

**EXHIBIT A**

**FORM OF BOND PURCHASE AND LOAN AGREEMENT**

**among**

**PINELLAS COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY  
(D/B/A PINELLAS COUNTY ECONOMIC DEVELOPMENT AUTHORITY),**

**CLEARWATER MARINE AQUARIUM, INC.,**

**and**

**BRANCH BANKING AND TRUST COMPANY**

**Dated as of \_\_\_\_\_, 2018**

**PINELLAS COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY INDUSTRIAL  
DEVELOPMENT REVENUE BOND  
(CLEARWATER MARINE AQUARIUM, INC. PROJECT), SERIES 2018**

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Exhibits:

- A. Form of Bond
- B. Form of Promissory Note
- C. Form of Requisition
- D. Form of Completion Certificate
- E. Form of Investor Letter

**THIS BOND PURCHASE AND LOAN AGREEMENT** dated as of \_\_\_\_\_, 2018 (the "Agreement"), among the PINELLAS COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY (D/B/A PINELLAS COUNTY ECONOMIC DEVELOPMENT AUTHORITY) (the "Issuer"), a special district duly organized and existing under the Constitution and laws of the State of Florida (the "State"), BRANCH BANKING AND TRUST COMPANY, a North Carolina banking corporation, having an office and place of business in Clearwater, Florida, as purchaser of the Bond (the "Purchaser") and CLEARWATER MARINE AQUARIUM, INC., a Florida not-for-profit corporation (the "Borrower").

WITNESSETH:

**WHEREAS**, the Issuer is authorized to exercise all the powers set forth in Chapter 159, Florida Statutes, Part II and III and other applicable provisions of law (the "Act"); and

**WHEREAS**, at the request of the Borrower and on behalf of the Borrower, the Issuer proposes to issue and sell to the Purchaser, and the Purchaser proposes to purchase from the Issuer, the Issuer's Industrial Development Revenue Bond (Clearwater Marine Aquarium, Inc. Project), Series 2018 in the principal amount of \$\_\_\_\_\_ (the "Bond"); and

**WHEREAS**, the proceeds of the sale of the Bond will be loaned by the Issuer to the Borrower for the purpose of providing funds, together with other available funds, to (a) finance and refinance approximately 230,000 square feet of improvements through construction to include (i) the final phase of a 378 space parking structure, (ii) a new building for guests and educational space, (iii) exhibit space improvements, (iv) an elevated deck and (v) other capital improvements to the Borrower's facilities; (b) finance a new dolphin habitat ((a) and (b) collectively, the "Project") and (c) pay certain fees and expenses relating to the issuance and sale of the Bond; and

**WHEREAS**, the Borrower agrees to repay such loan from the Issuer on the terms and conditions hereinafter set forth; and

**WHEREAS**, the Issuer has previously issued its Revenue Bond (Clearwater Marine Aquarium Project), Series 2010 (the "Series 2010 Bond") which is held by the Purchaser and is currently outstanding in the amount of \$\_\_\_\_\_; and

**WHEREAS**, simultaneously with the issuance of the Bond, the Borrower will execute and deliver to the Issuer its promissory note dated the date of the issuance of the Bond (the "Note") to evidence its obligations thereunder to make payments sufficient to pay the Bond, and the Issuer will assign the Note to the Purchaser to secure the Bond; and

**WHEREAS**, the Issuer, the Borrower and the Purchaser desire to set forth the terms and conditions with respect to such financing;

**NOW, THEREFORE**, the parties hereto agree as follows:

ARTICLE I  
DEFINITIONS AND RULES OF CONSTRUCTION

**Section 1.1. Definitions.** In addition to other terms defined elsewhere in this Agreement, the following terms shall have the following meanings in this Agreement unless the context otherwise requires:

"Act" shall mean Chapter 159, Parts II and III, Florida Statutes, and other applicable provisions of law.

"Adjusted LIBOR Rate" shall mean a rate of interest per annum equal to the sum obtained (rounded upwards, if necessary, to the next higher 1/100th of 1.0%), by adding (i) the product of (x) 79% and (y) One-Month LIBOR plus (ii) the Spread. The Adjusted LIBOR Rate shall be adjusted monthly on the first day of each LIBOR Interest Period. The Adjusted LIBOR Rate shall also be adjusted for any change in the LIBOR Reserve Percentage so that the Holder shall receive the same yield.

"Advance" shall mean each advance of a portion of the principal amount of the Bond made by the Purchaser pursuant to the terms hereof on or before the Advance Termination Date.

"Advance Start Date" shall mean the date 18 months from the Closing Date, or such earlier date as may be agreed to by the Purchaser within its discretion.

"Advance Termination Date" shall mean the earlier of (a) the date on which the sum of the aggregate Advances made hereunder equals \$\_\_\_\_\_, (b) the Completion Date, (c) the Date of Taxability or (d) the date 36 months from the Closing Date.

"Agreement" shall mean this Bond Purchase and Loan Agreement, including any amendments or supplements hereto.

"Bank Bond Period" shall mean from and after the Closing Date, the Initial Period, and after any Mandatory Purchase Date, any subsequent period during which the Bond bears interest at the Bank Bond Rate.

"Bank Bond Rate" shall mean, during the Initial Period, the Adjusted LIBOR Rate or the Taxable Adjusted LIBOR Rate, as applicable pursuant to Section 3.2, and, if applicable, the Standard Rate, and after the Initial Period, the rate determined by the Calculation Agent in accordance with Section 3.2(i).

"Bankruptcy Code" shall mean the United States Bankruptcy Code as in effect on the date hereof or as hereafter amended.

"Bond" shall mean the Issuer's Industrial Development Revenue Bond (Clearwater Marine Aquarium, Inc. Project), Series 2018 in the form of Exhibit A attached hereto, issued pursuant to this Agreement in the aggregate principal amount of \$\_\_\_\_\_, and dated the date of its issuance.

"Bond Counsel" shall mean Bryant Miller Olive P.A. or any other attorney or firm of attorneys nationally recognized on the subject of municipal bonds acceptable to the Holder.

"Bond Documents" shall mean this Agreement, the Resolution, the Bond, the Assignment, the Guaranty Agreement, the Note, the Mortgage and the Security Agreement.

"Bond Resolution" shall have the meaning assigned to it in Section 2.1(c).

"Borrower" shall mean Clearwater Marine Aquarium, Inc., a Florida not-for-profit corporation.

"Borrower Representative" shall mean initially the Borrower's Chief Executive Officer, Chief Financial Officer, and Chief Operating Officer and thereafter any one or more of the persons at the time designated to act on behalf of the Borrower by written certificate furnished to the Holder containing the specimen signature of such person and signed on behalf of the Borrower by its Chief Executive Officer, Chief Financial Officer or Chief Operating Officer.

"Business Day" shall mean any day on which the Holder is open for the purpose of conducting a commercial banking business.

"Calculation Agent" shall mean, initially, the Purchaser, and any other Person appointed by the Borrower to serve as Calculation Agent for the Bond.

"Closing Date" shall mean the initial date of delivery of and payment for the Bond, which is \_\_\_\_\_, 2018.

"Code" shall mean the Internal Revenue Code of 1986, as amended, including applicable regulations and revenue rulings thereunder.

"Completion Date" shall mean, with respect to the Project, the date on which the Borrower Representative delivers a completion certificate to the Purchaser and the Issuer pursuant to Section 5.7.

"Conversion Date" shall mean a Business Day selected by the Borrower, with the consent of the Holder, on which the Adjusted LIBOR Rate applicable to the Bond will be converted to a new Adjusted LIBOR Rate by converting the Spread used in calculating such rate to a new Spread (with corresponding changes being made to the Taxable Adjusted LIBOR Rate and the Taxable Spread).

"Costs of the Project" may include the following:

- (a) The cost of land constituting a part of the Project;
- (b) The cost of labor, materials, machinery and equipment as payable to contractors, builders and materialmen in connection with the acquisition, design, construction and equipping of the Project;

(c) Governmental charges levied or assessed during construction of the Project or upon any property acquired therefor, and premiums on insurance in connection with the Project during construction of the Project;

(d) Fees and expenses of architects and engineers for estimates, surveys and other preliminary investigations, preparation of plans, drawings and specifications and supervision of the Project, as well as for the performance of all other duties of architects and engineers in relation to the acquisition, design and construction of the Project or the issuance of the Bond;

(e) Expenses of administration, supervision and inspection properly chargeable to the Project, legal expenses and fees of the Issuer in connection with the Project and the issuance and sale of the Bond, fees and expenses of the Purchaser, fees and expenses of financial advisors or brokers in arranging for the sale or placement of the Bond, fees and expenses of Bond Counsel and counsel to the Borrower, financing charges, bank fees, costs of audits, cost of preparing, issuing and selling the Bond and all other items of expense, including those of the Issuer, not elsewhere specified in this section incident to the acquisition, design, construction, equipping and placing in operation of the Project and the issuance and sale of the Bond;

(f) Interest on the Bond prior to and during construction of the Project and up to one year thereafter; and

(g) Reimbursement to the Borrower for any of such costs paid by it, whether before or after the execution of this Agreement, provided, however, that reimbursement for any expenditure made prior to the execution of this Agreement shall only be permitted for expenditures meeting the requirements of applicable Treasury Regulations, including, but not limited to, Treasury Regulations Section 1.150-2 or any successor Treasury Regulations.

Anything herein to the contrary notwithstanding, proceeds of the Bond used to pay issuance costs as calculated under Section 147(g)(1) of the Code, including the portions of the expenses described in (d) above incurred in connection with the issuance of the Bond, shall not exceed an amount equal to 2% of the principal amount of the Bond or the net proceeds thereof, whichever is less. In addition, as long as the Borrower is required to comply with the covenants set forth in Section 6.1 of this Agreement, no item of cost shall be considered a Cost of the Project that is eligible to be paid or reimbursed from the proceeds of the Bond if such payment or reimbursement would result in a violation of the provision of Section 6.1 of this Agreement. In the event that the Borrower fails to comply with either or both of the two immediately preceding sentences, no Event of Default under this Agreement shall be deemed thereby to have occurred if the Borrower shall promptly take and complete such remedial action as may be appropriate.

"Date of Taxability" shall mean the earliest date as of which interest on the Bond shall have been determined to be includable in the gross income of any Holder or prior Holder as a result of a Determination of Taxability.

"Default Rate" shall mean the greater of (i) a fluctuating interest rate equal to 2.00% per annum above the Prime Rate in effect from time to time and (ii) 6.00% per annum.

"Determination of Taxability" shall mean and shall be deemed to have occurred on the first to occur of the following:

(a) on that date when the Borrower files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability shall have in fact occurred;

(b) on the date when the Holder or any prior Holder notifies the Issuer and the Borrower that it has received a written opinion by an attorney or firm of attorneys of recognized standing on the subject of tax-exempt municipal finance to the effect that an Event of Taxability shall have occurred unless, within 180 days after receipt by the Issuer and the Borrower of such notification from the Holder or any prior Holder, the Issuer or the Borrower shall deliver to each Holder and prior Holder (A) a ruling or determination letter issued to or on behalf of the Borrower by the Commissioner or any District Director of Internal Revenue (or any other governmental official exercising the same or a substantially similar function from time to time) or (B) a written opinion by an attorney or firm of attorneys of recognized standing on the subject of tax-exempt municipal finance to the effect that, after taking into consideration such facts as form the basis for the opinion that an Event of Taxability has occurred, an Event of Taxability shall not have occurred;

(c) on the date when the Issuer or the Borrower shall be advised in writing by the Commissioner or any District Director of Internal Revenue (or any other government official or agent exercising the same or a substantially similar function from time to time) that, based upon filings of the Issuer or the Borrower, or upon any review or audit of the Issuer or the Borrower or upon any other ground whatsoever, an Event of Taxability shall have occurred; or

(d) on that date when the Issuer or the Borrower shall receive notice from any Holder or prior Holder that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed as includable in the gross income of such Holder or any prior Holder the interest on the Bond paid to such Holder or prior Holder due to the occurrence of an Event of Taxability;

provided, however, that no Determination of Taxability shall occur under clauses (c) or (d) above unless the Issuer and the Borrower have been afforded the opportunity, at their expense, to contest any such assessment; and provided further that no Determination of Taxability shall occur until such contest, if made, has been finally determined; and provided further that upon demand from the Holder or any prior Holder, the Borrower shall immediately reimburse such Holder or prior Holder for any payments such Holder (or any prior Holder) shall be obligated to make as a result of the Determination of Taxability during any such contest.

