**DISCLAIMER**

These documents are provided “as-is,” and The Sky Foundation specifically disclaims all warranties, terms, representations and conditions, whether express or implied, or statutory. Neither the author nor anyone else assumes liability or responsibility for the contents of, or the consequence of using, any version of the Sky-PRI or any other document found on The Sky Foundation website. You acknowledge and agree that the making available of these documents shall not create any attorney-client or other confidential or special relationship between you and The Sky Foundation, and does not constitute the provision of legal, tax or other professional advice by The Sky Foundation. These documents have not been prepared with your specific circumstances in mind; therefore, before using any of these documents, you should consult with a lawyer licensed in the relevant jurisdiction, as well as a tax professional.

**LOAN AGREEMENT**

**(SKY-PRI)**

 This Loan Agreement (the “Agreement”) is entered into as of [\_\_\_\_\_\_\_\_\_\_\_\_], by and between [Foundation Name], a [Foundation’s State and Entity type e.g. New York nonprofit corporation] (the “Foundation”), and [Borrower Organization Name], a [Organization’s State and Entity Type e.g.: Delaware Corporation] (the “Borrower”). The Foundation is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), and is classified as a private foundation under Code Section 509(a).

This Agreement is one of the forms available at <https://thesky.foundation/document> and the Borrower and the Foundation agree that neither one has modified the form nor any of its attachments, except to fill in blanks and bracketed terms, and to remove the Disclaimer.

# RECITALS

 WHEREAS the Borrower has applied to the Foundation for a loan in the amount of [Applied-For Amount, usually same as Loan Amount], with the proceeds thereof to be used by the Borrower for the purposes described in Article I of this Agreement, in significant furtherance of the exempt purposes of the Foundation under Sections 170(c)(2)(B) and 501(c)(3) of the Code;

 WHEREAS the Foundation intends for such loan to qualify as a “program-related investment” of the Foundation, as such term is defined in Section 4944 of the Code; and

 WHEREAS the Foundation is willing to make such loan to the Borrower, and Borrower is willing to accept such loan, under the terms and subject to the conditions set forth in this Agreement;

 NOW, THEREFORE, in consideration of the foregoing premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**ARTICLE I**

**THE LOAN AND ITS PURPOSES**

 Section 1.1 The Loan; Closing. The Foundation agrees, subject to the terms and conditions set forth in this Agreement and in the Note (as defined below), to make a loan to the Borrower, in the principal amount of [Loan Amount in words and numbers e.g.: Fifty Thousand Dollars ($50,000)] (the “Loan”). The Closing of the Loan shall take place on or before [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] (such actual date being deemed the “Closing Date”), and at such time or place and by such method (including, without limitation, by electronic communication) as the parties may mutually determine. On the Closing Date, provided all the conditions precedent set forth in Article II have been fulfilled or waived by the Foundation in its sole discretion, the Foundation shall make available to the Borrower funds in the amount of the Loan by check or by wire transfer, as reasonably instructed by the Borrower.

 Section 1.2 The Note. The Loan shall be evidenced by a promissory note of the Borrower (the “Note”), substantially in the form attached as Exhibit A, duly executed on behalf of the Borrower by its authorized representatives and dated as of the Closing Date (as defined above). The Note shall set forth the interest rate, the repayment schedule and other terms. This Agreement, the Note, all exhibits thereto, and any other certificates or documents executed in connection therewith are referred to collectively in this Agreement as the “Loan Documents.” *All terms and conditions stated in the Loan Documents are incorporated by reference in this Agreement.*

 Section 1.3 Purpose of the Loan. The Foundation and the Borrower agree that the purpose of the Loan is [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], in significant furtherance of the Foundation’s charitable purposes under Sections 170(c)(2)(B) and 501(c)(3) of the Code and as set forth in the Foundation’s Certificate of Incorporation and Bylaws.

 Section 1.4 Use of Proceeds. The Borrower shall use the proceeds of the Loan exclusively for the purposes described in Section 1.3.

 Section 1.5 Security. The Loan will be an unsecured, full recourse obligation to the Borrower.

 **ARTICLE II**

 **CLOSING CONDITIONS**

 The obligation of the Foundation to make the Loan is subject to the following conditions precedent:

 Section 2.1 Loan Documents. The Loan Documents shall have been duly executed as appropriate and delivered to the Foundation and shall be in full force and effect.

