interest or the fees hereunder, as the case may be.

Section 2.06. Loan Payments Unconditional. The obligations of the Borrower to make the Loan Payments and Additional Payments and to make other payments hereunder and to perform and observe the covenants and agreements contained herein shall be absolute and unconditional in all events, without abatement, diminution, deduction, setoff or defense for any reason. Notwithstanding any dispute between the Borrower and any of the Issuer, the Lender or any other Person, the Borrower shall make all Loan Payments when due and shall not withhold any Loan Payments pending a final, non-appealable judgment by a court of competent jurisdiction, or an agreement between Borrower and Lender constituting a final resolution of the dispute, nor shall the Borrower assert any right of set-off or counterclaim against its obligation to make Loan Payments.

Section 2.07. Prepayments.

(a) The Borrower may prepay any portion of the outstanding principal balance of the Loan at any time prior to the Maturity Date without penalty by paying the applicable Prepayment Amount.

(b) The Borrower shall prepay the Loan in full immediately upon demand of the Lender after the occurrence of an Event of Default by paying the applicable Prepayment Amount.

Upon any prepayment in part of the Loan, the prepayment shall be applied first to interest accrued on the Loan and next to the principal of the Loan, which reduction of principal shall not affect the monthly payment amount established pursuant to **Section 2.04** herein or timing of such payments, but shall cause the principal amount due on the Maturity Date to be reduced. The Bond shall be subject to prepayment upon the same terms as the Loan, and, upon any prepayment of the Loan, the Bond shall be deemed to be prepaid to the same extent that the Loan is prepaid.

Section 2.08. Special Obligations. The Bond shall not constitute nor give rise to a pecuniary liability of the Issuer or a charge against its general credit or taxing powers, nor shall it constitute a debt or liability of the State, any political subdivision or any public agency thereof or a pledge of the faith and credit of the State or any political subdivision thereof, but shall be payable solely from the funds provided therefor pursuant to this Loan Agreement. The Bond is a special, limited revenue obligation of the Issuer, and the Issuer shall under no circumstances be obligated to make payments of the principal of and interest on the Bond or any Project Cost except from Loan Payments received from the Borrower and Bond Proceeds.

Neither the faith and credit nor the taxing power of the State, the Issuer or any political subdivision of the State is pledged to the payment of the principal of or interest on the Bond, nor is the State, the Issuer or any other political subdivision of the State, in any manner obligated to make any appropriation for that purpose.

No provision, covenant or agreement contained in this Loan Agreement or any obligation herein imposed on the Issuer, or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability, a charge upon its general credit or a pledge of its general revenues. In making the agreements, provisions and covenants set forth in this Loan Agreement, the Issuer has not obligated itself except with respect to the application of the Loan Payments to be paid by the Borrower. No recourse shall be had by the Lender or the Borrower for any claim based on this Loan Agreement or the Tax Compliance Agreement against any board member, officer, employee or agent of the Issuer alleging personal liability on the part of that person, unless the claim is based on the willful dishonesty of or intentional violation of Law by that person.

Section 2.09. Additional Payments. The Borrower will pay to the Issuer, to the Lender or to another party, as appropriate, as “Additional Payments” any amounts incurred by the Lender or the Issuer after the Closing Date in payment of reasonable costs and expenses in connection with the performance or enforcement of the Bond or the Borrower Documents and the financing of the Project, including (a) application, commitment or financing fees, if any; (b) indemnification payments pursuant to **Section 6.03** and **Section 6.07**; (c) all taxes and assessments of any type or character charged to the Issuer or the Lender affecting the amount available to the Issuer from payments to be received hereunder or in any way arising due to the transactions contemplated hereby (including taxes and assessments assessed or levied by any public agency or governmental authority of whatsoever character having power to levy taxes or assessments), but excluding franchise taxes based upon the capital or income of the Issuer or the Lender and taxes based upon or measured by the net income of the Issuer or the Lender; provided that the Borrower shall have the right to protest and contest any such taxes or assessments and to require the Issuer or the Lender, at the Borrower’s expense, to protest and contest any such taxes or assessments levied upon them and that the Borrower shall have the right to withhold payment of any such taxes or assessments pending disposition of any such protest or contest unless that withholding, protest or contest would adversely affect the rights or interests of the Lender or the Issuer; (d) the fees and expenses of any accountants, consultants, attorneys and other experts that may be reasonably engaged by the Issuer or the Lender to prepare audits, financial statements, reports or opinions or to provide such other services reasonably required under this Loan Agreement or the Tax Compliance Agreement, or otherwise in connection with the Loan or the Bond; (e) insurance premiums required to be paid hereunder; (f) any rebate payments payable to the United States or other payments payable pursuant to the Tax Compliance Agreement; (g) all other reasonable, direct and necessary administrative costs of the Lender or the Issuer and other charges required to be paid in order to comply with, or to enforce its rights under, the Bond or the Borrower Documents; (h) any additional funds necessary to pay Project Costs pursuant to **Section 5.03**; and (i) any other payments required to be made by the Borrower under this Loan Agreement or the Tax Compliance Agreement. Such Additional Payments shall be billed to the Borrower by the Lender or the Issuer, as the case may be, from time to time, together with a statement certifying that the amount so

billed has been paid for one or more of the items described, or that it is then payable for those items. Amounts so billed shall be due and payable by the Borrower within 30 days after receipt of the bill by the Borrower.

Section 2.10. Origination Fee. An origination fee of [0.20%] of the Loan Amount shall be due and payable by the Borrower to Lender at the closing of the transactions contemplated by this Loan Agreement. In addition, the Borrower shall pay to the Lender all reasonable legal costs and out of pocket expenses of the Lender, including, without limitation, all attorney fees, appraisal fees, environmental study costs, title insurance, builders risk insurance and other insurance coverages required by or associated with the Loan. Borrower shall pay all third-party costs associated with the closing of the Loan, which may include but shall not be limited to: appraisal, title insurance, title company lien waiver/advance, inspection, attorney document preparation and review, and recording fees.

ARTICLE III CONDITIONS OF LENDING; CONVERSION OF BONDS

Section 3.01. Conditions Precedent to Initial Advance. As conditions precedent to the Initial Advance, Lender shall have received, on or before the day of such Initial Advance, all of the following, dated and in form and substance satisfactory to Lender:

(a) This Loan Agreement, the Bond, the Note, the Issuer's endorsement to the Note, the Deed of Trust, the Disbursement Agreement, the Limited Guaranty Agreement, the Limited Guarantor Documents, and the Tax Compliance Agreement, each properly executed on behalf all parties thereto;

(b) Each document (including UCC financing statements) requested by Lender to be filed, registered or recorded in order to perfect the Liens granted hereunder (to the extent the same may be perfected by filing) in favor of Lender on the Property, in proper form for filing, registration or recording;

(c) A certificate of Borrower's secretary as to: (i) resolutions of its Board of Directors then in full force and effect authorizing the execution, delivery and performance of this Loan Agreement and each other Borrower Document to be executed by Borrower; and (ii) copies of Borrower's articles of incorporation and bylaws and all amendments thereto (with Borrower's articles of incorporation certified by the Nebraska Secretary of State on a date reasonably acceptable to Lender);

(d) A current Certificate of Good Standing for Borrower from the Nebraska Secretary of State;

(e) An opinion of counsel to Borrower in form acceptable to Lender addressing matters reasonably requested by Lender;

(f) A certificate of Limited Guarantor as to: (i) resolutions of its Board of Directors then in full force and effect authorizing the execution, delivery and performance of the Limited Guaranty Agreement and the Limited Guarantor Documents; and (ii) copies of Limited Guarantor's articles of incorporation and bylaws and all amendments thereto (with Limited Guarantor's articles of incorporation certified by the Nebraska Secretary of State on a date reasonably acceptable to Lender);

(g) A current Certificate of Good Standing for Limited Guarantor from the Nebraska Secretary of State;

(h) An opinion of counsel to Limited Guarantor in form acceptable to Lender addressing matters reasonably requested by Lender;

- (i) An approving opinion of Bond Counsel as counsel to the Issuer, in form and substance reasonably satisfactory to Lender;
- (j) An ALTA commitment for a mortgagee's policy of Title Insurance issued to Lender for the full principal amount of the Loan, with any endorsements reasonably required by Lender;
- (k) A boundary survey for the Property, certified to Lender and the title insurer in a form satisfactory to Lender;
- (l) A current appraisal report for the Property, certified to Lender and in form and substance reasonably satisfactory to Lender;
- (m) Certifications in form and substance satisfactory to Lender regarding environmental hazards and contamination related to the Property;
- (n) Evidence (including appropriate insurance certificates and endorsements) that all insurance policies, coverages and riders required pursuant to this Loan Agreement are in effect;
- (o) A true and correct copy of the construction contract to be entered into between Borrower and the Contractor selected by Borrower for the Construction of the Project, in form and substance satisfactory to Lender;
- (p) The Assignment of Construction Contract executed by Borrower and the contractor selected by Borrower for the construction of the Project, in form and substance satisfactory to Lender;
- (q) A true and correct copy of the architecture contract to be entered into between Borrower and the architect selected by Borrower for the Construction of the Project, in form and substance satisfactory to Lender;
- (r) The Assignment of Architecture Contract executed by Borrower and the architect selected by Borrower for the Construction of the Project, in form and substance satisfactory to Lender;
- (s) Payment of the origination fee on the Loan as provided in **Section 2.10**;
- (t) Payment of all reasonable costs and expenses incurred by Lender or the Issuer in preparing this Loan Agreement, the Issuer Documents, the Borrower Documents, the Limited Guarantor Documents, and securing the Loan; and
- (u) Such other documents or certificates of the Borrower as may be reasonably requested by Lender or Bond Counsel.

Section 3.02. Further Condition Precedents to Additional Advances. All additional advances under the Loan shall be subject to the conditions precedent and other terms and conditions of the Construction Advance Rider (attached hereto as **Exhibit G**) and the Disbursement Agreement.

Section 3.03. Further Condition Precedents to All Advances. All advances under the Loan shall be subject to the further condition precedent that on the date of each advance:

- (a) The representations and warranties of Borrower set forth in this Loan Agreement and the other Borrower Documents shall be true and correct in all material respects on and as of the date of such

advance as though made on and as of such date, except to the extent that such representations and warranties relate solely to an earlier date; and

(b) No Event of Default, or any other event which, if it continues uncured, will, with lapse of time or notice or both, constitute an Event of Default, exists under this Loan Agreement or any other Borrower Document.

Section 3.04. Conversion of the Bonds to Tax-Exempt Bonds.

(a) *Conversion Mechanics.* All or a specified portion of the Bonds may be converted to Tax-Exempt Bonds, on January 1, 2022 or any date or dates thereafter, and before the Amortization Commencement Date (the effective date of the conversion, if applicable, referred to herein as a “**Conversion Date**”), upon satisfaction of the following conditions:

(i) The Borrower shall have received confirmation from the Issuer that it is willing to agree to convert all or a portion of the Bonds to Tax-Exempt Bonds. The Borrower shall give written notice of the proposed conversion to the Lender and the Issuer not less than **10** days prior to the proposed Conversion Date. Following receipt of such notice, on any date prior to the Conversion Date, the Lender shall have the right to consent to the designation of any Bonds as Tax-Exempt Bonds. If the Lender does not consent to such designation, the interest rate that would be effective for Tax-Exempt Bonds shall become effective on the date that would be the Conversion Date as described herein, but the required deliverables and related actions set forth in (ii) below shall be modified as described in (ii) below.

(ii) The following documents shall be filed with the Issuer and the Lender on or prior to the Conversion Date:

(A) An opinion of Bond Counsel dated the Conversion Date, to the effect that the interest on the identified portion of the Bonds is excludable from gross income for federal income tax purposes and that such portion of the Bonds are “qualified tax-exempt obligations” pursuant to Section 265(b)(3) of the Code, to be delivered and released on the Conversion Date; provided however, if the Lender does not provide consent as described in (i) above, then Bond Counsel may withhold release of such opinion in connection with the Conversion Date;

(B) A copy of an executed Information Return for Private Activity Bond Issues, Form 8038, complete for filing with the Internal Revenue Service, to be filed with the Internal Revenue Service in connection with the Conversion Date; provided however, if the Lender does not provide consent as described in (i) above, then the Form 8038 will not be filed with the IRS in connection with the Conversion Date;

(C) A tax certificate in form and substance acceptable to Bond Counsel (that will update and supplement the Tax Compliance Agreement) to be executed, delivered and effective in connection with the Conversion Date; provided however, if the Lender does not provide consent as described in (i) above, then the tax certificate will not be executed in connection with the Conversion Date; and

(D) An opinion of counsel to the Borrower regarding the status of the Borrower as a Tax-Exempt Organization in form and substance reasonably

acceptable to Bond Counsel, to be delivered and released on the Conversion Date; provided however, if the Lender does not provide consent as described in (i) above, then such counsel may withhold release of such opinion in connection with the Conversion Date.

(b) *Bond Certificates Upon Conversion.* On the Conversion Date upon satisfaction of the conditions described in (i) and (ii) above, the Lender shall surrender the original Bond to the Trustee for a replacement Bond in substantially the form set forth in **Exhibit C** hereto with reference to the conversion, and the conversion of the Bonds to Tax-Exempt Bonds will be effective on and after the Conversion Date.

(c) *Event of Taxability.* From and after any Determination of Taxability for any Bonds that were previously Tax-Exempt Bonds, the Bonds shall bear interest at the Taxable Rate.

ARTICLE IV REPRESENTATIONS AND WARRANTIES

Section 4.01. Representations and Warranties of Issuer. The Issuer represents, warrants and covenants for the benefit of the Lender and the Borrower, as follows:

(a) The Issuer is a political subdivision duly organized and validly existing under the laws of the State.

(b) The Issuer is authorized to issue the Bond and to enter into this Loan Agreement, the Tax Compliance Agreement, the Issuer's endorsement to the Note and the transactions contemplated hereby and to perform all of its obligations hereunder.

(c) The Issuer has duly authorized the issuance of the Bond and execution and delivery of the Issuer Documents by a resolution adopted by its City Council, and all requirements have been met and procedures have occurred in order to ensure the enforceability of the Bond and the Issuer Documents against the Issuer. The Issuer has taken all necessary action required to make the Bond and the Issuer Documents the valid and binding obligation of the Issuer.

(d) The officers of the Issuer executing the Bond, the Issuer Documents and any related documents have been duly authorized to execute and deliver the Bond, the Issuer Documents and the related documents by a resolution of the members of the City Council of the Issuer, or by other appropriate official action.

(e) The Bond and the Issuer Documents are legal, valid and binding obligations of the Issuer, enforceable in accordance with their respective terms, except to the extent limited by bankruptcy, reorganization or other Laws of general application relating to the enforcement of creditors' rights, the application of equitable principles, and to the limitations on enforcement remedies against public entities in the State.

(f) The Issuer has assigned to the Lender all of the Issuer's rights in this Loan Agreement (except for the right to receive any Additional Payments to the extent payable to the Issuer, any rights of the Issuer to indemnification and rights of notice, inspection and consent) and the Note.

(g) The Issuer has not and will not pledge, mortgage or assign this Loan Agreement, the Note or its duties and obligations hereunder to any person, firm or corporation, except as provided under the terms hereof.

(h) None of the issuance of the Bond or the execution and delivery of the Issuer Documents, the consummation of the transactions contemplated thereby or the fulfillment of or compliance with the terms and conditions of the Bond or the Issuer Documents violates any Law, conflicts with or results in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Issuer is now a party or by which it is bound or constitutes a default under any of the foregoing or results in the creation or imposition of any prohibited Lien upon any of the property or assets of the Issuer under the terms of any instrument or agreement.