"Eminent Domain" shall mean the taking of title to, or the temporary use of, the Real Property or any part thereof pursuant to eminent domain or condemnation proceedings, or any voluntary conveyance of any part of the Real Property during the pendency of, or as a result of a threat of, such proceedings.



"Event of Default" shall mean any of the events set forth in Section 7.1.

"Event of Taxability" shall mean a change in law or fact or the interpretation thereof, or the occurrence or existence of any fact, event or circumstance (including, without limitation, the taking of any action by the Issuer or the Borrower, or the failure to take any action by the Issuer or the Borrower, or the making by the Issuer or the Borrower of any misrepresentation herein or in any certificate required to be given in connection with the issuance, sale or delivery of the Bond) which has the effect of causing interest paid or payable on the Bond to become includable, in whole or in part, in the gross income of the Holder or any prior Holder for federal income tax purposes.

"GAAP" shall mean generally accepted accounting principles, as in effect from time to time, consistently applied.

"Guaranty Agreement" shall mean the Guaranty and Credit Agreement dated \_\_\_\_\_, 2018 between the Borrower and the Purchaser and all amendments and supplements thereto.

"Holder" shall mean the Purchaser or any future registered owner of the Bond as permitted hereunder.

"Initial Period" shall mean the period from the Closing Date until the earlier of (a) the initial Mandatory Purchase Date or (b) a Conversion Date.

"Investor Letter" shall mean an investor letter in the form of the letter attached hereto as Exhibit E.

"Issuer" shall mean the Pinellas County Industrial Development Authority d/b/a Pinellas County Economic Development Authority body politic and corporate and a public Issuer and instrumentality duly organized and existing under the laws of the State of Florida, its successors and assigns.

"Issuer Representative" shall mean initially the Executive Director and thereafter any one of the persons at the time designated to act on behalf of the Issuer by written certificate furnished to the Borrower containing the specimen signatures of such persons and signed on behalf of the Issuer by its Chairman or Executive Director.

"LIBOR Interest Period" shall mean the period commencing on the **[first day]** of each month and ending on the day that is immediately prior to the numerically corresponding day of each month thereafter; provided that:

(a) any LIBOR Interest Period which would otherwise end on a day which is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such LIBOR Interest Period shall end on the next preceding Business Day; and

(b) any LIBOR Interest Period which begins on a day for which there is no numerically corresponding day in the subsequent month shall end on the last Business Day of each subsequent month; provided, however, that the first LIBOR Interest Period shall commence on the date the Bond is first issued and end \_\_\_\_\_.

"LIBOR Reserve Percentage" shall mean the maximum aggregate rate at which reserves (including, without limitation, any marginal supplemental or emergency reserves) are required to be maintained under Regulation D by member banks of the Federal Reserve System with respect to dollar funding in the London interbank market. Without limiting the effect of the foregoing, the LIBOR Reserve Percentage shall reflect any other reserves required to be maintained by such member banks by reason of any applicable regulatory change against (i) any category of liability which includes deposits by reference to which One-Month LIBOR is to be determined or (ii) any category of extension of credit or other assets related to One-Month LIBOR.

"Mandatory Purchase Date" shall mean, during any Bank Bond Period, the date designated by the Holder of the Bond in writing, upon at least 120 days' prior written notice to the Issuer and the Borrower, as the date on which the Bond is required to be purchased in whole; provided that, for any Bank Bond Period, the Mandatory Purchase Date shall not occur prior to the end of the Minimum Holding Period in effect for such Bank Bond Period.

"Minimum Holding Period" shall mean (a) during the Initial Period, the period from the Closing Date to March 26, 2024, and (b) during any subsequent Bank Bond Period, the period of time determined by the Calculation Agent pursuant to Section 3.2(i) as the minimum period during which the Holder is required to hold the Bond before a Mandatory Purchase Date can occur.

"Mortgage" shall mean the Amended and Restated Mortgage and Security Agreement dated as of the date hereof, executed and delivered by the Borrower to the Purchaser, and any amendments and supplements permitted thereby.

"Net Proceeds" when used with respect to any insurance proceeds or award resulting from, or other amount received in connection with, Eminent Domain, shall mean the gross proceeds from such proceeds, award or other amount, less all expenses (including attorneys' fees) incurred in the realization thereof.

"Note" shall mean the Promissory Note of the Borrower issued in favor of the Issuer and assigned to the Purchaser pursuant to this Agreement in the principal amount of \$\_\_\_\_\_ in the form attached hereto as Exhibit B.

"One-Month LIBOR" means the average rate quoted on Bloomberg Finance L.P., or any electronic quoting service or commonly available source utilized by the Holder, on the determination date for deposits in U. S. Dollars offered in the London interbank market for one month determined as of 11:00 am London time two (2) Business Days prior to the commencement of the applicable LIBOR Interest Period, provided that if the above method for determining One-Month LIBOR shall not be available, the rate quoted in The Wall Street Journal, or a rate

determined by a substitute method of determination agreed on by the Borrower and the Holder; provided if such agreement is not reached within a reasonable period of time (in the Holder's sole judgment), a rate reasonably determined by the Holder in its sole discretion as a rate being paid, as of the determination date, by first class banking organizations (as determined by the Holder) in the London interbank market for U. S. Dollar deposits. Notwithstanding the foregoing, if One-Month LIBOR determined as provided above would be less than zero percent (0%), then One-Month LIBOR shall be deemed to be zero percent (0%).

"Payment of the Bond" shall mean payment in full of the Bond and the making in full of all other payments due and payable pursuant to this Agreement at the time of such payment.

"Person" shall mean an individual, partnership, corporation, trust, unincorporated organization, association, joint venture, joint-stock company, or a government or agency or political subdivision thereof.

"Prime Rate" shall mean the interest rate announced by Branch Banking and Trust Company from time to time as its prime rate. Any change in the Prime Rate shall be effective as of the date such change is announced by Branch Banking and Trust Company.

"Principal Amount" shall mean the aggregate principal amount of all Advances.

"Project" shall mean the financing and refinancing of approximately 230,000 square feet of improvements through construction to include (i) the final phase of a 378 space parking structure, (ii) a new building for guests and educational space, (iii) exhibit space improvements, (iv) an elevated deck and (v) other capital improvements to the Borrower's facilities; and (b) finance a new dolphin habitat.

"Project Documents" shall mean, collectively, contracts, documents and agreements, and surety bonds and instruments pertaining to the construction and development of the Project.

"Purchaser" shall mean Branch Banking and Trust Company, a North Carolina banking corporation or any successor, as the initial Holder of the Bond.

"Real Property" shall mean the land on which the Project is to be located as described in the Mortgage.

"Restricted Gifts" shall mean any gift or other contribution to the Borrower that is expressly restricted by the donor thereof to be expended exclusively on a particular portion of the Project.

"Security Agreement" shall mean the Security Agreement dated as of the date hereof, between the Borrower and the Purchaser, and any amendments and supplements thereto permitted with respect thereto.

"Spread" shall mean (a) during the Initial Period, 2.0875% per annum, and (b) during any subsequent Bank Bond Period, the percentage rate per annum determined by the Calculation

Agent to be the lowest percentage rate necessary, when used to determine the Adjusted LIBOR Rate, to result in a remarketing or placement of the Bond at a price of par plus accrued interest, without premium, taking into account prevailing market conditions at the time of such remarketing or placement.

"Standard Rate" shall mean that rate of interest per annum that shall apply in lieu of the Adjusted LIBOR Rate or Taxable Adjusted LIBOR Rate in the event that One-Month LIBOR shall not be ascertainable or is illegal or unlawful with respect to the Holder. The Standard Rate shall be computed, for any day, as a rate per annum (rounded upwards, if necessary to the next 1/100th of 1.0%) equal to the Bank's announced Prime Rate per annum and each change in the Standard Rate shall be effective on the date any change in the Prime Rate is publicly announced as being effective.

"State" shall mean the State of Florida.

"Tax Certificate and Agreement" shall mean that certain Tax Certificate and Agreement dated as of the Closing Date, entered into by the Issuer and the Borrower in connection with the issuance of the Bond.

"Taxable Adjusted LIBOR Rate" shall mean a rate of interest per annum equal to the sum obtained (rounded upwards, if necessary, to the next higher 1/100th of 1.0%), by adding (i) One-Month LIBOR plus (ii) the Taxable Spread. The Taxable Adjusted LIBOR Rate shall be adjusted monthly on the first day of each LIBOR Interest Period. The Taxable Adjusted LIBOR Rate shall also be adjusted for any change in the LIBOR Reserve Percentage so that the Holder shall receive the same yield.

"Taxable Spread" shall mean (a) during the Initial Period, 2.25% per annum and (b) during any subsequent Bank Bond Period, the percentage rate per annum determined by the Calculation Agent to be the lowest percentage rate necessary, when used to determine the Taxable Adjusted LIBOR Rate, to result in a remarketing or placement of the Bond at a price of par plus accrued interest, without premium, taking into account prevailing market conditions at the time of such remarketing or placement.

## **Section 1.2. Rules of Construction.**

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders, and words of the neuter gender shall be deemed and construed to include correlative words of the masculine and feminine genders.

(b) The table of contents, captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Agreement.

(c) All references herein to particular Articles or Sections are references to Articles or Sections of this Agreement unless some other reference is established.

(d) All accounting terms not specifically defined herein shall be construed in accordance with GAAP.

(e) Any capitalized terms used herein and not otherwise defined shall have the meaning given such terms in the other Bond Documents.

(f) All references herein to the Code or any particular provision or section thereof shall be deemed to refer to any successor, or successor provision or section, thereof, as the case may be.

## ARTICLE II REPRESENTATIONS AND WARRANTIES

**Section 2.1. Representations and Warranties of the Issuer.** The Issuer hereby represents and warrants to, and agrees with, the Borrower and the Purchaser as follows:

(a) The Issuer is a body politic and corporate and an instrumentality duly organized and existing under the Act. The Issuer is authorized to issue revenue bonds in accordance with the Constitution and the laws of the State, including the Act, and to use the proceeds thereof to make loans within the meaning of the Act.

(b) The Issuer has full power and authority to issue the Bond pursuant to the Act and to carry out and consummate all transactions contemplated by the Bond Documents.

(c) The Issuer has duly authorized (i) the issuance and sale of the Bond; (ii) the loan of the proceeds to the Borrower to finance the Project, as provided herein; (iii) the execution, delivery and due performance of this Agreement and the Bond; (iv) the pledge of the Note, endorsed without recourse to the Purchaser as security for the Bond, and (v) the taking of any and all action as may be required on the part of the Issuer to consummate the transactions contemplated hereby. The Issuer has approved the form of the Agreement, the Bond, and the Note. The fully executed Bond, the executed Note duly endorsed to the order of the Purchaser, fully executed counterparts of this Agreement and certified copies of the resolutions adopted by the Issuer authorizing the Issuer's undertakings contemplated hereby (collectively, the "Bond Resolution") shall be delivered to the Purchaser by the Issuer on the Closing Date in the respective forms heretofore submitted to the Purchaser and approved by the Purchaser, with only such changes or modifications thereof as the Purchaser, the Borrower and the Issuer shall agree upon.

(d) So long as the Bond is outstanding, the Issuer will not issue or sell any other bonds, notes or other obligations the principal, premium, if any, or interest of which may be payable in whole or in part from the revenues derived from payment by the Borrower pursuant to this Agreement or the Note.

(e) To the knowledge of the Issuer, there is no action, suit, proceeding or investigation at law or in equity or before or by any court, public board or body pending or threatened against or affecting the Issuer, or to the best of the knowledge of the Issuer any basis therefor, wherein

an unfavorable decision, ruling or finding would adversely affect any of the transactions contemplated by this Agreement, or which, in any way, would adversely affect the validity of any of the Bond Documents or any other agreement or instrument to which the Issuer is a party and which is used or contemplated for use in consummation of the transactions contemplated hereby.

(f) The execution and delivery of and performance by the Issuer of the Bond and the other Bond Documents to which it is a party and the other agreements and instruments contemplated hereby in compliance with the provisions hereof and the endorsement and pledge of the Note as aforesaid will not conflict with, or constitute on the part of the Issuer a breach of or a default under, any existing law, administrative regulation, decree, court order or any provision of any legislative act or constitutional or other proceeding applicable to or establishing or relating to the establishment of the Issuer or its affairs or resolutions or any agreement, indenture, mortgage, lease or other instrument to which the Issuer is subject or by which it is or may be bound.