 Section 2.2 Closing Deliveries. On or before the Closing Date, the Borrower shall have delivered to the Foundation the following:

 (a) resolutions of the Borrower, signed by an officer of the Borrower and in a form satisfactory to the Foundation, regarding approval of the form, terms, and conditions of the Loan Documents by the Borrower’s governing body, and the authorization of the Borrower’s officers to sign and deliver this Agreement and the Note; and

 (b) A certificate of good standing of the Borrower in the jurisdiction of its incorporation.

 Section 2.3 Representations and Warranties. On the Closing Date, the representations and warranties set forth in Article III of this Agreement shall be true and correct.

**ARTICLE III**

**REPRESENTATIONS AND WARRANTIES**

 Borrower represents and warrants as of the date of this Agreement and as of the Closing that:

 Section 3.1 Organization and Powers. The Borrower is a corporation duly formed, validly existing, and in good standing under the laws of [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]. The Borrower has the power and authority to own its assets and properties and to carry on its activities as now conducted and as contemplated to be conducted. The Borrower has the power and authority to execute, deliver, and perform this Agreement, to execute and deliver the Note, and to borrow from the Foundation pursuant to the terms of the Loan Documents.

 Section 3.2 Authorization; Binding Agreement. The execution, delivery, and performance by the Borrower of this Agreement, the execution and delivery of the Note, and the borrowing hereunder have been duly authorized by all requisite corporate action. Upon execution and delivery of each of them by the Borrower, the Loan Documents will constitute the legal, valid, and binding obligations of the Borrower, enforceable in accordance with their terms.

 Section 3.3 Tax Status. The Borrower is a tax-paying entity and is current in the payment of all of its federal and state income taxes, except to the extent that such taxes are being contested in good faith by appropriate proceedings.

 Section 3.4 Litigation. There is no action, suit, or proceeding pending or, to Borrower’s knowledge, threatened before any court or governmental or administrative body or agency, nor, to Borrower’s knowledge, is there any basis for any such action, in each case, that may reasonably be expected to result in a material adverse effect on the activities, operations, assets, properties, or condition, financial or otherwise, of the Borrower, or to impair the ability of the Borrower to perform its obligations under the Loan Documents (a “Material Adverse Effect”). The Borrower has not received written notice that Borrower is in violation of or alleged to be in violation of any judgment, writ, injunction, decree, rule, or regulation of any court or any governmental or administrative body or agency.

 Section 3.5 No Conflicts. The execution, delivery, and performance by the Borrower of the Loan Documents and the use of the Loan proceeds contemplated hereby will not violate any provision of law, any order, rule, regulation, or judgment of any court or governmental or regulatory body applicable to the Borrower, the Articles of Incorporation or Bylaws of the Borrower, or any indenture, agreement, instrument, or deed of trust to which the Borrower is a party or by which the Borrower or any of its assets or properties is bound, or conflict with, result in a breach of, or constitute (with due notice, lapse of time, or both) a default under any such indenture, agreement, instrument, or deed of trust, or result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the assets or properties of the Borrower, except as otherwise permitted, required, or contemplated by the Loan Documents. The Borrower is not a party to any indenture, agreement, or instrument, nor subject to any restriction, which adversely affects the ability of the Borrower to perform its obligations under the Loan Documents. The Borrower is not in default or, to the Borrower’s knowledge, alleged to be in default under any indenture, agreement, or instrument for borrowed money, or under any indenture, agreement, or instrument which, if in default, might reasonably be expected to result in a material adverse change in the activities, operations, assets, properties, or condition, financial or otherwise, of the Borrower, or to impair the ability of the Borrower to perform its obligations under the Loan Documents.

 Section 3.6 Compliance with Government Regulation. The Borrower has obtained all necessary licenses, approvals, and authorizations from all appropriate governmental agencies, the absence of which would have a Material Adverse Effect, and is in compliance with all laws, rules, regulations, orders, writs, injunctions, or decrees, the violation of which would have a Material Adverse Effect.

 Section 3.7 No Default. The Borrower is in compliance with all of the terms and provisions set forth in the Loan Documents to be observed or performed on its part, and no Event of Default (as defined in Article VI hereof), or any event that, with notice or lapse of time or both, would constitute any such Event of Default, has occurred and is continuing.

