
TRUST INDENTURE

By and Between

RHODE ISLAND HOUSING AND MORTGAGE FINANCE CORPORATION

and

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,
as Trustee**

Dated as of [CLOSING MONTH] 1, 2023

**\$(PAR AMOUNT)
Rhode Island Housing and Mortgage Finance Corporation
Multifamily Housing Revenue Bonds
(Bernon Mills Apartments Project), Series 2023**

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(This Index is not a part of this Trust Indenture
but rather is for convenience of reference only)

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TRUST INDENTURE

THIS TRUST INDENTURE is entered into as of [CLOSING MONTH] 1, 2023 (this “*Indenture*”), by and between the RHODE ISLAND HOUSING AND MORTGAGE FINANCE CORPORATION, a public corporation and instrumentality of the State of Rhode Island (the “*Issuer*”), and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association, organized and operating under the laws of the United States of America, having a corporate trust office in Jacksonville, Florida, as trustee (together with any successor trustee thereunder, the “*Trustee*”), under the circumstances summarized in the following recitals (the capitalized terms not defined in the recitals and granting clauses being used therein as defined in Article I hereof):

RECITALS

A. Pursuant to and in accordance with the laws of the State, including without limitation, Chapter 55 of Title 42 of the General Laws of Rhode Island, 1956 (1998 Reenactment), as amended and supplemented (the “*Act*”), the Issuer has determined to issue and sell its Multifamily Housing Revenue Bonds (Bernon Mills Apartments Project), Series 2023 (the “*Bonds*”) in the aggregate principal amount of \$[PAR AMOUNT] and to loan the proceeds to be derived from the sale thereof to the Borrower (as defined below) to assist in the financing of the Project (as defined below) to be undertaken by the Borrower;

B. The Bonds will be secured by this Indenture, and the Issuer is authorized to execute and deliver this Indenture and to do or cause to be done all acts provided or required herein to be performed on its part;

C. Pursuant to its lawful authority under the Act and in accordance with a resolution of the Issuer adopted on [_____] 2023 (the “*Bond Resolution*”), the Issuer and Brisa Bernon Mills, LP, a Rhode Island limited partnership (the “*Borrower*”), have executed a certain Loan Agreement dated as of [CLOSING MONTH] 1, 2023 (the “*Agreement*” or the “*Loan Agreement*”), by the terms of which Loan Agreement the Issuer agrees to loan the proceeds of the Bonds to the Borrower (the “*Loan*”) for the purpose of financing the construction and equipping of a multifamily residential housing development to be known as Bernon Mills Apartments, located at 115-119 Front Street in Woonsocket, Rhode Island, which, upon completion, will contain approximately sixty (60) rental housing units and which may include such ancillary uses as parking, community space, and other functionally related and subordinate uses (the “*Project*”).

D. The Loan will be evidenced by a Promissory Note (the “*Note*”) executed by the Borrower in the form attached as *Exhibit A* to the Loan Agreement and delivered to the Issuer, and assigned by the Issuer to the Trustee. During the Construction Phase of the Project, the Bonds will be cash-collateralized, and no mortgage lien with respect to the Project will secure the Bonds or the Loan.

E. All acts and conditions required to happen, exist and be performed precedent to and in the issuance of the Bonds and the execution and delivery of this Indenture have happened, exist and have been performed, or at the delivery of the Bonds will exist, will have happened and will have been performed (i) to make the Bonds, when issued, delivered and authenticated, valid special, limited obligations of the Issuer in accordance with the terms thereof and hereof and (ii) to make this Indenture a valid, binding and legal trust agreement for the security of the Bonds in accordance with its terms; and

F. The Trustee has accepted the trusts created by this Indenture, and in evidence thereof has joined in the execution hereof.

G. Bank of America, N.A. (the “*Mortgage Lender*”) has agreed to provide a separate construction bridge loan (the “*Mortgage Loan*”) to the Borrower, the proceeds of which shall be advanced

pursuant to the Mortgage Loan Documents and used to directly or indirectly (including to cash collateralize the Bonds through deposits to the Collateral Fund) finance a portion of the costs of the construction and equipping of the Project. The Mortgage Lender will administer the Mortgage Loan during the Construction Phase in accordance with the Mortgage Loan Documents.

H. IMPACT C.I.L.L., LLC (the “**Funding Lender**”) has entered into a Conversion Agreement with the Borrower, the Trustee and the Mortgage Lender, dated as of [CLOSING DATE] (the “**Conversion Agreement**”), whereby the Funding Lender has committed, subject to the satisfaction on or before the Outside Conversion Date of the Conditions to Conversion set forth in the Conversion Agreement, to facilitate the financing of the Project in the Permanent Phase.

I. If the Conditions to Conversion are satisfied on or before the Outside Conversion Date, Conversion will occur on the Conversion Date and, on such Conversion Date, (i) the Bonds shall be subject to mandatory tender in accordance with Section 3.01 hereof, (ii) the purchase price of the Bonds shall be paid with amounts on deposit in the Collateral Fund (and other Eligible Funds hereunder), (iii) a portion of the principal amount of the Bonds shall be cancelled, if necessary, such that the principal amount outstanding equals the Actual Project Loan Amount (as determined by the Funding Lender at such time), (iv) the Bonds shall be removed from the Book-Entry System and converted to a physical Governmental Note of the Issuer (in the form attached to the Funding Loan Agreement) which shall be purchased by the Funding Lender, (v) the Funding Loan Agreement attached hereto as Appendix D and the Project Loan Agreement attached hereto as Appendix E shall be executed and delivered by the respective parties and become effective and shall supersede this Indenture and the Loan Agreement, respectively, (vi) the proceeds of the Funding Lender Purchase Price, along with other funds of the Borrower, shall be deposited into the Mortgage Loan Prepayment Fund, (vii) the Mortgage Loan shall be paid in full with amounts on deposit in the Mortgage Loan Prepayment Fund and all security related to the Mortgage Loan shall be released or assigned to secure the Funding Loan, and (viii) the Borrower shall execute a project note (the “**Project Note**”) to evidence its obligations under the Project Loan Agreement and a new security instrument (the “**Security Instrument**”) with respect to the Project to secure its obligations under the Project Loan Agreement, which Project Note and Security Instrument will be held by the Fiscal Agent under the Funding Loan Agreement to secure the Governmental Note of the Issuer. If the Conditions to Conversion are not satisfied on or before the Outside Conversion Date, the Loan will not convert from the Construction Phase to the Permanent Phase, and the Funding Lender will not have any obligation with respect to the Bonds or the purchase of the Governmental Note.

J. With respect to the Construction Phase, the issuance, sale and delivery of the Bonds and the execution and delivery of this Indenture and the Loan Agreement have been in all respects duly and validly authorized in accordance with the Act, and, with respect to the Permanent Phase, the execution, delivery and sale of the Governmental Note and the execution and delivery of the Funding Loan Agreement and the Project Loan Agreement have been in all respects duly and validly authorized in accordance with the Act.

K. In connection with the issuance of the Bonds, on or before the Closing Date, Mortgage Lender has indicated that the Mortgage Loan Documents as well as the Regulatory Agreement have been delivered in escrow to the title company.

GRANTING CLAUSES AND AGREEMENTS

NOW, THEREFORE, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of any or all of the Bonds issued and sold by the Issuer from time to time under this Indenture by those who shall hold the same from time to time, and of the sum of one dollar, lawful money of the United States of America, duly paid to the Issuer by the Trustee at or before the execution and delivery of these presents, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in order to secure the payment of the principal of and interest on the Bonds according to their tenor and effect and the performance and observance by the Issuer of all the covenants expressed or implied herein and in the Bonds and the payment and performance of all other of the Issuer's Obligations, the Issuer does hereby grant, bargain, sell, convey, pledge and assign, without recourse, unto the Trustee and unto its successors in trust forever, and grants to the Trustee and to its successors in trust, a security interest in, the following (such property being herein referred to as the "*Trust Estate*"):

I.

All right, title and interest of the Issuer in and to all Revenues, derived or to be derived by the Issuer or the Trustee for the account of the Issuer under the terms of this Indenture and the Loan Agreement (other than the Reserved Rights of the Issuer), together with all other Revenues received by the Trustee for the account of the Issuer arising out of or on account of the Trust Estate;

II.

All right, title and interest of the Issuer in and to the Loan Agreement and the Note (other than the Reserved Rights of the Issuer) including all payments and proceeds with respect thereto or replacement thereof;

III.

All moneys (including the Eligible Funds received by the Trustee for deposit into the Collateral Fund provided that Mortgage Loan proceeds become part of the Trust Estate concurrently with the Trustee's corresponding disbursement of Bond proceeds to or at the direction of the Mortgage Lender in accordance with Section 4.08 hereof) which are at any time or from time to time on deposit in any fund or account created under this Indenture (excluding amounts on deposit in the Costs of Issuance Fund, the Expense Fund, the Mortgage Loan Prepayment Fund and the Rebate Fund);

IV.

All other funds, moneys and securities and any and all other rights and interests in property whether tangible or intangible from time to time hereafter by delivery or by writing of any kind, conveyed, mortgaged, pledged, assigned or transferred as and for additional security hereunder for the Bonds by the Issuer or by anyone on its behalf or with its written consent to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof;

PROVIDED, HOWEVER, that there shall be excluded from the granting clauses of this Indenture all the Reserved Rights of the Issuer, including all amounts paid or collected by the Issuer in connection therewith;

TO HAVE AND TO HOLD all the same with all privileges and appurtenances hereby conveyed and assigned, or agreed or intended so to be, to the Trustee and its successors in trust forever.

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth, for the equal and proportionate benefit, security and protection of all Holders from time to time of the Bonds issued under and secured by this Indenture without privilege, priority or distinction as to the lien or otherwise of any of the Bonds over any of the other Bonds.

PROVIDED, HOWEVER, that if the Issuer shall well and truly pay, or cause to be paid, the principal of the Bonds issued hereunder, and interest due or to become due thereon, at the times and in the manner mentioned in the Bonds, according to the true intent and meaning thereof, and shall cause the payments to be made into the Bond Fund as required under Article VIII hereof or by depositing with the Trustee the entire amount due or to become due thereon, and shall well and truly keep, perform and observe all of the covenants and conditions pursuant to the terms of this Indenture and all other of the Issuer's Obligations to be kept, performed and observed by it, the Rebate Amount shall be paid in full and shall pay or cause to be paid to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payment, as further provided in Section 8.01 hereof, and the termination of the Loan Agreement, this Indenture and the rights hereby granted shall cease, terminate and be void; otherwise, this Indenture shall remain in full force and effect.

AND IT IS EXPRESSLY DECLARED that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and all such property, moneys, revenues and receipts hereby pledged are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Issuer has agreed and covenanted and does hereby agree and covenant with the Trustee and with the respective holders from time to time of the Bonds, or any part thereof, as follows:

ARTICLE I

DEFINITIONS AND CONSTRUCTION

Section 1.01 Definitions. Certain terms used in this Indenture are defined in the Loan Agreement and in the attached Funding Loan Agreement and when and if used herein, such terms shall have the meanings given to them by the Loan Agreement and the Funding Loan Agreement unless the context clearly indicates otherwise. In addition, when used in this Indenture, the following terms shall have the meanings given to them in this Section unless the context clearly indicates otherwise:

“Act” means Chapter 55 of Title 42 of the General Laws of Rhode Island, 1956 (1998 Reenactment), as amended and supplemented.

“Actual Project Loan Amount” has the meaning set forth for the term “Permanent Loan Amount” in the Conversion Agreement and will be determined by the Funding Lender as described in Section 2.12 of this Indenture.

“Additional Payments” means the amounts required to be paid by the Borrower pursuant to the provisions of Section 4.02 of the Loan Agreement.

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” when used with respect to any specified Person means the power to direct the policies of such Person, directly or indirectly, whether through the power to appoint and remove its directors, the

ownership of voting securities, by contract, or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“**Agreement**” or “**Loan Agreement**” means the Loan Agreement dated as of the same date as this Indenture, between the Issuer and the Borrower and any and all Supplements thereto.

“**Authorized Borrower Representative**” means any person who, at any time and from time to time, is designated as the Borrower’s authorized representative by written certificate furnished to the Issuer and the Trustee containing the specimen signature of such person and signed on behalf of the Borrower by or on behalf of any authorized general partner of the Borrower if the Borrower is a general or limited partnership, by any authorized managing member of the Borrower if the Borrower is a limited liability company, or by any authorized officer of the Borrower if the Borrower is a corporation, which certificate may designate an alternate or alternates. The Trustee may conclusively presume that a person designated in a written certificate filed with it as an Authorized Borrower Representative is an Authorized Borrower Representative until such time as the Borrower files with it (with a copy to the Issuer) a written certificate revoking such person’s authority to act in such capacity.

“**Authorized Denomination**” means \$5,000, or any integral multiple of \$5,000 in excess thereof.

“**Authorized Officer**” means any one or more of the Chair, Executive Director, Deputy Executive Director, Chief Financial Officer, Director of Finance, General Counsel and Manager of Treasury and Capital Planning of the Issuer, and such additional Person or Persons, if any, designated by certificate of any of the foregoing as authorized by the Issuer to perform a specified act, sign a specified document or otherwise take action with respect to the Bonds. The Trustee may conclusively presume that a person designated in a written certificate filed with it as an Authorized Officer is an Authorized Officer until such time as such provider files with it a written certificate identifying a different person or persons to act in such capacity.

“**Bankruptcy Code**” means Title 11 of the United States Code entitled “Bankruptcy,” as in effect now and in the future, or any successor statute.

“**BHRI Loan**” means the Building Homes RI loan to be made by the Rhode Island [Housing Resources Commission] to the Borrower in the principal amount of up to \$4,000,000.

“**Bond Counsel**” means Hawkins Delafield & Wood LLP or other counsel selected by the Issuer and nationally recognized as having an expertise in connection with the exclusion of interest on obligations of states and local governmental units from the gross income of holders thereof for federal income tax purposes.

“**Bond Debt Service Charges**” means payments to be made by the Borrower to the Issuer pursuant to the Loan Agreement and the Note in amount sufficient to pay the principal of and interest on the Bonds when due.

“**Bond Fund**” means the Bond Fund created in Section 4.01 of this Indenture.

“**Bond Payment Date**” means each Interest Payment Date and any other date on which Bond Debt Service Charges on the Bonds are due, whether at maturity, upon redemption, Mandatory Tender or acceleration or otherwise.

“**Bond Purchase Agreement**” means the Bond Purchase Agreement, dated [SALE DATE], among the Issuer, the Borrower and Underwriter.

“Bond Resolution” means that certain Bond Resolution adopted by the Issuer on [_____], 2023, authorizing, among other things, the issuance, sale and delivery of the Bonds and the loan of the proceeds thereof to the Borrower to finance the Project.

“Bond Year” means the period beginning on the Closing Date and ending on [_____], 2024, and each twelve-month period ending on [_____] of the following years.

“Bondholder” or **“Holder of the Bonds”** or **“Holder”** or **“Owner of the Bonds”** or **“Owner”** when used with respect to any Bond, means the person or persons in whose name such Bond is registered as the owner thereof on the books of the Issuer maintained at the Trust Office for that purpose.

“Bonds” means the Issuer’s Multifamily Housing Revenue Bonds (Bernon Mills Apartments Project), Series 2023, issued, authenticated and delivered under this Indenture, which are identified as such in Section 2.01(a) hereof.

“Book-Entry Form” or **“Book-Entry System”** means a form or system, as applicable, under which (i) the ownership of beneficial interests in the Bonds may be transferred only through a book entry and (ii) physical bond certificates in fully registered form are registered only in the name of a Securities Depository or its nominee as holder, with the physical bond certificates “immobilized” in the custody of the Securities Depository.

“Borrower” means Brisa Bernon Mills, LP, a limited partnership organized and existing under the laws of the State, and its permitted successors and assigns.

“Borrower Documents” means the Loan Agreement, the Note, the Tax Certificate, the Regulatory Agreement, the Bond Purchase Agreement, the Continuing Disclosure Agreement, the Remarketing Agreement, the Conversion Agreement and any and all documents, agreements or instruments executed by the Borrower in connection with the Loan and the Bonds, but excluding the Mortgage Loan Documents.

“Borrower’s Obligations” means the obligations of the Borrower under the Loan Agreement, the Note, and the other Borrower Documents to (a) pay the principal of, and interest on the Note, when and as the same shall become due and payable (whether at the stated maturity thereof, on any payment date or by acceleration of maturity or otherwise), (b) pay all other amounts required by the Loan Agreement, the Note, and the other Borrower Documents to be paid by the Borrower to the Issuer, as and when the same shall become due and payable, and (c) timely perform, observe and comply with all of the terms, covenants, conditions, stipulations, and agreements, express or implied, which the Borrower is required by the Loan Agreement, the Note, the Regulatory Agreement, and any of the other Borrower Documents, to perform or observe.

“Borrower Tax Certification” means the tax certification of the Borrower delivered to the Issuer and Bond Counsel in connection with the closing of the Loan.

“Business Day” means a day, other than a Saturday or Sunday, on which (a) banks located in New York, New York, or in the city in which the Trustee is located, are not required or authorized by law or executive order to close for business, and (b) the New York Stock Exchange is not closed.

“Cash Flow Projection” means a cash flow projection prepared by an independent firm of certified public accountants, a financial advisory firm, a law firm or other independent third party qualified and experienced in the preparation of cash flow projections for structured finance transactions similar to the Bonds, designated by the Borrower and acceptable to the Rating Agency, establishing the sufficiency of (a) the amount on deposit in the Project Fund, the Collateral Fund and the Bond Fund, (b) projected investment income to accrue on amounts on deposit in the Project Fund, Collateral Fund and Bond Fund during the applicable period and (c) any additional Eligible Funds delivered to the Trustee by or on behalf of the Borrower to pay Bond Debt Service Charges and the administrative expenses, in each instance, when due and payable, including, but not limited to, any cash flow projection prepared in connection with (i) the initial issuance and delivery of the Bonds, (ii) a proposed remarketing of the Bonds, as provided in Section 3.03, (iii) the release of Eligible Funds from the Negative Arbitrage Account of the Bond Fund, as provided in Section 4.02 hereof and (iv) the purchase, sale or exchange of Eligible Investments as provided in Section 6.01 hereof.

“Certificate of Occupancy” means the temporary or final certificate of occupancy, as the case may be, issued for the multifamily units in the Project, or if certificates of occupancy are not required or provided for multifamily units, then evidence of all final inspection approvals needed to occupy the multifamily units.

“Closing Date” means the date of initial delivery of the Bonds in exchange for the purchase price thereof.

“CMF Loan” means the Capital Magnet Fund loan to be made by Rhode Island Housing and Mortgage Finance Corporation to the Borrower in the principal amount of up to \$300,000.

“Code” means the Internal Revenue Code of 1986, including applicable final, temporary and proposed regulations and revenue rulings applicable thereto.

“Collateral Fund” means the Collateral Fund created in Section 4.01 hereof.

“Completion Certificate” means a certificate submitted by an Authorized Borrower Representative to the Issuer and the Trustee as provided in Section 3.07 of the Loan Agreement, a form of which is attached as Exhibit C to the Loan Agreement.

“Completion Date” means the date upon which the Completion Certificate and the Certificate of Occupancy are delivered by the Borrower to the Issuer and the Trustee.

“Conditions to Conversion” means the conditions set forth in Exhibit B to the Conversion Agreement, which conditions must be satisfied to effect a Conversion of the Loan.

“Confirmation of Rating” means a written confirmation, obtained prior to the event or action under scrutiny, from the Rating Agency to the effect that, following the proposed action or event under scrutiny at the time such confirmation is sought, the rating of the Rating Agency with respect to all Bonds then Outstanding and then rated by the Rating Agency will not be downgraded, suspended, qualified or withdrawn as a result of such action or event.