(g) All action on the part of the Issuer necessary for the making and performance of the Bond and the other Bond Documents to which it is a party and the other transactions on the part of the Issuer contemplated hereby or thereby has been duly and effectively taken. All consents, authorizations and approvals of, or filings or registrations with, all governmental or regulatory bodies required of the Issuer for the making and performance of the Bond and the other Bond Documents to which it is a party, and the transactions contemplated hereby and thereby, have been duly and effectively taken.

(h) All requirements and conditions specified in the Act, or other organizational documents of the Issuer and all other laws and regulations applicable to the adoption of the Bond Resolution, the execution, delivery and issuance of the Bond and the execution and delivery of the other Bond Documents to which the Issuer is a party, have been fulfilled.

(i) The Issuer shall take all action and do all things which it is authorized by law to take and do in order to perform and observe all covenants and agreements on its part to be performed and observed under the Bond and the other Bond Documents to which it is a party and in order to provide for and to assure payment of the Bond and the interest thereon when due, but solely in accordance with and subject to the limitations contained in the Bond and the other Bond Documents to which it is a party.

(j) The Issuer shall not alter, amend or repeal the Bond Resolution, or, without the prior written consent of the Holder, agree to any alteration or amendment of this Agreement, or take any action impairing any authority, right or benefit given or conferred by the Bond Resolution or the Bond Documents.

(k) The Bond and the other Bond Documents to which the Issuer is a party are legal, valid and binding obligations of the Issuer.

All of the above representations and warranties shall survive the making of this Agreement and the issuance of the Bond.

**Section 2.2. Representations and Warranties of Borrower.** The Borrower makes the following representations as the basis for its undertakings hereunder:

(a) The Borrower is a not-for-profit corporation duly organized, validly existing and in good standing under the laws of the State.

(b) The Borrower (1) is an organization described in Section 501(c)(3) of the Code and (2) is not a "private foundation" as defined in Section 509(a) of the Code. The Borrower has conducted its operations and filed all required reports with the Internal Revenue Service to maintain such status. The Borrower has not received any notice or other communication from the Internal Revenue Service questioning its tax-exempt status.

(c) The Borrower has the power to enter into the Bond Documents to which it is a party and perform its obligations thereunder, and by proper action has duly authorized the execution and delivery of the Bond Documents to which it is a party and the performance of its obligations thereunder. When executed and delivered, the Bond Documents to which the Borrower is a party will be the valid and binding obligations or agreements of the Borrower, enforceable in accordance with their respective terms.

(d) The Borrower is financing, through the issuance by the Issuer of the Bond, a "Project" within the meaning of the Act.

(e) There is no litigation at law or in equity or any proceeding before any governmental agency or arbitral body involving the Borrower pending or, to the knowledge of the Borrower, threatened which has not been disclosed to the Purchaser in which any judgment or order would have a material adverse effect upon the business or assets of the Borrower, or that would materially affect its authority to do business, the validity of the Bond Documents or the performance of its obligations thereunder.

(f) The Borrower is not in default in the payment of the principal of or interest on the Series 2010 Bond or on any of its material indebtedness for borrowed money and is not in default under any instrument under and subject to which any material indebtedness has been incurred, and no event has occurred and is continuing under the provisions of any such agreement that with the lapse of time or the giving of notice, or both, would constitute an event of default thereunder.

(g) The execution and delivery of the Bond Documents to which it is a party and the performance by the Borrower of its obligations thereunder do not and will not conflict with, or constitute a breach or result in a violation of, the articles of incorporation or bylaws of the Borrower, any agreement or other instrument to which the Borrower is a party or by which it is bound or any constitutional or statutory provision or order, rule, regulation, decree or ordinance

of any court, government or governmental agency having jurisdiction over the Borrower or any of its property.

(h) The Borrower has obtained all consents, approvals, authorizations and orders of any governmental or regulatory authority that (1) are required to be obtained by the Borrower as a condition precedent to the issuance of the Note or the execution and delivery of the Bond Documents or (2) are required for the performance by the Borrower of its obligations thereunder or in connection with the Tax Certificate and Agreement.

(i) The most recent audited financial statements of the Borrower, copies of which have been furnished to the Issuer and the Purchaser, accurately reflect the financial condition of the Borrower and its results of operations for the periods provided in such audited financial statements. There has been no material adverse change in the financial condition of the Borrower since the date of the most recent of such financial statements.

(j) The Borrower, to the best of its knowledge, is in compliance in all material respects with all environmental and similar laws to which it is subject.

(k) The Borrower has filed all federal, state and local tax returns which are required to be filed by it and has paid or caused to be paid all taxes as shown on said returns or on any assessment received by it, to the extent that such taxes have become due, and no controversy in respect of additional income taxes, state or federal, of the Borrower is pending or, to the knowledge of the Borrower, threatened which has not heretofore been disclosed in writing to the Purchaser and which, if adversely determined, would materially and adversely affect the financial condition or operations of the Borrower.

(l) None of the Bond Documents to which the Borrower is a party nor the Tax Certificate and Agreement contains any misrepresentation or untrue statement of fact or omits to state a material fact necessary in order, to make any such representation or statement contained therein not misleading.

(m) The Borrower possesses all necessary patents, licenses, trademarks, trademark rights, trade names, trade name rights and copyrights to conduct its business as now conducted, without known conflict with any patent, license, trademark, trade name or copyrights of any other Person.

(n) The site of the Project is properly zoned, and the use and operation of the Project complies with the uses permitted by applicable zoning regulations.

(o) The Borrower has not taken any action and will not take or omit to take any action which would impair the exemption of interest on the Bond from federal income taxation.

(p) All of the representations, warranties and covenants of the Borrower contained in the Tax Certificate and Agreement are hereby reaffirmed and incorporated herein by this reference.



All of the above representations and warranties shall survive the execution and delivery of this Agreement and the issuance of the Note.

### ARTICLE III ISSUANCE OF THE BOND

**Section 3.1. Sale and Purchase of Bond.** The Issuer shall issue the Bond substantially in the form attached as Exhibit A hereto. In reliance upon the representations, warranties and agreements herein contained, and subject to the conditions herein set forth, at the Closing Time (hereinafter defined) (a) the Issuer agrees to issue and sell the Bond to the Purchaser for a purchase price of \$\_\_\_\_\_ ; (b) the Issuer also agrees to lend the Borrower the proceeds of the Bond, enter into this Agreement and to pledge the Note, endorsed without recourse to the order of the Purchaser, to the Purchaser; (c) the Purchaser agrees to purchase the Bond from the Issuer and to accept the Guaranty Agreement from the Borrower; and (d) the Borrower agrees to enter into this Agreement, the Note (in the form of Exhibit B), the Guaranty Agreement and the other Bond Documents, and to consent to the pledge of the Note, endorsed without recourse to the order of the Purchaser, to the Purchaser as security for the Bond.

Payment for the Bond shall be made in the manner provided in Section 5.1 hereof, at or before 12:00 Noon, Clearwater, Florida time by wire transfers on the Closing Date, or at such other time, date and place as may be mutually agreed upon by the parties hereto (the "Closing Time").

The Issuer has been advised by the Borrower that due to (i) the desire to coordinate the sale of the Bond, (ii) the limited market for tax-exempt obligations such as the Bond, and (iii) the prior granting of the security interests to the holder of the Series 2010 Bond, it is in the best interest of the Borrower to sell the Bond by negotiated sale, and the Issuer, wishing to obtain the best interest rate on the Bond for the benefit of the Borrower, has determined to sell the Bond by negotiated sale to the Purchaser, permitting the Issuer to enter such market at the most advantageous time, rather than at a specified advertised date, and accordingly it is in the best interest of the Issuer that a negotiated sale of the Bond be authorized therefor the sale of the Bond on a negotiated basis is hereby provided for.

**Section 3.2. Terms of the Bond.**

(a) The Bond shall be dated \_\_\_\_\_, 2018 and mature on \_\_\_\_\_, 20\_\_\_\_. Principal and interest shall be payable to the Holder as set forth in the Bond. All unpaid principal with respect to the Bond shall be due and payable on \_\_\_\_\_, or on any earlier Mandatory Purchase Date.

(b) Interest shall accrue on the outstanding principal amount of the Bond, and shall initially be calculated at the Adjusted LIBOR Rate on the basis of actual days elapsed over a 360-day year and shall be payable as provided in the form of the Bond.

(c) Upon the occurrence of a Determination of Taxability, then, from and after the Date of Taxability, the interest rate used to calculate interest on the Bond shall be the Taxable Adjusted LIBOR Rate. After a Determination of Taxability and upon demand of the Holder or any prior Holder of the Bond, the Issuer shall pay to such Holder or prior Holder, but only from amounts provided by the Borrower pursuant to Section 4.6, such additional amount as shall be necessary to provide that interest on the Bond shall have been payable at the Taxable Adjusted LIBOR Rate from the Date of Taxability.

(d) Upon a Determination of Taxability, the Issuer shall also pay, but only from amounts provided by the Borrower pursuant to Section 4.6, to such Holder or to any prior Holder upon demand of such Holder or prior Holder any taxes, interest, penalties or other charges assessed against or payable by such Holder or prior Holder and attributable to such Determination of Taxability and all reasonable administrative, out of pocket and other expenses incurred by such Holder or prior Holder which are attributable to such event, including, without limitation, the costs incurred by such Holder or prior Holder to amend any of its tax returns, notwithstanding the repayment of the entire principal amount of the Bond or any transfer or assignment of the Bond.

(e) If at any time after the date hereof there should be any decline in the maximum marginal rate of federal income tax applicable to the taxable income of the Purchaser, its successors or assigns ("BB&T Tax Rate"), then the Adjusted LIBOR Rate in effect hereunder from time to time as herein provided, for so long as there shall not have occurred a Determination of Taxability, shall be adjusted by the Purchaser, effective as of the effective date of any such change in the BB&T Tax Rate, by multiplying the Adjusted LIBOR Rate by a fraction, the denominator of which is one hundred percent (100%) minus the BB&T Tax Rate in effect upon the date hereof which is 21%, and the numerator of which is one hundred percent (100%) minus the BB&T Tax Rate after giving effect to such change.

(f) So long as any portion of the principal amount of the Bond or interest thereon remains unpaid, if (i) any law, rule, regulation or executive order is or has been enacted or promulgated by any public body or governmental agency that changes the basis of taxation of payments to any Holder or prior Holder of principal or interest payable pursuant to the Bond, including without limitation the imposition of any excise tax or surcharge thereon, but excluding changes in the rates of tax applicable to the overall net income of any Holder or prior Holder, or (ii) as a result of action by any public body or governmental agency, any payment is required to be made by, or any federal, state or local income tax deduction is denied to, any Holder or prior Holder of the Bond by reason of the ownership of, borrowing money to invest in, or receiving principal of or interest on the Bond, the Issuer agrees to reimburse on demand therefor, but only from amounts provided by the Borrower and not otherwise, each such Holder and prior Holder against, any loss, cost, charge or expense with respect to any such change, payment or loss of deduction.

(g) In the event that One-Month LIBOR shall not be ascertainable, for any reason, or for any reason it shall be illegal or unlawful for the Holder of the Bond to collect interest based

on One-Month LIBOR, then, from and after the date the Holder of the Bond determines such condition exists, until the date such Holder determines such condition no longer exists, each reference herein to One-Month LIBOR shall be deemed and interpreted to mean the Standard Rate.

(h) Notwithstanding the foregoing, from and after the occurrence of an Event of Default, until such time as such Event of Default has been remedied or otherwise waived by the Holder, the Bond shall bear interest at the Default Rate. To the extent permitted by law, interest shall accrue on any overdue payment of interest or principal at the Default Rate. In addition, the Issuer agrees, solely from funds of the Borrower, to pay the Holder a late fee on any payments past due for ten (10) or more days in an amount equal to five percent (5%) of the amount of payment past due. When any payment is past due for ten (10) or more days, subsequent payments shall first be applied to past due balances. This provision for late charges shall not be deemed to extend the time for payment or be a "grace period" or "cure period" that gives the Issuer or the Borrower a right to cure such default. Imposition of late charges is not contingent upon the giving of any notice or lapse of any cure period.

