**PROGRAM RELATED INVESTMENT
PROMISSORY NOTE**

$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2015

For value received, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("Borrower"), unconditionally promises to pay to the order of Foundation ("XXX"), without setoff or counterclaim, at the principal office of XXX located at [*address]* (or in accordance with any subsequent written payment directive by XXX or any holder of this Note), the principal sum of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and 00/100 Dollars ($\_\_\_\_\_\_\_\_), together with interest on so much thereof as is from time to time outstanding and unpaid, from the date of this Note at the rate of \_\_\_% per annum (the "Interest Rate").

The proceeds of all advances evidenced by this Note may only be used to fund the project described in Exhibit A (the "Project").

1. **PAYMENTS**
	1. Scheduled Payments. Principal and interest due under this Note are payable in accordance with the amortization schedule attached as Exhibit B. XXX will not be required to send Borrower a monthly invoice.
	2. Payments at Maturity. A final payment equal to all unpaid principal and accrued interest is due on the last scheduled payment date on the amortization schedule attached as Exhibit B (the "Maturity Date").
	3. Prepayment. From time to time and at any time, Borrower may prepay the principal balance of this Note in whole or in part without penalty.
	4. Application of Payments. All payments will be applied first to interest, then to any expenses or fees payable to XXX, and then to principal that is then due and payable. Payments in excess of the foregoing shall be applied against the principal installments due hereunder in reverse order of maturity. For example, any such excess payment shall first be applied to the last maturing installment of principal and if the excess payment is greater than the last maturing installment of principal, then after application to such last installment, the remaining amount shall be applied to the next to last maturing installment of principal. This process shall continue until the principal balance is paid in full.
2. **default interest rate**
	1. In the event of a Default as defined in this Note, at the option of XXX, for so long as the Default continues, interest on the outstanding principal balance of this Note will accrue and will be paid at the Interest Rate plus an additional 5% per annum, not to exceed, however, the maximum rate permitted by law (the "Default Interest Rate").
3. **REPRESENTATIONS AND WARRANTIES**

To induce XXX to provide the loan evidenced by this Note, Borrower represents and warrants to XXX that:

* 1. Valid Existence. Borrower is duly organized and validly existing under the laws of the jurisdiction in which it was organized.
	2. Tax-Exempt Status. Borrower is a charitable or nonprofit entity with tax exempt status of the kind described in Section 501(c)(3) of the Internal Revenue Code and Borrower will take all necessary action to maintain that status.
	3. Authority. The execution and delivery of this Note and Borrower's performance under this Note are within Borrower's powers, have been duly authorized, and are not in contravention of law or the terms of Borrower's organizing document or of any indenture, agreement, or undertaking to which Borrower is a party or by which it is bound. The individual executing this Note is duly and properly in office and fully authorized to execute this Note.
	4. Enforceability. This Note, when executed and delivered by Borrower, will be the legal, valid, and binding obligation of Borrower, enforceable in accordance with its terms except to the extent that enforcement may be limited by bankruptcy, insolvency, reorganization, or other similar laws and except as the principles of equity may affect the remedy of specific performance.
	5. No Consent. No consent or approval of any trustee, issuer, or holder of any indebtedness or obligation of Borrower, and no consent, permission, authorization, order, or license of any governmental agency is necessary in connection with the execution and delivery of this Note.
	6. Financial Information Accuracy. Subject to any limitations stated therein or in connection therewith, all balance sheets, earnings statements, and other financial data of Borrower that have been or may hereafter be furnished to XXX to induce XXX to enter into this Note or otherwise in connection with this Note, fairly represent the financial condition of Borrower as of the dates and the results of operations for the periods for which same are furnished, and all other information, reports, and papers and data furnished to XXX are, or shall be at any time the same are so furnished, accurate and correct in all material respects and complete insofar as completeness may be necessary to give XXX a true and accurate knowledge of the subject matter.
	7. Litigation. There is no litigation, arbitration, proceeding, or investigation pending, or, to Borrower's knowledge, threatened against Borrower except: (i) as Borrower has disclosed to XXX in writing prior to the date of this Note; and (ii) to the extent the litigation, arbitration, proceeding, or investigation, if ultimately determined against Borrower, could not be reasonably anticipated to materially adversely affect Borrower's ability to perform under this Note.
1. **AFFIRMATIVE COVENANTS**