(i) There is no action, suit, proceeding, claim, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body pending or, to the best of the Issuer's knowledge, threatened against or affecting the Issuer, challenging the Issuer's authority to issue the Bond and to enter into the Issuer Documents or any other action wherein an unfavorable ruling or finding would adversely affect the enforceability of the Bond, the Issuer Documents or any other transaction of the Issuer which is similar hereto, or the exclusion of the interest on the Bond from gross income for federal income tax purposes under the Code, or would materially and adversely affect any of the transactions contemplated by the Issuer Documents.

(j) No council member, officer or other official of the Issuer has any financial interest whatsoever in the Borrower or in the transactions contemplated by the Issuer Documents.

Section 4.02. Representations and Warranties of the Borrower. The Borrower represents, warrants and covenants for the benefit of the Lender and the Issuer, as follows:

(a) *Organization; Tax-Exempt Status; Authority.* The Borrower (1) is a private nonprofit corporation duly organized and validly existing under the laws of the State of Nebraska not operated for private or corporate profit, (2) is a "nonprofit enterprise" financing the construction of a "project" (each as defined in the Act) pursuant to this Loan Agreement, (3) is a Tax-Exempt Organization, (4) has not declared and has not been determined to have any "unrelated business taxable income" as defined in Section 512 of the Code to an extent which could have a material adverse effect on its status as a Tax-Exempt Organization or which, if such income were subject to federal income taxation, could have a material adverse effect on the condition, financial or otherwise, of the Borrower, (5) has the lawful power and authority to enter into, execute and deliver this Loan Agreement, and to execute and deliver the Note and the other Borrower Documents required to be executed and delivered by it in connection with the issuance of the Bond and to perform its obligations hereunder and thereunder and (6) by all necessary corporate action, has been duly authorized to execute and deliver this Loan Agreement, the Note, the other Borrower Documents and all other documents contemplated hereby and thereby in connection with the issuance of the Bond, acting by and through its duly authorized officers.

(b) *Enforceability.* The Borrower Documents constitute valid and legally binding obligations of the Borrower enforceable against the Borrower in accordance with their respective terms, except to the extent limited by bankruptcy, reorganization or other Laws and equitable principles of general application relating to or effecting the enforcement of creditors' rights.

(c) *Absence of Litigation.* Except as disclosed on **Schedule 4.02(c)** attached hereto, there is no action, suit, proceeding, claim, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body pending or, to the best of the Borrower's knowledge, threatened against or affecting the Borrower, challenging the Borrower's authority to enter into the Borrower Documents or any other action wherein an unfavorable ruling or finding would adversely affect the enforceability of the Borrower Documents or any other transaction of the Borrower which is similar hereto, or the exclusion of the interest on the Bond from gross income for federal tax purposes under the

Code, or would materially and adversely affect any of the transactions contemplated by the Borrower Documents.

(d) *Licenses, Permits and Approvals.* The Borrower is duly authorized and has all necessary licenses and permits to occupy and operate its health care facilities as currently operated under the laws and regulations of the State of Nebraska and the departments, agencies and political subdivisions thereof, and the Borrower has obtained or will obtain all requisite approvals of federal, state and local governmental bodies necessary for the acquisition, construction and equipping of the Project. The authorization, execution, delivery and performance by the Borrower of the Borrower Documents or any other documents that name the Borrower as a party in connection with the Loan do not require submission to, approval of, or other action by any governmental authority or agency, other than any action that has been taken and is final and nonappealable.

(e) *Financial Statements and Other Information.* All financial statements that the Borrower has heretofore furnished to the Lender accurately present the financial condition of the Borrower in all material respects on the dates thereof and the results of its operations and cash flows for the periods then ended and were prepared in accordance with GAAP. Since the date of the most recent financial statements, there has been no material adverse change in the business, properties or condition (financial or otherwise) of the Borrower.

(f) *No Conflicts.* The execution and delivery of the Borrower Documents, the consummation of the transactions contemplated by the Borrower Documents and the fulfillment of the terms and conditions of the Borrower Documents do not and will not violate any Law, conflict with or result in a breach of any of the terms or conditions of the articles of incorporation or bylaws of the Borrower or of any corporate restriction or of any agreement or instrument to which the Borrower is now a party and do not and will not constitute a default under any of the foregoing or result in the creation or imposition of any prohibited Lien upon any of the property or assets of the Borrower contrary to the terms of any instrument or agreement.

(g) *Environmental Laws.* The Facilities are properly zoned for their current and anticipated use and the use of the Facilities will not violate any applicable zoning, land use, environmental or similar Law or restriction. The Borrower has all licenses and permits to acquire, construct or use the Facilities (other than building, occupancy, operating and similar licenses and permits that are not presently obtainable that the Borrower expects will be issued at or before the time that they will be required and has no reason to believe otherwise). The Borrower has obtained all permits, licenses and other authorizations that are required under Laws relating to emissions, discharges, releases of pollutants, contaminants, hazardous or toxic materials, or wastes into ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants or hazardous or toxic materials or wastes ("**Environmental Laws**") at the Facilities or in connection with the operation of the Facilities. The Borrower and all activities of the Borrower at the Facilities comply in all material respects with all Environmental Laws and with all terms and conditions of any required permits, licenses and authorizations applicable to the Borrower with respect thereto. The Borrower is also in compliance in all material respects with all limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in Environmental Laws or contained in any plan, order, decree, judgment or notice of which the Borrower is aware. The Borrower has not received notice of, any events, conditions, circumstances, activities, practices, incidents, actions or plans that may interfere with or prevent continued compliance with, or which may give rise to any liability under, any Environmental Laws.

(h) *Warranty of Title.* The Borrower has good and marketable title to the Facilities, free and clear of all mortgages, liens, security interests, charges and encumbrances except Permitted

Encumbrances, and there exists no mortgage, lien, security interest, charge or encumbrance (including, without limitation, any mechanic's lien or judgment lien) on such Facilities that has or will have a material adverse effect upon the Borrower's operations or the performance of the Borrower's obligations under this Loan Agreement. Pursuant to the Deed of Trust, the Borrower is conveying to the Trustee (as such term is defined in the Deed of Trust) for the benefit of the Lender a valid lien on the Premises (as described in the Deed of Trust), and is granting to the Lender a valid security interest in the Property (as described in the Deed of Trust). The Borrower is lawfully possessed of all such property and is the owner thereof as aforesaid free and clear of all mortgages, liens, security interests, charges or encumbrances whatever except Permitted Encumbrances and the interest of the Trustee (as described in the Deed of Trust) and the Lender under the Deed of Trust. The Borrower has full power and authority to mortgage the Premises and to grant a security interest in the Property.

(i) *Compliance with ERISA.* Borrower shall comply with all applicable requirements of the Employment Retirement Income Security Act of 1974, as amended from time to time ("**ERISA**") with respect to any pension plan or multiemployer pension plan maintained by Borrower, make contributions to all such plans in a timely manner and in an amount sufficient to comply with the requirements of ERISA, notify Lender within 30 days of receipt by Borrower of any notice of the institution of any proceeding or other action which may result in the termination of any plan maintained by Borrower, and to the extent applicable to Borrower, acquire and maintain in amounts satisfactory to Lender from either the Pension Benefit Guaranty Corporation or an authorized private insurer, when available, the contingent employer liability coverage insurance provided for under Section 4023 (or any amendments thereof or successors thereto) of ERISA.

(j) *Solvency.* On date of this Loan Agreement, and immediately prior to and after giving effect to the borrowings under the Loan and the use of the proceeds thereof, Borrower is and will remain Solvent. For purposes of this provision, the term "Solvent" means that: (a) the fair value of Borrower's assets is greater than the amount of its liabilities (including disputed, contingent and unliquidated liabilities) as such value is established and liabilities evaluated in accordance with GAAP; (b) Borrower is able to realize upon its assets and pay its debts and other liabilities (including disputed, contingent and unliquidated liabilities) as they mature in the normal course of business; (c) Borrower does not intend to, and does not believe that it will, incur debts or liabilities beyond its ability to pay as such debts and liabilities mature; and (d) Borrower has reasonably sufficient capital to engage in its current business and in the business in which it intends to engage.

(k) *Compliance With Anti-Terrorism Orders.* Borrower is not an entity or person listed on the Specifically Designated Nationals and Blocked Persons List or other similar lists maintained by the Office of Foreign Assets Control ("**OFAC**"), the Department of Treasury, or other similar lists included in any Executive Orders (any and all parties or persons described in such lists are herein referred to as "**Prohibited Persons**"). Borrower covenants and agrees that Borrower will not: (a) conduct any business, or engage in any transaction or dealing with any Prohibited Person, including, but not limited to, the making or receiving of funds, goods, or services to or for the benefit of a Prohibited Person (provided this provision shall not be construed to prohibit Borrower from providing services to any person to the extent required by applicable law such as the Emergency Medical Treatment and Active Labor Act), or (b) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the foreign asset control regulations of OFAC, any enabling statute or Executive Order relating thereto, or any applicable Bank Secrecy Act law or regulation, as amended. Borrower further covenants and agrees to immediately notify Lender if Borrower has knowledge that it has not fully complied with the representations and covenants made in this **Section 4.02(k)**. Borrower covenants and agrees to deliver from time to time to Lender any such certification or other evidence as may be requested by Lender in its reasonable discretion, confirming that Borrower has fully complied with its representations and covenants made in this paragraph.

(l) *Investment Company Act.* Borrower is not an “investment company” or a company “controlled” by an “investment company” or a “subsidiary” of an “investment company,” within the meaning of the Investment Company Act of 1940, as amended.

(m) *Use of Proceeds; Margin Stock.* The proceeds of the Loan shall be used exclusively to pay Project Costs and no part of the proceeds of the Loan will be used to purchase or carry, or to reduce or retire or refinance any credit incurred to purchase or carry, any margin stock as defined by Federal Reserve regulations or to extend credit to others for the purpose of purchasing or carrying any margin stock.

Section 4.03. Representations and Warranties of Lender. The Lender represents and warrants for the benefit of the Issuer and the Borrower, as follows:

(a) The Lender is duly organized, validly existing and in good standing under the laws of the State of Nebraska, has power to enter into this Loan Agreement and by proper corporate action has duly authorized the execution and delivery of this Loan Agreement.

(b) This Loan Agreement constitutes a valid and legally binding obligation of the Lender, enforceable against the Lender in accordance with its terms, except to the extent limited by bankruptcy, reorganization or other Laws of general application relating to or effecting the enforcement of creditors’ rights.

(c) The execution and delivery of this Loan Agreement by the Lender, the Lender’s consummation of the transactions contemplated hereby and the Lender’s fulfillment of the terms and conditions hereof do not and will not violate any Law applicable to the Lender, conflict with or result in a breach of any of the terms or conditions of the articles of incorporation or bylaws of the Lender or of any corporate restriction or of any agreement or instrument to which the Lender is now a party and do not and will not constitute a default under any of the foregoing or result in the creation or imposition of any prohibited Lien upon any of the property or assets of the Lender contrary to the terms of any instrument or agreement.

(d) There is no action, suit, proceeding, claim, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body pending or, to the best of the Lender’s knowledge, threatened against or affecting the Lender, challenging the Lender’s authority to enter into this Loan Agreement or any other action wherein an unfavorable ruling or finding would adversely affect the enforceability of this Loan Agreement or any other transaction of the Lender that is similar hereto, or the exclusion of the interest on the Bond from gross income for federal tax purposes under the Code, or would materially and adversely affect any of the transactions contemplated by this Loan Agreement.

(e) The Lender has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment in the Bond, and is able to bear the economic risk of that investment. The Lender has made its own inquiry and analysis with respect to the Borrower, the Issuer, this Loan Agreement, the Bond and the Loan Payments and the security therefor, and other material factors affecting the security and payment of the principal or and interest on the Bond and the Loan Payments.

(f) The Lender has either been supplied with or has had access to information, including financial statements and other financial information, to which a reasonable investor would attach significance in making investment decisions, and has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Borrower, the Issuer, this Loan Agreement, the

Bond and the Loan Payments and the security therefor, so that as a reasonable investor, it has been able to make its decision to purchase and invest in the Bond.

(g) The Lender acknowledges that the Bond (1) is not being registered or otherwise qualified for sale under the “Blue Sky” Laws of any state, (2) will not be listed on any stock or other securities exchange and (3) will be issued in a form that may not be readily marketable.

(h) The Lender acknowledges that the Bond has not been registered under the Securities Act of 1933, as amended, and that such registration is not legally required. The Lender represents to the Issuer that it is purchasing the Bond for investment for its own account and not with a present view toward resale or the distribution thereof.

ARTICLE V THE FACILITIES AND THE PROJECT

Section 5.01. Title to the Facilities. Legal title to the Facilities shall be in the Borrower. Except as permitted under the Borrower Documents, the Borrower will at all times protect and defend, at its own cost and expense, its title from and against all Liens of creditors of the Borrower, and keep the Facilities free and clear of all such Liens, subject to Permitted Encumbrances.

Section 5.02. Construction of the Project. The Borrower, utilizing the proceeds of the Bond and such other funds of Borrower as are necessary, will construct, or will cause the Construction of, the Project, and will acquire, equip, construct and install all other facilities and real and personal property necessary for the operation of the Project, substantially in accordance with the Plans and Specifications, including any and all supplements, amendments, additions or deletions thereto or therefrom made in accordance with this Agreement. The Borrower will proceed with due diligence to complete the Construction of the Project within three years from the date hereof. The Borrower agrees to provide any other funds in addition to the proceeds of the Bond and the County Bond needed to complete the Project.

Section 5.03. Payment of Costs of Construction.

(a) The Lender shall advance the purchase price of the Bond to the Borrower for the account of the Issuer to pay Project Costs as provided in this **Section 5.03**.

(b) Upon the Lender’s receipt of a Disbursement Request substantially in the form attached to the Disbursement Agreement, executed by the Borrower, fully completed and with all supporting documents described therein attached thereto, an amount equal to the Project Costs as shown therein shall be disbursed pursuant to the Disbursement Request. The Lender shall keep and maintain a record of the amounts advanced pursuant to each Disbursement Request under the terms of this Loan Agreement as “Principal Amount Advanced” for the Bond and shall enter the aggregate principal amount then outstanding as the “Cumulative Outstanding Principal Amount” for the Bond on its records maintained for the Bond, which records will be made available to the Borrower upon request. The aggregate amount advanced from the proceeds of the Bond shall not exceed the Loan Amount. To the extent any such payment would cause the amount advanced pursuant to this Loan Agreement to exceed the Bond Amount, the Borrower shall be liable for those Project Costs and shall pay those Project Costs. Any such payment by the Borrower shall not be a credit against, and shall not result in any reduction of, any amounts payable under the Bond or the Loan Agreement.

Section 5.04. Establishment of Completion Date; Obligation of the Borrower to Complete. As soon as the Construction of the Project is completed, an authorized representative of the Borrower shall evidence the completion date by providing a Completion Certificate in the form attached hereto as

Exhibit F stating that (a) Construction of the Project has been completed substantially in accordance with the plans and specifications therefor, and all labor, services, materials and supplies used in Construction have been paid for or stating the amount required to be retained to fully provide for any disputed amounts, and (b) all other equipment and facilities for the operation of the Project have been acquired, constructed and installed in accordance with the plans and specifications therefor and all costs and expenses incurred in connection therewith have been paid, subject to reasonable retainage and amounts withheld pending completion of any punchlist items, or provided for or stating the amount required to be retained to fully provide for any disputed amounts. Notwithstanding the foregoing, such certificate may state that it is given without prejudice to any rights of the Borrower against third parties.