(i) Following the tender of the Bond on any Mandatory Purchase Date pursuant to Section 3.5(c), the interest rate on the Bond shall be adjusted to a new Bank Bond Rate, determined by the Calculation Agent as set forth below, for such new Bank Bond Period (as determined by the Calculation Agent) and the Borrower (or a remarketing agent selected by the Borrower) shall use its best efforts to remarket or place the Bond with one or more Holders (all of whom must meet the requirements for a permitted transferee of the Bond set forth in Section 3.3) at a price of par. Prior to the placement or remarketing of the Bond following a Mandatory Purchase Date, the Calculation Agent shall determine the Bank Bond Rate to be in effect with respect to the Bond during such Bank Bond Period. The Calculation Agent shall first determine the Minimum Holding Period to be in effect during such Bank Bond Period. The Calculation Agent shall then determine the Spread for the Adjusted LIBOR Rate and the Taxable Spread for the Taxable Adjusted LIBOR Rate, in each case taking into account the Minimum Holding Period, so that the resulting Bank Bond Rate will result in a remarketing or placement of the Bond at a price of par plus accrued interest, without premium.

(j) This Agreement, including but not limited to this Section 3.2 is subject in all respects to the follow:

THE BOND SHALL NEVER CONSTITUTE AN INDEBTEDNESS OF THE ISSUER WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL PROVISION OR STATUTORY LIMITATION AND SHALL NEVER CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF PINELLAS COUNTY OR THE ISSUER OR A CHARGE AGAINST ITS GENERAL CREDIT. THE FULL FAITH AND CREDIT OF PINELLAS COUNTY OR THE ISSUER ARE NOT PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE BOND. THE OWNER OF THE BOND SHALL NOT HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE AD VALOREM TAXING POWER OF THE STATE OF FLORIDA OR OF ANY POLITICAL SUBDIVISION OF SAID STATE TO PAY THE BOND OR THE INTEREST THEREON. THE

BOND IS NOT A DEBT OF THE STATE OF FLORIDA OR OF ANY POLITICAL SUBDIVISION OF SUCH STATE OTHER THAN THE ISSUER, LIMITED AS AFORESAID, AND NEITHER SAID STATE NOR ANY SUCH POLITICAL SUBDIVISION THEREOF OTHER THAN THE ISSUER, LIMITED AS AFORESAID, SHALL BE LIABLE THEREON. THE BOND AND ALL PAYMENTS TO BE MADE BY THE ISSUER HEREUNDER OF ANY NATURE WHATSOEVER ARE PAYABLE SOLELY FROM THE SOURCES PROVIDED THEREFOR (I.E., PAYMENTS MADE BY THE BORROWER OR DERIVED FROM THE EXERCISE OF REMEDIAL RIGHTS AGAINST THE BORROWER AND THE SECURITY PROVIDED FOR THE BOND AND NOT ANY OTHER FUNDS OF THE ISSUER).

**Section 3.3. Bond to be Issued in Registered Form; Registration and Transfer.** The Bond shall be issuable in typewritten form as a fully registered Bond without coupons, in a denomination equal to the entire principal amount of the Bond. The Bond shall be substantially in the form attached hereto as Exhibit A, with such appropriate variations, omissions and insertions as are permitted or required by this Agreement, and may have endorsed thereon such legends or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any usage or requirements of law with respect thereto.

Branch Banking and Trust Company, Clearwater, Florida, is hereby appointed by the Issuer as the registrar for the Bond (the "Bond Registrar") and as such shall keep books for the registration and for the registration of transfer of the Bond as provided in this Agreement (the "Bond Registration Books"). The transfer of the Bond may be registered upon the Bond Registration Books only upon (i) surrender thereof to the Bond Registrar together with an assignment duly executed by the registered owner or his attorney or legal representative in such form as shall be satisfactory to the Bond Registrar and (ii) upon the delivery of an Investor Letter. Upon such registration of transfer, the Issuer (upon indemnification and the payment of any related cost) shall execute and deliver at the earliest practicable time in exchange for such Bond a new bond registered in the name of the transferee, in an aggregate principal amount equal to the principal amount of such Bond and maturing in the same principal installments and bearing interest at the applicable rate.

The Bond surrendered in any such exchange or registration of transfer shall forthwith be cancelled by the Bond Registrar. The Bond Registrar may make a charge which shall be paid by the Borrower for every registration of transfer sufficient to reimburse it and the Issuer for any tax, fee or other governmental charge required to be paid with respect to such registration of transfer, and such charge shall be paid before any such new Bond shall be delivered. The Bond Registrar shall not be required to make any registration of transfer of the Bond during the fifteen (15) days immediately preceding an interest payment date on the Bond or, in the case of any proposed redemption of the Bond, after any such Bond or any portion thereof has been called for redemption.

The person in whose name the Bond shall be registered upon the Bond Registration Books shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or

on account of the principal of and interest on such Bond shall be made only to the registered owner thereof or his registered assigns. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid.

Upon any registration of transfer of the Bond or of any interest therein and the delivery of the Investor Letter required hereunder, the transferee or any subsequent transferee, if the transfer to it in all respects complies with the requirements of this Section, and if it is duly registered as owner as herein provided, shall be deemed the Holder for purposes of this Agreement and shall succeed to the rights and be bound by the obligations of the Purchaser hereunder, including without limitation the provisions of this Section relating to transfer of the Bond. Immediately upon any registration of transfer of the Bond or of any interest therein, the new Holder shall give written notice of such transfer to the Borrower.

Interest shall be payable to the Holder of record on the interest payment date for such interest.

The Bond Registrar may resign upon thirty (30) days' prior written notice to the Issuer and the Borrower. The Issuer also reserves the right, with the Holder's consent, to remove the Bond Registrar and appoint a successor Bond Registrar. Upon the resignation or removal of any Bond Registrar, and with the consent of the Holder, the Issuer shall either act as or designate a successor to act as Bond Registrar, with the cost payable by the Borrower.

#### **Section 3.4. Purchase for Own Account.**

(a) The Purchaser represents that it is (1) purchasing the Bond for its own account as a loan in the ordinary course of business and has no present intention of reselling or disposing of the Bond or engaging in any "distribution" thereof (as that term is used in the Securities Act of 1933, as amended, and the regulations of the Securities and Exchange Commission thereunder), (2) familiar with the operations and financial condition of the Borrower based upon information furnished to the Purchaser by the Borrower and has made such inquiries as it deems appropriate in connection with the purchase of the Bond, and (3) capable of evaluating the merits and risks of the purchase of the Bond. In determining whether to purchase the Bond, the Purchaser has not relied upon any information (including financial information) relating to the Borrower provided by the Issuer, nor has it relied upon the Issuer to provide any such information.

(b) The Purchaser represents that it has made its own independent evaluation of the creditworthiness of the Borrower and that it has been provided with or permitted access to all information it has deemed material to formulating its decision to purchase the Bond. The Borrower has made available to the Purchaser, during the course of the transaction and prior to the purchase of the Bond, the opportunity to ask questions and receive answers from such parties concerning the terms and conditions of the issuance of the Bond and to obtain such additional information relative to the financial data and business of the Borrower and such property to be conveyed in trust or otherwise used as security, to the extent that such parties possess such

information or can acquire it without unreasonable effort or expense, as the Purchaser has deemed necessary and appropriate in the circumstances.

(c) The Purchaser is aware that there may be no secondary market for the Bond and that it may be required to hold the Bond for at least a six-year period. The Purchaser represents that it is purchasing the Bond for its own account as a loan made in the ordinary course of business with no present intention to resell or distribute the Bond or any interest therein; provided, however, that the Purchaser reserves the right at all times to control the disposition of its assets, including the Bond, and reserves the right to sell, assign and transfer the Bond (or fractional interests in the Bond in denominations of not less than \$100,000) to (a) other banks, insurance companies or similar financial institutions or affiliates thereof (including an affiliate of the Purchaser), (b) any "qualified institutional buyer" within the meaning of Rule 144A of the Securities Exchange Act of 1934, as amended, (c) the Federal Reserve Bank, the Federal Deposit Insurance Corporation or any similar governmental agency or (d) any other purchaser if such sale, assignment or transfer is approved in writing by the Issuer; provided, however, that no public offering of all or any portion of the Bond, or of any interest therein, shall be made.

(d) It is specifically understood and agreed that the Issuer makes no representation, covenant or agreement as to the financial position or business condition of the Borrower and does not represent or warrant as to any statements, materials, representations or certifications furnished by the Borrower in connection with the sale of the Bond, or as to the correctness, completeness or accuracy thereof.

(e) The Borrower represents that no Bond Document nor any information (financial or otherwise) furnished by or on behalf of the Borrower in connection with the negotiation of the sale of the Bond contains any untrue statement of a material fact or omits a material fact necessary to make the statements contained therein not misleading. There is no fact that the Borrower has not disclosed in writing to the Purchaser that will have a material adverse effect on the properties, business, prospects, profits or condition (financial or otherwise) of the Borrower, or the ability of the Borrower to perform its obligations under the Bond Documents.

**Section 3.5. Optional and Mandatory Redemption of Bond; Mandatory Purchase of Bond.**

(a) The Bond is subject to optional redemption, in whole or in part, at the option of the Borrower, in the event the Borrower elects to prepay the Note. The Borrower is hereby granted, and shall have the option to prepay, at any time the unpaid principal of the Note in whole or in part without penalty or premium; provided, that all prepayments shall be made in immediately available funds and with accrued interest to the date of prepayment and that any prepayment of the Note in part shall be applied to unpaid installments of principal in inverse order of maturity or otherwise as consented to by the Holder. Any prepayment pursuant to this subsection (a) shall be made by the Borrower taking, or causing the Issuer to take, the actions required (i) for Payment of the Bond, in the case of prepayment of the Note in whole, or (ii) to

effect prepayment of less than all of the Bond according to its terms in the case of a partial prepayment of the Note.

To exercise the option granted in subsection (a) of this Section, the Borrower shall give written notice to the Issuer and the Holder which shall specify therein (i) the date of the intended prepayment of the Note, which shall not be less than 10 nor more than 60 days from the date the notice is mailed and (ii) the principal amount of the Note to be prepaid; provided, however, no such notice shall be required to the extent that optional redemption of the Bond is pursuant to and in accordance with the schedule set forth in Exhibit \_\_ to the Guaranty Agreement. When given, such notice shall be irrevocable by the Borrower unless the Holder shall consent to a revocation.

(b) The Bond shall be subject to mandatory redemption in whole in the event of a Determination of Taxability, and the Borrower shall, on a date selected by the Borrower within 45 days after the Determination of Taxability pay to or for the account of the Holder the entire principal amount of the Note, if any, outstanding at the date of payment hereunder, plus accrued interest thereon to the date of such payment, plus all other amounts otherwise due under the Note and the Bond.

(c) The Holder of the Bond shall have the right to require that the Bond be redeemed in full on any date specified in such notice occurring on or after the Mandatory Purchase Date, upon at least 120 days' prior written notice to the Issuer and the Borrower, and on any Conversion Date, on which date the Bond shall be subject to redemption and payable in full and the Note shall correspondingly be due and payable in full. In such event, no purchase of the Bond by a subsequent Holder or advance or use of any moneys to effectuate such purchase shall be deemed to be a payment or redemption of the Bond or any portion thereof, and such purchase shall not operate to extinguish or discharge the indebtedness evidenced by the Bond. In the event the Holder of the Bond exercises its right to require the Bond to be purchased in whole on a Mandatory Purchase Date pursuant to this Section 3.5(c) or a Bond is subject to mandatory purchase on a Conversion Date, and the Bond is not remarketed to a subsequent Holder pursuant to Section 3.2(i), then the Bond shall be deemed to be called for redemption rather than purchased on the Mandatory Purchase Date or the Conversion Date at a purchase price equal to the principal amount thereof, plus accrued interest thereon to but not including the date of such redemption.

