

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of Lewis and Clark County, Montana (the "County"), hereby certify that the attached resolution is a true copy of Resolution No. _____ entitled: "RESOLUTION RELATING TO FIRST AMENDED AND RESTATED HIGHER EDUCATION REVENUE NOTE (CARROLL COLLEGE ENERGY PERFORMANCE PROJECT), SERIES 2008; APPROVING FIRST AMENDMENT TO LOAN AGREEMENT AND RELATED MATTERS; AUTHORIZING CERTIFICATES IN CONNECTION WITH THE DELIVERY OF THE AMENDED NOTE" (the "Resolution"), on file in the original records of the County in my legal custody; that the Resolution was duly adopted by the Board of County Commissioners of the County at a meeting on July 10, 2018, and that the meeting was duly held by the Board of County Commissioners and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Commissioners voted in favor thereof: Andy Hunthausen and Susan Good Geise; voted against the same: _____; abstained from voting thereon: _____; or were absent: Jim McCormick.

WITNESS my hand officially this 10th day of July, 2018.

Paulette DeHart
County Clerk and Recorder/Treasurer



RESOLUTION NO. 57

RESOLUTION RELATING TO FIRST AMENDED AND
RESTATEHED HIGHER EDUCATION REVENUE NOTE
(CARROLL COLLEGE ENERGY PERFORMANCE PROJECT),
SERIES 2008; APPROVING FIRST AMENDMENT TO LOAN
AGREEMENT AND RELATED MATTERS; AUTHORIZING
CERTIFICATES IN CONNECTION WITH THE DELIVERY OF
THE AMENDED NOTE

BE IT RESOLVED by the Board of County Commissioners (the "Board") of Lewis and Clark County, Montana (the "County"), as follows:

Section 1. Recitals.

1.01. Issuance of Note. Pursuant to Resolution No. 2008-80 of the County adopted on July 10, 2008 (the "Resolution"), the County authorized the issuance of its Higher Education Revenue Note (Carroll College Energy Performance Project), Series 2008, (the "Original Note") on behalf of Carroll College, a Montana nonprofit corporation (the "Borrower") for the purpose of defraying all or a portion of the costs of acquiring, constructing and installing energy efficiency improvements to various buildings and facilities located on the Carroll College campus (the "Project"), and to pay costs associated with the financing of the Project, as more particularly described in the Resolution. The Original Note is currently held by Valley Bank of Helena, Division of Glacier Bank (as successor to Valley Bank of Helena, Montana) (the "Lender"). The proceeds of the Original Note were loaned to the Borrower pursuant to a Loan Agreement between the County and the Borrower, dated as of July 18, 2008 (the "Loan Agreement"); the Borrower agreed to apply the proceeds to the payment of costs of the Project and to repay the loan at such times and in such amounts to provide for the prompt payment of the principal of and interest on the Original Note; and the Borrower would be obligated to pay all costs of acquiring, constructing and equipping the Project in excess of the proceeds of the Original Note available therefor. Pursuant to an Assignment of Loan Agreement, dated as of July 18, 2008, the County assigned its right, title and interest in and to the Loan Agreement (reserving, however, unto the County certain rights) to the Lender, as the purchaser of the Original Note.

1.02. Interest Rate Reduction. The Lender has agreed to modify the terms of the Original Note by agreeing that the interest rate for the final Rate Adjustment Period (as that term is defined in the Original Note) will be 2.95% per annum, thereby causing the interest rate to be more than 25 basis points less than the interest rate that would have been in effect for the final Rate Adjustment Period in the absence of modification.

1.03. Reduction in Interest Rate on the Series 2008 Note. To reflect the interest-rate reduction, the County, the Lender, and the Borrower have agreed to enter into a First Amendment to Loan Agreement in connection with the issuance by the County of the Amended Note and the County will issue a First Amended and Restated Higher Education Revenue Note (Carroll College Energy Performance Project), Series 2008 as set forth on the attached Appendix

A (the "Amended Note"). A form of the draft of the First Amendment to Loan Agreement has also been presented to the Board.