Section 5.05. Modification of the Project. Borrower shall not make material modifications of or additions to the Project without the written consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed. In the event that the Borrower desires to modify or add to the Project in a manner that will materially alter the purpose or description of the Project as set forth in **Exhibit A** or decrease the value or useful life of the Project, such modification to the Project shall be undertaken only upon an amendment to **Exhibit A** which shall accurately set forth the description and purpose of the Project as so modified. Such amendment to **Exhibit A** shall become effective only upon receipt by the Lender of:

- (a) a certificate of the authorized representative of the Borrower describing in detail the proposed changes;
- (b) an opinion of Bond Counsel stating to the effect that the proposed changes to the Project will not affect the exclusion of interest on the Bond that are Tax-Exempt Bonds from gross income for federal income tax purposes; and
- (c) a copy of the proposed form of amended or supplemented **Exhibit A**.

Section 5.06. Location of Project. The Borrower will not relocate all or a substantial portion of the equipment or other personal property included in the Project unless it has received the prior written consent of the Issuer and the Lender.

Section 5.07. Use of the Facilities. The Borrower will not use, operate or maintain the Facilities in violation of any applicable Laws or in a manner contrary to that contemplated by this Loan Agreement and the Tax Compliance Agreement.

ARTICLE VI AFFIRMATIVE COVENANTS OF THE BORROWER

The Borrower will comply with the following requirements, unless the Lender shall otherwise consent in writing:

Section 6.01. Reporting Requirements. The Borrower will deliver, or cause to be delivered, to the Lender, and to the Issuer if requested by the Issuer, each of the following, which shall be in form and detail acceptable to the Lender:

- (a) as soon as available, and in any event within 120 days after the end of each fiscal year of the Borrower (or such longer period as is approved by the Lender), (1) audited annual financial statements of the Borrower, which annual financial statements shall include the balance sheet of the Borrower as of the end of such fiscal year and the related statements of operations, changes in net assets and cash flows of the Borrower for the fiscal year then ended, all in reasonable detail and prepared in accordance with

GAAP applied on a basis consistent with the accounting practices applied in the financial statements referred to in **Section 4.02(e)**;

(b) as soon as available, and in any event within 45 days after the end of each fiscal quarter of the Borrower (or such longer period as is approved by the Lender), interim financial statements for the preceding fiscal quarter, consisting of a statement of operations; and

(c) as promptly as practicable (but in any event not later than seven days) after an officer of the Borrower obtains knowledge of the occurrence of any event that constitutes a Default, notice of that occurrence, together with a detailed statement by the chief financial officer or chief executive officer of the Borrower of the steps being taken by the Borrower to cure the effect of the Default.

Section 6.02. Books and Records; Inspection and Examination. The Borrower will keep accurate books of record and account for itself pertaining to the Project and pertaining to the Borrower's business and financial condition and such other matters as the Lender or the Issuer may from time to time request in which true and complete entries will be made in accordance with GAAP consistently applied and, upon request of the Lender or the Issuer, will permit any officer, employee, attorney or accountant for the Lender or the Issuer to audit, review, make extracts from, or copy any and all corporate, tax, and financial books, records and properties of the Borrower at all times during ordinary business hours, and to discuss the affairs of the Borrower with any of its directors, officers, employees or agents.

Section 6.03. Compliance with Laws; Environmental Indemnity. The Borrower will (a) comply with the requirements of applicable Laws, the noncompliance with which would materially and adversely affect its business or its financial condition, (b) comply with all applicable Environmental Laws and obtain any permits, licenses or similar approvals required by Environmental Laws and (c) use and keep its properties, and require that others use and keep its properties, only for lawful purposes, without violation of any Law. The Borrower shall secure all permits and licenses, if any, necessary for the acquisition, construction and operation of its properties. The Borrower will comply in all respects with all Laws of the jurisdictions in which its operations involving any component of its properties may extend and of any legislative, executive, administrative or judicial body exercising any power or jurisdiction over its properties or its interest or rights under this Loan Agreement. The Borrower will indemnify, defend and hold the Lender and the Issuer and their members, agents, officers, council members, and attorneys harmless from and against any claims, loss or damage to which any of them may be subjected as a result of any past, present or future existence, use, handling, storage, transportation or disposal of any hazardous waste or substance or toxic substance by the Borrower or on property owned, leased or controlled by the Borrower. The indemnification obligations of the Borrower under this **Section 6.03** shall survive the termination of this Loan Agreement.

Section 6.04. Payment of Taxes and Other Claims. The Borrower will pay or discharge, when due, (a) all taxes, assessments and governmental charges levied or imposed upon it or upon its income or profits, upon any properties belonging to it prior to the date on which penalties attach thereto, (b) all federal, state and local taxes required to be withheld by it, and (c) all lawful claims for labor, materials and supplies which, if unpaid, might by law become a Lien upon any properties of the Borrower; provided that the Borrower shall not be required to pay any tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings unless the contest (taking into account any applicable reserves or surety) would adversely affect the rights or interests of the Issuer or the Lender. The Borrower will pay, as the same respectively come due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Facilities, as well as all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Facilities.

Section 6.05. Maintenance of Properties. The Borrower will, at its own expense, maintain, preserve and keep its properties in good repair, working order and condition, and will from time to time make all repairs and replacements necessary to keep its properties in such condition, ordinary wear and tear excepted.

Section 6.06. Insurance.

(a) The Borrower will, at its own expense, procure and maintain continuously in effect: (1) public liability and professional malpractice insurance for personal injuries, death or damage to or loss of property arising out of or in any way relating to facilities or operations, with coverage limits of not less than \$1,000,000 per occurrence and not to exceed \$3,000,000 in the aggregate, or, if a different coverage is required by the Lender, the coverage minimum required by the Lender, (2) all risks property insurance regarding its facilities in an amount equal to the completed insurable value of the Project which names Lender as an additional loss payee, and (3) at all times during Construction, builders risk insurance in an amount equal to not less than 100% of the completed insurable value of the Project. All such policies of insurance shall be maintained at the sole cost and expense of Borrower, must be issued by companies reasonably approved by Lender, and must be reasonably acceptable to Lender as with an AM Best rating for insurer financial size and strength, amounts, forms, risk coverages, deductibles, expiration dates, and cancellation provisions substantially similar or more advantageous to the insured. In addition, each required policy must contain such endorsements as Lender may require and must provide that all proceeds be payable to Lender to the extent of its interest. All co-insurance provisions must be waived. All coverages under clause (1) above shall name the Lender as an additional insured to the extent of its interests.

(b) If required by State law, the Borrower will carry workers' compensation insurance covering all employees on, in, near or about the Facilities, and upon request, will furnish to the Lender certificates evidencing that coverage.

(c) All insurance policies required by this **Section 6.06** shall be obtained from and maintained with insurance companies acceptable to the Lender, shall contain a provision that the insurer shall not cancel or make any material adverse change to coverage thereunder without giving written notice to the insured parties at least 30 days before the cancellation or revision becomes effective, be satisfactory in form, substance, limits, deductibles and retentions to the Lender, and name Lender as mortgagee, lender loss payee or additional insured as applicable on such policies. No insurance required by this **Section 6.06** shall be subject to any self-insurance or co-insurance clause except as approved in writing by the Lender and all deductibles shall be acceptable to the Lender. Prior to the Closing Date, the Borrower will deposit with the Lender evidence satisfactory to the Lender of the insurance required by this **Section 6.06** and, prior to the expiration thereof, will provide the Lender evidence of all renewals or replacements thereof.

(d) Notwithstanding the foregoing, the Borrower may insure the foregoing risks through a self-insurance or alternative risk management program if approved in writing by the Lender.

Section 6.07. Indemnity. As among the Lender, the Borrower and the Issuer (but not as between the Borrower and any other Person), the Borrower assumes all risks and liabilities from any cause whatsoever other than the gross negligence or willful misconduct of the Lender or the Issuer, whether or not covered by insurance, for loss or damage to the Facilities and for injury to or death of any person or damage to any property, whether the injury or death be with respect to agents or employees of the Borrower or of third parties, and whether the property damage be to the Borrower's property or the property of others. Whether or not covered by insurance, as among the Lender, the Borrower and the Issuer (but not as between the Borrower and any other Person), the Borrower hereby assumes

responsibility for and agrees to reimburse the Lender and the Issuer for and will indemnify, defend and hold harmless the Lender and the Issuer and their members, agents, officers, council members, and attorneys, at the Borrower's expense from and against all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorneys' fees) of whatsoever kind and nature other than the gross negligence or willful misconduct of the Lender or the Issuer, imposed on, incurred by or asserted against any of them that in any way relate to or arise out of this Loan Agreement, the transactions contemplated hereby and the Facilities, including (a) the design or Construction of the Project or the ownership of the Facilities, (b) the lease, occupancy, possession, condition, maintenance, use or operation of, work done in or about, or latent and other defects in the Project, (c) the condition of the Project sold or otherwise disposed of after possession by the Borrower, (d) any patent or copyright infringement by the Borrower, (e) the conduct of the Borrower, its officers, employees and agents, (f) a breach by the Borrower of any of its covenants or obligations under any Borrower Document, (g) any claim, loss, cost or expense involving alleged damage to the environment relating to the Project, including investigation, removal, cleanup and remedial costs, (h) any untrue statement or alleged untrue statement of any material fact or omission or alleged omission to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading in connection with the Borrower Documents or the transactions contemplated thereby, or (i) any violation by the Borrower of any environmental law, rule or regulation or the release of any hazardous or toxic substance on or near the Project, (j) any act of negligence of the Borrower, its officers, agents, contractors, servants, employees, licensees or invitees in connection with the Project or the Borrower Documents, and (k) the recovery of claims under insurance policies on the Facilities. All amounts payable by the Borrower shall be paid immediately upon demand of the Issuer or the Lender regardless of whether any dispute related to those amounts has been resolved. This **Section 6.07** shall survive the termination of this Loan Agreement.

Section 6.08. Preservation of Existence. The Borrower will preserve and maintain its existence as a Nebraska nonprofit corporation and all of its rights, privileges and franchises necessary or desirable in the normal conduct of its business, and shall conduct its business in an orderly, efficient and regular manner.

Section 6.09. Performance by Lender. If the Borrower at any time fails to perform or observe any of the covenants or agreements contained in the Borrower Documents, and if the failure continues for ten days after the Lender gives the Borrower written notice thereof (or in the case of the agreements contained in **Section 6.05** and **Section 6.06**, immediately upon the occurrence of the failure, without notice or lapse of time), the Lender may, but need not, perform or observe such covenant or agreement on behalf and in the name, place and stead of the Borrower (or, at the Lender's option, in the Lender's name) and may, but need not, take any and all other actions that the Lender may reasonably deem necessary to cure or correct the failure (including the payment of taxes, the satisfaction of security interests, Liens, the performance of obligations owed to account debtors or other obligors, the procurement and maintenance of insurance, the execution of assignments, security agreements and financing statements, and the endorsement of instruments); and the Borrower shall thereupon pay to the Lender on demand the amount of all money expended and all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by the Lender in connection with or as a result of the performance or observance of those covenants or agreements or the taking of the action by the Lender, together with interest thereon from the date expended or incurred at the greater of the Default Rate. To facilitate the performance or observance by the Lender of the covenants or agreements of the Borrower, the Borrower hereby irrevocably appoints the Lender, or the delegate of the Lender, acting alone, as the attorney in fact of the Borrower with the right (but not the duty) from time to time to create, prepare, complete, execute, deliver, endorse or file in the name and on behalf of the Borrower any and all instruments, documents, assignments, security agreements, financing statements, applications for insurance and other agreements

and writings required to be obtained, executed, delivered or endorsed by the Borrower under the Borrower Documents.

Section 6.10. Limitations of Liability. In no event, whether as a result of breach of contract, warranty, tort (including negligence or strict liability), indemnity or otherwise, shall the Lender, its assignees, if any, or the Issuer be liable for any special, consequential, incidental, punitive or penal damages including loss of profit or revenue, loss of use of the Project or any associated equipment, service materials or software, damage to associated equipment, service materials or software, cost of capital, cost of substitute equipment, service materials or software, facilities, services or replacement power or down time costs.

Section 6.11. Debt Service Coverage Ratio. Beginning with the fiscal year during which Occupancy Stabilization has been achieved (which shall not be later than the fiscal year ending December 31, 2025), Borrower shall maintain a Debt Service Coverage Ratio as of the end of each fiscal year based on the audited financial statements of the Borrower of at least 1.25. Failure to achieve a Debt Service Coverage Ratio of at least 1.25 shall not constitute default under this Loan Agreement if the Borrower shall have (a) achieved a Debt Service Coverage Ratio of at least 1.00 and (b) is in compliance with the Days Cash on Hand requirement in Section 6.12 hereof.

Section 6.12. Days' Cash on Hand. The Borrower shall maintain, as of the end of each fiscal year based on the audited financial statements of the Borrower, at least 30 Days' Cash on Hand for the first fiscal year during which Occupancy Stabilization has been achieved (which shall not be later than the fiscal year ending December 31, 2025); at least 45 Days' Cash on Hand for the second fiscal year of such substantial operation (which shall not be later than the fiscal year ending December 31, 2026); and at least 60 Days' Cash on Hand for each fiscal year thereafter.

Section 6.13. Limitation on Incurrence of Additional Indebtedness. The Borrower shall not incur any additional indebtedness in the amount of \$1,500,000 or more in the aggregate outstanding at any time without the Lender's prior written consent. This restriction shall not include indebtedness related to the issuance of the Bond, the County Bond, (including obligations issued to refinance the Bond), the [Subordinate Loan Instrument] (including obligations issued to refinance the [Subordinate Loan Instrument]) or the transactions contemplated by this Loan Agreement.

ARTICLE VII NEGATIVE COVENANTS OF THE BORROWER

The Borrower will comply with the following requirements, unless the Lender shall otherwise consent in writing:

Section 7.01. Liens. The Borrower will not, directly or indirectly, create, incur, assume or suffer to exist any Lien on or with respect to the Facilities other than Permitted Encumbrances. The Borrower will promptly, at its own expense, take any action that may be necessary to discharge or remove any Lien not permitted by this **Section 7.01**. The Borrower will reimburse the Lender for any reasonable expenses incurred by the Lender to discharge or remove any Lien.

Section 7.02. Sale of Assets. The Borrower will not sell, lease, assign, transfer or otherwise dispose of all or a substantial part of its assets or of any of the Project or any interest therein (whether in one transaction or in a series of transactions) without the prior written consent of the Lender, except for: (a) dispositions of inventory in the ordinary course of business, (b) dispositions of obsolete, surplus or worn out property in the ordinary course of business, and (c) dispositions of investments in the ordinary course of business at fair market value.

Section 7.03. Consolidation and Merger. The Borrower will not consolidate with or merge into any Person, or permit any other Person to merge into it, or acquire (in a transaction analogous in purpose or effect to a consolidation or merger) all or substantially all the assets of any other Person, without the written consent of the Lender.

Section 7.04. Accounting. The Borrower will not adopt, permit or consent to any material change in accounting principles other than as required by GAAP.

Section 7.05. Transfers. The Borrower will not in any manner transfer any property without prior or present receipt of full and adequate consideration.

Section 7.06. Other Defaults. The Borrower will not permit any material breach, default or event of default to occur under any bond, note, loan agreement, indenture, lease, mortgage, contract for deed, security agreement or other contractual obligation binding upon the Borrower or any judgment, decree, order or determination applicable to the Borrower.