“Construction Phase” means the construction phase of the Loan, which time period shall commence on the Closing Date and remain in effect to, but not including, the Conversion Date.

“Continuing Disclosure Agreement” means the Continuing Disclosure Agreement of even date herewith between the Borrower and the Dissemination Agent, as the same may be amended, supplemented or restated from time to time.

“Conversion” means the conversion of the Loan from the Construction Phase to the Permanent Phase on the Conversion Date.

“Conversion Agreement” means the Conversion Agreement dated as of [CLOSING DATE], by and among the Funding Lender, the Trustee, the Mortgage Lender and the Borrower.

“Conversion Date” means the date the Funding Lender purchases the Governmental Note upon the satisfaction of the Conditions to Conversion, as such Conversion Date is specified by the Funding Lender in the Notice of Conversion, provided such date shall occur on or after [CONVERSION DATE].

“Costs of Issuance” means all fees, costs and expenses payable or reimbursable directly or indirectly by the Issuer or the Borrower and related to the authorization, issuance and sale of the Bonds, including issuance costs of the Bonds (within the meaning of Section 147(g) of the Code).

“Costs of Issuance Deposit” means the deposit from the Borrower in the amount set forth in Section 4.01 of this Indenture, if any.

“Costs of Issuance Fund” means the Costs of Issuance Fund created pursuant to Section 4.01 of this Indenture.

“Costs of the Project” with respect to the Project shall be deemed to include all items permitted to be financed under the provisions of the Code and the Act.

“CRP Grant Sponsor Loan” means the loan from [_____] to the Borrower of the proceeds of the Community Revitalization Program Grant made by Rhode Island Housing and Mortgage Finance Corporation to [_____] in the principal amount of up to \$1,838,250.

“Default” means any Default under the Loan Agreement as specified in and defined by Section 7.01 thereof.

“Designated Office” of the Trustee or the Underwriter means, respectively, the office of the Trustee or the Underwriter at the respective Notice Address set forth in Section 1.01 hereof or at such other address as may be specified in writing by the Trustee or the Underwriter, as applicable, as provided in Section 12.06 hereof.

“Determination of Taxability” means a final decree or judgment of any Federal court or a final action of the Internal Revenue Service determining that interest paid or payable on any Bond is or was includable in the gross income of a Holder of the Bonds for Federal income tax purposes (other than an Holder who is a “substantial user” or “related person” to a “substantial user” within the meaning of Section 147(a) of the Code); *provided*, that no such decree, judgment, or action will be considered final for this purpose unless the Borrower and the Issuer have been given written notice and, if it is so desired and is legally allowed, have been afforded the opportunity to contest the same, either directly or in the name of any Holder of a Bond, and until the conclusion of any appellate review, if sought.

“Dissemination Agent” means initially The Bank of New York Mellon Trust Company, N.A., or any dissemination agent subsequently appointed in accordance with the Continuing Disclosure Agreement.

“Documents” means and shall include, this Indenture, the Bonds, the Loan Agreement, the Note, the Regulatory Agreement, the Tax Certificate, the Bond Purchase Agreement, the Continuing Disclosure Agreement, the Remarketing Agreement, the Official Statement, the Conversion Agreement and any and all other documents which the Issuer, the Borrower or any other party or parties or their representatives, have executed and delivered, or may hereafter execute and deliver, with respect to the Bonds or the Loan, or in connection therewith, and any and all Supplements thereto, but excluding the Mortgage Loan Documents.

“Electronic Means” means the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Trustee, or another method or system specified by the Trustee as available for use in connection with its services hereunder.

“Eligible Funds” means, as of any date of determination, any of:

- (a) the proceeds of the Bonds (including any additional amount paid to the Trustee as the purchase price thereof or as an advance by the Underwriter);
- (b) moneys drawn on a letter of credit;
- (c) moneys received by the Trustee representing advances to the Borrower of proceeds of the Mortgage Loan [and proceeds of the Subordinate Loans];
- (d) remarketing proceeds of the Bonds (including any additional amount paid to the Trustee as the purchase and or remarketing price thereof by the Remarketing Agent) received from the Remarketing Agent or any purchaser of Bonds (other than funds provided by the Borrower, the Issuer, any Affiliate of either the Borrower or the Issuer);
- (e) any other amounts, including the proceeds of any refunding bonds, for which the Trustee has received an Opinion of Counsel (which opinion may assume that no Holder or Beneficial Owner of Bonds is an “insider” within the meaning of the Bankruptcy Code) to the effect that (A) the use of such amounts to make payments on the Bonds would not violate Section 362(a) of the Bankruptcy Code or that relief from the automatic stay provisions of such Section 362(a) would be available from the bankruptcy court and (B) payments of such amounts to Holders would not be avoidable as preferential payments under Section 547 or 550 of the Bankruptcy Code should the Issuer or the Borrower become a debtor in proceedings commenced under the Bankruptcy Code;
- (f) any payments made by the Borrower and held by the Trustee for a continuous period of 123 days, *provided* that no Act of Bankruptcy has occurred during such period;
- (g) proceeds of the Funding Lender Purchase Price received from the Funding Lender in connection with the purchase of the Governmental Note on the Conversion Date; and
- (h) investment income derived from the investment of the money described in subsections (a) through (g) hereof.

“Eligible Investments” means, subject to the provisions of Section 6.01 hereof, any of the following investments which mature (or are redeemable at the option of the Trustee without penalty) at such time or times as to enable timely disbursements to be made from the fund in which such investment is held or allocated in accordance with the terms of this Indenture:

(a) Governmental Obligations; and

(b) Shares or units in any money market mutual fund rated “Aaa-mf” by Moody’s (or the equivalent Highest Rating Category given by the Rating Agency for that general category of security) including mutual funds of the Trustee or its affiliates or for which the Trustee or an affiliate thereof serves as investment advisor or provides other services to such mutual fund and receives reasonable compensation therefor that are registered under the Investment Company Act of 1940, as amended, whose investment portfolio consists solely of direct obligations of the government of the United States of America.

“Event of Default” or **“Default”** means, when used in this Indenture, those events of default or defaults specified in Section 9.01 hereof and, when used in the Loan Agreement, those events of default or defaults specified in Section 7.01 thereof.

“Expense Fund” means the Expense Fund created in Section 4.01 hereof.

“Expense Fund Deposit” means \$[_____].

“Extension Payment” means the amount due, if any, in connection with the change or extension of the Mandatory Tender Date pursuant to Section 3.03 hereof, and (a) which shall be determined by a Cash Flow Projection approved in writing by the Rating Agency and (b) must consist of Eligible Funds.

“Extraordinary Issuer Fees and Expenses” means the expenses and disbursements payable to the Issuer under this Indenture or the other Documents for Extraordinary Services and Extraordinary Expenses, including extraordinary fees, costs and expenses incurred by Bond Counsel and counsel to the Issuer which are to be paid by the Borrower pursuant to Section 4.02 of the Loan Agreement.

“Extraordinary Services” and **“Extraordinary Expenses”** mean all services rendered and all reasonable expenses properly incurred by the Trustee or the Issuer under this Indenture or the other Documents, other than Ordinary Services and Ordinary Expenses. Extraordinary Services and Extraordinary Expenses shall specifically include but are not limited to services rendered or expenses incurred by the Trustee or the Issuer in connection with, or in contemplation of, an Event of Default.

“Federal Tax Status” means, as to the Bonds, the status of the interest on the Bonds as excludible from gross income for federal income tax purposes of the Holders of the Bonds (except on Bonds while held by a substantial user or related person, each as defined in the Code).

“Funding Lender” means IMPACT C.I.L., LLC, or any of its successors or assigns.

“Funding Lender Purchase Price” means an amount equal to the Actual Project Loan Amount to be funded by the Funding Lender on the Conversion Date.

“Funding Loan Agreement” means the Funding Loan Agreement attached hereto as Appendix D, which Funding Loan Agreement shall be executed, delivered and become effective on the Conversion Date.

“General Partner” means Brisa Bernon Mills GP LLC, a Rhode Island limited liability company.

“Governmental Authority” means any federal, State or local governmental or quasi-governmental entity, including, without limitation, any agency, department, commission, board, bureau, administration, service, or other instrumentality of any governmental entity.

“Governmental Note” means the Governmental Note of the Issuer in the form attached hereto as Exhibit A to the Funding Loan Agreement, which Governmental Note shall be executed, delivered and become effective on the Conversion Date.

“Governmental Obligations” means (i) noncallable, non-redeemable direct obligations of the United States of America for the full and timely payment of which the full faith and credit of the United States of America is pledged, and (ii) obligations issued by a Person controlled or supervised by and acting as an instrumentality of the United States of America, the full and timely payment of the principal of, premium, if any, and interest on which is fully guaranteed as a full faith and credit obligation of the United States of America (including any securities described in (i) or (ii) issued or held in book-entry form on the books of the Department of the Treasury of the United States of America), which obligations, in either case, are not subject to redemption prior to maturity at less than par at the option of anyone other than the holder thereof.

“Governmental Requirements” means all laws, ordinances, orders, rules or regulations of any Governmental Authority applicable to the Project, the Issuer, the Borrower or any of the Borrower’s assets or other properties, including without limitation, laws, ordinances, orders, rules and regulations relating to securities or other public disclosures, zoning, licenses, permits, subdivision, building, safety, health, and fire protection and all environmental laws.

“Hazardous Materials” means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls (“PCBs”) and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; radon; Mold; toxic or mycotoxin spores; any substance the presence of which on the Mortgaged Property is prohibited by any federal, state or local authority; any substance that requires special handling; and any other material or substance (whether or not naturally occurring) now or in the future that (i) is defined as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic substance,” “toxic pollutant,” “solid waste”, “pesticide”, “contaminant,” or “pollutant”, or otherwise classified as hazardous or toxic by or within the meaning of any Hazardous Materials Law, or (ii) is regulated in any way by or within the meaning of any Hazardous Materials Law, but excluding substances of kinds and amounts ordinarily and customarily used or stored in similar residential projects for the purposes of cleaning or other maintenance or operations and otherwise used in compliance with the Hazardous Materials Laws.

“Hazardous Materials Laws” means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, rule of common law (including, without limitation, nuisance and trespass), consent order, administrative rulings and court judgments and decrees or other government directive in effect now or in the future and including all amendments, that relate to Hazardous Materials or to the protection or conservation of the environment or human health and apply to Borrower or to the Mortgaged Property, including, without limitation, those relating to industrial hygiene, or the use, analysis, generation, manufacture, storage, discharge, release, disposal, transportation, treatment, investigation, or remediation of Hazardous Materials. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Toxic Substances Control Act, 15 U.S.C. Section 2601, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section

5101, et seq., the Superfund Amendments and Reauthorization Act, the Solid Waste Disposal Act, the Clean Air Act, the Occupational Safety and Health Act, and their state analogs.

“Highest Rating Category” means, with respect to an Eligible Investment, that the Eligible Investment is rated by a Rating Agency in the highest rating given by that Rating Agency for that Rating Category, provided that such rating shall include but not be below “Aaa” or “Aaa/VMIG 1” if rated by Moody’s or “A-1+” or “AA+” if rated by S&P.

“HPF Loan” means the Housing Production Fund loan to be made by Rhode Island Housing and Mortgage Finance Corporation to the Borrower in the principal amount of up to \$2,790,000.

“Indenture” means this Trust Indenture, dated as of [CLOSING MONTH] 1, 2023, by and between the Issuer and the Trustee, and any and all Supplements thereto.

“Initial Borrower Deposit” means Eligible Funds in the amount of \$[_____].

“Initial Collateral Fund Deposit” means Eligible Funds in the amount of \$[_____].

“Initial Interest Rate” means [____] %.

“Initial Mandatory Tender Date” means [INITIAL TENDER DATE].

“Initial Remarketing Date” means the Initial Mandatory Tender Date, but only if the conditions for remarketing the Bonds on such date as provided in Section 3.03 hereof are satisfied.

“Interest Payment Date” means (a) June 1 and December 1 of each year beginning June 1, 2024, and (b) each Mandatory Tender Date.

“Interest Period” means, initially, the period from the Closing Date to but not including first Interest Payment Date, and thereafter, the period commencing on each succeeding Interest Payment Date and ending on the last day of the month preceding the next Interest Payment Date.

“Interest Rate” means the Initial Interest Rate to but not including the Initial Mandatory Tender Date, as applicable, and thereafter the applicable Remarketing Rate; **provided, however**, commencing on the Conversion Date the Interest Rate shall be as set forth in the Funding Loan Agreement.

“Investor Limited Partner” means Alliant Capital LLC, a [_____] limited liability company, in its capacity as Investor Limited Partner in the Borrower, and its permitted successors and assigns.

“Issuer” means Rhode Island Housing and Mortgage Finance Corporation, a public corporation and instrumentality of the State of Rhode Island, and any successor to its powers or duties under the Act.

“Issuer Documents” means the Loan Agreement, this Indenture, the Regulatory Agreement, the Bond Purchase Agreement, the Tax Certificate and any and all documents, agreements or instruments executed by the Issuer in connection with the Loan.

“Issuer Fees and Expenses” means, collectively, the Ordinary Issuer Fees and the Extraordinary Issuer Fees and Expenses.

“Issuer’s Obligations” means, subject to Section 2.09 hereof, the obligations of the Issuer under the Bonds, this Indenture, and the other Documents to (a) pay the principal of and interest on the Bonds (including supplemental interest), when and as the same shall become due and payable (whether at the stated maturity thereof, or by acceleration of maturity or after notice of prepayment or otherwise) and, (b) timely perform, observe and comply with all of the terms, covenants, conditions, stipulations, and agreements, express or implied, which the Issuer is required, by the Bonds, this Indenture, or any of the other Documents, to perform and observe.

“Loan” means the loan in the original principal amount of \$[PAR AMOUNT] made by the Issuer to the Borrower from the proceeds of the Bonds pursuant to in the Loan Agreement and evidenced by the Note.

“Loan Payment Fund” means the Loan Payment Fund established under the Funding Loan Agreement.

“Loan Payments” means the amounts required to be paid by the Borrower in repayment of the Loan pursuant to the provisions of the Note and Section 4.01 of the Loan Agreement.

“Local Time” means Eastern time (daylight or standard, as applicable) in the State.

“Mandatory Tender Date” means each date on which all Outstanding Bonds are subject to mandatory tender as set forth in Section 3.01(b) hereof.

“Maturity Date” means [_____] 1, 20[___].

“Maximum Interest Rate” means the interest rate equal to the lesser of: (a) 12% per annum, or (b) the maximum interest rate per annum permitted by applicable law.

“Moody’s” means Moody’s Investors Service, Inc., a Delaware corporation, and its successors and assigns, or if it is dissolved or no longer assigns credit ratings, then any other nationally recognized statistical rating agency, acceptable to the Remarketing Agent, that assigns credit ratings.

“Mortgage Lender” means Bank of America, N.A., and any successors or assigns.

“Mortgage Loan” means the mortgage loan to be made by the Mortgage Lender to the Borrower in the principal amount of up to \$[_____] with respect to the Project, as described and provided for in the Mortgage Loan Documents.

“Mortgage Loan Documents” means the Mortgage Loan Security Instrument, the Mortgage Note, and all other documents required by the Mortgage Lender in connection with the Mortgage Loan.

“Mortgage Loan Prepayment Amount” means an amount necessary to prepay in full the outstanding principal amount of the Mortgage Loan, together with accrued interest to, but not including, the Conversion Date, as set forth in a payoff statement submitted by the Mortgage Lender to the Trustee on or prior to the Conversion Date.

“Mortgage Loan Prepayment Fund” means the Mortgage Loan Prepayment Fund created in Section 4.01 hereof.

“Mortgage Loan Security Instrument” means the [Open-End Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing] which will secure the Mortgage Loan, as the same may be amended, supplemented or restated.

“Mortgage Note” means the Promissory Note evidencing the Mortgage Loan, delivered by the Borrower to the Mortgage Lender, as may be amended and restated.

“Negative Arbitrage Account” means the Negative Arbitrage Account of the Bond Fund created in Section 4.01 hereof.

“Note” means the Promissory Note dated the Closing Date from the Borrower to the Issuer in substantially the form attached as Exhibit B to the Loan Agreement, which Note has been assigned by the Issuer to the Trustee, as the same may be amended, supplemented or restated.

“Notice Address” means, unless otherwise designated pursuant to Section 12.06 hereof:

(a) As to the Issuer:

Rhode Island Housing and Mortgage Finance Corporation
44 Washington Street
Providence, Rhode Island 02903
Attention: Executive Director
Telephone: (401) 457-1234
Email: cventura@rihousing.com

(b) As to the Trustee:

The Bank of New York Mellon Trust Company, N.A.
4655 Salisbury Road, Suite 300
Jacksonville, Florida 32256
Attention: Corporate Trust
Telephone: (904) 645-7979
Email: caroline.cowart@bnymellon.com

(c) As to the Borrower:

Brisa Bernon Mills, LP
c/o [_____]]
2009 Flatbush Avenue
Brooklyn, New York 11234
Attention: Hammad Graham
Telephone: (718) 774-6103
Email: HammadGraham@brisabuilders.com

with a copy to:

[_____]]
[_____]]
[_____]]
Attention: [_____]]
Telephone: [_____]]
Email: [_____]].com

(d) As to the Mortgage Lender:

Bank of America, N.A.
[_____]]
[_____]]
Attention: [_____]]
Telephone: [_____]]
Email: [_____]@bofa.com

with a copy to:

Bank of America, N.A.
[_____]]
[_____]]
Attention: [_____]]
Telephone: [_____]]
Email: [_____]@bofa.com

and a copy to:

Tiber Hudson LLC
1340 Smith Avenue, Suite 200
Baltimore, Maryland 21209
Attention: Matthew Grant, Esq.
Email Address: matthew@tiberhudson.com

(e) As to the Underwriter and Remarketing Agent:

Morgan Stanley & Co. LLC
1585 Broadway, 16th Floor
New York, New York 10036
Attention: Geoff Proulx
Telephone: 212-761-9056
Email: Geoff.proulx@morganstanley.com

with a copy to:

Tiber Hudson LLC
1800 M Street NW, Suite 350 South
Washington, DC 20036
Attention: [_____]]
Telephone: [_____]]
Email: [_____]@.com

(f) As to the Rating Agency:

[Moody's Investors Service, Inc.
250 Greenwich Street, 16th Floor
New York, NY 10007
Attention: Public Finance Group – Housing Team
Electronic notices shall be delivered to:
Housing@moodys.com]

(g) As to the Investor Limited Partner:

Alliant Capital LLC
[_____]]
[_____]]
Attention: [_____]]
Telephone: [_____]]
Email: [_____]].com

with a copy to:

Holland & Knight LLP
10 St. James Avenue, 12th Floor
Boston, Massachusetts 02116
Attention: [_____]], Esq.
Telephone: (617) 305-[_____]]
Email: [_____]]@hkllaw.com

(h) As to the Funding Lender:

IMPACT C.I.L., LLC
450 Sansome Street, Suite 100
San Francisco, California 94111
Attention: [_____]]
Telephone: [(415) 638-9509]
Email: [jbrenner@impactcapital.net]

with a copy to:

[Norton Rose Fulbright US LLP
799 9th Street, N.W., Suite 1000
Washington, D.C. 20001
Attention: Peter L. Canzano, Esq.
Email: peter.canzano@nortonrosefulbright.com
Telephone: (202) 662-4760]

“Notice of Conversion” means a written notice to be delivered not less than ten (10) days prior to the Conversion Date by the Funding Lender to the Issuer, the Trustee, the Borrower, and the Mortgage Lender (i) stating that the Conditions to Conversion have been satisfied on or before the Outside Conversion Date or, if any Condition to Conversion has not been satisfied on or before the Outside Conversion Date, stating that such Condition to Conversion has been waived in writing by the Funding Lender (if a waiver is permitted and is granted by the Funding Lender, in its sole and absolute discretion) on or before the Outside Conversion Date and (ii) confirming the Conversion Date.