Section 2. Authorization and Approval of the Amended Documents. The forms of First Amendment to Loan Agreement and Amended Note are approved, subject to such modifications as are deemed appropriate and approved by Dorsey & Whitney LLP, as the County's bond counsel, the Chair of the Board of County Commissioners, the County Attorney, and the Finance Director, which approval shall be conclusively evidenced by execution of the First Amendment to Loan Agreement and Amended Note by the Chair of the Board of County Commissioners and the County Clerk and Recorder/Treasurer. The First Amendment to Loan Agreement and Amended Note are directed to be executed in the name and on behalf of the County by the Chair of the Board of County Commissioners and the County Clerk and Recorder/Treasurer. Copies of all of the documents shall be delivered, filed and recorded as provided therein.

Section 3. Tax Matters.

3.01. General Covenants. The County covenants and agrees with the owners from time to time of the Amended Note that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest on the Amended Note to become includable in gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended (the "Code"), and applicable Treasury Regulations (the "Regulations"), and covenants to take any and all actions within its powers to ensure that the interest on the Amended Note will not become includable in gross income for federal income tax purposes under the Code and the Regulations.

3.02. Exception to Arbitrage Rebate. The Borrower acknowledged in its tax certificate delivered on the date of delivery of the Original Note that the Original Note was exempt from arbitrage rebate because of the six month spenddown exception to arbitrage rebate. The proceeds of the Amended Note will be spent on issuance and delivery of the Amended Note to effect a current refunding of the Original Note. Accordingly, the County expects the Amended Note will be exempt from arbitrage rebate. If however, the Amended Note is subject to arbitrage rebate, the County covenants and agrees to, or cause the Borrower to, retain such records, make such determinations, file such reports and documents and pay such amounts at such times as are required under said Section 148(f) and applicable Treasury Regulations to preserve the exclusion of interest on the Amended Note from gross income for federal income tax purposes. In furtherance of the foregoing, the Chair of the Board of County Commissioners, the County Clerk and Recorder/Treasurer, and/or the County Finance Director are hereby authorized, if applicable, to include in a tax certificate to be delivered at closing certain matters regarding arbitrage rebate. The Borrower will deliver a tax certificate regarding the Project and related matters and is expected to confirm that the Amended Note is exempt from arbitrage rebate requirements.

3.03. Certification. The Chair of the Board of County Commissioners and the County Clerk and Recorder/Treasurer of the County, being the officers of the County charged with the responsibility for issuing the Amended Note pursuant to this resolution, and the County Finance Director are authorized and directed to execute and deliver, or to cause the Borrower to execute and deliver, to Bond Counsel and the Lender certifications to satisfy the provisions of Sections 1.148-2(b) of the Treasury Regulations relating to a reasonable expectation that the

proceeds of the Amended Note will be used in a manner that will not cause them to be arbitrage bonds.

3.04. Information Reporting. The County shall file with the Secretary of the Treasury, not later than November 15, 2018, a statement concerning the Amended Note containing the information required by Section 149(e) of the Code.

3.05. “Qualified Tax-Exempt Obligations.” Pursuant to Section 265(b)(3)(B)(ii) of the Code, the Amended Note is designated or, if appropriate, deemed designated by the County as a “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code. The aggregate principal amount of the Amended Note, which is an obligation that will have the effect of refunding on a current refunding basis the Original Note, does not exceed the aggregate principal amount of the Original Note outstanding; the average maturity date of the Amended Note is not later than the average maturity date of the Original Note; and the Amended Note has a maturity date not later than the 30 years after the date the Original Note was issued.

Section 4. Certification and Effective Date.