 Section 3.8 Financial Condition. There has been no material adverse change in the Borrower’s financial condition since the dates of the Borrower’s most recent unaudited annual financial statements (for the fiscal year ended [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]) and most recent unaudited quarterly financial statements (for the period ended [\_\_\_\_\_\_\_\_\_\_\_\_\_\_]), which have been provided by the Borrower to the Foundation. Such financial statements are complete and correct and fairly present the financial position of the Borrower as of the end of such fiscal year and such fiscal quarter, and the results of the Borrower’s operations for such periods were prepared in accordance with generally-accepted accounting principles consistently applied.

 Section 3.9 Taxes. The Borrower has filed all tax and information returns (or extensions, as applicable) required to be filed by the Borrower in any jurisdiction, and has paid all taxes, assessments, fees, or other governmental charges which have become due and payable, except to the extent that such taxes, assessments, fees, or other governmental charges are being contested in good faith by appropriate proceedings.

 Section 3.10 Disqualified Persons. Neither the Borrower nor any owner, director, trustee, officer, or employee of the Borrower is a “disqualified person” with respect to the Foundation within the meaning of Section 4946(a) of the Code.

 Section 3.11 Insurance Coverage. The Borrower has insurance coverage in full force and effect, against such risks and in such amounts as is customarily maintained by organizations engaged in similar activities.

 **ARTICLE IV**

## AFFIRMATIVE COVENANTS OF BORROWER

 The Borrower covenants and agrees that so long as this Agreement shall remain in effect or the Note shall not have been repaid in full, and unless the Foundation shall otherwise consent in writing in advance:

 Section 4.1 Use of Proceeds. The Borrower shall use the proceeds of the Loan exclusively for the purposes described in Article I, and on the terms, in the manner, and subject to the limitations set forth in the Loan Documents, and shall immediately repay any portion of the Loan (with appropriate interest as provided in the Note) not used for such purposes.

 Section 4.2 Existence and Properties. The Borrower shall do or cause to be done all things necessary to preserve, renew, and keep in full force and effect its corporate existence, privileges, and necessary licenses, permits, franchises, and insurance coverage; comply in all material respects with all laws and regulations applicable to it; and obtain and maintain in full force and effect all authorizations, consents, approvals, exemptions, franchises, permits, and licenses of, and filings with, governments or governmental or administrative bodies or agencies necessary for the performance of any act, the carrying on of any activity, or the entering into of any transaction by the Borrower.

 Section 4.3 Payment of Indebtedness and Taxes. The Borrower shall pay all of its indebtedness and obligations promptly and in accordance with the terms thereof, file or cause to be filed all federal, state, and local tax or information returns required to be filed by it, and pay and discharge or cause to be paid and discharged promptly any taxes, assessments, and governmental charges or levies imposed upon it or upon its income or profits, or upon any of its property or upon any part thereof, before the same shall become in default, as well as all lawful claims for labor, materials and supplies, or otherwise which, if unpaid, might become a lien or charge upon its property, or any part thereof; *provided, however,* that the Borrower shall not be required to pay and discharge or to cause to be paid and discharged any such indebtedness, obligation, tax, assessment, charge, levy, or claim so long as the validity thereof shall be contested in good faith by appropriate proceedings and the Borrower shall have set aside on its books adequate reserves therefor.

 Section 4.4 Reporting Requirements of the Borrower. The Borrower shall furnish or cause to be furnished to the Foundation the following reports:

 4.4.1 Within ninety (90) days after each fiscal year during which the Loan is outstanding, a written report evaluating the progress of the Borrower toward achieving the purposes described in Article I; and

 4.4.2 Within ninety (90) days after the Loan has been repaid in full, a written report of the Borrower, signed by its chief executive officer, president or treasurer, evaluating the progress of the Borrower toward achieving the purposes described in Article I, and the contribution of the Loan thereto, including without limitation a narrative account of the manner in which the Loan proceeds have been used by the Borrower, and a statement certifying that the Borrower has used all of the Loan proceeds exclusively for the purposes described in Article I.

 4.4.3 Such other information about the activities, business affairs, and financial condition of the Borrower as the Foundation may from time to time reasonably request to confirm Borrower’s compliance with the terms of the Agreement.