**Section 3.6. Conditions Precedent to Delivery of Bond.** The Issuer shall issue and sell the Bond, and the Purchaser shall accept delivery of the Bond, only upon delivery to it in form and substance satisfactory to it of the following:

- (a) Executed copies of the Bond Documents, all in form acceptable to the Purchaser;
- (b) Evidence of the due authorization, execution and delivery of the Bond Documents by the parties thereto and certificates covering litigation, compliance with all applicable federal, state and local laws, restrictions and requirements, and prior agreements;

(c) An opinion or opinions of Bond Counsel satisfactory to the Purchaser that (i) interest on the Bond will be excluded from gross income for federal income tax purposes; and (ii) interest on the Bond will not be an item of tax preference for purposes of the federal alternative minimum income tax imposed on individuals and corporations;

(d) Evidence of the completion and arrangements for filing of Internal Revenue Service Form 8038 with respect to the issuance of the Bond, together with a certificate of an authorized officer of the Borrower with respect to the information contained therein;

(e) An opinion or opinions of counsel to the Borrower in a form acceptable to the Purchaser;

(f) A certificate of the Borrower having as attachments true and correct copies of its articles of incorporation, bylaws, Internal Revenue Service determination letter regarding its status under Section 501(c)(3) of the Code and a Certificate of Status issued by the Secretary of State of the State;

(g) The Purchaser shall have received a copy, duly certified by the Executive Director of the Issuer, of the resolution of the Issuer approving the issuance of the Bond;

(h) The executed Investor Letter;

(i) The conditions to purchase of the Bond by the Purchaser set forth in the Guaranty Agreement have been met to the satisfaction of the Purchaser; and

(j) Such other documentation, certificates and opinions as may be reasonably required by the Purchaser or Bond Counsel.

#### ARTICLE IV LOAN OF PROCEEDS TO BORROWER

##### **Section 4.1. Loan by the Issuer; Repayment of Loan.**

(a) The Issuer agrees, upon the terms and conditions of this Agreement, to lend to the Borrower, in one or more Advances, the proceeds received by the Issuer from the sale of the Bond. Such loan shall be a non-revolving loan; amounts repaid may not be reborrowed. Advances shall be made to or on behalf of the Borrower as provided in Article V hereof and in the Guaranty Agreement.

(b) Prior to or simultaneously with the issuance of the Bond, to evidence its obligations to repay the Bond, the Borrower shall deliver the Note to the Issuer for assignment to the Purchaser as security for the Payment of the Bond. The Issuer hereby assigns such Note to the Purchaser without recourse and shall also execute the form of assignment affixed to the Note.

**Section 4.2. Amounts Payable.** The Borrower shall make all payments required under (i) the Bond as and when the same become due and shall promptly pay to the Holder all other



amounts necessary to pay principal of and interest on the Bond, including any other payments required by the Bond, as and when the same become due (whether at maturity, by acceleration or otherwise), on the dates and in the amounts set forth in the Bond and (ii) this Agreement to be paid by the Issuer in respect of the Bond as and when the same become due. Payments shall be made in lawful money of the United States of America at the office of the Purchaser in Clearwater, Florida, or at such other place as the Holder may direct in writing. Any amount at any time paid to the Holder as the payment of principal of or interest on the Bond as the same become due shall be credited against the Borrower's obligation hereunder and under the Note as of the date such obligation is due (but subject to collection of any instrument, draft, check or order for payment received by the Holder).

**Section 4.3. No Set-Off.** The obligation of the Borrower to make the payments required by the Note shall be absolute and unconditional. The Borrower will pay without abatement, diminution or deduction (whether for taxes or otherwise) all such amounts regardless of any cause or circumstance whatsoever including, without limitation, any defense, set-off, recoupment or counterclaim that the Borrower may have or assert against the Issuer, the Purchaser, any Holder or any other Person.

**Section 4.4. Prepayments.** The Borrower shall have the option to prepay the Note, in whole or in part, as set forth in Section 3.5(a). The Borrower shall prepay the Note in whole in the amounts necessary to redeem the Bond when and as required by Sections 3.5(b) and 3.5(c) hereof.

**Section 4.5. Credits Against the Note.** To the extent that principal of or interest on the Bond shall be paid, there shall be credited against the unpaid principal of or interest on the Note, as the case may be, an amount equal to the principal of or interest on the Bond so paid. If the principal of and interest on and other amounts payable under the Bond shall have been paid sufficiently that Payment of the Bond shall have occurred, then the Note, *ipso facto*, shall be deemed to have been paid in full, the Borrower's obligations thereon shall be discharged (with the exception of the obligation of the Borrower to make certain payments which may subsequently arise as a result of a Determination of Taxability which shall survive notwithstanding Payment of the Bond) and the Note shall be cancelled and surrendered to the Borrower.

**Section 4.6. Additional Payments upon Determination of Taxability.**

(a) In the event of a Determination of Taxability, and upon demand of the Holder or any prior Holder, the Borrower shall pay to such Holder or prior Holder, as additional interest on the Bond, such additional amount as shall be necessary to provide that interest on the Bond shall have been payable at the Taxable Adjusted LIBOR Rate from the Date of Taxability.

(b) Upon a Determination of Taxability, the Borrower shall also pay to the Holder or to any prior Holder upon demand of such Holder or prior Holder any taxes (other than income taxes), interest, penalties or other charges assessed against or payable by such Holder or prior Holder and attributable to such Determination of Taxability and all reasonable administrative,

out of pocket and other expenses incurred by such Holder or prior Holder which are attributable to such event, including, without limitation, the costs incurred by such Holder or prior Holder to amend any of its tax returns, notwithstanding the repayment of the entire principal amount of the Bond or any transfer or assignment of the Bond.

(c) The obligation of the Borrower contained in this Section with respect to the payment of amounts required to be paid in the event of a Determination of Taxability shall survive the termination of this Agreement and the payment in full of the Note or the Bond.

**Section 4.7. Assignment.**

(a) In order to provide security for the payment of principal of and interest on the Bond, the Issuer hereby pledges, assigns, transfers and sets over to Purchaser and its successors and assigns and any subsequent Holder of the Bond all of the Issuer's right, title and interest (including beneficial interest) in and to this Agreement and the Note, including, but not limited to, all payments of principal and interest due and to become due from the Borrower under the Note and this Agreement, whether made at their respective due dates or as prepayments permitted or required by this Agreement, together with full power and authority, in the name of the Issuer or otherwise, to demand, receive, enforce, collect or receipt for any or all of the foregoing, to endorse or execute any checks or other instruments or orders, to file any claims and to take any action which the Holder may deem necessary or advisable in connection therewith. The Issuer shall continue to have all the rights, together with the Holder, contained in the following sections of this Agreement:

- (i) Section 3.5 (pertaining to the Issuer's right to notice of prepayments);
- (ii) Section 6.7 (pertaining to the Issuer's right of access to the Project and to certain records);
- (iii) Section 6.9 (pertaining to the Issuer's right to receive certain information);
- (iv) Article VIII (pertaining to the Issuer's right to release and indemnification and limitations on the liability of the Issuer and its members, officers, employees, etc.);
- (v) Section 9.3 (pertaining to the Issuer's right to receive notices); and
- (vi) Sections 6.10 and 9.7(a) (pertaining to the Issuer's right to reimbursement of certain fees and expenses).

(b) The Purchaser or any subsequent Holder may take or release other security, may release any party primarily or secondarily liable for any indebtedness secured hereby, may grant extensions, renewals or indulgences with respect to such indebtedness, and may apply any other security therefor held by it to the satisfaction of such indebtedness without prejudice to any of its rights hereunder. Nothing herein contained and no act done or omitted by the Holder pursuant to the powers and rights granted it herein shall be deemed to be a waiver by the Holder of its

rights and remedies under the Bond or this Agreement. The right of the Holder to collect such indebtedness and to enforce any other security therefor held by it may be exercised by the Holder either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

(c) Neither the assignment of the Issuer's right hereunder nor any action or inaction on the part of the Purchaser or any subsequent Holder shall, without its written consent, constitute an assumption on its part of any obligation of any other person under this Agreement or the Note, nor shall the Purchaser or any subsequent Holder have any obligation to make any payment to be made by the Issuer hereunder (which Issuer payment shall be solely from the funds of the Borrower) or under the Note or the Bond, or to present or file any claim, or to take any other action to collect or enforce the payment of any amounts which have been assigned to the Purchaser or any subsequent Holder or to which it may be entitled under this assignment at any time or times. No action or inaction on the part of the Issuer shall adversely affect or limit in any way the rights of the Purchaser or any subsequent Holder under this assignment or under this Agreement or the Note.

Except as set forth above, the Issuer agrees that it will not during the term of this Agreement sell, assign, transfer or convey any of its interest in this Agreement or the Note.

**Section 4.8. Payments Assigned.** If no Event of Default shall have occurred, the Borrower and the Issuer agree that all funds assigned hereunder shall be paid and applied as follows:

(a) each payment to be made pursuant to the Note shall be paid by the Borrower directly to the Holder on or before the due date of such payment under this Agreement, and shall be applied in accordance with the terms of the Bond;

(b) all amounts prepaid by the Borrower pursuant to Section 3.5 hereof shall be paid to the Holder and applied to the redemption of the Bond as provided in the Bond; and

(c) all other funds assigned hereunder shall be applied as provided in this Agreement and the Bond.

If any "Event of Default" under this Agreement shall have occurred, all funds covered by this Agreement shall be paid to the Holder who shall hold all funds received and shall apply the same in the manner specified in Section 7.3 of this Agreement and in the Bond.

**Section 4.9. No Liability of Issuer; No Charge Against Issuer's Credit.** Any obligation of the Issuer created by, arising out of, or entered into in contemplation of this Agreement, including the Bond, shall not impose a debt or pecuniary liability upon the Issuer, the State or any political subdivision thereof or constitute a charge upon the general credit or taxing powers of any of the foregoing. Any such obligation shall be payable solely out of the revenues and any other moneys derived hereunder by the Borrower to the extent it shall be paid out of moneys attributable to the proceeds of the Bond or the income from the temporary investment thereof.

The principal of, premium, if any, and interest on the Bond shall be payable solely from the funds pledged for their payment in accordance with the herewith.

## ARTICLE V ADVANCES

**Section 5.1. Use of Bond Proceeds; Advances of Bond Proceeds.** On the Closing Date, the Purchaser shall be obligated to deliver not to exceed \$50,000 of the proceeds of the Bond to the Borrower through an Advance to be used to pay, or reimburse the Borrower for payment of, the costs of issuance of the Bond.

**Section 5.2. Advance of Bond Proceeds.** The Issuer acknowledges and agrees that prior to the Advance Termination Date, the proceeds from the sale of the Bond (less amounts used at closing pursuant to Section 5.1) will be advanced to the Borrower in installments through the making of Advances by the Purchaser directly to the Borrower under and pursuant to this Section 5.2 and in accordance with the requirements of the Guaranty Agreement. The date and amount of each Advance shall be noted on the Table of Advances attached to the Bond (which notation can be either noted on the actual bond or noted electronically on the Purchaser's loan system). As set forth in Section 5.1, an initial Advance from the proceeds of the Bond in an amount of \$50,000 shall be delivered to the Borrower for a portion of the costs of issuance of the Bond. Following the expenditure of such funds, the Purchaser shall make additional Advances under the Bond in accordance with the provision of Section 5.3 hereof. In no event may the aggregate amount of all Advances exceed \$\_\_\_\_\_. Notwithstanding anything else herein contained, interest payable on the Bond shall be determined based on the Principal Amount of the Bond from time to time. In advance of the Advance Start Date, no Advances other than as set forth in Section 5.1 may be made. Following the Advance Termination Date, no additional Advances may be made.

**Section 5.3. Process for Making Advances.** The Purchaser shall, subject to the terms of the Guaranty Agreement, make Advances to the Borrower upon receipt of a requisition of the Borrower in the form attached hereto as Exhibit C, and shall be applied by the Borrower exclusively to payment, or to reimbursement of the Borrower for payment, of the Costs of the Project. In connection with the submission of any such requisition to the Purchaser, all conditions specified in the Guaranty Agreement for any Advance or payment of a requisition shall have been met.

**Section 5.4. Reserved.**

**Section 5.5. Borrower Required to Complete the Project.** If the proceeds derived from the sale of the Bond issued for such purpose are not sufficient to pay in full the Costs of the Project, the Borrower shall pay so much of the costs thereof as may be in excess of the moneys available therefor. The Borrower agrees that if, after exhaustion of the proceeds derived from the sale of the Bond the Borrower should pay any portion of the Costs of the Project pursuant to the provisions of this Section, it shall not be entitled to any reimbursement therefor from the Issuer

nor shall it be entitled to any abatement, diminution or postponement of its payments hereunder or under the Note.