 Until this Note has been paid in full and unless XXX expressly consents in writing (which consent will not be unreasonably conditioned, withheld, or delayed) Borrower will do all of the following:

* 1. Insurance. Borrower will maintain insurance on its property and operations to such an extent and against such risks as organizations engaged in similar businesses customarily insure properties and operations of a similar character;
	2. Avoidance of Encumbrances. Borrower will promptly pay all taxes, assessments, and governmental charges, as well as all claims for labor, materials, and supplies, which, if unpaid, might by law become a lien or charge upon its personal property or any real property that is collateral securing Borrower's obligations under this Note;
	3. Notification of Administrative Changes. Borrower will maintain executive and management personnel with substantially the same qualifications and experience as the present executive and management personnel. Borrower will notify XXX by e-mail within a reasonable time, but in not more than 15 calendar days, of all changes in: (i) Borrower's name; (ii) Borrower's headquarters address; (iii) Borrower's contact information; and (iv) the respective individual serving as Borrower's executive director, chief financial officer, or chief administrative officer (or any of the equivalent positions if Borrower does not have those specific offices);
	4. Notification of Other Changes. Borrower will promptly notify XXX by phone and email of all: (i) material changes in its financial condition; (ii) material legal proceedings; (iii) financial and program audits that are outside Borrower's ordinary course of business, or pursuant to which Borrower receives notice of material deficiencies; (iv) notices of default provided to Borrower from any of Borrower's creditors; (v) changes in its mission or business that with respect to any of clauses (i) through (v) could materially adversely affect Borrower’s ability to fulfill its obligations under this Note, any Deed of Trust entered into in connection with this Note, or any other related loan document (as amended from time to time, each a "Loan Document," and collectively, the "Loan Documents");
	5. Licenses and Accreditation. Borrower will keep current all licenses and accreditations; and
	6. Expenses and Fees. Borrower will pay all fees, charges, and expenses incurred in connection with the procuring and closing of the loan evidenced by this Note, including without limitation, cost of title examination, title insurance premiums (including early issue premiums), survey costs, photocopy expenses, mortgage recording charges, escrow charges, appraisal fees, costs of foreclosure reports, documentary, transfer, and tangible or other similar taxes, revenue stamps, architects' and engineers' services, and inspection fees. With respect to collection of the debt or enforcement of the Loan Documents, whether by legal action, arbitration, or otherwise, Borrower agrees to pay reasonable attorney fees and collection costs even though no civil action is filed and, if a civil action is filed, including any proceeding in bankruptcy court, such additional sum as the trial judge or the appellate court may adjudge reasonable as attorney fees in the action and the appeal, if any, along with statutory costs and disbursements; provided, however, that in the event of any action or proceeding with respect to this Note, the prevailing party in such action or proceeding will be entitled to recover from the adverse party in such action or proceeding the prevailing party's reasonable attorneys' fees and costs (however incurred, including, without limitation, on appeal or in any bankruptcy proceeding or similar proceeding). The prevailing party will be the party that succeeds either affirmatively or defensively on claims having the greatest value or importance, as determined by the court.
1. **NEGATIVE COVENANTS**

 Until this Note has been paid in full and unless XXX expressly consents in writing (which consent will not be unreasonably conditioned, withheld, or delayed) Borrower will not do any of the following:

* 1. Expenditures. Borrower will not make any expenditure or series of related expenditures outside the Borrower's ordinary course of business, if such expenditure would materially adversely affect Borrower's ability to perform under this Note;
	2. Disposition of Assets. Borrower will not lend, transfer, lease, sell, or otherwise dispose of any portion of its assets, other than those made in the ordinary course of the Borrower's business, if such loan, transfer, lease, sale, or disposition would materially adversely affect Borrower's ability to perform under this Note;
	3. Contingent Liabilities. Borrower will not guarantee or become a surety or otherwise contingently liable for any obligation of others, except to the extent the aggregate amount of such obligations is less than $50,000.
	4. Liens and Encumbrances. No collateral securing this Note (if any) may be subject to any security interest except for: (i) security interests granted by Borrower to XXX; (ii) security interests that are of public record on the date of this Note; and (iii) security interests granted by Borrower after the date of this Note and that are junior to all security interests granted by Borrower to XXX; and
	5. Material Transactions. Borrower will not change its name; liquidate or dissolve; or merge with or into or consolidate with or into any other corporation or entity; form any subsidiary outside the ordinary course of business; or sell, lease, transfer, or otherwise dispose of all or any substantial part of its property, assets, or business.
1. **FINANCIAL COVENANTS**

Until this Note has been paid in full and unless XXX expressly consents in writing (which consent will not be unreasonably conditioned, withheld, or delayed) Borrower will do all of the following:

* 1. Financial Covenants. Borrower will satisfy the financial covenants set forth in Exhibit C, as such Exhibit C is amended from time to time as evidenced by an amended and restated Exhibit C executed by Borrower and XXX;
	2. Accounting Records. Borrower will maintain a standard and modern system for accounting in accordance with generally accepted accounting principles consistently applied throughout all accounting periods and consistent with those applied in the preparation of any financial reports previously delivered to XXX; and
	3. Inspection of Records. Borrower will permit XXX, or any holder of the Note, to visit and inspect its premises (including, without limitation, any real property that is collateral securing Borrower's obligations under this Note) and to inspect Borrower’s books and records, and to make copies and extracts there from, at reasonable hours and upon reasonable advance notice.
1. **No Taxable Expenditures**

 Borrower agrees that the funds loaned pursuant to this Note will not be used so as to constitute a “taxable expenditure” within the meaning of Section 4945 of the Internal Revenue Code (the “IRC”). Specifically, Borrower agrees that the funds loaned pursuant to this Note will not be used:

* 1. To carry on propaganda or otherwise attempt to influence legislation within the meaning of Section 4945(e) of the IRC;
	2. To influence the outcome of any specific public election or to carry on directly or indirectly any voter registration drives;
	3. For any grant to an individual which does not comply with the requirements of Section 4945(g) of the IRC;
	4. For any transaction, the net earnings of which inures to the benefit of any private shareholder or individual or which does not otherwise comply with Section 170(c)(4) of the IRC;
	5. For any grant to an organization which does not comply with the requirements of Section 4945(d)(4) of the IRC; or
	6. For any purpose other than the one specified in Section 170(c)(2)(B) of the IRC (i.e., religious, charitable, scientific, literary or educational, etc.).

If Borrower determines that it has made a "taxable expenditure," under Section 4945 of the IRC, including, but not limited to, expenditures specifically listed above in Sections 7.1 through 7.6, Borrower agrees to notify XXX within 5 business days of such determination. If Borrower fails to so notify MMT, Borrower agrees that it shall be in Default under this note, as that term is defined under Section 11.

1. **FINANCIAL REPORTING**

From the date of this Note and thereafter until all liabilities and obligations of Borrower to XXX under this Note have been paid in full, unless XXX expressly consents in writing:

* 1. Audited Reports. Borrower must deliver to XXX a copy of an annual external audit, management letter, and management response within six calendar months of the end of Borrower's fiscal year or within 10 business days of completion and delivery to Borrower of the annual audit if the audit was not available within six calendar months of the fiscal year end. The audit and management letters must not include any adverse comment or note regarding Borrower's going concern status. The audit must include an unmodified opinion stating that Borrower is in compliance with all loan covenants of this Note and the Borrower's other creditors. The management letter must reflect substantial compliance with industry standards for internal controls. Borrower will promptly provide XXX with such additional information relating to the financing of Borrower's activities as XXX may reasonably request from time to time.
	2. Annual Financial Reports. With each annual external audit, Borrower must deliver to XXX management-prepared financial reports (including an income statement, balance sheet, and cash flow statement) covering Borrower's operations during the current fiscal year. Using the example of an audited report received on \_\_\_\_\_\_, 20\_\_, for the fiscal year ended on \_\_\_\_\_\_\_\_, 20\_\_, the financial reports must cover operations beginning on \_\_\_\_\_\_\_\_\_\_\_, 20\_\_. Income statements must include comparisons with the fiscal year's budget.
	3. Annual Program Reports. Along with the annual external audit and management-prepared financial reports, Borrower must deliver to XXX a program report describing Borrower's progress during the preceding fiscal year in accomplishing the Project. Each program report must follow the reporting guidelines provided by XXX to Borrower from time to time and must describe any material developments affecting Borrower's ability to accomplish the purpose of the Project. Borrower must promptly provide XXX with such additional information relating to the Project, and the financing thereof, as XXX may request from time to time.
	4. Financial Covenant Compliance Certificates. At the same time as, and included with, Borrower's delivery of its annual financial, audited, and program reports, Borrower must deliver to XXX a compliance certificate, in form and substance reasonably acceptable to XXX, demonstrating compliance with all financial covenants in Section 6.1. In calculating compliance with financial covenants, Borrower will use data from the independent audit.
1. **CONDITIONS TO BORROWING**

XXX is not required to make any advance to Borrower under this Note unless:

* 1. Borrower has executed and delivered an original of this Note to XXX;
	2. To the extent requested by XXX, Borrower has delivered to XXX a closing certificate, attaching Borrower's organizational documents (for example, its articles of incorporation and bylaws if Borrower is a corporation, and its articles of organization and operating agreement if Borrower is a limited liability company), a recent certificate of existence or good standing, authorizing resolutions, and such other documentation as XXX reasonably requests;
	3. If applicable, all documents required to be filed, registered, or recorded in order to create, in favor of XXX, perfected security interests in the collateral, including, without limitation, any ancillary financing statement, mortgage, or deed of trust have been properly filed, registered, or recorded in each applicable office in each applicable jurisdiction;
	4. XXX has received evidence satisfactory to XXX that Borrower maintains property and liability insurance coverage reasonably satisfactory to XXX;
	5. XXX has determined, in its reasonable discretion, that no material adverse change has occurred in either Borrower's or any guarantor's business, financial condition, or performance;
	6. XXX has determined, in its reasonable discretion, that no material adverse change has occurred regarding any matter that XXX analyzed in connection with underwriting the loan evidenced by this Note**[; and**
	7. **For loans secured by Real Property Collateral,** XXX **has received advice from a title insurance company acceptable to** XXX **that it is ready, able, and willing to issue an extended coverage mortgagee's title insurance policy in such form and with such endorsements as may be required by** XXX **insuring that security interest in the Real Property Collateral is and will continue to be an encumbrance against the Real Property Collateral, and securing a debt in the principal amount of this Note in a [first] priority position subject to exclusions acceptable to** XXX.
1. **SECURITY**
	1. **[This Note is not secured by a lien on any of Borrower's assets.] [Borrower grants to** XXX **a security interest in the Personal Property Collateral to secure the Indebtedness.] [Borrower Grants to** XXX **a security interest in the Real Property Collateral to secure the Indebtedness.]**
	2. "Personal Property Collateral" means all personal property of Borrower, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located, including, without limitation, all accounts, chattel paper, general intangibles, instruments, documents, contract rights, inventory, equipment, equipment leases, and all proceeds of the same.
	3. "Real Property Collateral" means all real property owned or leased by Borrower located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
	4. "Indebtedness" means: (i) the payment of Borrower’s debt to XXX as evidenced by this Note; (ii) all payment and performance obligations of Borrower to XXX under all agreements between Borrower and XXX, including, without limitation, all credit agreements, promissory notes, and mortgages, or deeds of trust, whether now existing or whether entered into hereafter, as such agreements or instruments may from time to time and at any time be restated, amended, or otherwise modified; and (iii) any and all other liabilities, direct and indirect, absolute or contingent, now existing or hereafter arising from Borrower to XXX.
2. **DEFAULT AND ACCELERATION**