 Section 4.5 Books and Records. The Borrower will maintain its books and records in accordance with generally-accepted accounting principles, applied on a consistent basis, and shall permit the Foundation and its agents and representatives to, at the Foundation’s expense, examine and audit such books and records at all reasonable times, with such assistance from the Borrower’s personnel as reasonably requested; provided that Foundation shall in no event be required to reimburse Borrower for its own costs and expenses in connection with a Foundation audit under this Section.

 Section 4.6 Notice to the Foundation. The Borrower shall advise the Foundation in reasonable detail of the occurrence of any of the following events:

 4.6.1 Any event that results in fifty-one percent (51%) or more of the equity interests in the Borrower ceasing to be owned directly or indirectly by the Persons that directly and indirectly own Borrower as of the date hereof or any change in the Chief Executive Officer, President, or Treasurer of Borrower (depending on the officer titles used by Borrower);

 4.6.2. Any change in the positions or responsibilities held by the Borrower’s directors, executive officers, or the senior employees responsible for managing in whole or in part Borrower’s program(s) funded by the Loan;

 4.6.3 Any proceeding instituted or, to the Borrower’s knowledge, threatened against the Borrower in or before any court or any governmental or administrative body or agency; or any investigation, adverse regulatory action, or proposed action by any governmental body or agency against the Borrower, in each case, that could have a Material Adverse Effect;

 4.6.4 If applicable, any denial or revocation of, or challenge to, the tax-exempt status, non-private foundation status, or nonprofit corporate status of the Borrower by any governmental authority;

 4.6.5 Any change in circumstances that would cause the Loan no longer to serve the purposes stated in Article I;

 4.6.6 Any use of the Loan proceeds for a purpose other than those set forth in Article I;

 4.6.7 Any material adverse change in the condition, financial or otherwise, or operations of the Borrower; and

 4.6.8 Any Event of Default or other event that, with notice or lapse of time or both, would constitute an Event of Default.

 Section 4.7 Evaluation. The Borrower shall allow the Foundation and its agents and representatives to monitor and evaluate the Borrower’s operations, at the Foundation’s expense, including without limitation (i) visiting the Borrower’s place of business at reasonable times, and with reasonable advance notice to the Borrower, for observation, with the assistance of the Borrower’s personnel as needed, and (ii) meeting with the Borrower’s personnel to discuss the Borrower’s programs and operations. In no event shall Foundation be required to reimburse Borrower for any of its expenses in connection Foundation’s evaluation under this Section.

 **ARTICLE V**

 **NEGATIVE COVENANTS OF BORROWER**

 The Borrower covenants and agrees that, until payment in full of the principal of the Loan, and unless the Foundation shall otherwise consent in writing in advance (which consent shall not be unreasonably withheld):

 Section 5.1 Legislative and Political Uses of Loan Proceeds. The Borrower shall not use any proceeds of the Loan for any of the purposes described in Section 170(c)(2)(D) of the Code, except as permitted by U.S. Treasury Regulations, as follows: The Borrower shall not use any proceeds of the Loan to carry on propaganda or otherwise to attempt to influence legislation (within the meaning of Section 4945(d)(1) of the Code), or to influence the outcome of any specific public election, or to carry on, directly or indirectly, any voter registration drive (within the meaning of Section 4945(d)(2) of the Code); *provided, however,* that the Borrower may expend funds from the proceeds of the Loan to pay for appearances before, or communications to, a legislative body with respect to legislation or proposed legislation of direct interest to the Borrower if, and only if, a tax deduction under Section 162 of the Code is then allowable to the Borrower for such expenditure. The Foundation and the Borrower understand that no proceeds of the Loan are earmarked to be used for such appearances or communications.

 Section 5.2 No Material Change. The Borrower shall not make any material change in the nature of its activities as presently conducted that would adversely affect the Borrower’s ability to perform under the Loan Documents. Furthermore, the Borrower shall not conduct its activities in a manner that materially departs from the representations made in the documents submitted by the Borrower to the Foundation in connection with the Borrower’s request for this Loan.

 Section 5.3 Acquisition of Business; Merger or Consolidation; Disposal of Assets. In the event that the Borrower shall (a) acquire all or substantially all the assets or properties of any other entity, except by gift, bequest, or other donation, or pursuant to the enforcement of a loan or security interest; (b) sell, lease, transfer, or otherwise dispose of all or substantially all of its assets or properties; or (c) dissolve, liquidate, merge, or consolidate with or into any other person, firm, corporation, or other business entity, it shall ensure that the terms of this Loan Agreement remain in full force and effect.