Section 7.07. Other Indebtedness. There are no restrictions on Borrower incurring any other Indebtedness.

Section 7.08. Loans, Investments and Guaranties. Other than restrictions attributable to the status of the Borrower as a 501(c)(3) organization, there are no restrictions on Borrower lending or advancing money, credit or property to any Person, or investing in (by capital contribution or otherwise), or acquiring any interest whatsoever in, all or a substantial part of the assets or properties, of any Person, or guaranteeing, assuming, endorsing or otherwise becoming responsible for (directly or indirectly or by an instrument having the effect of assuring any other Person's payment or performance or capability) the Indebtedness, performance, or obligations of any Person, or agreeing to do any of the foregoing.

Section 7.09. Governing Documents. The Borrower will not amend its articles of incorporation or bylaws in a manner that would adversely affect Lender's rights or remedies under any of the Borrower Documents, or liquidate, dissolve or otherwise alter the form of Borrower.

Section 7.10. Tax-Exempt Status of Tax-Exempt Bonds. The Borrower will not take, or fail to take, any action which action or failure will cause the interest on the Tax-Exempt Bonds to become includable in the gross income for federal income tax purposes of the Lender so long as any portion of the Tax-Exempt Bond remains outstanding.

(a) It is the intention of the parties hereto that interest on the Tax-Exempt Bond shall be and remain excludable from the gross income for federal income tax purposes of the Lender as the holder of the Tax-Exempt Bond, and to that end the covenants and agreements of the Borrower in this Section are for the benefit of the Lender as of the holder of the Tax-Exempt Bond.

(b) In the event of the occurrence of a Determination of Taxability, the rate of interest payable on the unpaid principal balance of the Tax-Exempt Bond, commencing as of the date of the occurrence of a Taxability Event, shall be the Taxable Rate and if the Taxability Event occurs prior to the Amortization Commencement Date each subsequent regularly scheduled installment of interest due prior to the Amortization Commencement Date shall be at the Taxable Rate and if the Taxability Event occurs on or after the Amortization Commencement Date the monthly payments of principal and interest on a Tax-Exempt Bond shall be re-amortized using the Taxable Rate.

(c) If upon the occurrence of a Determination of Taxability, it is determined that any interest payments paid or accrued to the Lender as the holder of the Tax-Exempt Bond prior to the date of such

Determination of Taxability are includable in Lender's gross income for federal income tax purposes, the Borrower shall pay to the Lender for the account of the Issuer, at Borrower's expense and subject to the indemnity provisions of this Loan Agreement, and the Borrower shall furnish to the Lender for the account of the Issuer the following amounts:

(1) from the date of the Taxability Event to the date of the occurrence of the Determination of Taxability, an amount equal to the difference between (A) the interest that would have been payable had such interest payments been calculated at the Taxable Rate and (B) the actual amount of such interest payments, plus

(2) the amount of penalties, additions to tax, exclusive of any taxes imposed under Section 11 (or any successor provision) of the Code, and interest assessed against the Lender on account of the inclusion of such interest payments in the Lender's gross income for federal income tax purposes ("**Additions to Tax**") that are deductible by the Lender for federal income tax purposes, plus

(3) an amount, which after the deduction of all federal, state or local taxes required to be paid by the Lender in respect of the receipt thereof (calculated at the maximum statutory rates applicable to the Lender) minus any tax benefit derived therefrom, shall be equal to the amount of any Additions to Tax that are not deductible by the Lender for federal income tax purposes.

(d) The obligations of the Borrower under this Section shall survive the termination of this Loan Agreement, payment of the Note, prepayment of the Tax-Exempt Bond, or any purchase of the Tax-Exempt Bond by or on behalf of the Borrower, notwithstanding anything to the contrary in this Loan Agreement.

(e) If the Borrower shall have made any payments to the Lender by reason of paragraph (c) above and if the Lender shall successfully claim for the taxable year in question that all or any part of the interest on the Tax-Exempt Bond for such taxable year is excluded from the Lender's gross income for federal income tax purposes (for this purpose a claim shall be successful only upon expiration of the statute of limitations provided by Section 6501 or any successor provision of the Code with respect to such taxable year), then the Lender shall pay to the Borrower for the account of the Issuer, but only from such funds as the Lender previously received from the Borrower, plus interest received from the government on the claim allowed, subject to reasonable expenses of the Lender which expenses shall be at Borrower's expense and subject to the indemnity provisions of this Loan Agreement, the lesser of an amount equal to such payment under paragraph (c) above with respect to such taxable year in question made by the Borrower, or the amount of the claim allowed, plus interest recovered by the Lender on the claim allowed.

(f) The Lender agrees to provide the Issuer and the Borrower with such information as may be necessary to verify the calculations under this **Section 7.10**.

(g) A Determination of Taxability shall not, by itself, result in a Default or Event of Default, but shall result in the Borrower's obligation to pay the Taxable Rate as provided herein.

ARTICLE VIII DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS

Section 8.01. Damage, Destruction and Condemnation; Use of Net Proceeds. The Borrower will provide a complete written report to the Lender immediately upon any loss, theft, damage,

destruction or taking under condemnation or under the threat of condemnation of the Facilities or any portion thereof (the “**Damaged Portion**”) to the extent that any of the foregoing is valued more than \$500,000 per event. If all or any portion of the Facilities in an amount in excess of \$500,000 is so lost, stolen, destroyed, damaged or taken, the Borrower will as soon as practicable either (a) repair, restore, reconstruct, replace or improve the Facilities at the Borrower’s sole cost and expense to the same or an improved condition and value and to accomplish at least the same function as existed immediately before the loss, theft, damage, destruction or taking or (b) if such damaged, destroyed or condemned portion of the Facilities was financed with proceeds of the Bonds, pay the Prepayment Amount for the Loan attributable to the reasonable value of the property damaged, destroyed or condemned. If, within 45 days of the loss occurrence, (x) the Borrower fails to notify the Lender; (y) the Borrower and the Lender fail to execute an amendment to this Loan Agreement to the extent necessary to delete the Damaged Portion and add the replacement property to the description of the Facilities or (z) if the Facilities are not restored and the Borrower fails to pay the Prepayment Amount, then the Lender may, at its sole discretion, declare the Prepayment Amount attributable to the reasonable value of the property damaged, destroyed or condemned to be immediately due and payable, and the Borrower is required to pay the same. Provided that no Event of Default has occurred that remains uncured, the Net Proceeds of insurance or any taking shall be made available by the Lender to be applied to discharge the Borrower’s obligation under this **Article VIII**, and after so applied any excess shall be paid directly to the Borrower. If any such damage, destruction or condemnation relates to a portion of the Facilities in excess of \$500,000, and the Borrower elects to repair, restore, reconstruct, replace or improve the Facilities and if the Borrower or the Lender so requests by a notice in writing to the other parties to this Loan Agreement, the Net Proceeds shall be deposited with the Lender in escrow pending disbursement for that purpose under an escrow agreement. If the Net Proceeds are insufficient to discharge the Borrower’s obligations under this **Article VIII**, the Borrower shall use its own funds to discharge its obligations under this **Article VIII**.

ARTICLE IX ASSIGNMENT, LEASING AND SELLING

Section 9.01. Registration of Bond; Transfer and Assignment by Lender.

(a) The Issuer shall act as bond registrar for the registration and transfer of the Bond, and as such shall keep the Bond register to evidence the registration, transfer and exchange of the Bond at its principal office. The Bond register may be kept in any form that maintains a record of the registered owner of the Bond and the registered owner’s address, including copies of the Bond, assignments thereof or notices of assignments thereof.

(b) The Bond may be transferred, but only upon the Bond register and only if (1) the Lender has submitted to the Issuer the Bond accompanied by an assignment in substantially the form attached to the Bond duly executed by the Lender or the Lender’s attorney or legal representative; which assignment shall disclose the name, address and tax identification number of the assignee; (2) the Borrower shall consent to such assignment, and (3) the assignee is a bank or a qualified institutional buyer as defined in Rule 144A promulgated by the Securities and Exchange Commission and the Lender has obtained and provided to the Issuer and the Borrower, prior to such transfer and assignment, an investor’s letter in the form of **Exhibit E**. Upon any transfer meeting the requirements of this **Section 9.01**, the Issuer shall execute and deliver in exchange for the Bond a new Bond, registered in the name of the transferee, of the same series, of the same outstanding principal amount, maturing in the same amount at the same time and bearing interest at the same rate.

Section 9.02. No Sale, Lease or Assignment by Borrower. Neither this Loan Agreement nor the Project or any part thereof may be sold, leased, assigned or encumbered by the Borrower without the prior written consent of the Lender and the Issuer and an opinion of Bond Counsel that is obtained and

provided to the Issuer and the Lender in a form acceptable to the Issuer and the Lender to the effect that the exclusion of the interest on the Bond from gross income for federal income tax purposes will not be affected by such action.

ARTICLE X EVENTS OF DEFAULT AND REMEDIES

Section 10.01. Events of Default. The following constitute “Events of Default” under this Loan Agreement:

(a) failure by the Borrower to pay to the Lender, as assignee of the Issuer, any Loan Payment when due;

(b) failure by the Borrower or the Issuer to comply with or to perform any other covenant, condition or agreement contained in this Loan Agreement or any other Issuer Document or Borrower Document on its part to be observed or performed (and not constituting an Event of Default under any other provision of this **Section 10.01**) and which is not cured within 30 days after written notice is given to the Borrower or the Issuer, as the case may be, specifying such failure and requesting that it be remedied; provided that, if the failure stated in such notice cannot reasonably be corrected within such 30-day period, the Lender will not unreasonably withhold its consent to an extension of such time, not to exceed a period of 60 days (or such other period as may be reasonably agreed to by the Borrower and Lender), if corrective action is instituted by the Borrower or the Issuer, as the case may be, within the applicable period and diligently pursued until the default is corrected;

(c) initiation by the Issuer of a proceeding under any federal or state bankruptcy or insolvency law seeking relief under such laws concerning the indebtedness of the Issuer;

(d) the Borrower shall be or become insolvent, or admit in writing its inability to pay its debts as they mature, or make a general assignment for the benefit of creditors; or the Borrower shall apply for or consent to the appointment of any receiver, trustee or similar officer for it or for all or any substantial part of its property; or such receiver, trustee or similar officer shall be appointed without the application or consent of the Borrower; or the Borrower shall institute (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction; or any such proceeding shall be instituted (by petition, application or otherwise) against the Borrower; or any judgment, writ, warrant of attachment or execution or similar process shall be issued or levied against a substantial part of the property of the Borrower and any of the foregoing shall not be dismissed, stayed or bonded within ninety (90) days after the occurrence thereof; or

(e) any representation or warranty made by the Borrower or the Issuer in any Issuer Document or Borrower Document was untrue in any material respect when made.

Section 10.02. Remedies on Default. Whenever any Event of Default has occurred and is continuing, the Lender, as assignee of the Issuer, shall have the right, at its sole option without any further demand or notice (except as required by applicable Laws), to take any one or any combination of the following remedial steps:

(a) by notice to the Issuer and the Borrower, declare the entire unpaid principal amounts of the Bond and the Loan then outstanding, all interest accrued and unpaid thereon and all amounts payable under this Loan Agreement to be forthwith due and payable, whereupon the same shall become and be

forthwith due and payable, without presentment, notice of dishonor, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower and the Issuer;

(b) exercise any remedy available under any other Borrower Document;

(c) proceed by appropriate court action to enforce specific performance by the Issuer or the Borrower of the applicable covenants of this Loan Agreement or to recover for the breach thereof, including the payment of all amounts due from the Borrower. The Borrower shall pay or repay to the Lender or the Issuer all costs of such action or court action, including reasonable attorneys' fees; and

(d) take whatever action at law or in equity may appear necessary or desirable to enforce its rights with respect to the Project or under the Borrower Documents. The Borrower shall pay or repay to the Lender or the Issuer all costs of that action, including reasonable attorneys' fees and expenses.

All proceeds from the exercise of remedies shall be applied in the following manner:

FIRST, to pay all reasonable costs and expenses associated with the exercise of any remedies, including reasonable attorneys' fees and expenses;

SECOND, to pay (1) the Lender the amount of all unpaid Loan Payments, if any, that are then due and owing, together with interest and late charges thereon and (2) the Lender the then applicable Prepayment Amount (taking into account the payment of past due Loan Payments as provided); and

THIRD, to pay the remainder of the proceeds to the Borrower.

Notwithstanding any other remedy exercised hereunder, the Borrower shall remain obligated to pay to the Lender any unpaid portion of the Prepayment Amount.

Section 10.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Lender or the Issuer is intended to be exclusive and every remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any right or power or shall be construed to be a waiver thereof, but any right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Lender or the Issuer to exercise any remedy reserved to it in this **Article X**, it shall not be necessary to give any notice other than any notice required by this **Article X**. All remedies herein conferred upon or reserved to the Lender or the Issuer shall survive the termination of this Loan Agreement.

ARTICLE XI MISCELLANEOUS

Section 11.01. Disclaimer of Warranties. THE LENDER AND THE ISSUER MAKE NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR FITNESS FOR USE OF THE PROJECT, OR ANY OTHER WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT THERETO. IN NO EVENT SHALL THE LENDER OR THE ISSUER BE LIABLE FOR ANY LOSS OR DAMAGE IN CONNECTION WITH OR ARISING OUT OF THIS LOAN AGREEMENT, THE PROJECT OR THE EXISTENCE, FURNISHING, FUNCTIONING OR THE BORROWER'S USE OF ANY ITEM OR PRODUCTS OR SERVICES PROVIDED FOR IN THIS LOAN AGREEMENT.

Section 11.02. Tax Compliance Agreement. The Issuer, the Borrower and the Lender will each comply fully at all times with the Tax Compliance Agreement, and neither the Issuer, the Borrower nor the Lender will take any action, or omit to take any action, which, if taken or omitted, respectively, would violate the Tax Compliance Agreement.

Section 11.03. Notices. All notices, certificates, requests, demands and other communications provided for hereunder or under the Tax Compliance Agreement shall be in writing and shall be either: (a) personally delivered, (b) sent by first-class United States mail, postage prepaid, (c) sent by overnight courier of national reputation, or (d) transmitted by facsimile, in each case addressed to the party to whom notice is being given at its address as set forth below and, if sent by facsimile, transmitted to that party at its facsimile number set forth below or, as to each party, at any other address or facsimile number hereafter designated by that party in a written notice to the other parties complying as to delivery with this **Section 11.03:**

Borrower:	Tabitha Grand Island, Inc. Attn: Brian P. Shanks, Chief Financial Officer 4720 Randolph St. Lincoln, Nebraska 68510 Telephone: (402) 486-8520
with copies to:	Cline Williams Wright Johnson & Oldfather, L.L.P. Attn: John C. Miles, Esq. 233 South 13th Street 1900 US Bank Bldg. Lincoln, Nebraska 68508 Telephone: (402) 479-7176
Issuer:	City of Grand Island, in the State of Nebraska c/o Gilmore & Bell, P.C. 450 Regency Parkway Drive, Suite 320 Omaha, Nebraska 68114 Telephone: (402) 991-9450
Lender:	Pinnacle Bank Attn: Bart Qualsett, Market President 106 E. 3 rd Street, P.O. Box 789 Grand Island, Nebraska 68802 Telephone: (308) 675-4605
with a copy to:	Walentine O'Toole, LLP Attn: Michael Kivett, Attorney 106 E. 3 rd Street, P.O. Box 789 Grand Island, Nebraska 68802 Telephone: (402) 505-8565

All such notices, requests, demands and other communications shall be deemed to have been given on (1) the date received if personally delivered, (2) three (3) Business Days after the date when deposited in the mail if delivered by mail, (3) one (1) Business Day after the date sent if sent by overnight courier, or (4) the date of transmission if delivered by facsimile.