4.01. Certification. The officers of the County are authorized and directed to prepare and furnish to the Lender and to the attorneys rendering an opinion as to the legality of the Amended Note, certified copies of all ordinances, resolutions and records and such other certificates, affidavits and other instruments as may be required to evidence the validity, status of tax-exempt interest, or marketability of the Amended Note and all such certified copies, certificates and affidavits shall constitute representations of the County as to the truth of all statements of fact contained therein.

4.02. Effective Date. This resolution shall be in full force and effect from and after its adoption.

Adopted by the Board of County Commissioners of Lewis and Clark County, Montana, on this 10th day of July, 2018.



Chair of the Board of Commissioners

Attest:



County Clerk and Recorder/Treasurer



(SEAL)

APPENDIX A

[FORM OF FIRST AMENDED AND RESTATED SERIES 2008 NOTE]

UNITED STATES OF AMERICA
STATE OF MONTANA

LEWIS AND CLARK COUNTY

First Amended and Restated Higher Education Revenue Note
(Carroll College Energy Performance Project)
Series 2008

R-2 \$1,121,786.55

<u>Tax-Exempt Interest Rate</u>	<u>Principal Amount</u>	<u>Final Maturity Date</u>	<u>Date of Original Issue</u>
2.95%	\$1,121,786.55	July 30, 2023	July 18, 2018

FOR VALUE RECEIVED, LEWIS AND CLARK COUNTY, Montana, a political subdivision validly existing under the Constitution and laws of the State of Montana (the "Issuer"), hereby promises to pay to VALLEY BANK OF HELENA, DIVISION OF GLACIER BANK (as successor to Valley Bank of Helena, Montana) (the "Lender"), or registered assigns (the Lender and any subsequent registered assign, the "Holder"), at the principal office of the Lender in Helena, Montana, or at such other place as the Holder may designate in writing, solely from the source and in the manner hereinafter provided, the principal amount of One Million One Hundred Twenty-One Thousand Seven Hundred Eighty-Six and 55/100 Dollars (\$1,121,786.55), with interest on the unpaid principal amount at the rate set forth in paragraph 1(d) hereof (the "Tax-Exempt Rate"), or at the higher rate specified in paragraph 1(e) hereof (the "Taxable Rate") upon a Determination of Taxability (as hereinafter defined), in any coin or currency which at the time or times of payment is legal tender for the payment of public or private debts in the United States of America, in accordance with the terms hereinafter set forth:

1. This Note shall be payable by Borrower as follows:

(a) On July 18, 2018, \$1,435.90, representing interest at 2.60% on the outstanding principal amount of the Prior Note (as defined below), shall be due and owing.

(b) On July 30, 2018 and continuing on the 30th day of each month thereafter (except with regard to each February, on the last day of February) (each such date, a "Payment Date") through and including July 30, 2023 (the "Final Maturity Date"), \$19,797.35 shall be due and owing.

(c) The entire outstanding principal balance of this Note and interest hereon, if not sooner paid, shall be paid in full on the Final Maturity Date.

(d) The monthly dollar amounts due and payable under this Note set forth above in paragraph 1(b) are computed using the interest rate per annum of 2.95% (the "Tax-Exempt Rate"). The Tax-Exempt Rate is subject to change to the Taxable Rate upon a Determination of Taxability (as hereinafter defined). The outstanding and unpaid principal balance of this Note bears interest from the Date of Original Issue set forth above, to and including July 30, 2023 (the Final Maturity Date), at the rate of 2.95% per annum, subject to a Determination of Taxability.

(e) In the event that the interest on this Note shall become includable in gross income for purposes of federal income taxation pursuant to a Determination of Taxability (as hereinafter defined), the Note Rate shall be increased, retroactively effective from and after the Date of Taxability (as hereinafter defined) to an annual interest rate equal to the Taxable Rate (as hereinafter defined). The Issuer shall, solely from payments required to be made by the Borrower (as hereinafter defined), upon demand, pay to the Holder and to each prior Holder since the Date of Taxability an amount equal to the amount by which the interest accrued retroactively at the Taxable Rate from the Date of Taxability to the date of payment exceeds the amount of interest actually accrued hereunder at the Tax-Exempt Rate and paid to the Holder and any such prior Holder during said period. Such obligation shall survive the payment in full of the principal amount of this Note.