“Official Statement” means, collectively, the preliminary and final Official Statement relating to the Bonds along with any amendments or supplements thereto.

“Opinion of Counsel” means an opinion from an attorney or firm of attorneys, acceptable to the Issuer or the Trustee, as applicable, with experience in the matters to be covered in the opinion.

“Ordinary Issuer Fees” means (a) the Issuer’s (i) initial financing fee in the amount of \$[_____] [equals 2% of first \$5 million and 1% of remaining par], (ii) tax credit allocation fee in the amount of \$[_____] [equals 1% of ten year allocation], and (iii) underwriting fee in the amount of \$[_____], together with all third party and out-of-pocket expenses of the Issuer in connection with the Loan and the issuance of the Bonds (including but not limited to the fee of the Rhode Island Public Finance Management Board and the fees and expenses of Bond Counsel and special counsel to the Issuer), in each case payable on the Closing Date; and (b) the Issuer’s ongoing annual administrative fee payable on a monthly basis in an amount equal to 25 basis points of the then outstanding principal amount of the Bonds, calculated on the basis of a 365/366 day year for the actual number of days elapsed in such month. Such fees do not include amounts due, if any, for Extraordinary Issuer Fees and Expenses.

“Ordinary Services” and **“Ordinary Expenses”** mean those services normally rendered, and those expenses normally incurred, by a trustee under instruments similar to this Indenture.

“Ordinary Trustee Fees and Expenses” means (a) the Trustee’s initial acceptance fee in the amount of \$[_____] , payable on the Closing Date, and (b) amounts due to the Trustee for the Ordinary Services and the Ordinary Expenses of the Trustee incurred in connection with its duties under this Indenture, payable annually in advance on the Closing Date and on each [_____] thereafter in the amount of \$[_____] per year; **provided, however**, the amount of Ordinary Trustee Fees and Expenses payable under this Indenture is limited to money withdrawn from the Expense Fund and the Borrower will be responsible to pay the remaining amount of the Ordinary Trustee Fees and Expenses pursuant to Section 4.02 of the Loan Agreement. In addition, all amounts due to the Trustee for Extraordinary Services and all Extraordinary Expenses of the Trustee will be paid directly by the Borrower pursuant to Section 4.02 of the Loan Agreement.

“Outside Conversion Date” means [_____, 20__], as may be extended to [_____, 20__], pursuant to the terms set forth in the Conversion Agreement.

“Outstanding,” “outstanding” or **“Bonds Outstanding”** when used with respect to the Bonds means any Bonds theretofore authenticated and delivered under this Indenture, except:

- (a) Bonds theretofore canceled by the Trustee or theretofore delivered to the Trustee for cancellation;
- (b) Bonds for the payment of which moneys or obligations shall have been theretofore deposited with the Trustee in accordance with Article VIII; or
- (c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered under this Indenture.

“Partnership Agreement” means the Amended and Restated Agreement of Limited Partnership of the Borrower, as it may be amended in accordance with the Borrower Documents and the Mortgage Loan Documents.

“Permanent Phase” means the permanent phase of the Loan, which time period shall commence on the Conversion Date and remain in effect through the remaining term of the Loan.

“Permitted Encumbrances” means (a) any matters set forth in any policy of title insurance issued to the Mortgage Lender and insuring Mortgage Lender’s interest in the Project which are acceptable to the Mortgage Lender as of the date hereof, (b) the lien of the Mortgage, and (c) any other encumbrance that the Mortgage Lender shall expressly approve in writing in its sole and absolute discretion.

“Person” shall include an individual, association, unincorporated organization, corporation, partnership, joint venture, or government or agency or political subdivision thereof.

“Plans and Specifications” means the plans and specifications describing the Project as now prepared and as they may be changed as provided in the Loan Agreement.

“Project” means the multifamily rental housing project to be constructed at 115-119 Front Street, in Woonsocket, Rhode Island to be known as Bernon Mills Apartments, which, upon completion, will contain approximately sixty (60) rental housing units and which may include such ancillary uses as parking, community space, and other functionally related and subordinate uses.

“Project Fund” means the Project Fund created in Section 4.01 of this Indenture.

“Project Loan Agreement” means the Project Loan Agreement attached hereto as Appendix E, which Project Loan Agreement shall be executed, delivered and become effective on the Conversion Date.

“Qualified Project Costs” means any expenditures which (a) are incurred not more than 60 days prior to the date on which the issuer first declared its “official intent” (within the meaning of Treasury Regulation Section 1.150-2) with respect to the Project (other than preliminary expenditures with respect to the Project in an amount not exceeding 20% of the aggregate principal amount of the Bonds); (b) are made exclusively to provide facilities and improvements that constitute part of a “qualified residential rental project” within the meaning of Section 142(d) of the Code; and (c) are properly chargeable to the Project’s capital account under general federal income tax principles or that would be so chargeable with a proper election or but for a proper election by the Borrower to deduct such expenditure. However, “Qualified Project Costs” do not include (i) issuance costs of the Bonds (within the meaning of Section 147(g) of the Code) or (ii) any fee, charge or profit payable to the Borrower or a “related person” (within the meaning of Section 144(a)(3) of the Code) of the Borrower. As used herein, the term “preliminary expenditures” includes architectural, engineering, surveying, soil testing and similar costs that were incurred prior to the commencement of the Project, but does not include land acquisition, site preparation and similar costs incident to commencement of the Project.

“Rating Agency” means Moody’s, S&P or any other nationally recognized securities rating agency rating the Bonds, or such rating agency’s successors or assigns, and initially means Moody’s so long as Moody’s is rating the Bonds.

“Rating Category” means one of the rating categories of the Rating Agency for the specific type and duration of the applicable Eligible Investment.

“Rebate Amount” means the amount, if any, which is to be paid to the United States of America pursuant to the Section 148(f) of the Code and Section 4.06 hereof.

“Rebate Analyst” means Hawkins Delafield & Wood LLP or such other certified public accountant, financial analyst or attorney, or any firm of the foregoing, or a financial institution experienced in making the arbitrage and rebate calculations required pursuant to Section 148 of the Code and selected by the Issuer at the expense of the Borrower to calculate the Rebate Amount or, in the event that the Issuer fails to so select a Rebate Analyst and the Borrower fails to pay such fee one month prior to any date on which calculations are required to be made, any qualified person retained by the Trustee to calculate the Rebate Amount.

“Rebate Fund” means the Rebate Fund created in Section 4.01 of this Indenture.

“Record Date” means the 15th day of the month preceding any Interest Payment Date or 45 days prior to any Mandatory Tender Date.

“Regulatory Agreement” means, collectively, (i) that certain Regulatory Agreement, dated as of [CLOSING DATE], by and between the Issuer and the Borrower, as hereafter amended or modified, and (ii) the Declaration of Land Use Restrictive Covenants for Low Income Housing Tax Credits, dated [CLOSING DATE], by and between the Issuer and the Borrower.

“Remarketing Agent” means Morgan Stanley & Co. LLC or any successor as Remarketing Agent designated in accordance with Section 10.24 hereof.

“Remarketing Agent's Fee” means the fee of the Remarketing Agent for its remarketing services.

“Remarketing Agreement” means the Remarketing Agreement, dated as of [CLOSING MONTH] 1, 2023 by and between the Borrower and the Remarketing Agent, as amended, supplemented or restated from time to time, or any agreement entered into in substitution therefor.

“Remarketing Date” means the Initial Remarketing Date and, if the Bonds Outstanding on such date or on any subsequent Remarketing Date are remarketed pursuant to Section 3.03 for a Remarketing Period that does not extend to the final maturity of the Bonds, the day after the last day of the Remarketing Period.

“Remarketing Expenses” means the costs and expenses incurred by the Trustee and its counsel, the Remarketing Agent and its counsel, the Issuer and its counsel, and Bond Counsel in connection with the remarketing of the Bonds, including bond printing and registration costs, costs of funds advanced by the Remarketing Agent, registration and filing fees, rating agency fees and other costs and expenses incurred in connection with or properly attributable to the remarketing of Bonds as certified to the Trustee by the Remarketing Agent in writing.

“Remarketing Notice Parties” means the Borrower, the Investor Limited Partner, the Issuer, the Trustee, the Remarketing Agent and the Mortgage Lender.

“Remarketing Period” means the period beginning on a Remarketing Date and ending on the earlier of (i) the last day of the term for which Bonds are remarketed pursuant to Section 3.03, (ii) the Conversion Date or (iii) the final Maturity Date of the Bonds.

“Remarketing Proceeds Account” means the Remarketing Proceeds Account of the Bond Fund created in Section 4.01 hereof.

“Remarketing Rate” means the interest rate or rates established pursuant to Section 2.01 and borne by the Bonds then Outstanding from and including each Remarketing Date to, but not including, the next succeeding Remarketing Date or the final Maturity Date of the Bonds, as applicable.

“Requisition” means the written request to make a disbursement from the Project Fund in substantially the form attached as Appendix B hereto or a disbursement request from the Costs of Issuance Fund in substantially the form attached as Appendix C hereto.

“Reserved Rights of the Issuer” means (a) all rights which the Issuer and its officers, officials, directors, agents and employees may have under this Indenture, the Loan Agreement and the Regulatory Agreement to indemnification by the Borrower and by any other persons, to payments for expenses incurred by the Issuer itself, or its officers, officials, directors, agents or employees and to payment to the Trustee by the Borrower of any arbitrage rebate; (b) the right of the Issuer to give and receive notices, reports,

certifications, or other information hereunder, under the Loan Agreement and under the Regulatory Agreement; (c) the right of the Issuer to receive its fees and expenses; (d) the Issuer's approval rights; (e) the rights of the Issuer with respect to access to the Project and inspections; (f) the rights of the Issuer with respect to publicity and signage; (g) the notification, indemnification and enforcement rights of the Issuer in Section 6.02 of the Loan Agreement; (h) the rights of the Issuer with respect to limited liability; (i) all rights of the Issuer to enforce the covenants and agreements and to take action for the breach of any representation or warranty of the Borrower pertaining in any manner or way, directly or indirectly, to the requirements of the Act or any requirements imposed by the Issuer with respect to the Project, or necessary to assure that interest on the Bonds is excluded from gross income for federal income tax purposes, as are set forth in any of the Documents, including any certificate or agreement executed by the Borrower; (j) all rights of the Issuer in connection with any amendment to or modification of any of this Indenture and the Loan Agreement, or the Regulatory Agreement, including but not limited to its rights to give or withhold consent to amendments, changes, modifications and alterations thereof; and (k) all enforcement rights with respect to the foregoing. All of the foregoing rights of the Issuer under this Indenture, the Regulatory Agreement and the Loan Agreement are reserved to the Issuer, as none of these rights under this Indenture, the Regulatory Agreement or the Loan Agreement are being assigned by the Issuer to the Trustee.

"Revenues" means (a) the Loan Payments, (b) the Eligible Funds received by the Trustee for deposit into the Collateral Fund, (c) all other money received or to be received by the Trustee in respect of repayment of the Loan, including without limitation, all money and investments in the Bond Fund, (d) any money and investments in the Special Funds, and (e) all income and profit from the investment of the foregoing moneys. The term **"Revenues"** does not include any money or investments in the Rebate Fund, the Costs of Issuance Fund, the Expense Fund or the Mortgage Loan Prepayment Fund, amounts paid as fees, reimbursement for expenses or for indemnification of the Issuer and the Trustee, or amounts paid to or collected by the Issuer in connection with any Reserved Rights of the Issuer.

"S&P" means S&P Global Ratings, and its successors and assigns.

"Securities Depository" means the Depository Trust Company, its successors and assigns, or any other securities depository for the Bonds designated by the Issuer or the Borrower to the Trustee in writing.

"Securities Depository Representation Letter" means the Issuer's Blanket Issuer Letter of Representations to The Depository Trust Company.

"Special Funds" means, collectively, the Bond Fund, the Collateral Fund and the Project Fund, and any accounts therein, all as created in this Indenture.

"State" means the State of Rhode Island.

"Subordinate Lender" means, individually or collectively, as the context may require, Rhode Island Housing and Mortgage Finance Corporation, Rhode Island [Housing Resources Commission] and [_____], as the lenders of the respective Subordinate Loans.

"Subordinate Loans" means, collectively, [the HPF Loan, the CMF Loan, the RI Rebounds Loan, the CRP Grant Sponsor Loan, the Sponsor Loan and the BHRI Loan].

"Subordinate Loan Documents" means, collectively, all instruments, agreements and other documents evidencing, securing or otherwise relating to the respective Subordinate Loans or executed and delivered by Borrower and/or Subordinate Lender in connection with the respective Subordinate Loans.

“**Supplement**” or “**Supplements**” means any and all extensions, renewals, modifications, amendments, supplements and substitutions to any Document.

“**TPA Regulations**” shall mean those certain regulations of the Issuer entitled “Regulations Governing Proposed Prepayments and Transfers” as in effect on the date hereof and as the same may be amended from time to time.

“**Tax Certificate**” means the Tax Certificate dated the Closing Date by the Issuer and the Borrower, together with the Borrower Tax Certification attached thereto and made a part thereof.

“**Term of Agreement**” means the term of the Loan Agreement as specified in Section 8.01 of the Loan Agreement.

“**Title Company**” means [Royal Abstract].

“**Trustee**” means The Bank of New York Mellon Trust Company, N.A., a national banking association, organized and existing under the laws of the United States and authorized to conduct business in the State, and its successor or successors in the trust created by this Indenture.

“**Trust Estate**” has the meaning given such term in the Granting Clauses of this Indenture.

“**Trust Office**” means the trust office of the Trustee located at the address set forth in Article I hereof or such other office designated by the Trustee from time to time, or such other offices as may be specified in writing to the Issuer by the Trustee.

“**Undelivered Bond**” means any Bond that is required under this Indenture to be delivered to the Remarketing Agent or the Trustee for purchase on a Mandatory Tender Date but that has not been received on the date such Bond is required to be so delivered.

“**Underwriter**” means Morgan Stanley & Co. LLC.

Section 1.02 Rules of Construction. The words “hereof,” “herein,” “hereunder,” “hereto,” and other words of similar import refer to this Indenture in its entirety.

The terms “agree” and “agreements” contained herein are intended to include and mean “covenant” and “covenants.”

References to Articles, Sections, and other subdivisions of this Indenture are to the designated Articles, Sections, and other subdivisions of this Indenture.

The headings of this Indenture are for convenience only and shall not define or limit the provisions hereof.

All references made (a) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, and (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well.

Any reference to particular sections or subsections of the Code and applicable Income Tax Regulations shall include any successor provisions of law or regulations, to the extent the same shall apply to the Bonds.

Any reference to a Bond or to the Bonds shall include each portion in the minimum Authorized Denomination of any registered bond having a denomination greater than the minimum Authorized Denomination.

ARTICLE II

CREATION OF BONDS; DETAILS OF THE BONDS

Section 2.01 *Authorization and Terms of Bonds.*

(a) Authorization of Bonds. The Issuer hereby authorizes for issuance under this Indenture, bonds in the original aggregate principal amount of \$[PAR AMOUNT], which shall be designated “Rhode Island Housing and Mortgage Finance Corporation Multifamily Housing Revenue Bonds (Bernon Mills Apartments Project), Series 2023” to be issued as hereinafter provided.

(b) Registered Form; Numbering. The Bonds shall be issuable only as fully registered Bonds in Authorized Denominations, substantially in the form, appropriately completed, attached hereto as Appendix A and made a part hereof. The Bonds shall be lettered “R,” and shall be numbered separately from “1” consecutively upward.

(c) Date, Denominations, Dates from Which Interest Payable, Interest Rate and Maturity. The Bonds shall be dated the Closing Date, shall be issued in Authorized Denominations, and shall bear interest on the principal amount Outstanding from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or provided for, from their date of initial delivery, payable on each Interest Payment Date. The Bonds shall bear interest for each Interest Period at the Interest Rate all as more specifically set forth hereinafter. Interest on the Bonds shall be calculated on the basis of a 360-day year consisting of twelve 30-day months. The Bonds shall mature on the Maturity Date, subject to Mandatory Tender for purchase as set forth in Section 3.01 hereof and mandatory redemption as set forth in Section 3.04 hereof.

(d) Initial Interest Rate. From the Closing Date to, but not including, the Initial Mandatory Tender Date, the interest rate on the Bonds shall be the Initial Interest Rate. On the Initial Mandatory Tender Date, the Bonds shall be subject to Mandatory Tender pursuant to Section 3.01 hereof.

(e) Establishment of Remarketing Rate. The Remarketing Agent shall establish the interest rate on the Bonds Outstanding for each Remarketing Period at the Remarketing Rate in accordance with this Section 2.01(e). Not less than ten (10) Business Days preceding each Remarketing Date, the Remarketing Agent, taking into consideration prevailing market conditions, shall, using its best professional judgment, determine the minimum rate(s) of interest which, if borne by the Bonds then Outstanding for the Remarketing Period specified by the Remarketing Agent at the direction of the Borrower as provided in Section 3.03 hereof shall offer for sale and use its best efforts to sell the Bonds Outstanding on the Remarketing Date at a price equal to 100% of the principal amount of such Bonds plus, if such Remarketing Date is a date other than a scheduled Interest Payment Date, accrued interest on such Bonds from the preceding Interest Payment Date to which interest has been paid. The rate of interest determined in accordance with the previous sentence shall be the Remarketing Rate for the specified Remarketing Period; *provided* that if the rate of interest so determined for such period would exceed the maximum interest rate per annum permitted by applicable law, the Bonds Outstanding shall be remarketed for the longest Remarketing Period for which the minimum rate of interest that would enable such Bonds to be remarketed at a price equal to 100% of the principal amount of such Bonds that would not exceed the maximum interest rate permitted by applicable law. Notwithstanding the foregoing, if the rate of interest so determined for any Remarketing Period would exceed the Maximum Interest Rate permitted by applicable State law, the Bonds Outstanding shall not be remarketed.

(f) Notice of Remarketing Rate. The Remarketing Agent shall, upon determination of the Remarketing Rate and Remarketing Period, immediately (and in no event later than the Business Day following the day on which the Remarketing Agent makes its determination of the Remarketing Rate and the Remarketing Period) give notice of its determination by telephone or telecopy, promptly confirmed in writing within two (2) Business Days, to the Trustee, the Issuer, the Borrower and the Investor Limited Partner. The Remarketing Rate and the Remarketing Period shall be conclusive and binding upon the Trustee, the Issuer, the Borrower and the Holders for the purposes of this Indenture.

(g) Book-Entry Form. Initially, the Bonds shall be issued in Book-Entry Form only through the facilities of the Securities Depository as further provided in Section 2.11 hereof. In the event the Book-Entry System is subsequently terminated as provided in Section 2.11 hereof, replacement Bonds shall be issued in Authorized Denominations.

(h) Medium and Place of Payment. Principal of and interest on the Bonds shall be payable in lawful money of the United States of America which, at the respective times of payment, is legal tender for the payment of public and private debts, but only from the Revenues and any other monies made available to the Issuer for such purpose. Subject to Section 2.11 hereof, Principal of the Bonds shall be payable at the Trust Office upon presentation and surrender of the Bonds as the same become due, and upon the request of any registered Owner of Bonds on the applicable Record Date having an aggregate principal amount of \$1,000,000 or more, such principal shall be paid by wire transfer of immediately available funds from the Trustee to the bank and account number specified by such Owner in writing to the Trustee. Interest on the Bonds shall be payable to each registered Owner of the Bonds by check or draft mailed to such Owners at their addresses as they appear on registration books kept by the Trustee as Bond Registrar, or, upon the request of any registered Owner of Bonds having an aggregate principal amount of \$1,000,000 or more, by wire transfer of immediately available funds from the Trustee to the bank and account number specified by such Owner in writing to the Trustee at least three (3) Business Days prior to the applicable payment date.