Section 11.04. Further Assurance and Corrective Instruments. The Issuer, the Borrower and the Lender will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any further acts, instruments, conveyances, transfers and assurances that the others reasonably deem necessary or advisable for the implementation, correction, confirmation, recording, filing or perfection of the Issuer Documents or the Borrower Documents, as applicable, and any rights under the Issuer Documents or the Borrower Documents, as applicable. The Lender shall pay all reasonable expenses of the Issuer and the Borrower, including reasonable attorneys' fees and expenses, in connection with any implementation, correction, confirmation or perfection of the Issuer Documents or the Borrower Documents requested by the Lender.

Section 11.05. Binding Effect; Time of the Essence. This Loan Agreement shall inure to the benefit of and shall be binding upon the Lender, the Issuer, the Borrower and their respective successors and assigns. Time is of the essence.

Section 11.06. Severability. In the event any provision of this Loan Agreement is held invalid or unenforceable by any court of competent jurisdiction, that holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.07. Amendments. To the extent permitted by law, the terms of this Loan Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written instrument signed by the parties hereto, and then any waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.

Section 11.08. Non-Waiver. Waiver of or acquiescence by Lender in any default by Borrower, or failure of Lender to insist upon strict performance by Borrower of any warranties, agreements or other obligations contained in this Loan Agreement or any other Borrower Document shall not constitute a waiver of any subsequent or other default, failure or waiver of strict performance, whether similar or dissimilar.

Section 11.09. Costs of Enforcement. In the event that Lender shall retain or engage an attorney or attorneys to collect or enforce or protect its interests with respect to this Loan Agreement or any other Borrower Document, including the representation of Lender in connection with any bankruptcy, reorganization, receivership or any other action affecting creditor's rights, and regardless of whether a suit or action is commenced, Borrower shall pay all of the costs and expenses of such collection, enforcement or protection, including reasonable attorneys costs, and Lender may take judgment for all such amounts.

Section 11.10. Reinstatement of Obligations. If at any time any payments on the Loan or any other indebtedness or liabilities owed to Lender theretofore made by Borrower must be disgorged by Lender for any reason whatsoever (including, without limitation, the insolvency, bankruptcy or reorganization of Borrower), this Loan Agreement and all other Borrower Documents shall be reinstated as to all disgorged payments as though such payment had not been made, and Borrower shall sign and deliver to Lender all documents and things necessary to reperfect any terminated Borrower Documents or Liens thereunder.

Section 11.11. Execution in Counterparts; Electronic Copies. This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument, and any of the parties hereto may execute this Loan Agreement by signing any counterpart. The transactions described herein may be conducted and this Loan Agreement, the Borrower Documents, Limited Guarantor Documents and all other documents related to this Loan Agreement may be sent, received and stored by electronic means, and may be executed by electronic transmission. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents (or

documents executed by electronic transmission) shall be deemed to be authentic and valid counterparts of such documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law. This Agreement shall supersede all previous agreements relating to the same subject matter between the parties.

Section 11.12. Term of Loan Agreement. This Loan Agreement shall be effective as of the date shown on the cover page and shall continue in force and effect until the principal of and interest on the Bond are fully paid together with all sums payable by the Borrower under the Borrower Documents.

Section 11.13. Applicable Law. This Loan Agreement shall be governed by and construed in accordance with the laws of the State.

Section 11.14. Entire Loan Agreement. This Loan Agreement, the Issuer Documents, the Borrower Documents, and the exhibits hereto and thereto constitute the entire agreement among the Lender, the Issuer and the Borrower with respect to the subject matter hereof.

Section 11.15. Waiver of Jury Trial. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE LENDER AND THE BORROWER, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY, INTENTIONALLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED UPON OR ARISING OUT OF THIS LOAN AGREEMENT OR ANY OTHER BORROWER DOCUMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS LOAN AGREEMENT OR ANY COURSE OF CONDUCT, DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF EITHER OF THEM, RELATED THERETO. NEITHER THE LENDER NOR THE BORROWER SHALL SEEK TO CONSOLIDATE, BY COUNTERCLAIM OR OTHERWISE (UNLESS SUCH CLAIM IS A COMPULSORY CLAIM, MEANING IT WOULD BE LOST OR OTHERWISE IMPAIRED IF NOT BROUGHT IN SUCH ACTION), ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY EITHER THE LENDER OR THE BORROWER EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY THE LENDER AND THE BORROWER. THIS PROVISION IS A MATERIAL INDUCEMENT TO PROVIDE THE FINANCING GOVERNED BY THIS LOAN AGREEMENT.

Section 11.16. Credit Agreement in Writing. A CREDIT AGREEMENT MUST BE IN WRITING TO BE ENFORCEABLE UNDER NEBRASKA LAW. TO PROTECT YOU AND US FROM ANY MISUNDERSTANDINGS OR DISAPPOINTMENTS, ANY CONTRACT, PROMISE, UNDERTAKING OR OFFER TO FOREBEAR REPAYMENT OF MONEY OR TO MAKE ANY OTHER FINANCIAL ACCOMMODATION IN CONNECTION WITH THIS LOAN OF MONEY OR GRANT OR EXTENSION OF CREDIT, OR ANY AMENDMENT OF, CANCELLATION OF, WAIVER OF, OR SUBSTITUTION FOR ANY OR ALL OF THE TERMS OR PROVISIONS OF ANY INSTRUMENT OR DOCUMENT EXECUTED IN CONNECTION WITH THIS LOAN OF MONEY OR GRANT OR EXTENSION OF CREDIT, MUST BE IN WRITING TO BE EFFECTIVE.

IN WITNESS WHEREOF, the parties hereto have executed this Loan Agreement in their respective names by their duly authorized officers, all as of the date first written above.

Lender:

PINNACLE BANK

By: _____
Market President

Loan Agreement - Lender
City of Grand Island, Nebraska – Revenue Bond
(Tabitha Grand Island Project), Series 2021B

S-1

Issuer:

**CITY OF GRAND ISLAND, IN THE STATE OF
NEBRASKA**

By: _____
Mayor

Loan Agreement - Issuer
City of Grand Island, Nebraska – Revenue Bond
(Tabitha Grand Island Project), Series 2021B

S-2

Borrower:

TABITHA GRAND ISLAND, INC., a Nebraska
Nonprofit Corporation

By: _____
Chief Financial Officer

Loan Agreement - Borrower
City of Grand Island, Nebraska –Revenue Bond
(Tabitha Grand Island Project), Series 2021B

S-3

EXHIBIT A TO LOAN AGREEMENT

THE PROJECT

A. Project Description.

The Project includes a new senior living campus (expected to consist of 157 units providing a 200,000 square foot, full-continuum of senior housing and services) and associated site improvements.

The 157 units consist of:

- 81 independent living apartments;
- An assisted living center consisting of 20 assisted living units and 20 memory care units;
- A 36-bed nursing facility; and
- Various common and administrative areas including a town center, bike path, resident gardens and covered parking.

B. Project Location.

The Project is at the west end of the Prairie Commons, Grand Island, Nebraska.

**EXHIBIT B TO LOAN AGREEMENT
FORM OF BOND – TAXABLE**

THIS BOND MAY BE TRANSFERRED ONLY IN THE MANNER AND ON THE TERMS AND CONDITIONS AND SUBJECT TO THE RESTRICTIONS STATED IN SECTION 9.01 OF THE LOAN AGREEMENT (AS DEFINED IN THE BOND).

This Bond, the interest thereon and any other payments or costs incident thereto do not constitute an indebtedness of the Issuer, the State of Nebraska, or any political subdivision of the State, and neither the State nor any such political subdivision of the State shall be liable thereon, nor in any event shall the Bond be payable out of any funds or properties other than those held under and pursuant to this Indenture and pledged therefor. The Issuer's taxing power is not pledged for payment of the Bond.

No. R-1

\$ _____

**CITY OF GRAND ISLAND, IN THE STATE OF NEBRASKA
REVENUE BOND
(TABITHA GRAND ISLAND PROJECT)
SERIES 2021B**

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Issue Date</u>
As described herein	_____, 2031	_____, 2021
REGISTERED OWNER:	PINNACLE BANK	
PRINCIPAL AMOUNT:	NOT TO EXCEED THIRTEEN MILLION NINE HUNDRED FIFTY THOUSAND DOLLARS	

CITY OF GRAND ISLAND, IN THE STATE OF NEBRASKA (“Issuer”), a political subdivision organized and existing under the laws of the State of Nebraska, for value received, hereby promises to pay to the Registered Owner named above or its registered permitted assigns, but only from the sources and other funds hereinafter described in lawful money of the United States of America, on the Maturity Date stated above (or earlier as hereinafter referred to), in monthly installments on the dates herein specified, the lesser of (i) the principal sum of \$[13,950,000], or (ii) the aggregate principal amounts advanced by the Registered Owner from time to time under the hereinafter-described Loan Agreement (as each such term is defined herein or is defined by this reference to the Loan Agreement), together with interest on the unpaid principal balance from time to time outstanding, computed on a three hundred sixty (360) day year, actual days elapsed, as follows:

(a) Prior to the Maturity Date, or an Event of Default, the unpaid principal balance of this Bond shall bear interest at the Taxable Rate. The **“Taxable Rate”** means, from the Closing Date through and including the Re-pricing Date, a fixed rate of 3.45% per annum. After the Re-pricing Date, the Taxable Rate shall be the then-current weekly average of the 3-Year Constant Maturity US Treasury Rate, plus a margin of 2.75%, with a floor 3.25%. Initially, the Bond shall bear interest at the Taxable Rate. The **“Re-pricing Date”** is the seventh (7th) anniversary of the Closing Date.

B-1

(b) Commencing on _____, 20__, and continuing on the first day of each calendar month thereafter until the Amortization Commencement Date (as hereinafter defined), interest on the unpaid principal balance of this Bond shall be due and payable.

(c) Commencing on _____, 20__ (the “**Amortization Commencement Date**”), and continuing on the [first] day of each calendar month thereafter, level monthly installments of principal and interest in the amount necessary to amortize the outstanding principal balance of this Bond based on a [333 month] amortization commencing on the Amortization Commencement Date shall be due and payable. A final installment representing the entire unpaid principal balance of this Bond, and all accrued and unpaid interest thereon and all fees and charges in connection therewith, shall be due and payable on the Maturity Date.

(d) If any installment of principal and/or interest provided herein becomes due and payable on a date other than a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest due on this Bond.

(e) Certain other amounts, including without limitation a late charge as described in the Loan Agreement, may from time to time be payable by the Borrower directly to the Registered Owner as provided in the Loan Agreement.

(f) Such payments shall be further subject to, and governed by, the terms and conditions of the Loan Agreement (as defined below).

Notwithstanding anything herein to the contrary, in the event of an Event of Default (assuming any applicable cure period provided for in the Loan Agreement has expired) or after maturity, interest on the unpaid principal balance of this Bond shall accrue at the Default Rate, commencing on the date of occurrence of the Event of Default or maturity, as applicable.

This Bond is the duly authorized Bond of the Issuer designated “City of Grand Island, in the State of Nebraska, Revenue Bond (Tabitha Grand Island Project), Series 2021B” issued under and pursuant to (a) Sections 13-1101 through 13-1110, inclusive, Reissue Revised Statutes of Nebraska, as amended, and (b) a Loan Agreement, dated as of May 1, 2021 (the “**Loan Agreement**”), among the Issuer, Tabitha Grand Island, Inc., a nonprofit corporation duly organized and validly existing under the laws of the State of Nebraska (the “**Borrower**”), and Pinnacle Bank, a state chartered bank duly organized and existing under the laws of the State of Nebraska, and its permitted successors and assigns (the “**Lender**”). The terms of the Loan Agreement are hereby incorporated by reference and capitalized terms used herein and not specifically defined herein shall have the meaning ascribed to them in the Loan Agreement. This Bond is issued for the purpose of making a loan (the “**Loan**”) to the Borrower, to (a) pay, together with other available funds of the Borrower, the cost of the Construction (as defined in the Loan Agreement) of the Project (as defined in the Loan Agreement), and (b) the costs of issuing this Bond.

The Loan Agreement prescribes the terms and conditions under which the Borrower shall repay the Loan and pursuant to which the Borrower will execute and deliver to the Issuer its promissory note (the “**Note**”) in the principal amount equal to the aggregate principal amount of this Bond in order to evidence such repayment obligation. The Loan Agreement and other Borrower Documents create a lien on and a security interest in the Project as security for the Note and this Bond. The Issuer has pledged and assigned the repayments of the Loan and the Note to the Lender to secure payment of the principal of and the interest on this Bond.

This Bond is issued under and entitled to the security of the Loan Agreement pursuant to which the Note and all rights of the Issuer under the Loan Agreement, except the rights to payment for expenses, indemnity rights and the rights to perform certain discretionary acts specifically reserved to the Issuer therein, are pledged and assigned by the Issuer to the Registered Owner as security for this Bond. Reference is made to the Loan Agreement and to all amendments thereto and to the other Borrower Documents for a description of the nature and extent of the security, the rights, duties and obligations of the Issuer and the Registered Owner, and any subsequent registered owners of the Bond, and the terms on which the Bond are or may be issued and secured, and to all the provisions of which the Registered Owner hereof by the acceptance of this Bond assents.

THIS BOND IS A LIMITED OBLIGATION OF THE ISSUER, PAYABLE SOLELY FROM AMOUNTS PAYABLE BY THE BORROWER PURSUANT TO THE LOAN AGREEMENT. THIS BOND IS NOT A LIEN OR CHARGE UPON THE FUNDS OR PROPERTY OF THE ISSUER, EXCEPT TO THE EXTENT OF THE AFOREMENTIONED PLEDGE AND ASSIGNMENT. THIS BOND SHALL NOT CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE ISSUER OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER. NONE OF THE ISSUER, THE STATE OF NEBRASKA, OR ANY OTHER POLITICAL SUBDIVISION OR AGENCY THEREOF, INCLUDING ANY MEMBER OF THE ISSUER, SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF THIS BOND, OR THE INTEREST THEREON, EXCEPT FROM THE LOAN REPAYMENTS MADE BY THE BORROWER. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF NEBRASKA, THE ISSUER, OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THIS BOND, NOR IS THE STATE OF NEBRASKA, THE ISSUER, OR ANY POLITICAL SUBDIVISION THEREOF IN ANY MANNER OBLIGATED TO MAKE ANY APPROPRIATION FOR PAYMENT.

This Bond is a fully registered Bond issued without option of conversion into a bond or bonds of any other form of denomination except upon transfer as stated below. This Bond may be transferred only in the manner and on the terms and conditions and subject to the restrictions stated in **Section 9.01** of the Loan Agreement.

No recourse shall be had for the payment of the principal of or interest on this Bond, or for any claim based hereon or on the Loan Agreement against any member, officer, employee or agent past, present or future, of the Issuer or of any successor body as such, either, directly or through the Issuer under any constitutional provision, statute or rule of law, by the enforcement of any assessment, or by any legal or equitable proceeding or otherwise. Neither the board, officers, employees or agents of the Issuer nor any person executing this Bond shall be liable personally on this Bond or be subject to any personal liability or accountability by reason of the issuance thereof.

It is hereby certified that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by the Constitution and laws of the State of Nebraska.

IN WITNESS WHEREOF, the City of Grand Island, in the State of Nebraska has caused this Bond to be executed in its name and on its behalf by the manual signature of the Mayor or other officer of the Issuer and attested by the manual signature of its Clerk, all as of the Issue Date set forth above.