After a Determination of Taxability, the installments of principal of and interest on this Note shall be adjusted to reflect the Note Rate then in effect.

(f) As used herein, and in addition, to the terms defined elsewhere in this Note, the following terms have the following meanings:

"Borrower" means Carroll College, a Montana nonprofit corporation, or any permitted successor or assign under the Loan Agreement.

"Business Day" has the meaning given such term in the Loan Agreement.

"Date of Taxability" shall have the meaning given such term in the Loan Agreement.

"Determination of Taxability" shall have the meaning given such term in the Loan Agreement.

"Loan Agreement" means the Loan Agreement, dated as of July 18, 2008, between the Issuer and the Borrower, as amended and supplemented by that certain First Amendment to Loan Agreement, dated as of July 18, 2018, between the Issuer, the Borrower, and the Lender, as the same may be amended or supplemented from time to time in accordance with the terms thereof.

"Note Rate" means, as of any date of determination, the annual interest rate then in effect on this Note, either the Tax-Exempt Rate or the Taxable Rate.

"Taxable Rate" means with regard to this Note 3.734% per annum.

(g) In the event the Issuer shall fail to make when due any principal, premium, if any, or interest payments required under this Note, the principal, premium (if any) or interest payment so in default shall continue as a special, limited obligation of the Issuer until the principal, premium

and interest payment in default shall have been fully paid, and the Issuer agrees to pay, but solely from the revenues derived under the Loan Agreement, interest thereon (including to the extent permitted by law, interest on overdue installments of interest) at the rate of interest per annum then borne by this Note. Further, if any installment of principal or interest on this Note is not paid by the close of business on the 18th calendar day after the date such installment was due, the Borrower shall pay to the Holder a late charge equal to 5% of the overdue payment. A late charge shall be payable only once on each late payment. Notwithstanding any provision to the contrary herein, this Note is payable by the Borrower and the Issuer is not obligated to make payments hereunder.

2. All payments shall be applied first to interest due on the outstanding principal amount hereof, then to redemption premium, if any, and thereafter in reduction of the principal amount hereof. All interest hereon shall be computed on the basis of a three hundred sixty-five (365) day year. If any Payment Date is not a Business Day, such payment shall be payable on the next succeeding Business Day with the same effect as if paid on the Payment Date and without additional interest payable thereon.

3. Except as otherwise provided in the next succeeding paragraph, this Note is subject to prepayment in whole or in part at the option of the Borrower, on any Payment Date upon at least thirty (30) days' prior written notice to the Holder (or such shorter period of notice as may be acceptable to the Holder) at a redemption price equal to the outstanding principal thereof plus interest accrued thereon to the date of prepayment.

To effect any prepayment of this Note, the Borrower shall pay or cause to be paid to the Holder, but solely from the revenues available under the Loan Agreement, an amount equal to the prepayment price, including accrued interest on this Note to the date of such prepayment. Any partial prepayments shall be applied in inverse order of principal installments payable hereunder, and no partial prepayment shall postpone, defer or otherwise reduce the amount of the monthly installments due hereunder.

4. This Note constitutes an issue of the Issuer in the maximum authorized face amount of \$1,121,786.55. This Note is issued by the Issuer pursuant to the authority granted by Montana Code Annotated, Title 90, Chapter 5, Part 1, as amended (the "Act"), in exchange for a Higher Education Revenue Note (Carroll College Energy Performance Project), Series 2008 (the "Prior Note"), which was issued for the purpose of providing funds for a project, as defined in the Act, consisting of the acquisition, construction and installation of energy efficient improvements to various buildings and facilities located on the Carroll College campus (the "Project") and paying necessary expenses incidental thereto, such funds to be lent by the Issuer to the Borrower pursuant to the Loan Agreement, and a Disbursing Agreement, dated the date hereof (the "Disbursing Agreement"), between the Issuer, the Borrower and the Lender, thereby assisting activities in the public interest and for the public welfare of the State of Montana. This Note is further secured by an Assignment of Loan Agreement, dated as of July 18, 2008, from the Issuer to the Lender, between the Borrower and the Lender.