(i) Form of Bonds. The definitive Bonds, which may be printed, typewritten, photocopied, or otherwise reproduced, including the Trustee's Certificate of Authentication to be endorsed thereon, shall be substantially in the form as set forth in Appendix A attached hereto with such appropriate variations, omissions and insertions as permitted or required by this Indenture.

(j) Payments or Actions to be taken on Saturdays, Sundays and Holidays. If any Interest Payment Date or a date of maturity of the principal of any Bonds is a Saturday, Sunday or a day on which the Trustee is required, or authorized or not prohibited, by law (including without limitation, executive orders) to close and is closed, then payment of interest and principal need not be made by the Trustee on that date, but that payment may be made on the next succeeding Business Day on which the Trustee is open for business with the same force and effect as if that payment were made on the Interest Payment Date or date of maturity, and no interest shall accrue for the period after that date. If a Mandatory Tender Date is a day that is not a Business Day, then, notwithstanding any provision hereof to the contrary, (i) any tender, purchase or redemption required to be made, or other action required to be taken, on such Mandatory Tender Date pursuant to Article III hereof instead shall be made or taken on the next succeeding Business Day with the same force and effect as if made or taken on such Mandatory Tender Date, and (ii) any provision in Article III hereof for the giving of notice or satisfaction of a condition a specified number of days prior to such Mandatory Tender Date instead shall be deemed to refer to the giving of such notice or satisfaction of such condition such number of days prior to the Business Day next succeeding such Mandatory Tender Date.

Section 2.02 *Security and Source of Payment of Bonds.* Subject to Section 2.09 hereof, the Bonds shall be secured by and payable solely from the Trust Estate pledged therefor under this Indenture. Nothing in the Bonds or in this Indenture shall be construed as pledging any other funds or assets of the Issuer. All the Bonds to be issued hereunder shall be equally and ratably secured, to the extent provided herein, by this Indenture.

Section 2.03 *Execution of Bonds.* Each Bond shall be executed on behalf of the Issuer by the manual or facsimile signature of an Authorized Officer of the Issuer, and attested by the manual or facsimile signature of another Authorized Officer, sealed with an impression or a facsimile of the seal of the Issuer. Any facsimile signatures shall have the same force and effect as if said officers had manually signed the Bonds. Any reproduction of the official seal of the Issuer on any Bond shall have the same force and effect as if the official seal of the Issuer had been impressed on such Bond. In case any officer whose signature or a facsimile of whose signature shall appear on any Bond shall cease to be that officer before the issuance of the Bond, such signature or the facsimile thereof nevertheless shall be valid and sufficient for all purposes, the same as if such officer had remained in office until that time. Any Bond may be executed on behalf of the Issuer by an officer who, on the date of execution is the proper officer, although on the date of the Bond that person was not the proper officer.

Section 2.04 *Certificate of Authentication.* Only such Bonds as shall have endorsed thereon a certificate of authentication substantially in the form set forth in the form of the Bond herein provided and duly executed by the Trustee shall be entitled to any right or benefit under this Indenture. No Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Trustee, and such executed certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture. The Trustee's certificate of authentication on any Bond shall be deemed to have been executed by it if manually signed by an authorized officer of the Trustee, but it shall not be necessary that the same person sign the certificate of authentication on all of the Bonds issued hereunder. At the time of authentication of any Bond, the Trustee shall insert therein the date from which interest on such Bond shall be payable as provided in Section 2.01(c).

Section 2.05 *Authentication and Delivery of Bonds.* Upon the execution and delivery of this Indenture, and satisfaction of the conditions established by the Issuer in the Bond Resolution and in the Bond Purchase Agreement for delivery of the Bonds, the Issuer shall execute the Bonds and deliver them to the Trustee. Thereupon, the Trustee shall authenticate the Bonds and hold them on behalf of the Securities Depository pending closing therewith.

Prior to the Closing with the Securities Depository, the Trustee shall have received the following:

- (a) executed counterparts of this Indenture and the other Documents specifically set forth in the definition of Documents;
- (b) a written order of the Issuer directing the Trustee to authenticate and deliver the Bonds;
- (c) the sale proceeds of the Bonds and all other amounts required to be received by the Trustee for deposit pursuant to Section 4.01(b), (c) and (d) hereof;
- (d) a UCC-1 financing statement for filing with the Rhode Island Secretary of State with respect to the Trust Estate;
- (e) a copy of the Issuer's certified Bond Resolution;

(f) an approving opinion of Bond Counsel;

(g) an opinion of counsel to the Issuer to the effect that the Issuer Documents have been duly authorized, executed and delivered by the Issuer and are legal, valid and binding agreements of the Issuer, enforceable against the Issuer in accordance with their respective terms, subject to customary qualifications and exceptions relating to, among other things, bankruptcy, insolvency, creditors' rights generally and principles of equity;

(h) an Opinion of Counsel for the Borrower to the effect that the Borrower Documents have been duly authorized, executed and delivered by the Borrower and are legal, valid and binding agreements of the Borrower, enforceable against the Borrower in accordance with their respective terms, subject to customary qualifications and exceptions relating to, among other things, bankruptcy, insolvency, creditors' rights generally and principles of equity;

(i) a copy of the rating letter from the Rating Agency evidencing a rating on the Bonds of "Aaa/VMIG 1".

Section 2.06 *Temporary Bonds.* Until Bonds in definitive form are ready for delivery, the Issuer may execute, and upon its request in writing, the Trustee shall authenticate and deliver in lieu of any thereof, and subject to the same provisions, limitations and conditions, one or more printed, typewritten or photocopied Bonds in temporary form, substantially of the tenor of the Bonds herein described, and with appropriate omissions, variations and insertions. Such Bond or Bonds in temporary form shall be delivered in denominations authorized by this Indenture, may be numbered using the prefix "T" before any number thereon as authorized by this Indenture, and may bear a legend thereon setting forth the terms for the exchange thereof for Bonds in definitive form. Until exchanged for Bonds in definitive form, such Bonds in temporary form shall be entitled to the benefit of this Indenture. The Issuer shall, without unreasonable delay (unless the Holders of the Bonds issued in temporary form agree otherwise), prepare, execute and deliver to the Trustee, and thereupon, upon the presentation and surrender of the Bond or Bonds in temporary form, the Trustee shall authenticate and deliver, in exchange therefor, a Bond or Bonds in a definitive authorized form in Authorized Denominations, of the same maturity or maturities, bearing the same interest rate or rates and for the same aggregate principal amount as the Bond or Bonds in temporary form surrendered. Such exchange shall be made by the Issuer at the Borrower's expense and without making any charge to the Holders of the Bonds therefor.

Section 2.07 *Mutilated, Lost, Stolen or Destroyed Bonds.* In the event any Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the Trustee may authenticate a new Bond of like date, maturity, interest rate and denomination as that of the Bond mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Bond there shall be first furnished to the Issuer and the Trustee evidence of such loss, theft or destruction satisfactory to the Issuer and the Trustee, together with indemnity satisfactory to them. The Trustee may, with the consent of the Holder, provide to the Holder a typewritten (or similarly reproduced) Bond certificate in lieu of a printed Bond certificate. In the event any such Bond shall have matured, instead of issuing a duplicate Bond the Trustee may pay the same without surrender thereof. The Issuer and the Trustee may charge the Holder of such Bond their expenses and reasonable fees, if any, in connection with the preparation, execution and authentication of a replacement Bond.

Section 2.08 *Registration, Negotiability, Transfer and Exchange of Bonds.* All of the Bonds issued under this Indenture shall be negotiable instruments. Subject to Section 2.11, the provisions for registration, transfer and exchange contained in this Section and otherwise in this Indenture shall apply to the Bonds. So long as any of the Bonds shall remain outstanding, the Issuer shall maintain and keep at the Trust Office, books for the registration and transfer of Bonds; and, upon presentation thereof for such

purpose at such office, the Trustee shall register or cause to be registered therein, and permit to be transferred thereon, under such reasonable regulations as the Issuer or the Trustee may prescribe, any Bond entitled to registration or transfer.

Each Bond shall be transferable only upon the books of the Issuer maintained for such purpose by the Trustee, at the written request of the registered Owner thereof or his attorney duly authorized in writing, upon presentation and surrender thereof, together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered Owner or his attorney duly authorized in writing. Upon the surrender for transfer of any Bond, the Issuer shall issue, and the Trustee shall authenticate, in the name of the transferee, in Authorized Denominations, a new Bond or Bonds without coupons of the same aggregate principal amount, maturity and interest rate as the surrendered Bond.

The Issuer and the Trustee may deem and treat the person in whose name any Outstanding registered Bond shall be registered upon the books of the Issuer as the absolute Owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Bond and for all other purposes, and all such payments so made to any such registered Owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

For every exchange or transfer of Bonds, whether temporary or definitive, the Issuer or the Trustee may make a charge sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or transfer which sum or sums shall be paid by the person requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. Notwithstanding any other provision of this Indenture to the contrary, any expenses of the Issuer or the Trustee incurred in connection therewith (except any applicable tax or other governmental charge to be paid by the person requesting such transfer or exchange) shall be paid by the Borrower as required by the Loan Agreement. The Issuer shall not be obligated to make any such exchange or transfer of Bonds during the fifteen (15) days next preceding an interest payment date on the Bonds.

Section 2.09 *Limited Obligations of Issuer.* The Bonds are special, limited obligations of the Issuer payable solely from the Trust Estate and any other revenues, funds and assets pledged and assigned under this Indenture and not from any other revenues, funds or assets of the Issuer. None of the Issuer, the State, or any political subdivision or agency thereof (except the Issuer to the limited extent set forth herein) nor any public agency shall in any event be liable for the payment of the principal of, premium, if any, or interest on Bonds or other costs incident thereto, or for the performance of any pledge, obligation or agreement of any kind whatsoever with respect thereto, except as set forth in this Indenture, and neither the Bonds nor any of the Issuer's agreements or obligations with respect to the Bonds or hereunder shall be construed to constitute an indebtedness of or a pledge of the faith and credit of or a loan of the credit of or a moral obligation of any of the foregoing within the meaning of any constitutional or statutory provision whatsoever. The Issuer shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with the Loan, the Loan Agreement, the Bonds or this Indenture, except only to the extent amounts are received for the payment thereof from the Borrower under the Loan Agreement. The Issuer has no taxing power.

Section 2.10 *Cancellation and Destruction of Bonds.* All Bonds that have been surrendered for payment, cancellation or for registration of transfer or exchange pursuant to Section 2.08 shall be cancelled and destroyed by the Trustee and shall not be reissued, and a counterpart of the certificate of destruction evidencing such destruction shall be furnished by the Trustee to the Issuer and, upon written request therefor, to the Borrower and the Investor Limited Partner. Any Bonds so cancelled may be retained by the Trustee for such period of time as the Trustee may determine and shall be destroyed by the Trustee

at the end of such period. Any Bonds so cancelled shall thereafter no longer be considered Outstanding for any purpose of this Indenture or the Loan Agreement.

Section 2.11 Book-Entry System.

(a) Except as provided in subparagraph (c) of this Section 2.11, the registered owner of all of the Bonds shall be, and the Bonds shall be registered in the name of, Cede & Co. (“*Cede*”), as nominee of The Depository Trust Company (“*DTC*”). Payment of interest and principal (including purchase price) for the Bonds shall be made by transfer of same-day funds on each Bond Payment Date in accordance with the procedures established by the Securities Depository.

(b) The Bonds shall be initially issued in the form of a separate single fully registered bond in the amount of each separately stated maturity of the Bonds. Upon initial issuance, the ownership of such Bonds shall be registered in the registry books of the Issuer kept by the Trustee in the name of Cede, as nominee of DTC. With respect to Bonds registered in the registry books kept by the Trustee in the name of Cede, as nominee of DTC, the Issuer and the Trustee shall have no responsibility or obligation to any participant of DTC (a “*Participant*”) or to any person for whom a Participant acquires an interest in the Bonds (a “*Beneficial Owner*”). Without limiting the immediately preceding sentence, the Issuer and the Trustee shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede or any Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any Participant, any Beneficial Owner or any other person, other than DTC, of any notice with respect to the Bonds, or (iii) the payment to any Participant, any Beneficial Owner or any other person, other than DTC, of any amount with respect to the principal of or interest on the Bonds. The Issuer and the Trustee may treat as and deem DTC to be the absolute owner of each Bond for the purpose of payment of the principal of and interest on such Bond, and other matters with respect to such Bond, for the purpose of registering transfers with respect to such Bond, and for all other purposes whatsoever. The Trustee shall pay all principal of and interest on the Bonds only to or upon the order of DTC, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer’s obligations with respect to the principal of and interest on the Bonds to the extent of the sum or sums so paid. Payments of principal may be made without requiring the surrender of the Bonds, and the Issuer and Trustee shall not be liable for the failure of DTC or any successor thereto to properly indicate on the Bonds the payment of such principal. No person other than DTC shall receive a Bond evidencing the obligation of the Issuer to make payments of principal of and interest on the Bonds pursuant to this Indenture. Upon delivery by DTC to the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede, and subject to the transfer provisions hereof, the word “Cede” in this Indenture shall refer to such new nominee of DTC.

(c) (i) DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving written notice to the Issuer and discharging its responsibilities with respect thereto under applicable law. Under such circumstances (if there is not a successor Securities Depository), Bond certificates will be delivered at the sole cost and expense of the Borrower as described in this Indenture.

(ii) The Issuer, in its sole discretion and without the consent of any other person, may terminate the services of DTC with respect to the Bonds if the Issuer determines that: (1) DTC is unable to discharge its responsibilities with respect to the Bonds or (2) a continuation of the requirement that all of the Outstanding Bonds be registered in the registration books kept by the Trustee in the name of Cede, as nominee of DTC, is not in the best interest of the Beneficial Owners of the Bonds. In the event that no substitute Securities Depository is found by the Issuer, or restricted registration is no longer in effect, Bond certificates will be delivered at the sole cost and expense of the Borrower as described in this Indenture.

(iii) Upon the termination of the services of DTC with respect to the Bonds pursuant to subparagraph (c)(i) of this Section 2.11, or upon the discontinuance or termination of the services of DTC

with respect to the Bonds pursuant to subparagraph (c)(ii) of this Section 2.11 after which no substitute Securities Depository willing to undertake the functions of DTC hereunder can be found which, in the opinion of the Issuer, is willing and able to undertake such functions upon reasonable and customary terms, the Bonds shall no longer be restricted to being registered in the registration books kept by the Trustee in the name of Cede as nominee of DTC, but shall be registered in whatever name or names Bondholders transferring or exchanging Bonds shall designate, in accordance with the provisions of this Indenture. Prior to any transfer of the Bonds outside the book-entry only system (including, but not limited to, the initial transfer outside the book-entry system) the transferor shall provide or cause to be provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Internal Revenue Code Section 6045, as amended. The Trustee shall conclusively rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

(d) Notwithstanding any other provision of this Indenture to the contrary, so long as any Bond is registered in the name of Cede, as nominee of DTC, all payments with respect to the principal of and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, to DTC as provided in the applicable Securities Depository Representation Letter.

(e) In connection with any notice or other communication to be provided to Bondholders pursuant to this Indenture by the Issuer or the Trustee with respect to any consent or other action to be taken by the Bondholders, the Issuer or the Trustee, as the case may be, shall establish a special record date for such consent or other action and give DTC notice of such special record date not less than fifteen (15) calendar days in advance of such special record date to the extent possible.

Section 2.12 Conversion.

(a) If the Notice of Conversion is issued in the timeframe required under the Conversion Agreement and all conditions with respect thereto and with respect to the purchase of the Governmental Note are satisfied, Conversion will occur on the Conversion Date indicated in such Notice of Conversion. If the Notice of Conversion is not so issued or all conditions with respect thereto and with respect to the funding of the Funding Loan are not so satisfied, then Conversion will not occur and the Funding Lender will not have any obligations with respect to the purchase of the Governmental Note or otherwise with respect to the Loan or the Project.

(b) If Conversion occurs, on the Conversion Date, (i) the Bonds shall be subject to mandatory tender in accordance with Section 3.01 hereof, (ii) the purchase price of the Bonds shall be paid with amounts on deposit in the Collateral Fund (and/or other Eligible Funds hereunder), (iii) a portion of the principal amount of the Bonds shall be cancelled as necessary such that the principal amount outstanding equals the Actual Project Loan Amount (as determined by the Funding Lender at such time), (iv) the Bonds shall be removed from the Book-Entry System and converted to a physical Governmental Note (in the form attached to the Funding Loan Agreement) which shall be purchased by the Funding Lender, (v) the Funding Loan Agreement attached hereto as Appendix D and the Project Loan Agreement attached hereto as Appendix E shall be executed and delivered by the respective parties and become effective and shall supersede this Indenture and the Loan Agreement, respectively, (vi) the proceeds of the Funding Lender Purchase Price, along with other funds of the Borrower, shall be deposited into the Mortgage Loan Prepayment Fund, (vii) the Mortgage Loan shall be paid in full with amounts on deposit in the Mortgage Loan Prepayment Fund and all security related to the Mortgage Loan shall be released or assigned to secure the Funding Loan, and (viii) the Borrower shall execute and deliver a Project Note to evidence its obligations under the Project Loan Agreement and a new Security Instrument with respect to the Project to secure its obligations under the Project Loan Agreement, which Project Note and Security Instrument will be held by the Fiscal Agent under the Funding Loan Agreement to secure the Governmental Note. If the

Conditions to Conversion are not satisfied on or before the Outside Conversion Date, the Loan will not convert from the Construction Phase to the Permanent Phase, and the Funding Lender will not have any obligation with respect to the purchase of the Governmental Note.

(c) Provided all Conditions to Conversion are satisfied, the Issuer and Trustee agree to execute and deliver the Funding Loan Agreement, the Governmental Note and Project Loan Agreement, in the forms attached hereto, on the Conversion Date, subject to the completion by or at the direction of the Issuer of such forms, including filling in the Conversion Date, the Actual Project Loan Amount and attaching the final amortization schedule in accordance with subsection (d) below. In no event shall the Actual Project Loan Amount exceed \$[_____].

(d) The Governmental Note shall mature on the Maturity Date, subject to earlier prepayment as provided in the Funding Loan Agreement. The unpaid principal balance of the Governmental Note shall be paid on the dates and in the amounts set forth on the initial Funding Loan Amortization Schedule provided on the Closing Date and attached as Schedule 1 to the Governmental Note (the "Funding Loan Amortization Schedule") if the Conversion Date occurs on or prior to the initial Outside Conversion Date. If the Outside Conversion Date is extended by the Funding Lender in accordance with the Conversion Agreement, the first principal payment date under the Funding Loan Amortization Schedule shall automatically be extended to the first day of the month immediately succeeding the Conversion Date (with the succeeding principal installments remaining consistent with the original schedule but for them occurring on later dates). Additionally, in the event the outstanding amount of the Funding Loan on the Conversion Date is less than the starting principal amount set forth in the initial Funding Loan Amortization Schedule, a new Funding Loan Amortization Schedule will be generated on the Conversion Date at such lesser outstanding principal amount based on the parameters set forth in the Permanent Loan Agreement. In the event the initial Funding Loan Amortization Schedule is modified in accordance with this Section 2.12(d), a replacement Funding Loan Amortization Schedule will be provided by the Funding Lender which will be attached to the Governmental Note on the Conversion Date.

(e) In addition to the Conditions to Conversion set forth in the Conversion Agreement, Conversion shall be conditioned upon the delivery of the items set forth in Section 2.10 of the Funding Loan Agreement.