 Section 5.4 Governing Document Amendments. The Borrower shall not amend its governing documents in any manner that would cause the Borrower to be in violation of any provision of the Loan Documents or that would jeopardize the ability of the Borrower to perform its obligations under the Loan Documents.

 Section 5.5 Future Indebtedness; Subordination. Subject to the proviso in this Section 5.5, Borrower shall not incur, create, assume, or suffer to exist any debt or obligation for borrowed money other than (a) the Loan, and (b) indebtedness incurred in the ordinary course of business that does not materially adversely affect the ability of the Borrower to perform any of its obligations under the Loan Documents; provided that Lender agrees that the Loan shall be subordinate to existing and future indebtedness of the Borrower provided by third-party financial institutions providing credit to Borrower, including, without limitation, [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] (“Senior Lenders”) for any mortgage financing provided by such Senior Lenders. Upon Borrower’s request, Lender shall execute and deliver to Senior Lenders subordination agreements evidencing Senior Lender’s priority right to repayment and enforcement of Borrower obligations to Senior Lender.

**ARTICLE VI**

**DEFAULTS**

 Section 6.1 Events of Default. The Borrower shall be deemed to be in default under this Agreement if any one or more of the following events (“Event or Events of Default”) shall have occurred and be continuing:

 (a) Borrower shall fail to pay an amount payable hereunder within 10 days after the due date thereof;

 (b) Borrower shall fail to observe or perform any covenant or agreement contained in this Agreement (other than those covered by clause (a) above) for 30 days after written notice thereof has been given to Borrower by the Foundation;

 (c) any representation, warranty, certification, or statement made by Borrower in this Agreement or in any certificate, financial statement, or other document delivered pursuant to this Agreement shall prove to have been incorrect in any material respect when made;

 (d) the Internal Revenue Service makes a determination that the Loan does not qualify as a program-related investment for purposes of Section 4944(c) of the Code;

 (e) the Foundation or counsel to the Foundation makes the reasonable determination that the Loan constitutes a self-dealing transaction under Section 4941 or a taxable expenditure under Section 4945;

 (f) Borrower shall (x) fail to make any payment in respect of any indebtedness having a principal amount in excess of $300,000 (other than the Note) when due and any applicable grace period in relation thereto has expired; or (y) fail to perform or observe any other term, condition, or agreement in relation to such indebtedness, or in any instrument or agreement evidencing, securing, and relating thereto, or any other event occurs or condition exists, if the effect of such failure is to cause, or permit the holder or holders of such indebtedness to cause, such indebtedness to become due prior to its stated maturity;

 (g) Borrower shall commence a voluntary case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, liquidator, custodian, or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of, or taking possession by, any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall take any corporate action to authorize any of the foregoing;

 (h) an involuntary case or other proceeding shall be commenced against Borrower seeking liquidation, reorganization, or other relief with respect to it or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, liquidator, custodian, or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 60 days; or an order for relief shall be entered against Borrower under the federal bankruptcy laws as now or hereafter in effect, and such order shall not be vacated within a period of 60 days from the date of entry thereof; or

 (i) a judgment or order for the payment of money in excess of $300,000 shall be rendered against Borrower, and such judgment or order shall continue unsatisfied and unstayed for a period of 60 days, other than any such judgment or order which has been fully bonded or for which an insurance company has agreed to pay the entire amount in excess of $300,000.

then, and in every such event, the Foundation may, by notice to Borrower terminate this Agreement and declare the Note (together with accrued interest thereon) to be, and the Note shall thereupon become, immediately due and payable without presentment, demand, protest, or other notice of any kind, all of which are hereby waived by Borrower.

**ARTICLE VII**

**INDEMNIFICATION**

 Borrower hereby indemnifies and agrees to defend and hold harmless each of the Foundation, its directors, officers, employees, agents, and affiliates (each, an “Indemnitee”), from and against any and all losses, liability, damages, and expenses (including attorneys’ fees and expenses) which any of them may incur or be obligated to pay in any action, claim, or proceeding against them or any of them, for or by reason of any acts or omissions of the Borrower or any of its officers, agents, or employees, in connection with this Agreement; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses have resulted from (A) the gross negligence or willful misconduct of such Indemnitee in any capacity, or (B) any dispute solely among or between Indemnitees in any capacity. The provisions of this Article and the Borrower’s obligations hereunder shall survive any expiration, termination, or rescission of this Agreement. In the event that a judgment, levy, attachment, or other seizure is entered against the Foundation arising from any claim within the scope of this indemnification, the Borrower shall promptly post any necessary bond to prevent execution against any property of the Foundation.