CITY OF GRAND ISLAND, IN THE STATE OF NEBRASKA

ATTEST:

By _____
Mayor

By: _____
Clerk

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[FORM OF ASSIGNMENT]

THIS BOND MAY BE TRANSFERRED ONLY IN THE MANNER AND ON THE TERMS AND CONDITIONS AND SUBJECT TO THE RESTRICTIONS STATED IN SECTION 9.01 OF THE LOAN AGREEMENT (AS DEFINED IN THIS BOND).

For value received, the undersigned hereby sells, assigns and transfers unto

(please print or type name, address and tax identification number of transferee)

the within Bond and all rights thereunder, and does hereby irrevocably constitute and appoint

attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____ Signed: _____

In the presence of: _____.

Notice: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever. When assignment is made by a guardian, trustee, executor or administrator, an officer of a corporation, or anyone in a representative capacity, proof of his authority to act must accompany this Bond.

Signature Guaranteed:

**EXHIBIT C TO LOAN AGREEMENT
FORM OF BOND – TAX-EXEMPT**

THIS BOND MAY BE TRANSFERRED ONLY IN THE MANNER AND ON THE TERMS AND CONDITIONS AND SUBJECT TO THE RESTRICTIONS STATED IN SECTION 9.01 OF THE LOAN AGREEMENT (AS DEFINED IN THE BOND).

This Bond, the interest thereon and any other payments or costs incident thereto do not constitute an indebtedness of the Issuer, the State of Nebraska, or any political subdivision of the State, and neither the State nor any such political subdivision of the State shall be liable thereon, nor in any event shall the Bond be payable out of any funds or properties other than those held under and pursuant to this Indenture and pledged therefor. The Issuer's taxing power is not pledged for payment of the Bond.

No. R-1

\$ _____

**CITY OF GRAND ISLAND, IN THE STATE OF NEBRASKA
REVENUE BOND
(TABITHA GRAND ISLAND PROJECT)
SERIES 2021B**

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Issue Date</u>
As described herein	_____, 2031	_____, 20__

REGISTERED OWNER: PINNACLE BANK

PRINCIPAL AMOUNT: NOT TO EXCEED _____

CITY OF GRAND ISLAND, IN THE STATE OF NEBRASKA (“Issuer”), a political subdivision organized and existing under the laws of the State of Nebraska, for value received, hereby promises to pay to the Registered Owner named above or its registered permitted assigns, but only from the sources and other funds hereinafter described in lawful money of the United States of America, on the Maturity Date stated above (or earlier as hereinafter referred to), in monthly installments on the dates herein specified, the lesser of (i) the principal sum of \$_____, or (ii) the aggregate principal amounts advanced by the Registered Owner from time to time under the hereinafter-described Loan Agreement (as each such term is defined herein or is defined by this reference to the Loan Agreement), together with interest on the unpaid principal balance from time to time outstanding, computed on the basis of a 360-day year and actual days elapsed, as follows:

(a) Prior to the Maturity Date, a Determination of Taxability or an Event of Default, the unpaid principal balance of this Bond shall bear interest at the Tax-Exempt Rate. The **“Tax-Exempt Rate”** means, from the Closing Date through and including the Re-pricing Date, a fixed rate of 2.93% per annum. After the Re-pricing Date, the Tax-Exempt Rate shall be the then-current weekly average of the 3-Year Constant Maturity US Treasury Rate, plus a margin of 2.25%, with a floor of 2.75%. The **“Re-pricing Date”** is the seventh (7th) anniversary of the Closing Date.

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(b) Commencing on _____, 20__, and continuing on the first day of each calendar month thereafter until the Amortization Commencement Date (as hereinafter defined), interest on the unpaid principal balance of this Bond shall be due and payable.

(c) Commencing on _____, 20__ (the “**Amortization Commencement Date**”), and continuing on the [first] day of each calendar month thereafter, level monthly installments of principal and interest in the amount necessary to amortize the outstanding principal balance of this Bond based on a [333 month] amortization shall be due and payable. A final installment representing the entire unpaid principal balance of this Bond, and all accrued and unpaid interest thereon and all fees and charges in connection therewith, shall be due and payable on the Maturity Date.

(d) If any installment of principal and/or interest provided herein becomes due and payable on a date other than a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest due on this Bond.

(e) Certain other amounts, including without limitation a late charge as described in the Loan Agreement, may from time to time be payable by the Borrower directly to the Registered Owner as provided in the Loan Agreement.

(f) Such payments shall be further subject to, and governed by, the terms and conditions of the Loan Agreement (as defined below).

Notwithstanding anything herein to the contrary, in the event of (a) a Determination of Taxability, interest on the unpaid principal balance of this Bond shall accrue at the Taxable Rate, commencing on the date of occurrence of the Determination of Taxability, and (b) an Event of Default (assuming any applicable cure period provided for in the Loan Agreement has expired) or after maturity, interest on the unpaid principal balance of this Bond shall accrue at the Default Rate, commencing on the date of occurrence of the Event of Default or maturity, as applicable.

This Bond is the duly authorized Bond of the Issuer designated “City of Grand Island, in the State of Nebraska, Revenue Bond (Tabitha Grand Island Project), Series 2021B” issued under and pursuant to (a) Sections 13-1101 through 13-1110, inclusive, Reissue Revised Statutes of Nebraska, as amended, and (b) a Loan Agreement, dated as of May 1, 2021 (the “**Loan Agreement**”), among the Issuer, Tabitha Grand Island, Inc., a nonprofit corporation duly organized and validly existing under the laws of the State of Nebraska (the “**Borrower**”), and Pinnacle Bank, a state chartered bank duly organized and existing under the laws of the State of Nebraska, and its permitted successors and assigns (the “**Lender**”). The terms of the Loan Agreement are hereby incorporated by reference and capitalized terms used herein and not specifically defined herein shall have the meaning ascribed to them in the Loan Agreement. This Bond is issued for the purpose of making a loan (the “**Loan**”) to the Borrower, to (a) pay, together with other available funds of the Borrower, the cost of the Construction (as defined in the Loan Agreement) of the Project (as defined in the Loan Agreement), and (b) the costs of issuing this Bond.

The Loan Agreement prescribes the terms and conditions under which the Borrower shall repay the Loan and pursuant to which the Borrower will execute and deliver to the Issuer its promissory note (the “**Note**”) in the principal amount equal to the aggregate principal amount of this Bond in order to evidence such repayment obligation. The Loan Agreement and other Borrower Documents create a lien on and a security interest in the Project as security for the Note and this Bond. The Issuer has pledged and assigned the repayments of the Loan and the Note to the Lender to secure payment of the principal of and the interest on this Bond.

This Bond is issued under and entitled to the security of the Loan Agreement pursuant to which the Note and all rights of the Issuer under the Loan Agreement, except the rights to payment for expenses, indemnity rights and the rights to perform certain discretionary acts specifically reserved to the Issuer therein, are pledged and assigned by the Issuer to the Registered Owner as security for this Bond. Reference is made to the Loan Agreement and to all amendments thereto and to the other Borrower Documents for a description of the nature and extent of the security, the rights, duties and obligations of the Issuer and the Registered Owner, and any subsequent registered owners of the Bond, and the terms on which the Bond are or may be issued and secured, and to all the provisions of which the Registered Owner hereof by the acceptance of this Bond assents.

THIS BOND IS A LIMITED OBLIGATION OF THE ISSUER, PAYABLE SOLELY FROM AMOUNTS PAYABLE BY THE BORROWER PURSUANT TO THE LOAN AGREEMENT. THIS BOND IS NOT A LIEN OR CHARGE UPON THE FUNDS OR PROPERTY OF THE ISSUER, EXCEPT TO THE EXTENT OF THE AFOREMENTIONED PLEDGE AND ASSIGNMENT. THIS BOND SHALL NOT CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE ISSUER OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER. NONE OF THE ISSUER, THE STATE OF NEBRASKA, OR ANY OTHER POLITICAL SUBDIVISION OR AGENCY THEREOF, INCLUDING ANY MEMBER OF THE ISSUER, SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF THIS BOND, OR THE INTEREST THEREON, EXCEPT FROM THE LOAN REPAYMENTS MADE BY THE BORROWER. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF NEBRASKA, THE ISSUER, OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THIS BOND, NOR IS THE STATE OF NEBRASKA, THE ISSUER, OR ANY POLITICAL SUBDIVISION THEREOF IN ANY MANNER OBLIGATED TO MAKE ANY APPROPRIATION FOR PAYMENT.

This Bond is a fully registered Bond issued without option of conversion into a bond or bonds of any other form of denomination except upon transfer as stated below. This Bond may be transferred only in the manner and on the terms and conditions and subject to the restrictions stated in **Section 9.01** of the Loan Agreement.

No recourse shall be had for the payment of the principal of or interest on this Bond, or for any claim based hereon or on the Loan Agreement against any member, officer, employee or agent past, present or future, of the Issuer or of any successor body as such, either, directly or through the Issuer under any constitutional provision, statute or rule of law, by the enforcement of any assessment, or by any legal or equitable proceeding or otherwise. Neither the board, officers, employees or agents of the Issuer nor any person executing this Bond shall be liable personally on this Bond or be subject to any personal liability or accountability by reason of the issuance thereof.

It is hereby certified that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond have existed, have happened and have been performed in due time, form and manner as required by the Constitution and laws of the State of Nebraska.

IN WITNESS WHEREOF, the City of Grand Island, in the State of Nebraska has caused this Bond to be executed in its name and on its behalf by the manual signature of the Mayor or other officer of the Issuer and attested by the manual signature of its Clerk, all as of the Issue Date set forth above.

CITY OF GRAND ISLAND, IN THE STATE OF NEBRASKA

ATTEST:

By _____
Mayor

By: _____
Clerk

[FORM OF ASSIGNMENT]

THIS BOND MAY BE TRANSFERRED ONLY IN THE MANNER AND ON THE TERMS AND CONDITIONS AND SUBJECT TO THE RESTRICTIONS STATED IN SECTION 9.01 OF THE LOAN AGREEMENT (AS DEFINED IN THIS BOND).

For value received, the undersigned hereby sells, assigns and transfers unto

(please print or type name, address and tax identification number of transferee)

the within Bond and all rights thereunder, and does hereby irrevocably constitute and appoint

attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

Signed: _____

In the presence of: _____.

Notice: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever. When assignment is made by a guardian, trustee, executor or administrator, an officer of a corporation, or anyone in a representative capacity, proof of his authority to act must accompany this Bond.

Signature Guaranteed:

**EXHIBIT D TO LOAN AGREEMENT
FORM OF NOTE**

PROMISSORY NOTE

U.S. Not to Exceed \$[13,950,000] _____, 2021

FOR VALUE RECEIVED, TABITHA GRAND ISLAND, INC., a Nebraska nonprofit corporation (the “**Borrower**”), hereby unconditionally promises to pay to the CITY OF GRAND ISLAND, IN THE STATE OF NEBRASKA, a political subdivision organized and existing under the laws of the State of Nebraska (the “**Issuer**”), in lawful money of the United States of America and in immediately available funds, the lesser of (i) the principal sum of not to exceed \$[13,950,000], or (ii) the aggregate principal amounts advanced by Lender from time to time under the hereinafter-described Loan Agreement (as each such term is defined herein or is defined by this reference to the Loan Agreement) and to pay interest on the unpaid principal amount hereof, in like money, at such office at the rates and in the amounts hereinafter specified and as specified in Article II of that certain Loan Agreement (the “**Loan Agreement**”), dated as of May 1, 2021, among the Issuer, the Borrower and Pinnacle Bank, a state chartered bank duly organized and existing under the laws of the State of Nebraska (the “**Lender**”), as the registered owner of the Issuer’s not to exceed \$[13,950,000] aggregate principal amount Revenue Bond (Tabitha Grand Island Project), Series 2021B (the “**Bond**”).

This Note has been executed and delivered by the Borrower to the Issuer pursuant to the Loan Agreement. Under the Loan Agreement, the Issuer will loan to the Borrower the proceeds received from the sale of the Bond to assist in the financing and refinancing of the Project, as defined in the Loan Agreement, and the Borrower has agreed to repay such loan by making payments of principal, premium, if any, and interest (“**Loan Payments**”) at the times and in the amounts set forth in this Note for application to the payment of the principal of, premium, if any, and interest on the Bond as and when due, or as otherwise provided in the Loan Agreement. The Bond has been issued, concurrently with the execution and delivery of this Note, pursuant to, and is secured by, and as provided in, the Loan Agreement. The Bond matures on _____, 2031.

Capitalized terms used herein and not specifically defined herein shall have the meaning ascribed to them in the Loan Agreement.

Concurrently with the execution and delivery of this Note by the Borrower to the Issuer, the Issuer is endorsing this Note to the Lender and is assigning and pledging to the Lender all of the Loan Payments pursuant to the terms of the Loan Agreement. Such assignment is made as security for the payment of the Bond.

To provide funds to pay the principal of, premium, if any, and interest on the Bond as and when due as above specified, the Borrower hereby agrees to and shall make Loan Payments in amounts identical to the amounts due on the Bond.

If any installment of principal and/or interest provided herein becomes due and payable on a date other than a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest due on this Note.

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Certain other amounts, including without limitation a late charge as described in the Loan Agreement, may from time to time be payable by the Borrower directly to the Lender as provided in the Loan Agreement.

Loan Payments shall be further subject to, and governed by, the terms and conditions of the Loan Agreement.

Notwithstanding anything herein to the contrary, in the event of (a) a Determination of Taxability, interest on the unpaid principal balance of this Note shall be at the Taxable Rate, commencing on the date of occurrence of a Determination of Taxability, and (b) an Event of Default (assuming any applicable cure period provided for in the Loan Agreement has expired) or after maturity, interest on the unpaid principal balance of this Note shall be at the Default Rate, commencing on the date of occurrence of the Event of Default or maturity, as applicable.

Installments of principal, premium, if any, and interest required hereunder shall be made by the Borrower directly to the Lender for the account of the Issuer, in lawful money of the United States of America in immediately available funds at the office of the Lender in Omaha, Nebraska. Notwithstanding any other provision of this Note to the contrary, all installments of principal and interest hereunder shall at all times be sufficient to pay the installments of principal and interest required on the Bond.

The payments by the Borrower to the Lender shall be deemed made by the Borrower on account of this Note and receipt of such payments by the Lender shall be deemed satisfaction of the payment obligations of the Issuer under the Bond.

Time is of the essence with respect to the terms of this Note.

This Note is the Note referred to in the Loan Agreement, and is entitled to the benefits, and is subject to the provisions of the Loan Agreement and such provisions are deemed incorporated herein by this reference thereto. Advances under this Note shall be made in accordance with the Loan Agreement. This Note may be prepaid and is subject to prepayment as specified in the Loan Agreement, and all of the terms, conditions and provisions of the Loan Agreement are by this reference incorporated herein and made a part of this Note. Payment of this Note is secured by the Borrower Documents and as otherwise provided in the Loan Agreement.

In case of an Event of Default (assuming any applicable cure period provided for in the Loan Agreement has expired), the principal of and interest on this Note may be declared immediately due and payable as provided in the Loan Agreement, along with attorneys' fees and costs of collection, and without relief from valuation or appraisal laws. Upon such Event of Default, interest hereon shall be at the Default Rate.

The Borrower and all endorsers, guarantors, liquidity providers, sureties, accommodation parties and all other parties liable or becoming liable for all or any part of the indebtedness evidenced hereby, severally waive presentment, demand, notice, notice of dishonor, protest, notice of protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note, and assent to the addition or release of any other party or person primarily or secondarily liable under this Note.