ARTICLE III

MANDATORY TENDER AND REMARKETING OF BONDS; MANDATORY REDEMPTION

Section 3.01 *Mandatory Tender.*

(a) All Outstanding Bonds shall be subject to mandatory tender by the Holders for purchase in whole and not in part on each Mandatory Tender Date. The purchase price for each such Bond shall be payable in lawful money of the United States of America by check or draft, shall equal 100% of the principal amount to be purchased and accrued interest, if any, to the Mandatory Tender Date, and shall be paid in full on the applicable Mandatory Tender Date. Notwithstanding the foregoing, if the Notice of Conversion has not been delivered establishing the Conversion Date and resulting Mandatory Tender Date the Bonds must be remarketed or redeemed on such Mandatory Tender Date subject to meeting the requirements set forth below.

(b) The Mandatory Tender Dates shall consist of (i) the earlier of (A) the Initial Mandatory Tender Date and (B) the Conversion Date, and (ii) any subsequent dates for mandatory tender of the Bonds

established by the Borrower, with the consent of the Investor Limited Partner and the Remarketing Agent, in connection with a remarketing of the Bonds pursuant to Section 3.03 hereof.

(c) While tendered Bonds are in the custody of the Trustee pending purchase pursuant hereto, the tendering Holders thereof shall be deemed the owners thereof for all purposes, and interest accruing on tendered Bonds through the day preceding the applicable Mandatory Tender Date is to be paid as if such Bonds had not been tendered for purchase.

(d) Notwithstanding anything herein to the contrary, any Bond tendered under this Section 3.01 will not be purchased if such Bond matures or is redeemed on or prior to the applicable Mandatory Tender Date.

(e) The Trustee shall utilize the following sources of payments to pay the tender price of the Bonds not later than 2:30 p.m. Local Time on the Mandatory Tender Date in the following priority: (i) amounts representing proceeds of remarketed Bonds deposited in the Remarketing Proceeds Account, to pay the principal amount, plus accrued interest, of Bonds tendered for purchase, (ii) amounts on deposit in the Collateral Fund (and/or other Eligible Funds hereunder), to pay the principal amount of Bonds tendered for purchase, (iii) amounts on deposit in the Negative Arbitrage Account of the Bond Fund to pay the accrued interest; if any, on Bonds tendered for purchase, (iv) any available interest earnings on amounts on deposit in the Project Fund to pay the accrued interest, if any, on the Bonds tendered for purchase and (v) any other Eligible Funds available or made available for such purpose at the direction of the Borrower, with the consent of the Issuer.

(f) Bonds shall be deemed to have been tendered for purposes of this Section 3.01 whether or not the Holders shall have delivered such Undelivered Bonds to the Trustee, and subject to the right of the Holders of such Undelivered Bonds to receive the purchase price of such Bonds and interest accrued thereon to the Mandatory Tender Date, such Undelivered Bonds shall be null and void. If such Undelivered Bonds are to be remarketed, the Trustee shall authenticate and deliver new Bonds in replacement thereof in connection with the remarketing of such Undelivered Bonds.

Section 3.02 *Mandatory Tender Notice.*

(a) Not less than thirty (30) days preceding a Mandatory Tender Date (or 10 days in connection with a Mandatory Tender Date that is the Conversion Date), the Trustee shall give written notice of mandatory tender to the Holders of the Bonds then Outstanding (with a copy to the Borrower, the Investor Limited Partner, the Mortgage Lender, the Issuer and the Remarketing Agent) by first class mail, postage prepaid, at their respective addresses appearing on the Register stating:

(i) the Mandatory Tender Date and that (a) all Outstanding Bonds are subject to mandatory tender for purchase on the Mandatory Tender Date, (b) all Outstanding Bonds must be tendered for purchase no later than 12:00 Noon Local Time on the Mandatory Tender Date and (c) Holders will not have the right to elect to retain their Bonds;

(ii) the address of the Designated Office of the Trustee at which Holders should deliver their Bonds for purchase and the date of the required delivery;

(iii) that all Outstanding Bonds will be purchased on the Mandatory Tender Date at a price equal to the principal amount of the Outstanding Bonds plus interest accrued to the Mandatory Tender Date; and

(iv) any Bonds not tendered will nevertheless be deemed to have been tendered and will cease to bear interest from and after the Mandatory Tender Date.

(b) In the event that any Bond required to be delivered to the Trustee for payment of the purchase price of such Bond shall not have been delivered to the Trustee on or before the 20th day following a Mandatory Tender Date, the Trustee shall mail a second notice to the Holder of the Bond at its address as shown on the Register setting forth the requirements set forth in this Indenture for delivery of the Bond to the Trustee and stating that delivery of the Bond to the Trustee (or compliance with the provisions of this Indenture concerning payment of lost, stolen or destroyed Bonds) must be accomplished as a condition to payment of the purchase price or redemption price applicable to the Bond.

(c) Neither failure to give or receive any notice described in this Section 3.02, nor the lack of timeliness of such notice or any defect in any notice (or in its content) shall affect the validity or sufficiency of any action required or provided for in this Section 3.02.

(d) Notice delivered as required in this Section 3.02 with respect to a mandatory tender pursuant to Section 3.01(b) hereof may be rescinded and annulled on or before the tender date set forth in such notice if Conversion does not occur by the Conversion Date.

Section 3.03 *Remarketing of Bonds.*

(a) No later than 11:00 a.m. Local Time on the 35th day prior to each Mandatory Tender Date (or the 10th day in connection with a Mandatory Tender Date due to the Conversion Date), the Trustee shall give notice to the Borrower, the Investor Limited Partner, the Mortgage Lender, the Issuer and the Remarketing Agent by telephone or teletype, confirmed on the same day in writing, which states the Mandatory Tender Date and that all of the Bonds are to be tendered or deemed to be tendered on the Mandatory Tender Date pursuant to Section 3.01 hereof.

(b) No later than 11:00 a.m. Local Time on the 15th day prior to the Mandatory Tender Date then in effect (excluding a Mandatory Tender Date in connection with a Conversion Date), the Borrower may give notice to the Remarketing Notice Parties by telephone or teletype, confirmed on the same day in writing, that it elects to cause the Bonds to be remarketed. A remarketing of the Bonds shall be permitted only if the following conditions are satisfied no later than the time the foregoing election notice is given:

(i) Notice by the Borrower to the Issuer, the Investor Limited Partner, the Mortgage Lender, the Remarketing Agent and the Trustee of the Remarketing Period pursuant to and in accordance with Section 4.05 of the Loan Agreement;

(ii) Delivery to the Issuer, the Trustee and the Remarketing Agent of a preliminary Cash Flow Projection with respect to the proposed Remarketing Period; and

(iii) The Borrower shall have notified the Trustee in writing that it has approved as to form and substance any disclosure document or offering materials which, in the Opinion of Counsel to the Remarketing Agent, is necessary to be used in connection with the remarketing of the Outstanding Bonds.

(c) Not less than ten (10) days before each Remarketing Date, the Remarketing Agent shall offer for sale and use its best efforts to sell the Bonds Outstanding on the Remarketing Date at a price equal to 100% of the principal amount of such Bonds plus, if such Remarketing Date is a date other than an Interest Payment Date, accrued interest on such Bonds from the preceding Interest Payment Date to which interest has been paid. Not less than four (4) Business Days before each Remarketing Date, the

Remarketing Agent shall give notice, by telephone or telecopy, promptly confirmed in writing, to the Remarketing Notice Parties specifying the principal amount of Bonds, if any, it has remarketed (including Bonds to be purchased by the Remarketing Agent on the Remarketing Date for its own account), the Remarketing Rate(s) and the Remarketing Period applicable to the Bonds.

The Remarketing Agent shall remarket any Bond tendered pursuant to Section 3.01 hereof (except those tendered in connection with a Conversion); *provided, however*, that no such Bond shall be remarketed at a price less than 100% of the principal amount thereof plus accrued interest (if any) without the prior written consent of the Borrower; and *provided, further*, that the purchase price of any Bond paid to the tendering Holder allocable to such discount shall be paid with Eligible Funds made available by the Borrower therefor and on deposit with the Trustee prior to the remarketing of such Bonds. The Remarketing Agent shall have the right to purchase any Bond tendered or deemed tendered pursuant to Section 3.01 hereof at 100% of the principal amount thereof, and to thereafter sell such Bond. Any such purchase shall constitute a remarketing hereunder.

The Remarketing Agent shall not remarket any Bond to the Issuer, the Borrower, the Investor Limited Partner, any guarantor of the Bonds or any person which is an “insider” of the Issuer, Borrower, or any such guarantor within the meaning of the Bankruptcy Code.

(d) If, not less than four (4) or two (2) Business Days, as applicable, preceding the Remarketing Date:

(i) if, not less than four (4) Business Days preceding the Remarketing Date, the Remarketing Agent shall have notified the Trustee in writing of the remarketing of the Outstanding Bonds and that the proceeds from the remarketing (including proceeds of remarketing of Outstanding Bonds to be purchased by the Remarketing Agent on the Remarketing Date for its own account) and other Eligible Funds equal to the amount needed to purchase the remarketed Bonds on the Remarketing Date are expected to be available to the Trustee on the Remarketing Date for deposit into the Remarketing Proceeds Account;

(ii) if, not less than four (4) Business Days preceding the Remarketing Date, the Trustee shall have received written notice from the Remarketing Agent that the Remarketing Agent has received a Confirmation of Rating from the Rating Agency, together with a copy of such Confirmation of Rating from the Rating Agency;

(iii) if, not less than two (2) Business Days preceding the Remarketing Date, there shall be on deposit with the Trustee, from Eligible Funds provided by the Borrower an amount sufficient to pay the Extension Payment set forth in the Cash Flow Projection for deposit to the Negative Arbitrage Account of the Bond Fund with respect to the payment of interest and principal during the new Remarketing Period;

(iv) if, not less than two (2) Business Days preceding the Remarketing Date, there shall either (A) be on deposit with the Trustee in the Expense Fund an amount sufficient to pay the estimated Remarketing Expenses as certified in writing to the Trustee and the Issuer by the Borrower, or (B) the Remarketing Agent shall have certified in writing to the Trustee that provision for the payment of the estimated Remarketing Expenses shall have been made to the satisfaction of the Remarketing Agent;

then the Trustee shall immediately give notice, by telephone or telecopy, which notice shall be immediately confirmed in writing, to the Remarketing Notice Parties that (a) all conditions precedent to the remarketing of the Outstanding Bonds have been satisfied and (b) the sale and settlement of the Outstanding Bonds is

expected to occur on the Remarketing Date. Following the Trustee's notice, the Outstanding Bonds shall be sold to the purchasers identified by the Remarketing Agent for delivery and settlement on the Remarketing Date, and the Trustee shall apply the funds in the Remarketing Proceeds Account of the Bond Fund on the Remarketing Date to payment of the purchase price of the Outstanding Bonds.

(e) If, not less than four (4) or two (2) Business Days, as applicable, preceding a Remarketing Date, any condition set forth in paragraph (d) of this Section 3.03 has not been satisfied, then, the Remarketing Agent shall not sell any of the Outstanding Bonds on the Remarketing Date.

(f) No later than 11:00 a.m. Local Time on each Remarketing Date, the Remarketing Agent shall pay to the Trustee, in immediately available funds, the proceeds theretofore received by the Remarketing Agent from the remarketing of Bonds tendered for purchase on such Remarketing Date; provided that the Remarketing Agent may use its best efforts to cause the purchasers of the remarketed Bonds to pay the purchase price plus accrued interest (if any) to the Trustee in immediately available funds. The proceeds from the remarketing of the Bonds shall be segregated from any funds of the Borrower and the Issuer and shall in no case be considered to be or be assets of the Borrower or the Issuer. Funds representing remarketing proceeds received by the Remarketing Agent after 11:00 a.m. Local Time on each Remarketing Date shall be paid to the Trustee as soon as practicable upon such receipt.

(g) On or before the Business Day next preceding each Remarketing Date, the Remarketing Agent, by telephonic advice, shall notify the Trustee of (i) the principal amount of Bonds to be sold by the Remarketing Agent pursuant to this Section 3.03 hereof and the purchase price, and, unless the Bonds are then in the Book-Entry System, the names, addresses and social security numbers or other tax identification numbers of the proposed purchasers thereof and (ii) the principal amount of Bonds tendered for purchase on such Remarketing Date (if any) which will not be sold by the Remarketing Agent pursuant to this Section 3.03 hereof. Such telephonic advice shall be confirmed by written notice delivered or electronically communicated at the same time as the telephonic advice.

Bonds purchased by the Trustee on a Mandatory Tender Date that have been remarketed shall be delivered to the purchasers thereof as directed by the Remarketing Agent. Bonds delivered as provided in this Section shall be registered in the manner directed by the recipient thereof.

Section 3.04 *Mandatory Redemption.*

The Bonds are subject to mandatory redemption, in whole, on any Mandatory Tender Date other than the Conversion Date, upon the occurrence of any of the following events: (i) the Borrower has not previously elected pursuant to Section 3.03 hereof and Section 4.05 of the Loan Agreement to cause the remarketing of the Bonds, (ii) the conditions to remarketing set forth in Section 2.01(e) or Section 3.03 have not been met by the dates and times set forth therein, or (iii) the proceeds of a remarketing on deposit in the Remarketing Proceeds Account at 11:00 a.m. Local Time on the Mandatory Tender Date are insufficient to pay the purchase price of the Outstanding Bonds on such Mandatory Tender Date. The Bonds shall be redeemed at a redemption price equal to 100% of the principal amount of such Bonds plus accrued interest to the applicable redemption date from funds on deposit in, or transferred from, the Bond Fund, the Collateral Fund, and the Project Fund.

ARTICLE IV

REVENUES AND FUNDS

Section 4.01 *Creation of Funds; Allocation of Bond Proceeds and Other Amounts.* (a) Trust Funds. The following trust funds are hereby created by the Issuer and established by the Trustee, to be maintained in the custody of the Trustee each as a separate bank account, to be used for the purposes as hereinafter provided in this Indenture:

- (i) Bond Fund, and within the Bond Fund, the “*Negative Arbitrage Account*” and the “*Remarketing Proceeds Account*”.
- (ii) Project Fund.
- (iii) Rebate Fund.
- (iv) Costs of Issuance Fund.
- (v) Collateral Fund.
- (vi) Expense Fund.
- (vii) Mortgage Loan Prepayment Fund.

The Trustee may create one or more accounts or subaccounts within any fund authorized by this Indenture for the purpose of accounting for funds deposited into or held in each fund or for carrying out any of the requirements of this Indenture. The Trustee may transfer funds between accounts and subaccounts within any fund.

In the event certain moneys are deposited with the Trustee prior to the Closing Date, whether or not pursuant to one or more letters of instruction from the provider or providers of such moneys, such moneys shall be held by the Trustee subject to the terms and conditions of this Indenture, in addition to the terms of any such letter(s) of instruction. For such purpose, the standards of care, any provisions governing the responsibilities and indemnification and other provisions relating to the Trustee contained in this Indenture and in the Loan Agreement (the “Effective Provisions”) shall be effective as of the first date of receipt by the Trustee of such moneys. The Effective Provisions shall be deemed incorporated into any such letter(s) of instructions.

(b) *Allocation of Bond Proceeds.* On the Closing Date, all of the proceeds of the Bonds in the amount of \$[_____] shall be delivered to the Trustee and allocated and deposited to the Project Fund.

(c) *Allocation of Borrower Funds.* On the Closing Date, the Trustee shall receive the Initial Borrower Deposit, the Expense Fund Deposit and the Costs of Issuance Deposit, from or on behalf of the Borrower, which the Trustee shall deposit as follows:

- (i) to the Negative Arbitrage Account of the Bond Fund, the Initial Borrower Deposit in the amount of \$[_____];
- (ii) to the Expense Fund the Expense Fund Deposit in the amount of \$[_____]; and
- (iii) to the Cost of Issuance Fund, the Costs of Issuance Deposit in the amount of \$[_____].

(d) *Initial Deposit to the Collateral Fund.* On the Closing Date, the Trustee shall receive from or on behalf of the Borrower the Initial Collateral Fund Deposit in the amount of \$[_____], which the Trustee shall deposit to the Collateral Fund.

Section 4.02 *Deposits into and Use of Moneys in the Bond Fund.* On the Closing Date, the Trustee shall deposit the Initial Borrower Deposit, if any, in the Negative Arbitrage Account of the Bond Fund. The Bond Fund and amounts on deposit in the Bond Fund are to be invested pursuant to Section 6.01 hereof. Any Extension Payment received by the Trustee in connection with an extension of the Mandatory Tender Date pursuant to Section 3.03 hereof shall also be deposited into the Negative Arbitrage Account. Upon receipt by the Trustee of a Cash Flow Projection provided on behalf of the Borrower, the Trustee is hereby authorized to release from the Negative Arbitrage Account the amount set forth in the Cash Flow Projection to be released to or at the written direction of the Borrower from such account.

So long as there are any Outstanding Bonds, to the extent the Borrower has not received a credit against Loan Payments, all Loan Payments under the Loan Agreement shall be paid on or before each Interest Payment Date directly to the Trustee, and deposited in the Bond Fund, in at least the amount necessary to pay the interest and the principal due on the Bonds on such Bond Payment Date.

Bond Debt Service Charges shall be payable, as they become due (a) in the first instance from the money on deposit in the Bond Fund (excluding the Negative Arbitrage Account of the Bond Fund), (b) next from money on deposit in the Negative Arbitrage Account of the Bond Fund, (c) next from money on deposit in the Collateral Fund and transferred as necessary to the Bond Fund and (d) thereafter, from money on deposit in the Project Fund and transferred as necessary to the Bond Fund.

Except as provided in Section 4.05 hereof, moneys in the Bond Fund shall be used solely for the payment of the principal of and interest on the Bonds when due.

Section 4.03 *Custody of the Bond Fund.* The Bond Fund shall be in the custody of the Trustee but in the name of the Issuer, and the Issuer hereby authorizes and directs the Trustee (a) to withdraw sufficient funds from the Bond Fund to pay the principal of and interest on the Bonds as the same become due and payable, and (b) to make such funds so withdrawn available to the Trustee, as paying agent, for the purpose of paying such principal and interest, which authorization and direction the Trustee accepts.

Section 4.04 *Non-Presentation of Bonds.* Subject to the provisions of Section 10.21 hereof, in the event any Bonds shall not be presented for payment when the principal thereof becomes due, either at maturity or otherwise, if funds sufficient to pay such Bonds shall have been made available to the Trustee for the benefit of the Holder or Holders thereof, all liability of the Issuer to the Holder thereof for the payment of such Bond shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such funds, without liability for interest thereon, for the benefit of the Holder of such Bond, who shall thereafter be restricted exclusively to such funds, for any claim of whatever nature on its part under this Indenture or on, or with respect to, such Bond. Any such Bonds shall cease to bear interest on the specified maturity and such Bonds or portions thereof shall no longer be protected by or subject to the benefit or security of this Indenture and shall not be deemed to be outstanding under the provisions of this Indenture.

Section 4.05 *Payment to Borrower of Excess Moneys in Bond Fund.* Any amounts remaining in the Bond Fund (except for amounts then held by the Trustee for payment of principal of, or interest on any of the Bonds) after payment in full of the purchase price of the Bonds on the Conversion Date, and other costs associated with the conversion of the Bonds, and payment in full, or provision for payment, of the final Rebate Amount and payment in full of any outstanding fees and expenses of the Paying Agent, the Issuer and the Trustee and any other fees and expenses due under the Documents, shall, upon written

instruction to the Trustee from the Borrower, be deposited into the Loan Payment Fund established under the Funding Loan Agreement or used for any other purpose provided that in the latter case the Trustee is furnished with an opinion of Bond Counsel to the effect that such investment or purpose will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes.