 The unpaid balance of this Note shall, at the option of XXX or any holder of this Note and immediately upon demand, mature and become immediately due and payable in the event that: (i) Borrower fails to make any payment under this Note when due and such failure remains uncured 10 business days after XXX’s delivery to Borrower of written notice of such failure; (ii) other than payment default (addressed in clause (i), above), there is any default by Borrower of its obligations under this Note or any security agreement, mortgage, deed of trust, or similar agreement or instrument related to this Note (including, without limitation, the material inaccuracy of any representation or warranty made by Borrower in this Note or any such agreement or instrument), or any agreement, document, or instrument evidencing a grant by XXX to Borrower, and such default remains uncured one calendar month after XXX’s delivery to Borrower of written notice of such default; (iii) Borrower is in material breach of any other agreement with XXX; or (iv) Borrower is in breach of any other agreement regarding any other credit facility with any lender other than XXX or Borrower is in breach of any other agreement regarding indebtedness for borrowed money in excess of $50,000 owed to a creditor other than XXX (in each case a "Nonbankruptcy Default").

The unpaid balance of this Note will automatically mature and become immediately payable in the event that Borrower fails to timely notify XXX that it has made a taxable expenditure, as described in Section 6.

The unpaid balance of this Note will automatically mature and become immediately payable in the event that: (i) Borrower institutes or consents to the institution of any proceeding under any Debtor Relief Law (as defined below); (ii) Borrower makes an assignment for the benefit of creditors; (iii) Borrower applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator, or similar officer for Borrower or for all or any material portion of Borrower's property; (iv) any receiver, trustee, custodian, conservator, liquidator, or similar officer is appointed without Borrower's application or consent and such appointment continues undischarged or unstayed for sixty calendar days; or (v) any proceeding under any Debtor Relief Law relating to Borrower or to all or any material portion of Borrower's property is instituted without Borrower's consent and continues undismissed or unstayed for sixty calendar days, or an order for relief is entered in any such proceeding (a "Bankruptcy Default") (any Bankruptcy Default or Nonbankruptcy Default, a "Default").

The receipt by XXX, or by any holder of this Note, of any payment after the occurrence of a Default will not constitute a waiver of such Default or of any rights and remedies of XXX or such holder.

"Debtor Relief Law" means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdiction from time to time in effect and affecting the rights of creditors generally.

1. **WAIVERS; COSTS OF COLLECTIOn; EFFECT OF WAIVERS**

Except as expressly provided in this Note, Borrower and all others who may become liable for all or part of the principal balance of this Note or for any obligations of Borrower to XXX or any holder of this Note: (i) jointly and severally, forever waive presentment, protest and demand, notice of protest, demand and dishonor and non-payment of this Note, and all other notices in connection with the delivery, acceptance, performance, default or enforcement of the payment of this Note; (ii) agree that the time of payment of the debt evidenced by this Note or any part thereof may be extended from time to time without modifying or releasing the lien of any ancillary mortgage or deed of trust or other Loan Documents or the liability of Borrower or any other such parties, the right of recourse against Borrower and such parties being hereby reserved by XXX; and (iii) agree that time is of the essence.

XXX may at any time and from time to time waive any one or more of the provisions of the Loan Documents, but any such waiver will be made pursuant to the Loan Documents and not in modification thereof, and any such waiver in any instance or under any particular circumstances will not be construed a waiver of any other condition or of any subsequent default.

Neither any extension of time for the payment of this Note, nor any failure on the part of XXX to exercise any of its rights under any of the Loan Documents, will operate to release, discharge, modify, change or affect Borrower's original liability under any of the Loan Documents, either in whole or in part, or be deemed a waiver or grounds for the claim of estoppel.