Upon payment in full of this Note, the Lender shall mark hereon "Paid in Full" and return this Note to the Borrower. When this Note shall be paid in full, the Bond shall be deemed paid in full.

THE BORROWER, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, KNOWINGLY, VOLUNTARILY, INTENTIONALLY, IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED UPON OR ARISING OUT OF THIS NOTE OR ANY OTHER BORROWER DOCUMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS NOTE OR ANY COURSE OF CONDUCT, DEALING, STATEMENTS, WHETHER ORAL OR WRITTEN, OR ACTIONS OF THE BORROWER OR LENDER RELATED THERETO. THE BORROWER SHALL NOT SEEK TO CONSOLIDATE, BY COUNTERCLAIM OR OTHERWISE (UNLESS SUCH CLAIM IS A COMPULSORY CLAIM, MEANING IT WOULD BE LOST OR OTHERWISE IMPAIRED IF NOT BROUGHT IN SUCH ACTION), ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY LENDER EXCEPT BY WRITTEN INSTRUMENT EXECUTED BY BOTH THE BORROWER AND THE LENDER. THIS PROVISION IS A MATERIAL INDUCEMENT TO PROVIDE THE FINANCING EVIDENCED BY THIS NOTE.

This Note shall be governed by the laws of the State of Nebraska.

IN WITNESS WHEREOF, the Borrower has caused this Note to be executed and delivered by its duly authorized representative as of the date first written above.

TABITHA GRAND ISLAND, INC., a Nebraska
Nonprofit Corporation

By: _____
Title: Chief Financial Officer

ENDORSEMENT

Pay, without recourse, to the order of the Pinnacle Bank, as the registered owner and holder of the Bond issued under and pursuant to the Loan Agreement dated as of the date first written above, from the undersigned.

**CITY OF GRAND ISLAND, IN THE STATE
OF NEBRASKA**

By: _____
Title: Mayor

ACCEPTANCE OF ASSIGNMENT

The above assignment is hereby accepted by Pinnacle Bank, and Pinnacle Bank hereby agrees to the terms thereof.

PINNACLE BANK

By: _____
Title: Authorized Officer

**EXHIBIT E TO LOAN AGREEMENT
FORM OF INVESTOR'S LETTER OF REPRESENTATION**

_____, 2021

City of Grand Island, in the State of Nebraska
Grand Island, Nebraska

Tabitha Grand Island, Inc.
Grand Island, Nebraska

Re: Not to exceed \$[13,950,000] City of Grand Island, in the State of Nebraska, Revenue
Bond (Tabitha Grand Island Project), Series 2021B, dated _____, 2021

Ladies and Gentlemen:

The undersigned, Pinnacle Bank, as purchaser (the “**Purchaser**”) of the above-referenced bond (the “**Bond**”) issued by the City of Grand Island, in the State of Nebraska (the “**Issuer**”) pursuant to and on the terms set forth in the Loan Agreement, dated as of May 1, 2021 (the “**Loan Agreement**”) among the Purchaser, the Issuer and Tabitha Grand Island, Inc. (the “**Borrower**”), hereby represents to you that:

1. Capitalized terms used herein and not otherwise defined are used with the meanings given such terms in the Loan Agreement.

2. The Purchaser has duly authorized, by all necessary action, the purchase of the Bond and the right to receive the payments of principal of and interest on the Bond pursuant to the terms and provisions of the Loan Agreement (the “**Issuer Payments**”).

3. The Purchaser is a bank or a qualified institutional buyer as defined in Rule 144A under the Securities Act of 1933, as amended (the “**Securities Act**”). The Purchaser has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other obligations bearing tax-exempt interest, to be able to evaluate the risks and merits of the investment represented by the Bond, the Issuer Payments, the Loan Payments and the Loan Agreement. The Purchaser is able to bear the economic risks of that investment, including a complete loss of such investment.

4. The Purchaser understands that the obligations of the Issuer to make the Issuer Payments under the Loan Agreement and the Bond are special, limited revenue obligations payable solely from amounts paid to the Issuer from the Borrower pursuant to the terms of the Loan Agreement and that notwithstanding anything to the contrary contained in the Loan Agreement, the Issuer is not obligated to make the Issuer Payments, or pay any portion of the Project Costs (including costs of issuing the Bond) or make any other payment or advance any money or be liable for any other costs or expenses in connection with the Project, the Bond, the Issuer Payments, the Loan Payments or the Loan Agreement, except from proceeds of the Bond and the amounts paid to the Issuer from the Borrower pursuant to the Loan Agreement, and no such payment shall constitute a charge against the general credit of the Issuer. The Purchaser further understands that the Issuer is not directly, indirectly, contingently or morally obligated to use any other money or assets of the Issuer to pay the Issuer Payments or any portion of the Project Costs (including costs of issuing the Bond) or for all or any portion of those other costs or expenses.

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5. The Purchaser acknowledges that it have either been supplied with or has been given access to information, including financial statements and other financial information, which it has asked for and the Purchaser has had the opportunity to ask questions and receive answers from appropriate officers of the Borrower concerning the Borrower, the Bond, the Issuer Payments, the Loan Payments, the Loan Agreement and the security therefor, so that the Purchaser has been able to evaluate the risks and merits of purchasing the Bond and make its decision to purchase the Bond on the terms set forth in the Loan Agreement. The Purchaser acknowledges that it has not relied upon the Issuer for any information in connection with its purchase of the Bond under the terms of the Loan Agreement, except as set forth in **Section 4.01** of the Loan Agreement.

6. The Purchaser made its own inquiry and analysis with respect to the Loan Agreement, the Bond, the Issuer Payments, the Loan Payments and the security therefor, and other factors affecting the security and payment of such payments set forth in the Loan Agreement. The Purchaser is aware that the business of the Borrower involves certain economic variables and risks that could adversely affect the security for the payments to be made by the Issuer to the Purchaser under the terms of the Loan Agreement and the Bond. The Purchaser has examined the legal documents relating to the Bond and the Loan Agreement, including the proposed legal opinions to be delivered by the Borrower's counsel and Gilmore & Bell, P.C., as Bond Counsel.

7. The Purchaser understands that the Bond (including the right to receive the Issuer Payments and Loan Payments under the terms of the Loan Agreement) (a) is not being registered or otherwise qualified for sale under the securities laws and regulations of any state, (b) will not be listed on any securities exchange, (c) does not and will not carry a credit rating from any credit rating service and (d) will be delivered in a form which may not be readily marketable.

8. The Purchaser understands that the Bond (including the right to the Issuer Payments and Loan Payments under the terms of the Loan Agreement) has not been registered under the Securities Act in reliance upon certain exemptions from registration. The Purchaser represents to you that it is purchasing the Bond for investment for its own account and not with a view toward resale or the distribution thereof, in that it does not now intend to resell or otherwise dispose of the Bond or any part of its interest in the Bond. The Purchaser agrees not to sell, transfer or otherwise dispose of the Bond or all or any part of its interest in the Bond or the Loan Agreement unless such transfer is permitted under the Loan Agreement and the transferee executes a letter of representation in substantially the form of this letter and such sale, transfer or other disposition is in compliance with applicable securities laws.

9. The Purchaser agrees to indemnify and hold harmless the Issuer with respect to any claim asserted against the Issuer that is based upon the Purchaser's sale, transfer or other disposition of the Bond or all or any part of the Purchaser's interests in the Bond or the Loan Agreement in violation of the provisions hereof or of the Loan Agreement, other than any claim that is based upon the gross negligence or willful misconduct of the Issuer.

10. The Purchaser has executed and delivered this letter in connection with issuance of the Bond and the execution and delivery of the Loan Agreement as an inducement to the Issuer to cause the issuance of the Bond and the execution and delivery of the Loan Agreement to the Purchaser.

Only the addressees hereof may rely upon this letter.

PINNACLE BANK

By: _____
Authorized Officer

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**EXHIBIT F TO LOAN AGREEMENT
FORM OF COMPLETION CERTIFICATE**

Issuer: City of Grand Island, in the State of Nebraska
Lender: Pinnacle Bank
Borrower: Tabitha Grand Island, Inc.

Pinnacle Bank
Grand Island, Nebraska

Ladies and Gentlemen:

Pursuant to **Section 5.04** of the Loan Agreement, the undersigned hereby certifies (a) all terms in this certificate are used with the meanings used in the Loan Agreement, (b) the Project was substantially completed on _____, 20__, (c) all other facilities reasonably necessary in connection with the Project have been acquired, constructed, equipped and installed, (d) the Project and such other facilities have been acquired, constructed, equipped and installed in substantial accordance with the plans and specifications for the Project and in material conformance with all applicable zoning, planning, building, environmental and other similar governmental regulations, and (e) all Project Costs have been paid subject to any retainage. This certificate is given based on the certifications(s) of the contractor and/or project architect attached hereto, and are without prejudice to any rights of the Borrower that then exist or may subsequently come into being against third parties.

TABITHA GRAND ISLAND, INC.

By: _____
Title: _____
Date: _____

**EXHIBIT G TO LOAN AGREEMENT
CONSTRUCTION ADVANCE RIDER**

CONSTRUCTION ADVANCE RIDER

This Construction Advance Rider (“**Rider**”) is attached to and made a part of (A) the Loan Agreement dated as of May 1, 2021, between The County of Hall, in the State of Nebraska (the “**County**”), Tabitha Grand Island, Inc., a Nebraska nonprofit corporation (the “**Borrower**”), and Pinnacle Bank, a Nebraska banking corporation (“**Lender**”), relating to the not to exceed \$[10,000,000] Revenue Bond (Tabitha Grand Island Project), Series 2021A and the not to exceed \$[10,000,000] Revenue Bond (Tabitha Grand Island Project), Series 2021B (collectively, the “**County Loan Agreement**”) and (B) the Loan Agreement dated as of May 1, 2021, between the City of Grand Island, in the State of Nebraska (the “**City**”), Borrower and Lender, relating to the not to exceed \$[13,950,000] Revenue Bond (Tabitha Grand Island Project), Series 2021B (the “**City Loan Agreement**”; and the County Loan Agreement and the City Loan Agreement, individually and collectively, the “**Loan Agreements**”). Each capitalized term used in this Rider that is defined in the Loan Agreements or the other Borrower Documents (defined therein) and not defined in this Rider will have the meaning specified in the Loan Agreements or the other Borrower Documents, as applicable.

Notwithstanding any term or provision to the contrary in the Loan Agreement or other Borrower Documents:

1. Unless the context otherwise requires, terms defined in this Rider shall, for all purposes of this Rider and of any agreement supplemental hereto, have the meanings herein specified, such definitions to be equally applicable to both the singular and plural forms of any of the terms defined.

“**2021 County Loan Advance**” shall mean a disbursement of the proceeds of a Loan to Borrower under the terms and conditions of the County Loan Agreement, to or for the benefit of Borrower.

“**2021 City Loan Advance**” shall mean a disbursement of the proceeds of a Loan to Borrower under the terms and conditions of the City Loan Agreement, to or for the benefit of Borrower.

“**Advance**” means a 2021 County Loan Advance or a 2021 City Loan Advance.

“**Architect**” means [Pope Architects, Inc., St. Paul, Minnesota].

“**Authorized Representative**” means Borrower’s [President and Chief Financial Officer] or other duly authorized officer.

“**Borrower Documents**” means, individually and collectively, the “Borrower Documents” as defined in the County Loan Agreement and the “Borrower Documents” as defined in the City Loan Agreement.

“**Borrower Equity**” means the amount of Project Costs paid with funds other than proceeds of the Loans.

“**Completion Accounts**” means, individually and collectively, the “Completion Account” as defined in the County Loan Agreement and the “Completion Account” as defined in the City Loan Agreement.

“Construction Consultant” means an independent architect, engineer or other construction professional retained by Lender.

“Construction Contract” means the Standard Form of Agreement Between Owner and Construction Manager as Constructor, between Borrower and Construction Manager, dated _____, 20__, relating to the construction of the Project, together with the General Conditions and Exhibit A thereto, any and all extensions, modifications, amendments and renewals thereof.

“Construction Manager” means [Chief Construction], and its successors and assigns under the Construction Contract.

“Date-Down Endorsement” has the meaning specified in Section 3(c).

“Deed of Trust” has the meaning specified in the Loan Agreements.

“Final Advance Conditions” has the meaning specified in Section 4.

“Hard Costs” means the costs of all labor, materials, equipment, fixtures and furnishings necessary for final completion of the construction of the Project, including without limitation, all such labor, materials, equipment, fixtures and furnishings provided under the Construction Contract.

“Land” means the “Premises” as defined in the Deed of Trust.

“Loans” means, individually and collectively, the Loan by the County to the Borrower pursuant to the County Loan Agreement and the Loan by the City to the Borrower pursuant to the City Loan Agreement, each as funded through a corresponding payment of the purchase price of the Bonds through Advances.

“Loan Advance Request” means a written request signed by an Authorized Representative of Borrower for an Advance in the form of Exhibit 1 attached to this rider, or such other form approved by Lender.

“Plans and Specifications” means collectively, the final plans and specifications which describe and show the labor, materials, equipment, fixtures and furnishings necessary for the final completion of the Project, including all amendments and modifications thereof made by changes approved by Lender or otherwise permitted under this Rider.

“Project” has the meaning specified in the Loan Agreements.

“Project Budget” means a schedule showing all projected Project Costs.

“Project Completion Date” means that date designated by Lender and the Borrower as the time of the final completion of the Project and satisfaction of all other conditions for the final disbursement of the Loans.

“Project Completion Deadline” means [November __, 2022].

“Project Construction Costs Breakdown” means a schedule showing all major categories of work and the projected cost or allocated value thereof prepared by the Construction Manager under the terms of the Construction Contract.

“Project Costs” means all Hard Costs, architectural and other consultants’ fees, Project Assessments, other costs of construction of Roads or Utilities, and all other costs and expenses of any nature required to complete the Project and satisfy the Final Disbursement Conditions.

“Punch List” shall mean a list prepared and certified by the Architect at the time of Substantial Completion, listing all construction work necessary to achieve final completion of the Project.

“Soft Costs” means all Project Costs other than Hard Costs.

“Stored Materials” means materials purchased or to be purchased for the Project that are not yet installed into the Project.

“Substantial Completion” means substantial completion of the physical construction of the Project in accordance with the Plans and Specifications; receipt of a Certificate of Substantial Completion (AIA Document G704 or as approved by Lender) by the Architect and the Construction Manager; verification of substantial completion of the Project by Lender (which verification shall not be unreasonably withheld, delayed, or conditioned); subject, however, to Punch List items.

“Title Company” means _____.

“Title Insurance Policy” means the title insurance policy and applicable title insurance endorsements issued by the Title Company pursuant to the Loan Agreements and this Rider, insuring the lien of the Deed of Trust as a first lien upon the Land in favor of Lender.