**Section 5.6. Final Payment of Advances.** The Borrower shall draw all Advances no later than the Advance Termination Date.

**Section 5.7. Establishment of Completion Date and Certificate as to Completion.** The Completion Date shall be the date on which the Borrower Representative signs and delivers to the Purchaser and the Issuer a certificate, in the form of Exhibit D hereto, stating that, except for amounts retained by the Borrower for Costs of the Project not then due and payable, or the liability for which the Borrower is, in good faith, contesting or disputing, (a) the Project has been completed to the satisfaction of the Borrower, and (b) all labor, services, materials and supplies used in the construction and equipping of the Project to be paid from the proceeds of the Bond have been paid for.

Notwithstanding the foregoing, such certificate may state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being.

**Section 5.8. No Warranty of Condition or Suitability.** The Borrower acknowledges its full familiarity with the Project and that the Issuer has no responsibility for the Project Documents. The Issuer makes no representation or warranty, either express or implied, and offers no assurance that the proceeds of the Bond will be sufficient to pay in full the Costs of the Project in accordance with the Project Documents or that the Project is or will be suitable for its intended purpose. THE ISSUER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, WORKMANSHIP, OR THE ACTUAL OR DESIGNED CAPACITY OF ANY PART OF THE PROJECT OR ITS SUITABILITY FOR THE BORROWER'S PURPOSES, OR FOR THE PURPOSES SPECIFIED IN THIS AGREEMENT, OR THE EXTENT TO WHICH PROCEEDS DERIVED FROM THE SALE OF THE BOND WILL PAY THE COSTS TO BE INCURRED IN CONNECTION THEREWITH.

**Section 5.9. Plans and Specifications.** The Borrower shall maintain a set of Plans and Specifications at the Project which shall be available to the Issuer and the Holder for inspection and examination, upon written request and reasonable notice, during the Borrower's regular business hours. The Issuer, the Holder and the Borrower agree that the Borrower may, subject to the terms of the Guaranty Agreement, supplement, amend and add to the Plans and Specifications, and that the Borrower shall be authorized, subject to the terms of the Guaranty Agreement, to omit or make substitutions for components of the Project, without the approval of the Issuer or the Holder, provided that no such change shall be made which, after giving effect to such change, would cause any of the representations and warranties set forth in Section 2.2 to be false or misleading in any material respect. If any such change would render materially incorrect or inaccurate the description of the initial components of the Project described in the definitions thereof, the Borrower shall deliver to the Issuer and the Holder an opinion of Bond Counsel to

the effect that such change will not cause the interest on the Bond to be includable in the gross income of the owners thereof for federal income tax purposes, and thereafter, the Borrower, the Issuer and the Holder shall amend such definition to reflect such change. No approvals of the Issuer shall be required for the construction of the Project or for the solicitation, negotiation, award or execution of contracts relating thereto.

ARTICLE VI  
BORROWER'S COVENANTS

**Section 6.1. Use of Proceeds; Other Matters with Respect to the Project, the Bond and Tax Exemption.**

(a) Use of Proceeds; Prohibited Uses of the Project, etc. The Borrower shall not, and the Issuer shall not knowingly, cause any proceeds of the Bond to be expended except pursuant to this Agreement. The Borrower shall not (i) permit the proceeds of the Bond to be used in any way that would result in less than 95% of the proceeds of the Bond being considered as having been used solely in the exempt purpose trade or business (not in an "unrelated trade or business") carried on by any person who is a "501(c)(3) organization" or a "governmental unit," each within the meaning of Section 145 of the Code, (ii) approve the use of the proceeds of any Bond or any other funds other than in accordance with its "non-arbitrage" certificate with respect to such use given immediately prior to the delivery of such Bond, (iii) take or permit any action that would result in more than 5% of the proceeds of the Bond being used directly or indirectly to make or finance loans to any person who is not a "501(c)(3) organization" within the meaning of Section 145 of the Code, (iv) permit the Project to be used or occupied by the United States or an agency or instrumentality thereof in any manner for compensation, including any entity with statutory authority to borrow from the United States (in any case within the meaning of Section 149(b) of the Code), including without limitation causing the Bond to be "federally guaranteed" within the meaning of Section 149(b) of the Code, (v) allow any of the property provided by the proceeds of the Bond to be owned by any person who is not a "501(c)(3) organization" within the meaning of Section 145 of the Code or (vi) permit the proceeds of the Bond to be used, directly or indirectly, to provide residential real property for family units. The Borrower shall not take or omit, or permit to be taken or omitted, any other action, the taking or omission of which would cause the inclusion of interest on the Bond in gross income for federal income tax purposes.

(b) Test-Period Beneficiary. If 95% or more of the net proceeds of the Bond are not used to finance capital expenditures, the Borrower shall not take any action or allow any action to be taken that will cause the "aggregate authorized face amount" of the Bond allocated to any "test-period beneficiary," as defined in Section 145(b) of the Code, when increased by such obligations as provided in Section 145(b) of the Code, to exceed \$150,000,000, without providing to the Issuer and the Holder an opinion of Bond Counsel stating that such action will not impair the exclusion of interest on the Bond from gross income for federal income tax purposes.

(c) Economic Life of the Project. The Borrower hereby represents that the "average reasonably expected economic life" of the components comprising the Project, determined

pursuant to Section 147(b) of the Code, is not less than the amount set forth in the certificates or letters of representation of the Borrower delivered on the Closing Date. The weighted average maturity of the Bond does not exceed 120% of the "average reasonably expected economic life" of the components comprising the Project, determined pursuant to Section 147(b) of the Code, as set forth in the certificates or letters of representation of the Borrower delivered on the Closing Date. The Borrower agrees that it will not make any changes in the Project that would, at the time made, cause the "average reasonably expected economic life" of the components of the Project, determined pursuant to Section 147(b) of the Code, to be less than the "average reasonably expected economic life" of the components set forth in the certificates or letters of representation of the Borrower delivered on the Closing Date, unless the Borrower shall file with the Issuer and the Holder an opinion of Bond Counsel that such change to the Project will not impair exclusion of interest on the Bond from gross income taxation for federal income tax purposes.

(d) Certificate of Information; 8038 Form. The Borrower hereby represents that the information contained in the certificates or letters of representation of the Borrower with respect to the compliance with the requirements of Section 149 of the Code, including the information in Form 8038 (excluding the issue number and the employer identification number of the Issuer), filed by the Issuer with respect to the Bond and the Project, is true and correct in all material respects.

## **Section 6.2. Arbitrage and Rebate.**

(a) Rebate Covenant. The Issuer and the Borrower covenant that no use of the proceeds of the Bond or the earnings thereon will knowingly be made or directed, and no other action will be taken, which would cause the Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code. The Borrower further covenants that (i) all actions with respect to the Bond required by Section 148(f) of the Code shall be taken, (ii) it shall make the determinations required by Section 148(f) of the Code at its own expense and promptly notify the Issuer of the same, together with supporting calculations, and (iii) it shall within forty-five (45) days after the final payment, whether upon redemption in whole or at maturity, of the Bond, file with the Issuer a statement signed by the Borrower to the effect that the Borrower is then in compliance with its covenants contained in clauses (i) and (ii) of this sentence, together with supporting calculations; provided, however, that if the Borrower shall furnish an opinion of Bond Counsel to the Issuer to the effect that no further action by the Borrower is required for such compliance with respect to the Bond, the Borrower shall not thereafter be required to deliver any such statements or calculations.

(b) Issuer Rebate Report. In the event that for any reason rebate is payable to the United States pursuant to Section 148 of the Code, the Borrower shall cause to be calculated by an expert in rebate calculations satisfactory to the Issuer, the amount of rebate required to be paid pursuant to Section 148(f) of the Code (the "Rebate Amount"). Upon request, the Borrower shall furnish a copy of each such rebate calculation to the Issuer promptly upon its completion. The Borrower agrees to pay the amount so calculated to the United States on behalf of the Issuer at the times required by the Code, and to provide a copy of such calculations and proof of such

payment to the Issuer, if requested. The Borrower shall maintain or cause to be maintained records of the determinations of the rebate, if any, pursuant to this Section until six years after the retirement of the Bond. This Section shall be construed in accordance with Section 148(f) of the Code, including, without limitation, any applicable regulations promulgated under the Code. Nothing contained in this Agreement shall be interpreted or construed to require the Issuer to pay any applicable rebate with its own funds, such obligation being the sole responsibility of the Borrower. The Issuer shall not be liable to the Borrower by way of contribution, indemnification, counterclaim, set-off or otherwise for any payment made or expense incurred by the Borrower pursuant to this section, or any other provision of this Agreement.

(c) Maintenance of 501(c)(3) Status. The Borrower shall file all required reports and documents with the Internal Revenue Service so as to maintain its status as an organization described in Section 501(c)(3) of the Code, shall not operate the Project in any manner and shall not engage in any activities or take any action (or omit to take any action) that would result in the Borrower ceasing to be a "501(c)(3) organization" within the meaning of Section 145 of the Code. The Borrower shall promptly notify the Holder and the Issuer of any loss of its status as a "501(c)(3) organization" or of any investigation, proceeding or ruling that might result in loss of such status.

(d) Further Action. The Borrower shall take all action necessary to ensure that interest on the Bond is not included in gross income for federal income tax purposes and not included in alternative minimum taxable income of individuals.

(e) Restricted Gifts. The Borrower shall apply all Restricted Gifts as follows: (1) to Costs of the Project in excess of such costs paid or to be paid from proceeds of the Bond or (2) to the prepayment of the Bond pursuant to Section 3.5(a) hereof on the next date for such prepayment after such receipt. Until such prepayment date, such funds shall be invested in obligations the interest on which is excludable from gross income for federal income tax purposes pursuant to Section 103(a) of the Code other than obligations that are "specified private activity bonds" as defined in Section 57(a)(5)(C) of the Code, or otherwise in investments that will not adversely affect the tax-exempt status of the Bond from gross income for federal income tax purposes. Notwithstanding the foregoing, the Borrower may apply Restricted Gifts other than as described in this paragraph with the consent of the Holder and upon delivery to the Holder of an opinion of Bond Counsel that such use shall not adversely affect the tax-exempt status of the Bond.

(f) Other Bonds to be Issued. During the period commencing on the date of the issuance of the Bond and ending 30 days thereafter, there shall be issued no "private activity bonds," as defined in Section 141 of the Code that are guaranteed or otherwise secured by payments to be made by the Borrower or any "related person" (or group of "related persons"), unless the Borrower shall deliver to the Holder an opinion of Bond Counsel in form and substance satisfactory to the Holder to the effect that the issuance of such "private activity bonds" will not adversely affect the exclusion of interest on the Bond from gross income for federal income tax purposes.



**Section 6.3. Maintenance of Project.** The Borrower will cause the proceeds of the Bond to be applied solely for the purposes specified herein. The Borrower shall, until Payment of the Bond shall be made, at its own expense, (a) keep the Project in as reasonably safe condition as its operations shall permit, (b) make or cause to be made from time to time all necessary repairs thereto and renewals and replacements thereof and otherwise keep the Project in good repair and in good operating condition and (c) not permit or suffer others to commit a nuisance on or about the Project. The Borrower shall pay or cause to be paid all costs and expenses of operation and maintenance of the Project. The Borrower shall observe all laws, regulations and other valid requirements of any regulatory authority with respect to its operation of the Project.

**Section 6.4. Payment of Taxes.** The Borrower shall pay when due all taxes, assessments, levies, claims and charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project, all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project and all assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on any portion of the Project. The Borrower shall furnish the Issuer and the Holder, upon request, with proof of payment of any taxes, governmental charges, utility charges, insurance premiums or other charges required to be paid by the Borrower under this Agreement.

**Section 6.5. Insurance.** The Borrower shall during the term of this Agreement and at all times while the Bond is outstanding continuously insure the Project against such risks as are customarily insured against by businesses of like size and type, paying as the same become due all premiums in respect thereof. In addition the Borrower shall comply, or cause compliance, with applicable worker's compensation laws of the State.

**Section 6.6. Damage and Destruction.**

(a) If at any time while the Bond is outstanding, all or any portion of the Project shall be damaged or destroyed by fire, flood, windstorm or other casualty, or title to, or the temporary use of, all or any portion of the Project shall have been taken by the power of Eminent Domain, the Borrower shall deposit the Net Proceeds with the Holder and have the option to apply the Net Proceeds to repair or replace such Project or to prepay the Bond pursuant to Section 3.5(a). In case of any damage to or destruction of all or any part of the Project exceeding \$100,000, the Borrower shall give prompt written notice thereof to the Issuer and the Holder.