Section 4.06 *Rebate Fund; Rebate Amount.* The Trustee shall deposit into the Rebate Fund amounts paid by the Borrower pursuant to the Tax Certificate.

(a) The determination of the Rebate Amount shall be made in accordance with the Tax Certificate and the Rebate Amount shall be paid at such times and in such installments as provided therein. As further provided in the Tax Certificate, the Borrower shall be responsible for calculating or causing to be calculated and paying the Rebate Amount.

(b) Neither the Issuer nor the Trustee shall be obligated to pay any portion of the Rebate Amount (except from funds on deposit in the Rebate Fund). In addition, neither the Issuer nor the Trustee shall have any responsibility with respect to the calculation of the Rebate Amount, *provided* that the rebate calculations are subject to the Issuer's approval.

(c) Any moneys held as part of the Rebate Fund and not immediately required to be paid to the United States pursuant to the Tax Certificate shall be invested or reinvested by the Trustee, at the written direction of an Authorized Borrower Representative and approved by the Issuer, in Governmental Obligations or in any money market or short term investment fund investing in or consisting solely of and secured by Governmental Obligations, including any such fund maintained by the Trustee or an affiliate thereof, having maturities consonant with the need for moneys as reasonably estimated by the Borrower. In connection with the investment of moneys held as part of the Rebate Fund (as provided in Section 6.01 hereof), interest and other income received on the investment of moneys held as part of the Rebate Fund shall be credited to the Rebate Fund.

(d) As provided in the Tax Certificate, the Borrower is required to (i) obtain a rebate calculation with respect to the Rebate Amount upon the redemption or final maturity of the Bonds and either (ii) (a) pay to the Trustee for deposit into the Rebate Fund an amount of money as determined by such calculation within thirty (30) days of such calculation or (b) provide the Trustee with written notice (signed by an Authorized Borrower Representative and the Rebate Analyst) that (1) no deposit is required or (2) the amount in the Rebate Fund is in excess of the amount required to be on deposit as determined by the most recent rebate calculation, in which case the Trustee shall, with the prior written consent of the Issuer, pay such excess over to the Borrower. If the Trustee does not receive either of the items required in (ii)(a) or (ii)(b) above within 30 days after the redemption or final maturity of the Bonds, the Trustee shall notify the Issuer; *provided, however*, that the Trustee shall not incur any liability if it should fail to provide such notice.

Section 4.07 *Costs of Issuance Fund.* On the Closing Date, the Trustee shall deposit the Costs of Issuance Deposit (if any) in the Costs of Issuance Fund to pay the costs of issuance from amounts available therein, which costs of issuance shall not exceed the amounts set forth in a certificate of the Issuer. The Trustee shall disburse funds on deposit in the Costs of Issuance Fund upon receipt by the Trustee of a Requisition substantially in the form attached as Appendix C hereto. Any funds remaining in the Costs of Issuance Fund more than one hundred eighty (180) days after the Closing Date, and not specifically committed to the payment of Costs of Issuance, shall be returned to the Borrower, to the extent such funds are not Bond proceeds or otherwise restricted funds. If such remaining funds are Bond proceeds or otherwise restricted, such funds shall be deposited by the Trustee into the Bond Fund.

Section 4.08 Collateral Fund; Project Fund. To the extent moneys are not otherwise provided to the Trustee to make the necessary interest and principal payments on each Interest Payment Date, including moneys deposited into the Bond Fund or the Collateral Fund, the Trustee shall, without further written direction, transfer from the Project Fund to the Bond Fund sufficient Eligible Funds to make such necessary interest and principal payments on each Interest Payment Date in accordance with Section 4.02 herein. Upon the receipt of a Requisition for disbursement from the Project Fund subject and pursuant to the terms of Section 5.02 hereof and the receipt of Eligible Funds in amounts equal to or greater than such requests, the Trustee shall concurrently take the following steps:

- (i) deposit such Eligible Funds into the Collateral Fund; and
- (ii) disburse Bond proceeds from the Project Fund in an amount equal to the Eligible Funds received and deposited pursuant to subparagraph (i) above, in accordance with Article V hereof; provided to the extent money on deposit in the Project Fund is invested in Eligible Investments, the Trustee shall not sell or otherwise terminate such Eligible Investments prior to their stated maturity date and instead the Trustee is hereby instructed to make the following allocations and exchanges, which allocations and exchanges shall occur prior to the disbursement of amounts on deposit in the Project Fund to pay Costs of the Project: (a) allocate all or a portion of the Eligible Investments in the Project Fund, in the amount specified in the Requisition for disbursement, to the Collateral Fund, and (b) transfer to the Project Fund a like amount of Eligible Funds on deposit in the Collateral Fund to be disbursed in accordance with subparagraph (ii).

Each deposit into the Collateral Fund shall constitute an irrevocable deposit solely for the benefit of the Holders, subject to the provisions hereof.

The Trustee shall cause to be kept and maintained accurate records pertaining to the Project Fund and all disbursements therefrom. If requested by the Issuer or the Borrower, after the Project has been completed and a certificate of payment of all costs is filed as provided herein, the Trustee shall file copies of the records pertaining to the Project Fund and disbursements therefrom with the Issuer and the Borrower.

Each Requisition submitted to the Trustee shall evidence and request disbursements from the Project Fund and/or the Costs of Issuance Fund.

Notwithstanding any other provision of this Indenture to the contrary, after the Closing Date the Trustee shall not disburse moneys from the Project Fund, other than to pay Bond Debt Service Charges on the Bonds, unless and until the Trustee receives satisfactory evidence that Eligible Funds in an amount equal to or greater than the requested disbursement amount (the "Collateral Deposit") has been deposited in the Collateral Fund. Prior to making any disbursement, the Trustee shall verify that upon making the disbursement, the aggregate amount to be held in (i) the Collateral Fund, together with projected investment earnings thereon, and (ii) the Project Fund, together with projected investment earnings thereon, will be sufficient to pay Bond Debt Service Charges on the outstanding Bonds as and when they become due. In the event that, following receipt of a Collateral Deposit, the Trustee determines that it cannot correspondingly disburse Bond proceeds in an amount equal to the Collateral Deposit to or at the direction of the Borrower and the Mortgage Lender, the Trustee shall immediately notify the Borrower and the Mortgage Lender, as applicable, of the reason for such determination and shall immediately return the subject Collateral Deposit to the Mortgage Lender.

Upon the occurrence and continuance of an Event of Default hereunder because of which the principal amount for the Bonds has been declared to be due and immediately payable under this Indenture, any moneys remaining in the Project Fund shall be promptly transferred by the Trustee to the Bond Fund for payment of Bond Debt Service Charges.

Section 4.09 Expense Fund. On the Closing Date, the Trustee shall deposit the Expense Fund Deposit into the Expense Fund. The Trustee shall apply money on deposit in the Expense Fund solely for the following purposes in the following order of priority:

- (a) to transfer money to the Rebate Fund to the extent necessary to pay the Rebate Amount (if any) when due pursuant to Section 4.06 hereof;
- (b) to pay the Ordinary Trustee Fees and Expenses when due;
- (c) to pay the Ordinary Issuer Fees when due;
- (d) to pay the Issuer Fees and Expenses not previously paid;
- (e) to pay the Remarketing Expenses when due; and
- (f) to pay the Dissemination Agent Fee when due.

To the extent moneys in the Expense Fund are not sufficient to pay the foregoing fees and expenses, such deficiency shall be paid by the Borrower pursuant to Section 4.02 of the Loan Agreement immediately upon written demand.

Section 4.10 Mortgage Loan Prepayment Fund. On the Conversion Date, the Trustee shall deposit into the Mortgage Loan Prepayment Fund the proceeds of the Funding Lender Purchase Price and other funds of the Borrower such that the amount in the Mortgage Loan Prepayment Fund equals the Mortgage Loan Prepayment Amount, which amount shall be used on the Conversion Date to prepay the Mortgage Loan in full.

Section 4.11 Disposition of Excess Funds in the Bond Fund, the Collateral Fund, and the Project Fund Prior to the Conversion Date. If the Bonds are subject to mandatory redemption or acceleration prior to the Conversion Date, then to the extent any moneys remain in the Project Fund, the Bond Fund or the Collateral Fund after there are no Bonds Outstanding and payment in full, or provision for payment, of the final Rebate Amount and any remaining fees or expenses or other amounts owed to the Issuer or Trustee, such moneys will be paid directly to the Mortgage Lender and applied first to the payment of the outstanding balance of the Mortgage Loan to the extent such funds are not proceeds of the Bonds or otherwise restricted funds.

ARTICLE V

PROJECT FUND DISBURSEMENTS

Section 5.01 [Reserved].

Section 5.02 Procedure for Making Disbursements from Project Fund. On the Closing Date, the Borrower shall submit the initial Requisition from the Project Fund for \$[_____] and shall cause Eligible Funds in an equal amount to be delivered to the Trustee for deposit into the Collateral Fund. Thereafter, upon each deposit of Eligible Funds into the Collateral Fund, as provided in Section 4.08 hereof, the Trustee shall disburse from the Project Fund an equal amount of Bond proceeds on such date solely to pay the Costs of the Project and only upon the receipt by the Trustee of (1) a Requisition in substantially the form attached as **Appendix B** hereto, signed by an Authorized Borrower Representative and countersigned by an Authorized Officer of the Issuer and the Mortgage Lender (signifying the consent to the Requisition by such parties), and (2) certification by an Authorized Borrower Representative that such costs are Qualified

Project Costs. The Trustee shall not disburse money from the Project Fund, other than to pay interest and principal on the Bonds, unless and until a Collateral Deposit or other Eligible Funds in an amount equal to or greater than the requested disbursement amount have been deposited into the Collateral Fund and the Trustee has determined that the aggregate account balance in (a) the Collateral Fund and (b) the Project Fund (less the requested disbursement amount) is at least equal to the then-Outstanding principal amount of the Bonds.

Notwithstanding the foregoing, the Issuer agrees that if the Issuer has not signed a Requisition or otherwise objected in writing to any disbursement from the Project Fund within five (5) days of receipt of a request for approval of such disbursement (a copy of which request and any written objection thereto shall be sent simultaneously to the Trustee by electronic means), the Issuer shall be deemed to have approved such disbursement. Furthermore, if the Issuer and the Mortgage Lender disagree as to whether a particular disbursement from the Project Fund shall be approved or disapproved, they shall meet and confer in good faith, upon the request of either of them in an effort to resolve the matter, which meeting may be by telephonic or electronic means, or may be at a personal meeting. If they fail to agree upon the approval or disapproval of such a disbursement following such good faith efforts, the Mortgage Lender can approve the disbursement and the Trustee shall pay it from the Project Fund.

To the extent money on deposit in the Project Fund is invested in Eligible Investments and the Borrower has requested that the Trustee not sell or otherwise terminate such Eligible Investments prior to their stated maturity date, the Trustee is hereby authorized to make the following allocations and exchanges in accordance with Section 4.08 hereof, which allocations and exchanges shall occur prior to the disbursement of amounts on deposit in the Project Fund to pay Costs of the Project: (i) allocate all or a portion of the Eligible Investments in the Project Fund, in the amount specified in the request for disbursement, to the Collateral Fund, and (ii) transfer to the Project Fund a like amount of Eligible Funds on deposit in the Collateral Fund.

Money in the Project Fund shall be disbursed in accordance with the provisions of Section 3.03 of the Loan Agreement and this Section 5.02. To the extent moneys are not otherwise provided to the Trustee to make the necessary interest and principal payments on each Interest Payment Date, including moneys deposited into the Bond Fund or the Collateral Fund, the Trustee shall, without further written direction, transfer from the Project Fund to the Bond Fund sufficient Eligible Funds to make such necessary interest and principal payments on each Interest Payment Date in accordance with Section 4.02 herein.

Except as provided above with respect to the approval of a Requisition by the Issuer, but notwithstanding any other provisions contained in this Indenture or any of the Borrower Documents to the contrary, with respect to Eligible Funds funded by the Mortgage Lender for deposit into the Collateral Fund, the Trustee shall be irrevocably and unconditionally obligated to disburse an equal amount of funds from the Project Fund to either the Mortgage Lender, the Borrower or the Title Company pursuant to a Requisition from the Project Fund as directed by the Mortgage Lender and the Borrower. Such disbursements shall not be made more frequently than once per month, unless approved by the Mortgage Lender.

Subject to the Trustee's obligation to return the Eligible Funds to the Mortgage Lender as set forth in this Section 5.02, the Trustee and the Issuer shall not, in any event, be responsible or liable to any person (other than the Borrower, but only in the case of the Trustee, and only in the event of a failure by the Trustee to make disbursements following request for disbursements in accordance with the provisions of this Section 5.02, when such failure is within the Trustee's sole control, and after receipt of written notice of such failure and a 3-day opportunity to cure such failure) for the disbursement of, or failure to disburse, moneys from the Project Fund or any part thereof, and no contractor, subcontractor or material or equipment

supplier or their respective successors and assigns shall have any right or claim against the Trustee or the Issuer under this Indenture.

Notwithstanding anything contained in this Indenture or any of the Borrower Documents to the contrary, if for any reason the Trustee is not able to disburse a corresponding amount of Bond proceeds from the Project Fund to or at the direction of the Mortgage Lender immediately following receipt of Eligible Funds from the Mortgage Lender for deposit into the Collateral Fund, the Trustee shall promptly wire transfer such funds back to the Mortgage Lender and not deposit same into the Collateral Fund.

Section 5.03 *Trustee May Rely on Requisitions and Certifications.* In making any disbursement from the Project Fund, the Trustee may rely on any Requisitions and certifications delivered to it pursuant to Section 5.02 hereof, and the Trustee shall be relieved of all liability with respect to making such disbursements in accordance with such Requisitions and certifications. In making any disbursements from the Costs of Issuance Fund, the Trustee may rely on any Requisitions delivered to it pursuant to Section 4.07 hereof, and the Trustee shall be relieved of all liability with respect to making such disbursements in accordance with such Requisitions.

Section 5.04 *Completion of Project.* The completion of the Project and the payment of all costs and expenses incident thereto shall be evidenced for the Project by the filing with the Trustee of (a) the Completion Certificate required by the provisions of Section 3.07 of the Loan Agreement and (b) a certificate signed by an Authorized Borrower Representative stating that all obligations and costs in connection with the Project and payable out of the Project Fund have been paid and discharged except for amounts retained by the Trustee for the payment of Costs of the Project not then due and payable or then in dispute as provided in the Loan Agreement; *provided, however*, that no amounts necessary to pay principal and interest on the Bonds at maturity shall be held by the Trustee in the Project Fund beyond the Maturity Date. Additionally, the Borrower has agreed pursuant to Section 3.08 of the Loan Agreement that in the event that there are insufficient moneys available in the Project Fund to pay the Costs of the Project, the Borrower will complete the Project and pay the portion of the Costs of the Project in excess of the moneys available therefor in the Project Fund.

Section 5.05 *Disposition of Moneys in Project Fund After Completion of Project.* Subject to the proviso in Section 5.04 hereof, as soon as practicable after the date of the certificate referred to in clause (b) of Section 5.04 hereof, any balance remaining in the Project Fund (other than the amounts retained by the Trustee referred to in Section 5.04 hereof) shall be deposited into the Bond Fund and used to pay principal of the Bonds when due. To the extent any moneys from any payments made by the Borrower pursuant to the Loan Agreement remain in the Project Fund or Bond Fund after there are no Bonds Outstanding and payment in full, or provision for payment, of the final Rebate Amount, the repayment of the Mortgage Loan and any remaining fees or expenses or other amounts owed to the Issuer or Trustee, such moneys will be paid directly to the Borrower to the extent such funds are not proceeds of the Bonds or otherwise restricted funds. If such remaining funds are proceeds of the Bonds or otherwise restricted, such funds shall be deposited by the Trustee into the Bond Fund.

Notwithstanding the provisions of this Section or any other provision herein set forth, but subject to the Trustee's right to rely on the Requisitions and certifications as provided Section 5.02 hereof, none of the moneys in the Project Fund will be disbursed for or be used to pay any cost, or to reimburse the Issuer or the Borrower for any cost, which is not permitted by the Act, the Code, the Loan Agreement or this Indenture.

ARTICLE VI

INVESTMENT OF FUNDS AND ACCOUNTS

Section 6.01 *Investment of Special Funds.* Amounts held by the Trustee in the Special Funds shall be invested and reinvested by the Trustee, and at all times held in Eligible Investments at the written direction of the Borrower. The Trustee may conclusively rely upon the Borrower's written instructions as to both the suitability and legality of the directed investments. If the Trustee is required to sell or otherwise dispose of any Eligible Investments prior to maturity at a price below par, the Borrower shall, at the Borrower's expense, deliver to the Trustee (i) a Cash Flow Projection and (ii) Eligible Funds in the amount set forth in such Cash Flow Projection, if any. Ratings of Eligible Investments shall be determined at the time of purchase of such Eligible Investments and without regard to ratings subcategories. The Trustee shall not be liable for losses on investments made in compliance with the provisions of this Indenture. In the absence of written direction of the Borrower, the Trustee shall not be responsible or liable for keeping the moneys held by it hereunder fully invested in Eligible Investments.

At no time shall the Borrower direct that (a) any funds constituting gross proceeds of the Bonds be used in any manner as would constitute failure of compliance with Section 148 of the Code or (b) any funds be held other than in Eligible Investments. Following the Closing Date, at the direction of the Borrower, the Trustee is permitted to purchase, sell or exchange Eligible Investments with a Cash Flow Projection. Notwithstanding anything herein to the contrary, (i) earnings received by the Trustee with respect to Eligible Investments purchased for the purpose of paying Bond Service Charges shall be held uninvested and (ii) Bond proceeds and the Negative Arbitrage Deposit shall be held uninvested until the Trustee has purchased, sold or exchanged Eligible Investments.

Investments of money in the Special Funds shall mature or be redeemable at the option of the Trustee at the times and in the amounts necessary to provide money to pay any amounts due on the Bonds as they become due on each Bond Payment Date (including each Mandatory Tender Date). In addition, investment of money in the Project Fund shall mature or be redeemable at the option of the Trustee at the times and in the amounts as may be necessary to make anticipated payments from the Project Fund. Any investment in the Special Funds that are not classified as Eligible Investments shall be re-invested in Governmental Obligations.

The Trustee shall sell or redeem investments credited to the Bond Fund to produce sufficient money applicable hereunder to and at times required for the purposes of paying any amounts due on the Bonds, and shall do so without necessity for any order on behalf of the Issuer or the Borrower and without restriction by reason of any order. An investment made from money credited to an applicable fund or account shall constitute part of that respective fund or account. All investment earnings from amounts on deposit in the Special Funds shall be credited to and become part of the Bond Fund to the extent necessary to pay the expected Bond Debt Service Charges to be paid on the Bonds to and including the Maturity Date and any excess amounts shall be transferred upon receipt to the Project Fund and used to pay Costs of the Project. All gains resulting from the sale of, or income from, any investment made from amounts on deposit in the Special Funds shall be credited to and become part of the Bond Fund. Following the Closing Date, at the direction of the Borrower, the Trustee is permitted to purchase, sell or exchange Eligible Investments with a Cash Flow Projection. Notwithstanding anything herein to the contrary, (i) earnings received by the Trustee with respect to Eligible Investments purchased for the purpose of paying Bond Debt Service Charges shall be held uninvested and (ii) Bond proceeds and the Negative Arbitrage Deposit shall be held uninvested until the Trustee has purchased, sold or exchanged Eligible Investments.

Any investments may be purchased from or sold to the Trustee, or any bank, trust company or savings and loan association which is an affiliate or subsidiary of the Trustee; *provided* that all such investments must be Eligible Investments.

The Trustee shall not be liable for losses on investments made in compliance with the provisions of this Indenture.