5. This Note shall be registered and shall be transferable upon the books of the Issuer at the office of the County Clerk and Recorder/Treasurer in Helena, Montana, by the Holder hereof in person or by its attorney duly authorized in writing, upon surrender hereof together with a

written instrument of transfer satisfactory to the County Clerk and Recorder/Treasurer, duly executed by the Holder or its duly authorized attorney. Upon such transfer the County Clerk and Recorder/Treasurer will note the date of registration and the name and address of the new Holder upon the books of the Issuer and in the registration blank appearing below. Alternatively, the Issuer will, at the request and expense of the Holder, issue a new note or notes in an aggregate principal amount equal to the unpaid principal balance of this Note, and of like tenor except as to number, principal amount and the number and amount of the installments payable thereunder, and registered in the name of the Holder or such transferee as may be designated by the Holder. If more than one note is to be issued upon any such exchange, the governing body of the Issuer shall prescribe the form thereof by resolution to ensure that no alteration inadvertently occurs in the terms of or security for this Note. The Issuer may deem and treat the person in whose name this Note is last registered upon the books of the Issuer with such registration also noted on the Note, as the absolute owner hereof, whether or not this Note is overdue, for the purpose of receiving payment of or on account of the principal balance, prepayment price, late charges or interest and for all other purposes, and all such payments so made to the Holder or upon its order shall be valid and effectual to satisfy and discharge the liability upon this Note to the extent of the sum or sums so paid, and the Issuer shall not be affected by any notice to the contrary.

6. Time is of the essence under this Note. If default occurs under this Note, or an Event of Default occurs under the Loan Agreement or the Disbursing Agreement, or if any other event occurs which entitles the Holder to accelerate payment under the Loan Agreement or the Disbursing Agreement, then the Holder may at its right and option (subject, however, to such notice, if any, as may be required under the Loan Agreement or the Disbursing Agreement) declare immediately due and payable the principal balance of this Note and interest accrued thereon to the date of declaration of such default, together with any reasonable attorneys' fees incurred by the Holder in collecting or enforcing payment thereof, whether suit be brought or not, and all other sums due hereunder.

7. THIS NOTE IS NOT A GENERAL OBLIGATION OF THE ISSUER, BUT RATHER A SPECIAL, LIMITED OBLIGATION OF THE ISSUER AND SHALL NOT BE PAYABLE FROM NOR CHARGED UPON ANY FUNDS OF THE ISSUER OTHER THAN THE REVENUES UNDER THE LOAN AGREEMENT PLEDGED TO THE PAYMENT THEREOF, NOR SHALL THE ISSUER BE SUBJECT TO ANY LIABILITY THEREON. NO HOLDER OF THIS NOTE SHALL EVER HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE ISSUER TO PAY THIS NOTE OR THE INTEREST, PREMIUM OR ANY LATE CHARGES THEREON, NOR TO ENFORCE PAYMENT THEREOF AGAINST ANY PROPERTY OF THE ISSUER EXCEPT REVENUES UNDER THE LOAN AGREEMENT PLEDGED TO THE PAYMENT THEREOF PURSUANT TO THE ASSIGNMENT. THIS NOTE SHALL NOT CONSTITUTE A CHARGE, LIEN, OR ENCUMBRANCE, LEGAL OR EQUITABLE, AGAINST THE GENERAL CREDIT OF THE ISSUER OR UPON ANY PROPERTY OF THE ISSUER, EXCEPT THE REVENUES UNDER THE LOAN AGREEMENT PLEDGED TO THE PAYMENT THEREOF PURSUANT TO THE ASSIGNMENT. THIS NOTE, INCLUDING INTEREST, PREMIUM, IF ANY, AND LATE CHARGES, IF ANY, HEREON IS PAYABLE SOLELY FROM THE REVENUES UNDER THE LOAN AGREEMENT PLEDGED TO THE PAYMENT THEREOF PURSUANT TO THE ASSIGNMENT. NEITHER THE STATE OF MONTANA, THE COUNTY OF LEWIS