**ARTICLE VIII**

**MISCELLANEOUS**

 Section 8.1 Entire Agreement. This Agreement, its exhibits, and the Note constitute the entire agreement between the parties with respect to the transactions contemplated hereby and supersede all prior agreements or understandings, written or oral, in respect hereof.

 Section 8.2 Notices. Any notice or communication required or desired to be given hereunder by either of the parties to the other shall be in writing and delivered by hand, or mailed by first-class mail or by nationally-recognized overnight courier, postage prepaid (notices shall be deemed given three days after being duly mailed, or one day after being sent by overnight courier), addressed to the party at its address appearing below:

 To Borrower:

 [Borrower Organization Name]

 [Borrower Organization Mailing Address]

 ATTN.: [Borrower Organization Contact]

 [Title of Contact]

 Phone: [Phone number of Borrower Organization Contact]

 To the Foundation:

 [Foundation Organization Name]

 [Foundation Organization Mailing Address]

 ATTN.: [Foundation Organization Contact]

 [Title of Contact]

 Phone: [Phone number of Foundation Organization Contact]

 Section 8.3 Waiver; Remedies. No waiver of any provision hereof shall be valid unless in a writing signed by the party waiving its rights under the provision. No course of dealing or delay or failure on the part of either party in exercising any right, power, or privilege hereunder shall operate as a waiver thereof or otherwise prejudice such party’s rights, powers, or remedies, nor shall any waiver in any particular instance of any right, power, or privilege hereunder on the part of either party operate as a waiver of such or any other right, power, or privilege hereunder in any other instance.

 Section 8.4 Expenses. Borrower shall (i) pay all of its own expenses in connection with the preparation of this Agreement, any waiver or consent hereunder or any amendment hereof or any default or alleged default by Borrower hereunder, and (ii) if an Event of Default occurs, pay all out-of-pocket expenses reasonably incurred by the Foundation, including fees and disbursements of counsel, in connection with such Event of Default and in connection with any collection and other enforcement proceedings resulting therefrom.

 Section 8.5 Assignment; Successors. The Foundation may assign all or any portion of its rights or obligations under the Loan Documents, and in the event of such assignment, the assignee shall be accorded the full rights of the Foundation by the Borrower with respect to such assignment. The Borrower may not assign all or any portion of its rights or obligations under the Loan Documents without the prior written consent of the Foundation.

 Section 8.6 Modification; Amendment. No change, modification, or amendment of any provision hereof shall be valid unless in a writing signed by both parties.

 Section 8.7 Governing Law; Jurisdiction and Venue. This Agreement and the Note shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and to be performed entirely within such State. For the purposes of any suit, action, or proceeding arising out of or relating to this Agreement, each party hereby irrevocably and unconditionally (a) submits to the exclusive jurisdiction of the state courts of New York and to the jurisdiction of the United States District Court for the Southern District of New York and (b) agrees that all claims in respect of such suit, action, or proceeding shall be heard and determined exclusively in any New York state or federal court located in New York County. Each party hereby irrevocably and unconditionally waives any objection to the laying of such venue and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in such court that any such suit, action, or proceeding brought in such court has been brought in an inconvenient forum.

 Section 8.8 Severability. If any provision of the Loan Documents shall for any reason be held to be illegal, invalid, or unenforceable, such illegality shall not affect any other provision of the Loan Documents, but the Loan Documents shall be construed as if such illegal, invalid, or unenforceable provision had never been contained herein.

 Section 8.9 Other Parties. Nothing in the Loan Documents shall be construed as giving any person, firm, corporation, or other entity other than the parties any right, remedy, or claim under or in respect of the Loan Documents or any provision thereof.

 Section 8.10 Attorneys’ Fees and Costs. In the event of any controversy, claim, or dispute between the parties arising out of or relating to the Loan Documents, or the alleged breach thereof, the prevailing party shall, in addition to any other relief, be entitled to recover its reasonable attorneys’ fees and costs of sustaining its position.