If the Trustee is required to sell or otherwise dispose of any Eligible Investments prior to maturity at a price below par in connection with a mandatory tender prior to the Initial Mandatory Tender Date, the Borrower shall, at the Borrower's expense, deliver to the Trustee (i) a Cash Flow Projection and (ii) Eligible Funds in the amount set forth in such Cash Flow Projection, if any.

Although the Issuer and the Borrower each recognizes that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, the Issuer and the Borrower hereby agree that confirmations of permitted investments are not required to be issued by the Trustee for each month in which a monthly statement is rendered. No statement need be rendered for any fund or account if no activity occurred in such fund or account during such month.

Section 6.02 *Investment of Other Funds.* Any amounts held as part of the Rebate Fund, Costs of Issuance Fund, Expense Fund or Mortgage Loan Prepayment Fund and not immediately required for the purposes thereof, shall be invested or reinvested by the Trustee, at the written direction of an Authorized Borrower Representative, in Governmental Obligations or in any money market or short term investment fund investing in or consisting solely of and secured by Governmental Obligations, including any such fund maintained by the Trustee or an affiliate thereof having maturities consonant with the need for funds as estimated by the Borrower. All investment earnings, gains resulting from the sale of, or income from, any investment made from amounts on deposit in any aforementioned funds shall be retained in the respective fund from which the investment was made.

Section 6.03 *Accounting for Termination of Investments; No Arbitrage.* In the event the moneys in the Project Fund or the Bond Fund are invested in any investment which fails to satisfy the requirements of Section 6.01, the Trustee shall, at the written direction of the Borrower, terminate any such investment, and the proceeds of such termination, shall be credited to the Project Fund or the Bond Fund, respectively.

If the Issuer is of the opinion, upon receipt of advice of Bond Counsel, that it is necessary to restrict or limit the yield on the investment of any moneys, securities or other obligations paid to or held by the Trustee hereunder in order to comply with the provisions of the Documents intended to prevent any Bonds from being considered "arbitrage bonds" within the meaning of Section 148 of the Code, an Authorized Officer of the Issuer may give written notice to the Trustee and the Borrower to such effect (together with appropriate written instructions), in which event the Trustee will take such action as is set forth in such written instructions to restrict or limit the yield on such investment so as to comply with Section 148 of the Code. The Trustee may conclusively rely on the direction of the Issuer in taking such action.

Section 6.04 *Trustee's Own Bond or Investment Department.* The Trustee may make any and all investments permitted under Section 6.01 and Section 6.02 through its own bond or investment department or that of any Affiliate, and may charge its ordinary and customary fees for such trades, including investment maintenance fees.

Section 6.05 *Moneys to be Held in Trust.* All moneys required to be deposited with or paid to the Trustee for account of the Bond Fund, the Collateral Fund or the Project Fund under any provision of this Indenture shall be held by the Trustee in trust, and shall, while held by the Trustee, constitute part of the Trust Estate and be subject to the lien and claim created by this Indenture.

All moneys required to be deposited with or paid to the Trustee for the account of the other funds created under Section 4.01 shall also be held by the Trustee in trust but shall not be part of the Trust Estate. The Trustee, acting in its capacity as Trustee and not as sponsor, advisor or manager in connection with any investments hereunder, shall not be liable for any loss arising from investments made in accordance with this Indenture, or for any loss resulting from the redemption or sale of any such investments as authorized by this Section.

Upon receipt of written instructions from an Authorized Officer, the Trustee shall exchange any coin or currency of the United States of America or Investment Securities held by it pursuant to this Indenture or any Supplemental Indenture for any other coin or currency of the United States of America or Investment Securities of like amount.

ARTICLE VII

GENERAL COVENANTS

Section 7.01 *Payment of Bonds.* Each and every covenant made in this Indenture, including all covenants made in the several sections of this Article, is predicated upon the condition that the Bonds are special, limited obligations of the Issuer payable solely from and secured by the Trust Estate pledged therefor. Nothing in the Bonds or in this Indenture shall be construed as pledging any other funds or assets of the Issuer.

The Issuer covenants that it will promptly cause the Trustee to pay, as provided herein, the principal of and interest on the Bonds when due solely from the Trust Estate at the place, on the date and in the manner provided herein and in the Bonds.

Section 7.02 *Performance of Covenants.* The Issuer covenants that it will faithfully perform at all times all of its covenants and undertakings contained in this Indenture, and in any and every Bond executed, authenticated and delivered hereunder, subject, however to the limitations set forth in Section 2.09. The Issuer represents that it is duly authorized under the laws of the State to issue the Bonds, to enter into this Indenture and the Loan Agreement and to pledge and assign the Revenues, and that, upon issuance, authentication, and delivery, the Bonds are and will be valid and enforceable special limited obligations of the Issuer according to the import thereof.

Section 7.03 *Priority of Pledge.* The Issuer covenants and agrees that it will not create any lien or claim upon the Revenues other than the liens and claims hereby created. Except for the assignment to the Trustee, the Issuer will not sell, lease or otherwise dispose of or encumber any of the Revenues or any other part of the Trust Estate.

Section 7.04 *Books and Documents Open to Inspection.* The Issuer covenants and agrees that all books and documents in its possession relating to the Bonds, the Project, and the moneys, revenues and receipts derived from the Project, if any, that shall at any time be in its possession, shall, within a reasonable time of a request by the Trustee, be open to inspection during the Issuer's regular business hours by such accountants or other agents as the Trustee may from time to time designate.

Section 7.05 *Tax-Exempt Status of Bonds.* The Issuer and the Trustee each agrees that it will not (a) take any action, (b) fail to take any action, or (c) make any use of the Project or the proceeds of the Bonds, which it knows would cause the interest on any of the Bonds to be or become includible in the gross income of the Owners thereof for federal income tax purposes (except for minimum or preference tax purposes or other indirect taxation). In connection with the foregoing, the Issuer and the Trustee may rely upon the advice of Bond Counsel.

ARTICLE VIII

DISCHARGE

Section 8.01 *Release of Indenture.* If (a) the Issuer shall pay all of the Outstanding Bonds, or shall cause them to be paid and discharged, or if there otherwise shall be paid to the Holders of the Outstanding Bonds, all Bond Debt Service Charges due or to become due thereon, and (b) provision also shall be made for the payment of all other sums payable hereunder or under the Loan Agreement, the Tax Agreement and the Note, then this Indenture shall cease, terminate and become null and void (except for those provisions surviving by reason of Section 8.03 hereof in the event the Bonds are deemed paid and discharged pursuant to Section 8.02 hereof), and the covenants, agreements and obligations of the Issuer hereunder shall be released, discharged and satisfied.

Thereupon, and subject to the provisions of Section 8.03 hereof if applicable,

(a) the Trustee shall release this Indenture (except for those provisions surviving by reason of Section 8.03 hereof in the event the Bonds are deemed paid and discharged pursuant to Section 8.02 hereof), and shall execute and deliver to the Issuer any instruments or documents in writing as shall be requisite to evidence that release and discharge or as reasonably may be requested by the Issuer;

(b) the Trustee shall release and satisfy the Note and deliver such release and satisfaction to the Borrower; and

(c) the Trustee shall assign and deliver to the Issuer any property subject at the time to the lien of this Indenture which then may be in its possession, except amounts in the Bond Fund required (i) to be deposited in the Loan Repayment Fund under Section 4.05 or paid to the Mortgage Lender under Section 4.11 hereof, or (ii) to be held by the Trustee under Section 4.04 hereof or otherwise for the payment of Bond Debt Service Charges.

Section 8.02 *Payment and Discharge of Bonds.* All or any part of the Bonds shall be deemed to have been paid and discharged within the meaning of this Indenture, including without limitation, Section 8.01 hereof, if:

(a) the Trustee as paying agent shall have received, in trust for and irrevocably committed thereto, sufficient money, or

(b) the Trustee shall have received (i) in trust for and irrevocably committed thereto, noncallable Governmental Obligations; (ii) certification by an independent public accounting firm of national reputation to the effect that the Governmental Obligations have such maturities or redemption dates and interest payment dates, and bear such interest, as will be sufficient together with any money to which reference is made in subparagraph (a) above, without further investment or reinvestment of either the principal amount thereof or the interest earnings therefrom (which

earnings are to be held likewise in trust and so committed, except as provided herein), for the payment of all Bond Debt Service Charges on those Bonds at their maturity; and (iii) an Opinion of Bond Counsel to the effect that the conditions of this Section 8.02 have been satisfied.

Any money held by the Trustee in accordance with the provisions of this Section may be invested by the Trustee only in noncallable Governmental Obligations having maturity dates, or having redemption dates which, at the option of the Holder of those obligations, shall be not later than the date or dates at which money will be required for the purposes described above. To the extent that any income or interest earned by, or increment to, the investments held under this Section is determined from time to time by the Trustee to be in excess of the amount required to be held by the Trustee for the purposes of this Section, that income, interest or increment shall be transferred at the time of that determination in the manner provided in Section 4.05 hereof for transfers of excess amounts remaining in the Bond Fund.

If any Bonds shall be deemed paid and discharged pursuant to this Section 8.02, then within 15 days after such Bonds are so deemed paid and discharged the Trustee shall cause a written notice to be given to each Holder as shown on the Register on the date on which such Bonds are deemed paid and discharged. Such notice shall state the numbers of the Bonds deemed paid and discharged or state that all Bonds are deemed paid and discharged, set forth a description of the obligations held pursuant to subparagraph (b) of the first paragraph of this Section 8.02.

Section 8.03 *Survival of Certain Provisions.*

Notwithstanding the foregoing, any provisions of the Bond Resolution and this Indenture which relate to the maturity of Bonds, interest payments and dates thereof, exchange, transfer and registration of Bonds, replacement of mutilated, destroyed, lost or stolen Bonds, the safekeeping and cancellation of Bonds, nonpresentment of Bonds, the holding of money in trust, and repayments to the Borrower from the Bond Fund, the rebate of money to the United States in accordance with Section 4.06 hereof, and the rights and duties of the Trustee in connection with all of the foregoing, shall remain in effect and be binding upon the Trustee and the Holders notwithstanding the release and discharge of this Indenture. The provisions of this Article shall survive the release, discharge and satisfaction of this Indenture. The obligations of the Borrower to pay the Trustee its fees and expenses hereunder shall survive the release, discharge and satisfaction of this Indenture.

ARTICLE IX

DEFAULTS AND REMEDIES

Section 9.01 *Events of Default and Acceleration.* The occurrence of any of the following events is hereby defined as and declared to be and to constitute an “Event of Default”:

(a) any interest on any Bond is not paid on the date on which the same becomes due;
or

(b) any principal of any Bond (including purchase price) is not paid on the date on which the same becomes due, whether at the stated maturity thereof, by redemption, tender, acceleration or otherwise; or

(c) a “Default” (as defined in Section 7.01 of the Loan Agreement) occurs and is continuing under the Loan Agreement for which all Loan Payments and all other amounts due under the Loan Agreement and the Note have been declared to be immediately due and payable; or

(d) the Issuer fails to duly and promptly perform, comply with, or observe any covenant, condition, agreement or provision (other than as specified in (a) or (b) of this Section 9.01) contained in the Bonds or in this Indenture on the part of the Issuer to be performed, and such failure shall continue for a period of ninety (90) days after written notice specifying such failure and requiring the same to be remedied shall have been given to the Issuer, the Borrower and the Investor Limited Partner by the Trustee, which notice may be given by the Trustee in its discretion and shall be given at the written request of the Holders of not less than 100% in principal amount of the Bonds then Outstanding; **provided, however**, that if such default be such that it is correctable but cannot be corrected within ninety (90) days, it shall not be an Event of Default if the Issuer, the Borrower or the Investor Limited Partner is taking appropriate corrective action to cure such failure and if such failure will not impair the security for the Loan or the Bonds.

If any Loan payment required under the Loan Agreement to avoid a default under (a) or (b) of this Section shall not have been received at the close of business on the last Business Day preceding the day on which payment must be made to avoid a default under such (a) or (b), the Trustee shall use its best efforts to give telephonic notice of such default to the Borrower, the Mortgage Lender and the Investor Limited Partner, which telephonic notice shall be confirmed by written notice to the Borrower. If any other default shall occur under the provisions of this Section, the Trustee shall, within five (5) days after having actual knowledge of such default, use its best efforts to give written notice of such default to the Issuer, the Borrower, the Mortgage Lender, the Investor Limited Partner and the Holders of the Bonds. A default or an Event of Default specified in (a) through (d) above shall occur even though the Trustee fails to give the notice required by this paragraph, the giving of such notice being intended solely to aid in the enforcement of the rights of Bondholders and not in limitation of such rights.

If an Event of Default specified in (a) or (b) of this Section 9.01 shall occur and be continuing, the Trustee shall declare the principal of all Bonds then Outstanding to be immediately due and payable by notice in writing to that effect delivered to the Issuer, the Investor Limited Partner, the Mortgage Lender and the Borrower, and upon such declaration such principal, together with interest accrued thereon, shall become immediately due and payable at the place of payment provided therein, anything in this Indenture or in the Bonds to the contrary notwithstanding.

If an Event of Default specified in (c) or (d) of this Section 9.01 shall occur and be continuing, the Trustee, upon written request of the Holders of a majority in principal amount of the Bonds then Outstanding shall declare the principal of all Bonds then Outstanding to be immediately due and payable by notice in writing to that effect delivered to the Issuer, the Investor Limited Partner, the Mortgage Lender and the Borrower, and upon such declaration such principal, together with interest accrued thereon, shall become immediately due and payable at the place of payment provided therein, anything in this Indenture or in the Bonds to the contrary notwithstanding.

The Investor Limited Partner or Mortgage Lender shall be entitled (but shall not be obligated) at its election to cure any Event of Default hereunder for which a cure right is provided to the Borrower upon the same terms and conditions and within the same time frame provided to the Borrower. The Issuer and the Trustee agree that cure of any default or Event of Default made or tendered by the Investor Limited Partner or Mortgage Lender shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower.

Section 9.02 Trustee to Enforce Rights of Issuer. Only in accordance with the provisions of this Indenture, the Trustee, as the assignee of all the right, title and interest of the Issuer in and to each of the documents constituting a part of the Trust Estate (except the Reserved Rights of the Issuer), may enforce the rights granted to the Issuer pursuant to such documents. In the enforcement of any rights or remedies under such documents, no provision of such documents shall require, and none shall be construed to require,

that the Trustee post a bond or establish any surety of any kind as a condition precedent to exercising any such rights or remedies.

Section 9.03 Remedies in Addition to Acceleration. Upon the occurrence of, and during the continuance of, any Event of Default, then and in every such case the Trustee in its discretion may, and upon the written request of the Holders of not less than 51% in principal amount of the Bonds then Outstanding and receipt of satisfactory indemnity shall (in addition to its right or duty to accelerate as provided in Section 9.01):

- (a) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Bondholders, and require the Issuer or the Borrower to carry out any agreements with or for the benefit of the Bondholders and to perform its or their duties under the Act and the Documents;
- (b) bring suit upon the Bonds; or
- (c) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Bondholders.

Section 9.04 Termination of Proceedings. In case any proceeding taken by the Trustee on account of any Default or Event of Default shall have been discontinued or abandoned for any reason, the default or Event of Default has been cured, or shall have been determined adversely to the Trustee, then and in every such case, the Issuer, the Trustee, the Bondholders, and the Borrower shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Trustee shall continue as though no such proceeding had been taken.

Section 9.05 Right of Bondholders to Direct Proceedings. No Holder of any of the Bonds shall have any right to institute any suit, action or proceeding in equity or at law for the execution of any trust hereunder, or any other remedy hereunder or on the Bonds, unless such Holder previously shall have given to the Trustee written notice of an Event of Default as hereinabove provided and unless also the Holders of not less than 51% in principal amount of the Bonds then outstanding shall have made written request of the Trustee to do so, after the right to exercise such powers or rights of action, as the case may be, shall have accrued, and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers hereinabove granted, or to institute such action, suit or proceeding in its or their name; nor unless there also shall have been offered to the Trustee security and satisfactory indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee shall not have complied with such request within a reasonable time; and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the trusts of this Indenture or for any other remedy hereunder; it being understood and intended that no one or more Holders of the Bonds hereby secured shall have any right in any manner whatever by its or their action to affect, disturb or prejudice the security of this Indenture, or to enforce any right hereunder or under the Bonds, except in the manner herein provided and for the equal benefit of all Holders of Outstanding Bonds. For purposes of the foregoing sentence, the Trustee shall be deemed to have failed to act within a reasonable time if it fails to take action within sixty (60) days after receipt of notice and compliance with the foregoing terms and conditions, whereupon, the Holders of 51% aggregate principal amount of the Bonds may take such action in the place of the Trustee. Nothing contained in this Indenture shall, however, affect or impair the right of any Holder of Bonds to enforce the payment of the principal of and interest on any Bond at and after the maturity thereof, or the obligation of the Issuer to pay the principal of and interest, on each of the Bonds issued hereunder to the respective Holders of the Bonds at the time, place, from the source and in the manner herein and in such Bonds expressed.

Section 9.06 Remedies Vested in Trustee. All rights of action under this Indenture or under any of the Bonds secured hereby which are enforceable by the Trustee may be enforced by it without the possession of any of the Bonds, or the production thereof in any trial or other proceeding relating thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in its name for the equal and ratable benefit of the Holders of the Bonds, subject to the provisions of this Indenture.

Section 9.07 Remedies Non-Exclusive and Cumulative. No remedy herein conferred upon or reserved to the Trustee or to the Holders of the Bonds is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 9.08 Delays or Omissions by Trustee. No delay or omission of the Trustee or of any Holder of the Bonds to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default, or any acquiescence therein; and every power and remedy given by this Article IX to the Trustee and to the Holders of the Bonds, respectively, may be exercised from time to time and as often as may be deemed expedient.

Section 9.09 Application of Moneys. All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article IX shall, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the fees, expenses and advances incurred or made by the Trustee and the Issuer with respect thereto, be deposited in the Bond Fund and all moneys so deposited in the Bond Fund during the continuance of an Event of Default (other than moneys for the payment of Bonds which have matured or otherwise become payable prior to such Event of Default or for the payment of interest due prior to such Event of Default, which moneys shall continue to be held for such payments) shall be applied as follows:

(a) Unless the principal of all of the Bonds shall have become, or shall have been declared to be, due and payable, all such moneys shall be applied:

First - To the payment to the persons entitled thereto of all installments of interest then due on the Bonds, in the direct order of the maturity of the installments of such interest and, if the amounts available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or privilege;

Second - To the payment to the persons entitled thereto of the unpaid principal, on any of the Bonds, which shall have become due (other than Bonds which have matured or otherwise become payable prior to such Event of Default and moneys for the payment of which are held in the Bond Fund or otherwise held by the Trustee), and if the amount available shall not be sufficient to pay in full the amount of principal, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto, without any discrimination or privilege;

Third - To the payment to the persons entitled thereto of all other of the Issuer's Obligations and the Borrower's Obligations, and, if the amount available shall not be sufficient to pay such Obligations in full, then to the payment ratably, according to the amounts then due, to the persons entitled thereto without discrimination or privilege; and

Fourth - The remainder, if any, shall be paid over to the Borrower, its successors or assigns, or whomever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

(b) If the principal of all the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal of and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest to the persons entitled thereto without any discrimination or privilege. Any remaining funds shall be applied in accordance with the paragraphs designated “*Third*” and “*Fourth*” of subsection (a) above.

Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which such application is to be made, and upon such date interest on the amounts or principal to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the Holder of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Section 9.10 *Severability of Remedies.* It is the purpose and intention of this Article to provide rights and remedies to the Trustee and Bondholders which may be lawfully granted under the provisions of the Act, but should any right or remedy herein granted be held to be unlawful, the Trustee and the Bondholders shall be entitled, as above set forth, to every other right and remedy provided in this Indenture and by law.