AND CLARK NOR ANY OTHER POLITICAL SUBDIVISION SHALL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, INTEREST OR LATE CHARGES ON THE NOTE OR FOR THE PERFORMANCE OF ANY AGREEMENT OF ANY KIND WHATSOEVER THAT MAY BE UNDERTAKEN BY THE ISSUER. NEITHER THIS NOTE NOR ANY OF THE AGREEMENTS OR OBLIGATIONS OF THE ISSUER CONTAINED HEREIN OR IN THE LOAN AGREEMENT, THE ASSIGNMENT OR THE DISBURSING AGREEMENT SHALL BE CONSTRUED TO CONSTITUTE AN INDEBTEDNESS OF THE ISSUER WITHIN THE MEANING OF ANY CONSTITUTIONAL, STATUTORY OR CHARTER PROVISIONS WHATSOEVER, NOR TO CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OR BE A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWER OF THE ISSUER. NO FAILURE OF THE ISSUER OR ANY PARTY TO COMPLY WITH ANY TERM, CONDITION, COVENANT OR AGREEMENT IN THIS NOTE, THE LOAN AGREEMENT, THE ASSIGNMENT OR THE DISBURSING AGREEMENT SHALL SUBJECT THE ISSUER TO LIABILITY FOR ANY CLAIM FOR DAMAGES, COSTS OR OTHER FINANCIAL OR PECUNIARY CHARGE, AND NO EXECUTION ON ANY CLAIM, DEMAND, CAUSE OF ACTION OR JUDGMENT SHALL BE LEVIED UPON OR COLLECTED FROM THE GENERAL CREDIT, GENERAL FUNDS OR TAXING POWERS OF THE ISSUER.

8. The Holder shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the Holder and then only to the extent specifically set forth in the writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event.

9. It is intended that this Note is made with reference to and shall be construed as a Montana contract and governed by the laws thereof, without giving effect to the conflicts-of-law principles thereof.

10. This Note may not be amended, modified or changed nor shall any waiver of any provision hereof be effective, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought. No material modification of the terms and conditions of this Note shall be effective without the prior written consent of the Issuer.


11. If any term of this Note, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Note, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Note shall be valid and enforceable to the fullest extent permitted by law.

IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts and things required to exist, happen, and be performed precedent to or in the issuance of this Note do exist, have happened and have been performed in regular and due time, form and manner as required by law.

IN WITNESS WHEREOF, the Issuer has caused this Note to be duly executed by its duly authorized officers as of the 18th day of July, 2018.

LEWIS AND CLARK COUNTY,
MONTANA

By  _____
Chair of the Board of County
Commissioners

Attest:  _____
County Clerk and Recorder/Treasurer

PROVISIONS AS TO REGISTRATION

NO WRITING HEREON EXCEPT BY
THE COUNTY CLERK AND RECORDER/TREASURER AS NOTE REGISTRAR

The ownership of the unpaid principal balance of this Note and the interest accruing thereon has registered on the books of the Issuer in the name of the registered holder last noted below.

<u>Date of Registration</u>	<u>Name and Address of Registered Holder</u>	<u>Signature of County Clerk and Recorder/Treasurer</u>
July 18, 2018	Valley Bank of Helena, Division of Glacier Bank 3030 North Montana Ave Helena, MT 59601	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____