(b) In the event the Borrower intends to repair or replace the Project or any portion thereof, the Borrower shall use the Net Proceeds to repair or replace the same to a condition substantially similar to its condition prior to the loss, casualty or other event giving rise to the receipt of such Net Proceeds. If such Net Proceeds are not sufficient to repair or replace such property to a condition substantially similar to its condition prior to the loss, casualty or other event giving rise to the receipt of Net Proceeds, the Borrower shall transfer the Net Proceeds to the Holder to be held as set forth herein and pay all costs above the amount of Net Proceeds available to repair or replace such property. In such case, the Borrower shall not be entitled to

any reimbursement therefor from the Issuer or the Holder, and shall not be entitled to any abatement, diminution or postponement of the payments required hereunder.

(c) The Holder shall disburse the Net Proceeds to the persons, firms or corporations named in a requisition provided by the Borrower to the Holder. The Borrower Representative must state with respect to each payment to be made (A) the requisition number, (B) the name and address of the person, firm or corporation to whom payment is due, (C) the amount to be paid and (D) that each obligation mentioned therein has been properly incurred, is a proper charge against the Net Proceeds, has not been the basis of any previous withdrawal, and specifying in reasonable detail the nature of the obligation, accompanied by a bill or a statement of account for such obligation.

(d) Any balance of the Net Proceeds remaining after such replacement or repair has been completed shall be applied to prepay the Note as provided in Section 3.5(a) hereof. After payment or provision for payment of the Bond in full and all other amounts due to the Holder, any balance of the Net Proceeds shall be paid to the Borrower.

(e) Notwithstanding the above, so long as the Guaranty Agreement, the Mortgage or the Security Agreement is in place with respect to the Project, the Borrower shall comply with the terms of the Guaranty Agreement, the Mortgage or the Security Agreement related to the use of insurance proceeds.

**Section 6.7. Inspection.** The Issuer Representative and the Holder shall have the right, at all reasonable times upon the furnishing of reasonable notice to the Borrower under the circumstances, to enter upon the Project and to examine and inspect the Project. The Issuer Representative and the Holder and their duly authorized agents shall also have such right of access to the Project as may be reasonably necessary for its proper maintenance, in the event of failure by the Borrower to perform its obligations relating to maintenance under this Agreement, the Guaranty Agreement, the Mortgage or the Security Agreement. The Borrower hereby covenants to execute, acknowledge and deliver all such further documents, and do all such other acts and things as may be necessary to grant to the Issuer Representative and the Holder such right of entry. The Issuer Representative and the Holder shall also be permitted, at all reasonable times, upon the furnishing of reasonable notice to examine the books and records of the Borrower with respect to the obligations of the Borrower hereunder, but neither shall be entitled to access to trade secrets or other proprietary information (other than financial information) of the Borrower.

**Section 6.8. Description of Project.** The Issuer and the Borrower agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements and amendments hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project and the site of the Project and for carrying out the intention or facilitating the performance of this Agreement.

**Section 6.9. Maintenance of Existence.** The Borrower shall at all times take all legal steps necessary to maintain its existence as a corporation not-for-profit under the laws of the State and as an organization described in Section 501(c)(3) of the Code.

**Section 6.10. Notice of Internal Revenue Service or other Agency Audits or Investigations.** The Borrower and the Issuer each agree to provide prompt written notice to the other and to the Purchaser upon receipt of a notice from the Internal Revenue Service that the Bond is being audited or otherwise investigated or that the Internal Revenue Service or another agency has requested documents or other information relating to the Bond as part of an audit or investigation. The Borrower shall be responsible for all costs and expenses of the Issuer and its counsel and the Purchaser and its counsel relating to such an audit, investigation or inquiry.

## ARTICLE VII EVENTS OF DEFAULT

**Section 7.1. Events of Default.** The term "Event of Default" shall mean any one or more of the following events:

(a) The failure by the Borrower to pay when due any payment of principal of or interest on or other amount payable under the Note or under this Agreement;

(b) The failure of the Issuer to pay when due any payment of principal of or interest on or other amount payable under the Bond;

(c) The occurrence of an "Event of Default" or "event of default" under any of the Guaranty Agreement, the Mortgage, the Security Agreement or any other Bond Document;

(d) Any representation or warranty of the Borrower contained in Section 2.2 hereof, in the Tax Certificate and Agreement or in any other document, instrument or certificate delivered pursuant hereto or in connection with the issuance and sale of the Bond shall have been false, misleading or incomplete in any material respect on the date as of which made;

(e) Failure by the Borrower to observe and perform any covenant, condition or agreement on the part of the Borrower under the Note or this Agreement, other than as referred to in the preceding paragraphs of this Section, for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to the Borrower by the Holder;

(f) The Borrower shall (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, assignee, sequestrator, trustee, liquidator or similar official of the Borrower or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Bankruptcy Code, (v) file a petition seeking to take advantage of any other federal or state law relating to bankruptcy, insolvency, reorganization, arrangement, winding-up or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition

filed against the Borrower in an involuntary case under the Bankruptcy Code, or (vii) take any corporate action for the purpose of effecting any of the foregoing; and

(g) A proceeding or case shall be commenced, without the application or consent of the Borrower, in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, arrangement, dissolution, winding-up or composition or adjustment of debts of the Borrower, (ii) the appointment of a trustee, receiver, custodian, assignee, sequestrator, liquidator or similar official of the Borrower or of all or any substantial part of its assets, or (iii) similar relief in respect of the Borrower under any law relating to bankruptcy, insolvency, reorganization, arrangement, winding-up or composition or adjustment of debts and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of 90 days from the commencement of such proceeding or case or the date of such order, judgment or decree, or an order for relief against the Borrower shall be entered in an involuntary case under the Bankruptcy Code.

**Section 7.2. Remedies of Holder.** Whenever any Event of Default referred to in Section 7.1 hereof shall have happened and shall not have been waived, the Holder may take any one or more of the following remedial steps:

(a) By written notice declare all principal repayable pursuant to the Note and the Bond for the remainder of the term thereof to be immediately due and payable, whereupon the same, together with accrued interest thereon as provided for in the Note and the Bond, shall become immediately due and payable without presentment, demand, protest or any other notice whatsoever, all of which are hereby expressly waived by the Borrower and the Issuer; provided, however, that upon the occurrence of any event described in Section 7.1(f) or (g), the Note, the Bond, and all obligations payable hereunder, shall become immediately due without demand or acceleration.

(b) Take whatever other action at law or in equity may appear necessary or desirable to collect the amounts payable pursuant to the Note, the Bond or hereunder then due and thereafter to become due, or to enforce the performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement or under any of the other Bond Documents.

In the enforcement of the remedies provided in this Section, the Holder may treat all reasonable expenses of enforcement, including, without limitation, legal, accounting and advertising fees and expenses, as additional amounts payable by the Borrower then due and owing and the Borrower agrees to pay such additional amounts upon demand, the amount of such legal fees to be without regard to any statutory presumption.

**Section 7.3. Payments After Default; No Waiver.** Any amounts collected pursuant to action taken under Section 7.2 hereof shall be paid to the Holder and applied to the payment of, first, any costs, expenses and fees incurred by the Holder as a result of taking such action; second, any interest which shall have accrued on any overdue interest or overdue principal of the Bond at the rate set forth in the Bond; third, any overdue interest on the Bond; fourth, any overdue

principal of the Bond; fifth, the outstanding principal balance of the Bond and any other amounts owing in respect of the Bond; and sixth, if Payment of the Bond shall have been made, all remaining moneys shall be paid as required by law.

**Section 7.4. No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Holder is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

## ARTICLE VIII LIMITATION OF LIABILITY; INDEMNIFICATION

**Section 8.1. Limitation of Issuer's Liability.** No covenant, agreement or obligation contained in any Bond Document shall be deemed to be a covenant, agreement or obligation of any past, present or future director, officer, employee or agent of the Issuer in his individual capacity, and neither the directors of the Issuer nor any officer, employee or agent thereof executing any Bond Document shall be liable personally on such Bond Document or be subject to any personal liability or accountability by reason of the issuance thereof. No director, officer, employee or agent of the Issuer shall incur any personal liability with respect to any other action taken by him pursuant to the Bond Documents or the Act or any of the transactions contemplated thereby provided he acts in good faith.

THE BOND SHALL NOT BE DEEMED TO CONSTITUTE A DEBT OR LIABILITY OF THE STATE OF FLORIDA OR OF ANY POLITICAL SUBDIVISION THEREOF OR A PLEDGE OF THE FAITH AND CREDIT OF THE STATE OF FLORIDA OR OF ANY SUCH POLITICAL SUBDIVISION, BUT SHALL BE PAYABLE SOLELY FROM THE FUNDS HEREIN PROVIDED THEREFOR FROM REVENUES OF THE BORROWER. NEITHER THE STATE OF FLORIDA NOR THE ISSUER SHALL BE OBLIGATED TO PAY THE SAME OR THE INTEREST THEREON EXCEPT FROM REVENUES AND RECEIPTS DERIVED BY THE ISSUER PURSUANT TO THIS AGREEMENT OR FROM PAYMENTS ON THE NOTE AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF FLORIDA OR OF ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR THE INTEREST ON THE BOND. THE ISSUANCE OF THE BOND SHALL NOT DIRECTLY, INDIRECTLY OR CONTINGENTLY OBLIGATE THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF TO LEVY OR TO PLEDGE ANY FORM OF TAXATION WHATEVER THEREFOR OR TO MAKE ANY APPROPRIATION FOR ITS PAYMENT.

**Section 8.2. Indemnification by Borrower.** The Borrower shall and hereby does indemnify and hold harmless the Issuer, the Bond Registrar, the Purchaser, any subsequent Holder, and all members, officers, directors, agents and employees thereof (each an "Indemnified Party" and, collectively, the "Indemnified Parties") of and from all losses, costs, damages,

expenses and liabilities of whatever nature, including but not limited to reasonable attorneys' fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments (collectively referred to hereinafter as "Losses"), directly or indirectly resulting from, arising out of or related to one or more Claims, as hereinafter defined, excluding any such Losses or Claims that arises out of an act of gross negligence or willful misconduct of any such Indemnified Parties. The word "Claims" as used herein shall mean all claims, lawsuits, causes of action and other legal actions and proceedings of whatsoever nature including but not limited to claims, lawsuits, causes of action and other legal actions and proceedings involving bodily or personal injury or death of any person or damage to any property (including but not limited to persons employed by any of the Indemnified Parties and any other person) brought against any of the Indemnified Parties or to which any of the Indemnified Parties is a party, that directly or indirectly result from, arise out of or relate to (1) the transfer, sale, operation, use, occupancy, maintenance or ownership of the Project or any part thereof or (2) the execution, delivery or performance of this Agreement, the Note, the Bond, the Guaranty Agreement, the Mortgage, the Security Agreement or any other related instruments or documents, including, without limitation, any Internal Revenue Service audit of the Bond. The obligations of the Borrower under this Section shall survive termination of this Agreement and apply to all Losses and Claims that result from, arise out of, or are related to any event, occurrence, condition or relationship prior to termination of this Agreement, whether such Losses and Claims are asserted prior to termination of this Agreement or thereafter.

Each Indemnified Party shall reimburse the Borrower for payments made by the Borrower pursuant to this Section to the extent of any proceeds, net of all expenses of collection, actually received by such Indemnified Party from any insurance covering such Claims with respect to the Losses sustained. The Indemnified Parties shall have the duty to claim any such insurance proceeds and shall assign their respective rights to such proceeds, to the extent of such required reimbursement, to the Borrower.