1. **EXPENSES; INDEMNITY; WAIVER**

Borrower agrees to indemnify XXX against all losses, claims, damages, liabilities, and related expenses (including, without limitation, reasonable attorney fees and expenses, however incurred, including, without limitation, on appeal or in any bankruptcy proceeding) incurred by XXX or asserted against XXX, as applicable, to the extent arising out of, in any way connected with, or as a result of: (i) Borrower's execution and delivery of the Loan Documents; (ii) Borrower's material breach of any obligation under the Loan Documents; (iii)XXX’s post-Default enforcement and collection of Borrower's payment obligations under the Loan Documents; and (iv) any actual or prospective claim, litigation, investigation, or proceedings related to any of the foregoing, whether or not XXX is a party thereto; provided, however, that Borrower has no indemnification obligations under this section to the extent that such losses, claims, damages, liabilities, or related expenses arise from XXX’s gross negligence or willful misconduct.

To the fullest extent permitted by applicable law, Borrower waives all claims against MMT on any theory of liability for special, indirect, consequential, or punitive damages.

1. **CONSENT TO LOAN TRANSFER**

Borrower agrees and consents to XXX’s sale or transfer, whether now or later, of all or a portion of the loan evidenced by the Loan Documents to one or more purchasers, whether related or unrelated to XXX. XXX may provide, without any limitation whatsoever, to any one or more purchasers or potential purchasers, any information or knowledge XXX may have about Borrower or about any other matter relating to the loan evidenced by the Loan Documents, and Borrower hereby waives any rights to privacy Borrower may have with respect to such matters. Borrower additionally waives any and all notices of sale of all or a portion of the loan, as well as all notices of any repurchase of the loan. Borrower also agrees that the purchaser of any interest in the loan evidenced by the Loan Documents will be considered as the absolute owners of such interests and will have all the rights granted under the sale agreement or other agreements governing the sale or transfer of such interests.

1. **SUCCESSORS AND ASSIGNS**

All rights, powers, privileges, and immunities herein granted to XXX shall extend to its successors and permitted assigns and any other legal holder of this Note, with full right by XXX to assign or sell the same. All duties, responsibilities, and obligations of Borrower pursuant to this Note shall be binding and effective against Borrower's successors and permitted assigns.

1. **Governing Law**

 This Note will be governed by and construed in accordance with the laws of the state of [*State*], without regard to conflict-of-laws principles.

1. **Severability**

 If any provision of this Note is invalid or unenforceable in any respect for any reason, the validity and enforceability of such provision in any other respect and of the remaining provisions of this Note will not be in any way impaired.

1. **Arbitration**

Any claim arising out of or related to this Note will be resolved exclusively by arbitration by a single arbitrator, which, unless the parties agree otherwise in writing, will be administered by and in accordance with the rules of the Arbitration Service of [*City*], Inc. The place of arbitration will be [*City, State*]. The award rendered by the arbitrator will be final and binding, and judgment may be entered on the award in any court having jurisdiction. The parties may endeavor to resolve disputes by mediation at any time as they may agree, provided, however, that resolution of disputes by mediation is not required prior to initiating resolution of disputes by arbitration. Notwithstanding anything to the contrary in this paragraph, either party may seek equitable relief in any court having jurisdiction with respect to a breach of this Note where immediate equitable remedy is necessary.

1. **STATUTORY NOTICE**

**UNDER [*STATE*] LAW, MOST AGREEMENTS, PROMISES, AND COMMITMENTS MADE BY MMT CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY BORROWER'S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION, AND BE SIGNED BY MMT TO BE ENFORCEABLE.**

**[*Signature Page Follows*]**

The duly authorized representatives of the undersigned has executed and delivered this Note as of the date first written above.

 **[Insert Borrower Name]**

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

Printed Name:
Printed Title:

Agreed and Acknowledged:

**[*Foundation*]**

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

Printed Name:
Printed Title:

**Exhibit A**

**Project Description**

See attached.

**Exhibit B**

**Amortization Schedule**

 See attached.

**Exhibit C**

**Financial Covenants**