2. All Advances subsequent to the Initial Advance are subject to the following conditions precedent:

a. Lender shall have received the following, each in a form and in substance reasonably satisfactory to Lender:

- (1) the final Project Budget;
- (2) a copy of the final Plans and Specifications;
- (3) a copy of the fully executed GMP rider or other documents establishing a final guaranteed maximum price under the Construction Contract; and
- (4) a Project Construction Costs Breakdown.

b. Lender shall make Advances necessary to permit the Borrower to pay (or reimburse the Borrower for payment of) one hundred percent (100%) of Project Costs incurred by Borrower for the actual completion of the line items shown on the Project Construction Costs Breakdown.

c. The sum of all Advances with respect to any individual line item on the Project Construction Costs Breakdown must not exceed the amounts shown on the Project Construction Costs Breakdown for such individual line item by more than five percent or \$50,000, whichever is greater, unless otherwise approved by the Lender. The Borrower may reallocate amounts designated on the Project Construction Costs Breakdown as a cost contingency to another category or line item of the Project Construction Costs Breakdown representing Project Costs reasonably incurred or anticipated to be incurred and payable to a party unrelated to the

Borrower, only with the approval of the Lender, which approval shall not be unreasonably withheld, conditioned or delayed. If at any time, the Borrower anticipates that the actual Project Costs will not be in substantial conformity with the Project Construction Costs Breakdown, the Borrower shall promptly submit to Lender for approval a revised Project Construction Costs Breakdown which, if approved by Lender, shall supersede all previously approved Project Construction Costs Breakdowns.

d. The Borrower shall request Advances no more frequently than once per month, by submitting a Loan Advance Request, accompanied by an AIA form of payment request, lien and bond claim waivers from the Construction Manager with respect to the work which was the basis for all previous Loan Advance Requests based on Hard Costs, and such documentation and information reasonably requested by and in form and substance reasonably acceptable to Lender. If required by Lender, each Loan Advance Request shall be accompanied by a certificate of the Architect (or, at the option of Lender, the Construction Manager), certifying that the labor, materials, equipment, fixtures and furnishings completed have been constructed in accordance with the Plans and Specifications or in accordance with any special recommendations of such professional. Each Loan Advance Request shall constitute the Borrower's representation and warranty to Lender that no Event of Default has occurred, and no event has occurred that with notice and the passage of time would become an Event of Default, unless the Borrower has notified Lender in writing to the contrary.

e. As a condition precedent to the disbursement for Stored Materials which individually or in the aggregate account for more than \$50,000 of the amounts shown on the Project Construction Costs Breakdown, Lender may, at its option, require Borrower to supply to Lender: (i) evidence satisfactory to Lender that the Stored Materials are included in the coverage of the insurance policies required by the Loan Agreements or otherwise applicable to the Project; (ii) evidence satisfactory to Lender from the seller or fabricator of the Stored Materials that, upon payment, ownership will vest in Borrower free of any liens or claims of third parties; and (iii) evidence satisfactory to Lender that the Stored Materials are satisfactorily stored on the Land to protect against theft or damage, or, if the Stored Materials are not stored on the Land, then (1) evidence satisfactory to Lender that the Stored Materials are stored in a bonded warehouse or storage yard approved by Lender, and the warehouse or yard has been notified that Lender has a security interest in the subject Stored Materials and (2) Borrower's delivery to Lender of the original warehouse receipt. With Lender's prior written approval, Stored Materials may be stored in the yard or warehouse of the seller or fabricator, so long as Lender receives satisfactory evidence that the Stored Materials are protected against theft or damage and have been suitably identified as belonging to Borrower for use in the Property and that the seller or fabricator has been notified of the first priority security interest of Lender in the Stored Material.

f. Unless otherwise agreed in writing by Lender on a case-by-case basis with Borrower, Borrower is required to retain or holdback from payment to the Construction Manager under the Construction Contract (as well as all applicable subcontracts) an amount equal to not less than 10% of all draw requests (or, if less, the maximum amount permitted to be retained by the Borrower under the Construction Contract).

g. Following and during the continuation of an Event of Default, the Lender may make all or any portion of each Advance (or applicable portion thereof) payable directly to the Construction Manager or other persons furnishing goods or services with respect to the Project.

h. Lender may make Advances to pay fees owing to Lender, interest on the Loans, and such other sums as may be owing from time to time by Borrower to Lender with respect to the Loans, upon at least five days' notice to or authorization by Borrower.

i. The Borrower hereby grants to Lender a security interest in any funds now or hereafter deposited in the Completion Accounts as additional collateral for the performance of the Borrower's obligations under the Loan Agreements and other Borrower Documents. Whenever Lender is holding the Borrower's funds in the Completion Account, Lender may, at its option make disbursements to pay Project Costs first from the Completion Account until such funds are exhausted, prior to making any additional Advance, after notice to the Borrower.

j. If the construction of the Project is delayed by fire, earthquake or other acts of God, strike, or other cause outside the Borrower's reasonable control, the Borrower shall notify Lender in writing within ten (10) calendar days. So long as no Event of Default has occurred and is continuing, Lender shall not unreasonably withhold its consent to any request by the Borrower to extend the Project Completion Deadline by a period of time equal to the period of the delay.

k. Lender has received evidence acceptable to Lender that no construction liens or other encumbrances have been filed against the Project except as previously approved by Lender.

l. Borrower, at Borrower's cost and expense, will deliver or cause to be delivered to Lender from time to time foundation endorsements and continuation and date-down endorsements (ALTA 33-06 or similar incremental mechanic's lien coverage endorsement), to be attached to the Title Insurance Policy, in form and substance satisfactory to Lender (each such endorsement, a **"Date-Down Endorsement"**).

m. The Project has not been materially damaged by any casualty, or subject to any condemnation proceeding, unless Lender has received insurance or condemnation proceeds (to the extent Lender is entitled to receive such proceeds under the terms of the Deed of Trust) sufficient in Lender's judgment to pay for all repairs in a timely manner. Lender must also be satisfied that the Borrower's intended use of the Property and ability to repay the Loan will not be materially impaired by such casualty or condemnation.

n. At Lender's option, a satisfactory report by a Construction Consultant regarding whether the construction completed to date is in accordance with the Plans and Specifications, and is proceeding in substantial accordance with the approved Project Construction Costs Breakdown, Plans and Specifications, and other matters requested by Lender.

o. Lender shall be satisfied that the construction completed to date is in accordance with the Plans and Specifications and is proceeding in substantial accordance with the approved Project Construction Costs Breakdown, and Construction Schedule.

p. There is no Event of Default, and no event shall have occurred that with notice or the passage of time could become such an Event of Default.

q. All representations and warranties of the Borrower in the Loan Agreements and the other Borrower Documents shall be true, correct and complete as of the date of such Advance.

r. Satisfaction of all other requirements reasonably required by Lender.

3. Each request for an Advance shall be deemed a representation and warranty by Borrower as follows:

- a. the Plans and Specifications are complete and accurate in all material respects;
- b. all utility services necessary for the operation of the Project (collectively, **“Utilities”**) are available or Borrower has taken all steps necessary to assure that all utility services so required will be available upon completion of the Project;
- c. all streets, roads, entrances, and other off-site improvements (collectively, **“Roads”**) necessary for the completion, occupancy and operation of the Project have either been completed or the necessary easements or rights-of-way therefor have been acquired or dedicated to public use, and all necessary steps have been taken by Borrower to ensure their completion no later than the Project Completion Deadline or any earlier date required by any Governmental Authority or applicable law;
- d. all permits, licenses and approvals necessary to construct, occupy and operate the Project (collectively, the **“Permits”**) have been obtained, or, to the extent not obtained, no information or fact exists that would reasonably cause Borrower to believe that all permits, licenses and approvals required to construct, occupy, and operate the Project, will not be readily obtainable prior to the Project Completion Deadline;
- e. all fees for the issuance of the Permits, assessments, impact fees, capacity charges and other governmental charges and levies of any nature, required as a condition of the construction, occupancy and operation of the Project (collectively, **“Project Assessments”**), have been paid or are shown on the Project Budget; and
- f. the Project Budget includes all projected Project Costs.

4. The disbursement of any portion of the proceeds of the Loans remaining after Project Construction Cost Advances made in the accordance with this Rider (the **“Final Advance”**) will be subject to the following additional conditions (the Final Advance Conditions):

- a. The Project has reached Substantial Completion.
- b. The Lender has received evidence that the Borrower holds all required permits and approvals for purposes of operating the Project for its intended purpose.
- c. There is no Event of Default, or no event shall have occurred that with notice or the passage of time could become such an Event of Default.
- d. Lender has received a Date-Down Endorsement.
- e. The proposed Final Advance will not violate the terms and conditions of the Loan Agreements and other Borrower Documents.
- f. Borrower will have provided to Lender any other documentation, including, but not limited to, endorsements to the Title Policy, as Lender may reasonably require.

5. Borrower agrees to furnish to the Title Company all surveys and other documents and information as are required by Lender or the Title Company to enable the Title Company to issue the Date-Down Endorsements to Lender.

6. Without Lender's prior written consent, Borrower will not permit any material amendments or modifications of the Plans and Specifications. Regardless of whether Lender's consent to any material amendment or modification is required under this Agreement, if an amendment or modification to the Plans and Specifications causes an increase in the amount necessary to complete all or any portion of the Project beyond any then-available and applicable contingency fund or previously realized Hard Cost or Soft Cost savings, Borrower will if requested by Lender, deposit with Lender into Completion Account, cash or current funds in an amount equal to any increase resulting from the amendment or modification.

7. Within 60 days after Substantial Completion of the Project (or, if later, the time reasonably required by the Borrower's surveyor), Borrower shall deliver to Lender, an ALTA as built survey of the Project in form and substance satisfactory to Lender.

8. Power of Attorney. To implement the rights of Lender and otherwise to effectuate the intent of this agreement, BORROWER APPOINTS LENDER ITS TRUE AND LAWFUL ATTORNEY IN FACT WITH FULL POWER OF SUBSTITUTION TO, UPON AN EVENT OF DEFAULT WHICH IS CONTINUING (a) COMPLETE THE PROJECT IN THE NAME OF BORROWER AND PAY ALL BILLS AND EXPENSES INCURRED THEREBY AND EMPOWERS LENDER AS ITS ATTORNEY IN FACT: TO USE ANY FUNDS OF BORROWER ON DEPOSIT IN THE COMPLETION ACCOUNTS AND THE UNDISBURSED AMOUNT OF THE LOANS FOR THE PURPOSE OF COMPLETING THE PROJECT; (b) MAKE ANY ADDITIONS, CHANGES OR CORRECTIONS IN THE PLANS AND SPECIFICATIONS REASONABLY DEEMED BY LENDER TO BE NECESSARY TO COMPLETE THE PROJECT; (c) EMPLOY ANY CONTRACTORS, AGENTS, ARCHITECTS, ENGINEERS AND INSPECTORS REASONABLY DEEMED BY LENDER TO BE REQUIRED TO COMPLETE THE PROJECT; (d) PAY, SETTLE OR COMPROMISE ALL EXISTING BILLS AND CLAIMS WHICH MAY BE OR BECOME LIENS AGAINST THE REAL ESTATE OR AS MAY BE NECESSARY FOR COMPLETION OF THE PROJECT OR FOR THE CLEARANCE OF TITLE; (e) EXECUTE ALL APPLICATIONS, CERTIFICATES OR INSTRUMENTS IN THE NAME OF BORROWER WHICH ARE REQUIRED BY ANY GOVERNMENTAL AUTHORITY OR CONTRACT (INCLUDING NOTICES OF CESSATION AND COMPLETION AND TO RECORD SAME) TO COMPLETE THE PROJECT; AND (f) DO ANY AND EVERY ACT WHICH BORROWER MIGHT DO ON ITS OWN BEHALF AS NECESSARY TO COMPLETE THE PROJECT. IT IS FURTHER UNDERSTOOD AND AGREED THAT THIS POWER OF ATTORNEY SHALL BE DEEMED TO BE A POWER COUPLED WITH AN INTEREST AND CANNOT BE REVOKED. Under this power of attorney, Lender shall also, upon an Event of Default which is continuing, have power to prosecute and defend all actions and proceedings in connection with the construction and completion of the Project and to take any action and require performance under any surety bond or other obligation any execute in the name of Borrower any other bonds or obligations deemed by Lender to be required in connection with the Project.

EXHIBIT 1
TO CONSTRUCTION ADVANCE RIDER
FORM OF LOAN ADVANCE REQUEST

_____, 20__

Pinnacle Bank
106 E. 3rd Street
Grand Island, NE 68801
Attn: Bart Qualsett

Re: (A) the Loan Agreement dated as of May 1, 2021, between The County of Hall, in the State of Nebraska (the **"County"**), Tabitha Grand Island, Inc., a Nebraska nonprofit corporation (the **"Borrower"**), and Pinnacle Bank, a Nebraska banking corporation (**"Lender"**), relating to the not to exceed \$[10,000,000] Revenue Bond (Tabitha Grand Island Project), Series 2021A and the not to exceed \$[10,000,000] Revenue Bond (Tabitha Grand Island Project), Series 2021B (collectively, the **"County Loan Agreement"**) and (B) the Loan Agreement dated as of May 1, 2021, between the City of Grand Island, in the State of Nebraska (the **"City"**), Borrower and Lender, relating to the not to exceed \$[13,950,000] Revenue Bond (Tabitha Grand Island Project), Series 2021B (the **"City Loan Agreement"**); and the County Loan Agreement and the City Loan Agreement, individually and collectively, the **"Loan Agreements"**).

Ladies and Gentlemen:

Borrower hereby gives you notice pursuant to the Loan Agreements that it requests one or more advances of Project Costs (collectively, the **"Construction Advance"**), and in connection therewith set forth below the terms on which such Construction Advance is requested to be made:

(A) Series from which Advance is to be made:

\$_____ from Series 2021A (under the County Loan Agreement)

\$_____ from Series 2021B (under the County Loan Agreement)

\$_____ from Series 2021B (under the City Loan Agreement)

\$_____ TOTAL CONSTRUCTION ADVANCE REQUESTED

(B) Type of Advance: (check one)

___ depositing the proceeds in account designated by Borrower by wire or ACH transfer

___ joint check to Borrower and _____

___ other (describe below:)

(C) Requested date of Advance (which is a Business Day):

_____, 20__

(D) Borrower hereby represents, and upon acceptance of any or all of the Advance made in response to this request, Borrower shall be deemed to have represented and warranted, that the conditions to lending specified in the Loan Agreements have been satisfied. Without limitation, Borrower represents that to the best of Borrower's knowledge, the amount of each of the following items is as indicated:

Series 2021 County Loan Advances:

- (1) 2021 County Loan Advance
Maximum Amount: \$_____.00
- (2) Prior 2021 County Loan
Advances: \$_____
- (3) Amount of this
2021 County Loan
Advance: \$_____
- (4) Total 2021 County Loan
Advances
(Line (2) plus Line (3): \$_____
- (5) Undisbursed portion
Of 2021 County Loan
Advance Maximum Amount
(Line (1) minus Line (4): \$_____

Series 2021 City Loan Advances:

- (6) 2021 City Loan Advance
Maximum Amount: \$_____.00
- (7) Prior 2021 City Loan
Advances: \$_____
- (8) Amount of this
2021 City Loan
Advance: \$_____
- (9) Total 2021 City Loan
Advances
(Line (7) plus Line (8): \$_____
- (10) Undisbursed portion
Of 2021 City Loan
Advance Maximum Amount
(Line (6) minus Line (9): \$_____
- (11) Total Construction Project
Costs (per the Construction
Project Budget): \$_____

- (12) Total Advances
(Line 4 plus Line 9): \$ _____
- (13) Construction Costs Paid
With Borrower Equity: \$ _____
- (14) Total Paid Construction Costs
(Line (12) plus Line (13)): \$ _____
- (15) Unpaid Project Costs
(Line (11) minus Line (14)): \$ _____

Borrower has signed this instrument effective as of the day and year first written above.

BORROWER:

TABITHA GRAND ISLAND, INC..

By _____
Name: _____
Title: _____

SCHEDULE 1.01(Q)
[PERMITTED ENCUMBRANCES]

SCHEDULE 4.02(C)

LITIGATION

[NONE]