In case any Claim shall be brought against any Indemnified Party in respect of which indemnity may be sought against the Borrower, then such Indemnified Party shall promptly notify the Borrower in writing of such Claim. Failure to notify the Borrower of such Claim shall not relieve the Borrower from any liability that the Borrower may have other than pursuant to this Section and shall relieve the Borrower from liability the Borrower may have under this Section only to the extent that such failure prejudices the Borrower. The Borrower shall have the right to assume the investigation and defense of such Claim, including the employment of counsel, which counsel shall be satisfactory to the Indemnified Parties, and shall pay all expenses of the investigation and defense of such Claim. If any Claim is brought against any Indemnified Party for any Losses for which the Borrower is required to provide indemnification under this Section, such Indemnified Party shall promptly notify the Borrower and the Borrower shall have the sole right and duty to assume, and shall assume, the defense thereof, with full power to litigate, compromise or settle the same in its sole discretion. Notwithstanding the foregoing, in the event the Indemnified Party is the Purchaser or the Issuer, in the event the Purchaser or the Issuer reasonably believes there are defenses available to it that are not being pursued, the Purchaser or the Issuer (as the case may be) may, in its sole discretion, hire independent counsel

to pursue its own defense, and the Borrower shall be liable for the cost of such counsel. The Borrower shall not be liable for Losses resulting from settlement of Claims against an Indemnified Party unless the Borrower consents to that settlement. The obligations of the Borrower under this Section shall survive any termination of this Agreement.

**Section 8.3. Issuer, Directors, Attorneys, Officers, Employees and Agents of Issuer Not Liable.** To the extent permitted by law, no recourse shall be had for the enforcement of any obligation, promise or agreement of the Issuer contained herein or in the other Bond Documents to which the Issuer is a party or for any claim based hereon or thereon or otherwise in respect hereof or thereof against any director, officer, agent, attorney or employee, as such, in his/her individual capacity, past, present or future, of the Issuer or of any successor entity, either directly or through the Issuer or any successor entity whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise. No personal liability whatsoever shall attach to, or be incurred by, any director, officer, agent, attorney or employee as such, past, present or future, of the Issuer or any successor entity, either directly or through the Issuer or any successor entity, under or by reason of any of the obligations, promises or agreements entered into between the Issuer and the Borrower, whether herein contained or to be implied herefrom as being supplemental hereto; and all personal liability of that character against every such director, officer, agent, attorney and employee is, by the execution of this Agreement and as a condition of, and as part of the consideration for, the execution of this Agreement, expressly waived and released.

Notwithstanding any other provision of this Agreement, the Issuer shall not be liable to the Borrower or the Purchaser or any other person for any failure of the Issuer to take action under this Agreement unless the Issuer (a) is requested in writing by an appropriate person to take such action, (b) is indemnified and is assured of payment of, or reimbursement for, any reasonable expenses in such action, and (c) is afforded, under the existing circumstances, a reasonable period to take such action. In acting under this Agreement, or in refraining from acting under this Agreement, the Issuer may conclusively rely on the advice of its counsel.

## ARTICLE IX MISCELLANEOUS

**Section 9.1. Assignment; Leasing.** Except as expressly permitted under the terms of the Guaranty Agreement or otherwise with the prior written consent of the Holder, the rights of the Borrower under this Agreement shall not be assigned and the Project may not be leased or sold as a whole or in part.

**Section 9.2. Benefit of Agreement.** The Borrower intends that the representations, warranties and covenants made by the Borrower in this Agreement shall be for the equal benefit of the Issuer and the Purchaser hereunder.

**Section 9.3. Notices.** Except as may otherwise be provided in the applicable Bond Document, all demands, notices, approvals, consents, requests and other communications hereunder and under the other Bond Documents shall be in writing and shall be deemed to have

been given when delivered in person or by overnight courier or mailed by first class registered or certified mail, postage prepaid, addressed:

(a) As to the Issuer: Pinellas County Industrial Development Authority  
13805 58<sup>th</sup> Street North, Suite 1-200  
Clearwater, Florida 33760  
Attn: Executive Director

With a copy to: Pinellas County, Florida  
315 Court Street, 6<sup>th</sup> Floor  
Clearwater, Florida 33756  
Attn: County Attorney

(b) As to the Borrower: Clearwater Marine Aquarium, Inc.  
249 Windward Passage  
Clearwater, Florida 33767  
Attn: Chief Financial Officer

(c) As to the Purchaser: Branch Banking and Trust Company  
28050 US Highway 19 North, Suite 201  
Clearwater, Florida 33761  
Attn: Senior Vice President

A duplicate copy of each notice, approval, consent, request or other communication given under any Bond Document by either the Issuer or the Borrower to the other shall also be given to the Purchaser. The Issuer, the Borrower and the Purchaser may, by notice given hereunder, designate any further or different addresses to which subsequent notices, approvals, consents, requests, or other communications shall be sent or persons to whose attention the same shall be directed.

**Section 9.4. Amendments.** This Agreement, the Bond and the Note may not be terminated, modified or amended, and the Borrower will not take or omit to take any action, the taking or omission of which might result in any alteration or impairment of this Agreement, the Bond or the Note, without the prior written consent of the Holder. Any consent provided for in this Agreement which may be given by the Issuer shall not be valid unless approved in writing by the Holder and no offer made by the Borrower under this Agreement, the Bond, the Note, the Guaranty Agreement, the Mortgage or the Security Agreement shall be deemed accepted or rejected by the Issuer without such approval. In connection with any such amendment requested by the Borrower, the Holder may require the Borrower to deliver, at the Borrower's expense, an opinion of Bond Counsel to the effect that such amendment will not adversely affect the exclusion of interest on the Bond from gross income for federal income tax purposes.

**Section 9.5. UCC Financing Statements.** The Holder may file any financing statements and any continuation statements and amendments to financing statements that are or may be



necessary with respect to this Agreement and the assignment of the Issuer's rights hereunder under the Uniform Commercial Code as in effect in the State. The Borrower hereby (a) irrevocably appoints the Holder as its true and lawful attorney for such purpose, with full power of substitution, and (b) ratifies and confirms all that such attorney or any substitute shall lawfully do by virtue hereof. If so requested by the Holder, the Borrower shall ratify and confirm all proper continuation statements and amendments to financing statements as may be designated in any such request.

**Section 9.6. No Third Party Beneficiary.** It is specifically agreed between the parties to this Agreement that it is not intended by any of the provisions of any part of this Agreement to make the public or any member thereof, other than as may be expressly provided herein, a third party beneficiary hereunder.

**Section 9.7. Miscellaneous; Jurisdiction.**

(a) The Borrower agrees to pay (1) the reasonable fees and expenses of the Issuer, counsel to the Issuer, the Purchaser, counsel to the Purchaser and Bond Counsel and all other costs, fees and expenses incidental to the financing hereunder, the issuance of the Bond and the costs of producing the documents referred to herein and any post-issuance audit, investigation or other inquiry concerning the Bond or the Bond Documents, (2) all taxes of any kind whatsoever lawfully assessed, levied or imposed with respect to the filings or recordings pursuant to the Bond Documents and the transactions contemplated by this Agreement, and (3) all costs of collection (including reasonable counsel fees) in the event of a default in the payment of the principal of, or interest on the Bond or other charges payable under the Bond Documents.

(b) The Purchaser shall furnish to the Issuer upon request (1) a statement of the amount of principal of the Bond outstanding and unpaid as of the date of such request and (2) such information as may be necessary to complete the annual audit of the Issuer as required by the Act or any other law, now or hereafter in effect.

(c) This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and the subsequent holders of the Bond and their respective successors and assigns. The representations, covenants and agreements contained herein shall continue notwithstanding the delivery of the Bond to the Purchaser.

(d) If any provision of this Agreement shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof.

(e) This Agreement shall be governed by the applicable laws of the State of Florida. To the extent permitted by applicable law, jurisdiction of the Sixth Judicial Court, in and for Pinellas County or the US District Court for the Middle District of Florida – Tampa Division, over any suit, action or proceeding arising out of or relating to this Agreement or the Indebtedness. The Borrower hereby irrevocably waives, to the fullest extent permitted by law, any objection that the Borrower may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Nothing herein shall affect the right of the

Issuer or the Purchaser to serve process in any manner permitted by law or limit the right of the Issuer or the Purchaser to bring proceedings against the Borrower in any other court or jurisdiction.

(f) The Bond Documents express the entire understanding among the parties and none of such instruments may be modified except in writing signed by the parties. No Bond Document may be modified before Payment of the Bond without the consent of the Purchaser.

(g) This Agreement may be executed in several counterparts, each of which shall be an original, and all of which together shall constitute but one and the same instrument.

**Section 9.8. References to the Bond Ineffective After Bond Paid.** Upon Payment of the Bond, all references in this Agreement to the Bond shall be ineffective and the Issuer and Holder of the Bond shall not thereafter have any rights hereunder, excepting those that shall have theretofore vested and the right to receive payments pursuant to Section 3.2 hereof as a result of a Determination of Taxability and the rights to the computation, reporting and payment of any rebate amounts and other payments under the Tax Certificate and Agreement.

**Section 9.9. No Implied Waiver.** In the event any agreement contained in the Note or this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach thereunder or hereunder. Neither any failure nor any delay on the part of the Purchaser or any subsequent Holder to exercise any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

**Section 9.10. Issuer Representative.** Whenever under the provisions of this Agreement the approval of the Issuer is required or the Issuer is required to take some action at the request of the Borrower, such approval may be made or such action may be taken by the Issuer Representative; and the Borrower, the Purchaser and any subsequent Holder shall be authorized to rely on any such approval or action.

**Section 9.11. Borrower Representative.** Whenever under the provisions of this Agreement the approval of the Borrower is required or the Borrower is required to take some action at the request of the Issuer, such approval may be made or such action may be taken by the Borrower Representative; and the Issuer, the Purchaser and any subsequent Holder shall be authorized to act on any such approval or action.

**Section 9.12. Conflicts.** To the extent any provision of this Agreement is directly inconsistent with any Related Document (as defined in the Guaranty Agreement) and such provision of this Agreement cannot reasonably be reconciled with such Related Document, the terms of such Related Document shall be controlling. To the extent any provision of this Agreement is directly inconsistent with the Bond or the Note and such provision of this

Agreement cannot reasonably be reconciled with the Bond or the Note, the terms of this Agreement shall be controlling.

**Section 9.13. Usury Laws.** The Borrower, the Holder, and the Issuer intend to conform to and contract in strict compliance with applicable usury law from time to time in effect. All agreements between the Issuer, the Holder and the Borrower (or any other party liable with respect to the Bond under the Bond Documents) are hereby limited by the provisions of this Section which shall override and control all such agreements, whether now existing or hereafter arising. In no way, nor in any event or contingency (including but not limited to prepayment, default, demand for payment, or acceleration of the maturity of any obligation), shall the interest taken, reserved, contracted for, charged, chargeable, or received under this Agreement, the Note, any of the other Bond Documents, or otherwise, exceed the maximum amount permitted under applicable law ("Maximum Amount"). If, from any possible construction of any document, interest would otherwise be payable in excess of the Maximum Amount, any such construction shall be subject to the provisions of this Section and such document shall ipso facto be automatically reformed and the interest payable shall be automatically reduced to the Maximum Amount, without the necessity of execution of any amendment or new document. If the Holder or the Issuer shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Amount, an amount equal to the amount which would have been excessive interest shall, without penalty, be applied to the reduction of the principal amount owing on the Bond in the inverse order of its maturity and not to the payment of interest, or be refunded to the Borrower or the other payor thereof, at the election of the Holder in its sole discretion or as required by applicable law. The right to accelerate maturity of the Note or any other Bond does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and neither the Issuer nor the Holder intends to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid by the Borrower shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such Bond so that the amount of interest on account of such Bond does not exceed the Maximum Amount. As used in this Section, the term "applicable law" shall mean the laws of the State or the federal laws of the United States applicable to this transaction, whichever laws allow the greater interest, as such laws now exist or may be changed or amended or come into effect in the future.

**Section 9.14. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective names, all as of the date first above written.

**PINELLAS COUNTY INDUSTRIAL  
DEVELOPMENT AUTHORITY D/B/A PINELLAS  
COUNTY ECONOMIC DEVELOPMENT  
AUTHORITY**

(SEAL)

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

Name: Kenneth T. Welch

Title: Chairman

Attest:

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

Name: Mike Meidel

Title: Executive Director

[Signature Page to Bond Purchase and Loan Agreement]

**CLEARWATER MARINE AQUARIUM,  
INC.**

(SEAL)

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

Name: John L. Draheim

Title: Chair

Attest:

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

Name: Brent Howie

Title: Treasurer

[Signature Page to Bond Purchase and Loan Agreement]

**BRANCH BANKING AND TRUST COMPANY,**  
as Purchaser

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

Name: Jeff Lampasso

Title: Vice President

[Signature Page to Bond Purchase and Loan Agreement]