 Section 8.11 Waiver of Consequential Damages. NO PARTY WILL BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR EXEMPLARY LOSSES OR DAMAGES, WHETHER IN TORT (INCLUDING NEGLIGENCE), CONTRACT, OR OTHERWISE.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, or have caused this Agreement to be executed by their respective authorized officers, as of the day and year first above written.

 The Sky Foundation Inc.

 By: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

 Name: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

 Title: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

 Borrower Organization:

 [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

 By: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

 Name: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

 Title: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

**Exhibit A**

**PROMISSORY NOTE**

Principal Amount: [\_\_\_\_\_\_\_\_\_\_\_\_\_] Date of Closing: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

 1. Payment Promise. For value received, [Borrower Organization Name], a [Organization’s Jurisdiction and Entity Type e.g.: Delaware Corporation] (the “Borrower”), promises to pay to the order of The Sky Foundation Inc. (the “Lender”), the principal sum of [\_\_\_\_\_\_\_\_\_\_\_\_], subject to the terms and conditions of the Loan Agreement between the Borrower and the Lender having the same date as this Note (“Loan Agreement”), plus interest on the unpaid principal balance and all other sums due from the Borrower to the Lender under this Note, the Loan Agreement, or any security or other documents or any other Loan Document. (Terms used but not defined in this Note have the meanings given to them in the Loan Agreement. This Note is part of the Loan Agreement and is subject to its terms and conditions.)

 2. Interest Rate. Interest on the unpaid principal balance shall begin accruing on the date of this Note, and shall continue until all sums due under this Note are paid in full, at a fixed rate of interest of [often the same yield as US Treasury of the same duration]% per annum. All interest shall be computed on the basis of actual days elapsed over an assumed year of three hundred sixty (360) days consisting of twelve 30-day months and for the actual number of days elapsed in any partial month. Interest shall not be compounded.

 3. Due Date. On [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] (“Due Date”), the Borrower shall pay to the Lender in full all outstanding principal, accrued interest, and any other unpaid sums due under this Note, the Loan Agreement, and any other Loan Document.

 4. Payments. The Borrower agrees to make the principal and interest payments to the Lender as indicated on Schedule 1 to this Note. The Borrower shall make each payment or prepayment under this Note. All payments of principal, interest, and other amounts shall be made without offset, counterclaim, or deduction of any kind. The Borrower may completely or partially prepay this Note on any business day before the Due Date without penalty.

 If any principal or interest on this Note falls due on a day which is not a business day for banks in New York County, New York such due date shall be extended to the next succeeding business day.

 5. Application of Payments. The Lender shall apply every payment or prepayment first to unpaid accrued interest charges and costs due under this Note, and then to the unpaid principal. The Borrower, however, must continue to make the scheduled quarterly payments when due, despite any partial prepayment; provided that the outstanding balance of the Loan shall be reduced by any such prepayment.

 6. Late Fee. If the Lender does not receive any payment within 30 days of when due under the terms of the Note, the Borrower shall pay the Lender a late fee of 5% of the payment due for each and every late payment, in addition to the accrued interest.

 7. Default. The Lender may declare the Borrower to be in default, and all sums due under this Note immediately due in full, if an Event of Default under the Loan Agreement shall have occurred.

 8. Term. This Note and all obligations of the Borrower under the Loan Documents in connection therewith shall terminate when the Borrower has fully paid all principal and interest under this Note.

 9. No Waiver. Failure of the Lender to exercise any of its rights and remedies shall not constitute a waiver of the right to exercise the same at that or any other time. All rights and remedies of the Lender hereof for default hereunder shall be cumulative to the greatest extent permitted by law.

 This Note is given pursuant to the Loan Agreement between the Lender and the Borrower and, except as expressly indicated herein, is subject to the terms and conditions set forth in the Loan Agreement.

 Borrower hereby agrees to the terms and conditions of this Note:

 Organization Name:

 [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

 By: [ \_\_\_\_\_\_\_ ]

 Name: [ ]

 Title: [ ]

**Schedule 1**

**Repayment Schedule**

|  |  |
| --- | --- |
| **Repayment Installment of Principal** | **Repayment Date** |
| [Percent or amount repaid][Add additional payment lines as required | [Due Date] |