ARTICLE X

THE TRUSTEE AND REMARKETING AGENT

Section 10.01 *Acceptance of Trusts.* The Trustee hereby accepts the trusts hereby created, but only upon the additional terms set forth in this Article, to all of which the Issuer agrees and the respective Holders of the Bonds agree upon and by their acceptance of delivery of any of the Bonds. The Trustee, prior to the occurrence of an event of default and after the curing of all events of default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations should be read into this Indenture against the Trustee. If any event of default under this Indenture shall have occurred and be continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and shall use the same degree of care as a prudent person would exercise or use in the circumstances in the conduct of such prudent person's own affairs.

Section 10.02 *Trustee Not Responsible for Recitals, Statements and Representations.* Except as otherwise expressly provided herein, any representations or warranties by the Issuer in this Indenture or in the Bonds contained shall be taken and construed as made by and on the part of the Issuer, and not by the Trustee, and the Trustee does not assume, and shall not have, any responsibility or obligation for the correctness of any thereof.

Except for information, if any, provided by the Trustee concerning the Trustee, the Trustee shall have no responsibility for any information in any Official Statement or other disclosure material distributed with respect to the Bonds, and the Trustee shall have no responsibility for compliance with any state or federal securities laws in connection with the Bonds.

Section 10.03 *Action by Trustee Through and Reliance Upon Others.* The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, receivers or employees and shall not be responsible for any willful misconduct or gross negligence on the part of any attorney, agent, or receiver so appointed. The Trustee shall be entitled to advice of counsel concerning all matters of trust and its duties hereunder, and the written advice or opinion of such counsel shall be full and complete authorization and protection for any action taken or omitted by it in good faith and in accordance with such advice or opinion. The Trustee may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may be reasonably employed in connection with the trusts hereof, such compensation to be paid as described under Section 10.04 hereof. The Trustee shall not be answerable for the exercise of any discretion or power under this Indenture or for anything whatever in connection with the trust, except only for negligence or willful misconduct with respect to its responsibilities hereunder.

Except for fraud and willful misconduct, no personal recourse may be taken, directly or indirectly, against any officer, director, employee or agent of the Trustee with respect to the obligations of the Trustee under this Indenture or any certificate or other writing delivered in connection therewith.

The Trustee's immunities and protections from liability and its right to indemnification in connection with the performance of its duties and functions under this Indenture shall extend to the Trustee's officers, directors, agents and employees. The Trustee's immunities and protections from liability and its right to payment of compensation and indemnification in connection with performance of its duties and functions under this Indenture shall survive the Trustee's resignation or removal and the final payment of the Bonds..

Section 10.04 *Fees and Expenses of Trustee.* The Trustee shall be entitled to payment and/or reimbursement of such fees as the Trustee, the Issuer and the Borrower shall agree upon, or in the absence of such agreement, to payment and/or reimbursement of reasonable fees, for its services rendered hereunder, and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Trustee in connection with such services. Any amounts payable to the Trustee pursuant to this Section 10.04 shall be payable upon demand.

Section 10.05 *Trustee's Obligations to Take or Have Notice of Default.* The Trustee shall not be required to take notice, or to be deemed to have notice, of any default under this Indenture other than a default under Section 9.01(a) or Section 9.01(b) hereof, unless specifically notified in writing of such default by the Issuer or by the Holders of not less than 25% in principal amount of the Bonds then Outstanding. The Trustee may, however, at any time, in its discretion, require of the Issuer information and advice as to the performance of any of the covenants, conditions and agreements contained herein.

Section 10.06 *Duties of Trustee.*

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise its rights and powers hereunder and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default,

- (1) The Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and
- (2) In the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed, upon certificates

or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee shall examine those certificates and opinions to determine whether they conform to the requirements of this Indenture.

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that

- (i) This paragraph does not limit the effect of paragraph (b) of this Section,
- (ii) The Trustee shall not be liable for any error of judgment made in good faith by a responsible officer of the Trustee, unless it is proved that the Trustee was grossly negligent in ascertaining the pertinent facts,
- (iii) The Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it in accordance with this Indenture, and
- (iv) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers.

(d) The Trustee may refuse to perform any discretionary duty or exercise any discretionary right or power hereunder unless it receives indemnity satisfactory to it against any loss, liability or expense, but the Trustee shall not require indemnity as a condition to declaring the principal of and interest on the Bonds to be due immediately hereunder.

(e) The Trustee's immunities and protections from liability and its right to indemnification in connection with the performance of its duties under this Indenture shall extend to the Trustee's officers, directors, agents, attorneys and employees. Such immunities and protections and right to indemnification, together with the Trustee's right to payment of compensation, shall survive the Trustee's resignation or removal, the defeasance or discharge of this Indenture and final payment of the Bonds.

(f) Except as otherwise provided in this Article, the Trustee shall be under no obligation to take any action in respect of any default or otherwise, or toward the execution or enforcement of any of the trusts hereby created, or to institute, appear in or defend any suit or other proceeding in connection therewith, unless requested in writing to do so by the Holders of not less than 51% in principal amount of the Bonds then Outstanding, and if in its opinion such action may tend to involve it in expense or liability, unless furnished, from time to time as often as it may require, with security and satisfactory indemnity. The foregoing provisions are intended only for the protection of the Trustee, and shall not affect any discretion or power given by any provision of this Indenture to the Trustee to take action in respect of any default without such notice or request from the Bondholders, or without such security or indemnity.

(g) Upon written request by the Rating Agency, the Trustee shall furnish to the Rating Agency the balance of funds on hand with the Trustee and other information as may be reasonably required to maintain the rating on the Bonds.

(h) Every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a) through (g) of this Section.

Section 10.07 *Trustee May Make Advances to Effect Performance.* If the Issuer shall fail to perform any of the covenants or agreements contained in this Indenture other than the covenants or agreements in respect of the payment of the principal of and interest on the Bonds, the Trustee may, in its absolute discretion and without notice to the Bondholders, at any time and from time to time, make advances to effect performance of the same on behalf of the Issuer, but the Trustee shall be under no obligation to do so; and any and all moneys paid or advanced by the Trustee for any such purposes shall be a claim in favor of the Trustee upon the Trust Estate prior to the claim of the Bonds; but no such advance shall operate to relieve the Issuer from any default hereunder.

Section 10.08 *Trustee May Rely Upon Instruments and Instructions.* The Trustee shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any indenture, notice, telegram, request, consent, waiver, certificate, statement, affidavit, voucher, bond, requisition or other paper or document which it shall in good faith believe to be genuine and to have been passed or signed by the proper board, body or person or to have been prepared and furnished pursuant to any of the provisions of this Indenture or the Documents, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements, and shall be protected and shall incur no liability in acting or proceeding in good faith in reliance thereon, except as otherwise provided in Section 10.06(c)(ii) hereof. The Trustee shall not be bound to recognize any person as a Holder of any Bond or to take any action at his request unless such Bond shall be deposited with the Trustee or satisfactory evidence of the ownership of such Bond shall be furnished to the Trustee. The Trustee shall have the right to accept and act upon instructions, including funds transfer instructions (“**Instructions**”) given pursuant to this Indenture and delivered using Electronic Means; **provided, however**, that the Borrower shall provide to the Trustee an incumbency certificate listing officers with the authority to provide such Instructions (as used in this Section 10.08, “**Authorized Officers**”) and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the Borrower whenever a person is to be added or deleted from the listing. If the Borrower elects to give the Trustee Instructions using Electronic Means and the Trustee in its discretion elects to act upon such Instructions, the Trustee’s understanding of such Instructions shall be deemed controlling. The Borrower understands and agrees that the Trustee cannot determine the identity of the actual sender of such Instructions and that the Trustee shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Trustee have been sent by such Authorized Officer. The Borrower shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Trustee and that the Borrower and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Borrower. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee’s reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction, provided the Trustee shall call the Borrower to confirm any change in the Instructions most recently provided to the Trustee pursuant to this Section. The Borrower agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Trustee and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Borrower; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures. Notwithstanding the foregoing, the Trustee shall attempt to confirm by telephone call back to the applicable Authorized Person instructions delivered to it by Electronic Means (i) directing withdrawals greater than \$50,000 to parties other than the Mortgage Lender, the Borrower or either parties’ affiliates or (ii) changing deposit account information previously provided to the Trustee or information concerning Authorized Persons.

Section 10.09 *Trustee May Own and Deal in Bonds and Deal with Issuer and Borrower.* The Trustee may in good faith buy, sell, own, hold and deal in any of the Bonds issued hereunder and secured by this Indenture, and may join in any action which any Bondholder may be entitled to take with like effect as if the Trustee were not a party to this Indenture. The Trustee, either as principal or agent, may also engage in or be interested in any financial or other transaction with the Issuer or the Borrower or any related entity, and may act as depository, trustee, or agent for any committee or body of Holders of the Bonds secured hereby or other obligations of the Issuer as freely as if it were not Trustee hereunder.

Section 10.10 *Financial Liability of the Trustee.* No provision of this Indenture will require the Trustee to expend or risk its own funds or otherwise incur or risk any financial liability in the performance of any of its duties under this Indenture, or in the exercise of any of its rights or powers if it will have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

Except as may otherwise be provided in this Indenture, the Trustee will have the right to demand, in respect to the authentication of any Bonds or the release of any property, any showings, certificates, opinions (including Opinions of Counsel), appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof or of the Loan Agreement required as a condition of such action by the Trustee deemed desirable for the purpose of establishing the right of the Issuer or the Borrower to the authentication of any Bonds, or the release of any property.

Section 10.11 *Trustee May Construe Ambiguous or Inconsistent Provisions.* The Trustee may construe any of the provisions of the Indenture insofar as the same may appear to be ambiguous or inconsistent with any other provisions hereof, and any construction of any such provisions hereof by the Trustee in good faith shall be binding upon the Bondholders.

Section 10.12 *Resignation of Trustee.* The Trustee may at any time resign and be discharged of the duties and obligations created by this Indenture by giving not less than 60 days written notice to the Issuer (with a copy to the Borrower and the Investor Limited Partner) specifying the date when such resignation shall take effect and such resignation shall take effect upon the day specified in such notice unless previously a successor shall have been appointed, in which event such resignation shall take effect immediately on the appointment of such successor, provided that such resignation shall not take effect unless and until a successor shall have been appointed.

Section 10.13 *Removal of Trustee.* The Trustee shall be removed by the Issuer within 30 days if so requested by an instrument or concurrent instruments in writing, filed with the Trustee and the Issuer, and signed by the Holders of a majority in principal amount of the Bonds then Outstanding or their attorney-in-fact duly authorized, excluding any Bonds held by or for the account of the Issuer. The Issuer may also remove the Trustee at any time for cause or breach of trust or for acting or proceeding in violation of, or failing to act or proceed in accordance with any provision of this Indenture with respect to the duties and obligations of the Trustee by filing with the Trustee an instrument signed by an authorized officer of the Issuer. A copy of each such instrument providing for any such removal shall be delivered by the Issuer to any Bondholder who shall have filed its name and address with the Issuer and, if requested, to the Borrower and the Investor Limited Partner; provided that such removal shall not take effect unless and until a successor shall have been appointed.

Section 10.14 *Appointment of Successor Trustee.* In case at any time the Trustee shall resign or shall be removed or shall become incapable of acting, or shall be adjudged as bankrupt or insolvent, or if a receiver, liquidator or conservator of the Trustee, or of its property, shall be appointed, or if any public officer shall take charge or control of the Trustee, or of its property or affairs, the Issuer covenants and agrees that it will thereupon appoint a successor Trustee.

If in a proper case no appointment of a successor Trustee shall be made pursuant to the foregoing provision of this Section within 45 days after the Trustee shall have given to the Issuer written notice, as provided in Section 10.12 or after a vacancy in the office of the Trustee shall have occurred by reason of its inability to act, the Trustee or the Holder of any Bond may apply to any court of competent jurisdiction to appoint a successor Trustee. Said court may thereupon, after such notice, if any, as such court may deem proper, prescribe and appoint a successor Trustee.

Any successor Trustee appointed under the provision of this Section 10.14 in succession to the Trustee shall be a bank or trust company or national banking association with trust powers, having a combined capital, surplus and undivided profits of at least \$50,000,000 if there be such a bank or trust company or national bank association willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Indenture.

Section 10.15 *Appointment of Successor Trustee by Court.* In case at any time the Trustee shall resign and no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Article prior to the date specified in the notice of resignation as the date when such resignation shall take effect, the retiring Trustee may forthwith apply to a court of competent jurisdiction for the appointment of a successor Trustee. If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Article within thirty days after a vacancy shall have occurred in the office of Trustee, the Holder of any Bond may apply to any court of competent jurisdiction to appoint a successor Trustee. Such court may thereupon, after such notice, if any, as it may deem proper, prescribe and appoint a successor Trustee. A successor Trustee under Sections 10.14 and 10.15 shall notify the Borrower and the Investor Limited Partner, in writing, after being so appointed.

Section 10.16 *Acceptance of Trust by Successor Trustee.* Any successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Issuer and the Rating Agency an instrument accepting such appointment hereunder, and thereupon such successor Trustee, without further act, deed or conveyance, shall become duly vested with all the estates, property, rights, powers, trust, duties and obligations of its predecessor in the trust hereunder, with like effect as if originally named Trustee herein. Upon request of such Trustee, the Trustee ceasing to act and the Issuer shall execute and deliver an instrument transferring to such successor Trustee all the estates, property, rights, powers and trusts hereunder of the Trustee so ceasing to act, and the Trustee so ceasing to act shall pay over to the successor Trustee all moneys and other assets at the time held by it hereunder.

Section 10.17 *Merger or Consolidation of Trustee With Another Corporation.* Any corporation into which any Trustee hereunder may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which any Trustee hereunder shall be a party, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, shall be the successor Trustee under this Indenture without the execution or filing of any paper or any further act on the part of the parties hereto, anything herein to the contrary notwithstanding.

Section 10.18 *Notice of an Event of Default.* Notwithstanding anything herein to the contrary, upon the occurrence of an Event of Default known to the Trustee, the Trustee shall, pursuant to Section 9.01 hereof, give written notice thereof to the Issuer, the Borrower, the Mortgage Lender, the Investor Limited Partner, the Rating Agency and to each Bondholder at its last address appearing upon the registration books of the Issuer kept by the Trustee unless such Event of Default shall have been cured before the giving of such notice.

Section 10.19 *Trustee May Intervene.* In any judicial proceeding to which the Issuer is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of Holders of the Bonds, the Trustee may intervene on behalf of the Holders of the Bonds and shall, upon receipt of satisfactory indemnity do so if requested in writing by the Holders of not less than 51% in principal amount of Bonds then outstanding, if such intervention is permitted by the court having jurisdiction in the premises.

Section 10.20 *Unclaimed Moneys.* Anything in this Indenture to the contrary notwithstanding, any moneys held by the Trustee in trust for the payment and discharge of any Bonds and which remain unclaimed by the Holder of a Bond not presented for payment or check or draft not cashed for a period of four years after the due date thereof, shall, subject to any applicable escheat laws, be paid to the Borrower free of any trust or lien, upon a request in writing by the Borrower. Thereafter, the Holder of that Bond shall look only to the Borrower for payment and then only to the amounts so received by the Borrower without any interest thereon, and the Trustee shall not have any responsibility with respect to such money.

Section 10.21 *Appointment of Co-Trustee.* It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the law of the State) denying or restricting the right of banking corporations or associations to transact business as a trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture or the Loan Agreement, and in particular in case of the enforcement thereof on default, or in the case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties, in trust, as herein granted, or take any action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an additional individual or institution as a separate or co-trustee. The following provisions of this Section are adopted to these ends.

In the event that the Trustee appoints an additional individual or institution as a separate or co-trustee, each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in such separate or co-trustee but only to the extent necessary to enable such separate or co-trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or co-trustee shall run to and be enforceable by either of them.

Approval in writing from the Issuer shall be required prior to the appointment of the separate or co-trustee by the Trustee. All such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer at the expense of the Borrower. In case any separate or co-trustee or a successor to either shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate or co-trustee, so far as permitted by law and so approved by the Issuer, shall vest in and be exercised by the Trustee until the appointment of a successor to such separate or co-trustee. The Trustee shall notify the Borrower and the Investor Limited Partner, in writing, of any co-trustee appointed under this Section.

Section 10.22 *The Remarketing Agent.*

The Remarketing Agent identified in Section 1.01 hereof shall serve as the Remarketing Agent for the Bonds. The Remarketing Agent shall designate to the Trustee its Designated Office and signify its acceptance of the duties and obligations imposed upon it hereunder by a written instrument of acceptance delivered to the Issuer, the Borrower the Investor Limited Partner and the Trustee. In addition, the Remarketing Agent will agree particularly to:

(a) keep such records relating to its computations of interest rates for the Bonds as shall be consistent with prudent industry practice and to make such records available for inspection by the Issuer, the Trustee, the Investor Limited Partner and the Borrower at all reasonable times; and

(b) perform all of its functions and duties under this Indenture.

The Remarketing Agent shall be entitled to advice of legal counsel on any matter relating to the Remarketing Agent's obligations hereunder and shall be entitled to act upon the opinion of such counsel in the exercise of reasonable care in fulfilling such obligations.

Section 10.23 *Qualification of Remarketing Agent.*

The Remarketing Agent shall be a member in good standing of the Financial Industry Regulatory Authority having a capitalization of at least \$5,000,000, or shall have a line of credit with a commercial bank in the amount of at least \$5,000,000, and shall be authorized by law to perform all the duties imposed upon it by this Indenture.

Subject to the terms of the Remarketing Agreement, the Remarketing Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least sixty (60) days' notice to the Issuer, the Trustee, the Borrower and the Investor Limited Partner. The Remarketing Agent may be removed by the Issuer without cause upon at least sixty (60) days' notice and for cause at any time at the direction or with the consent (which consent shall not be unreasonably withheld) of the Borrower by an instrument, signed by an Authorized Representative and filed with the Remarketing Agent, the Trustee, the Borrower and the Investor Limited Partner. The Issuer shall appoint a successor Remarketing Agent, with the consent (which consent shall not be unreasonably withheld) of the Borrower. Notwithstanding the foregoing, the Remarketing Agent shall not resign or be removed during the sixty-day period preceding any Remarketing Date; excepting only at the direction of the Borrower for cause.

Upon any resignation or removal of the Remarketing Agent, the departing Remarketing Agent shall pay over, assign and deliver any money and Bonds held by it in such capacity to its successor or, if there be no successor, to the Trustee to be held in a separate account to be established for such purpose hereunder.

In the event that the Remarketing Agent shall resign or be removed, or be dissolved, or if the property or affairs of the Remarketing Agent shall be taken under the control of any state or federal court or administrative body because of a bankruptcy or insolvency, or for any other reason, the Issuer shall appoint a successor Remarketing Agent, with the consent (which consent shall not be unreasonably withheld) of the Borrower.

The Trustee, within 30 days of the resignation or removal of the Remarketing Agent or the appointment of a successor Remarketing Agent, shall give notice thereof by registered or certified mail to the Rating Agency (if the Bonds are then rated) and to the Holders of the Bonds.

Section 10.24 *Notices to Rating Agency and Remarketing Notice Parties.* The Trustee shall notify the Rating Agency and the Remarketing Notice Parties of (a) the occurrence of an Event of Default of which the Trustee has actual notice, (b) the occurrence of any monetary or other material default under the Loan of which the Trustee has actual notice, (c) any change in the identity of the Trustee, (d) any amendments, modifications, supplements or changes to this Indenture, the Loan Agreement, the Note or the Bonds, including any extension of principal or modification of interest or redemption premium due on any of the Bonds, in each case only in the event the Trustee has actual notice, (e) any change or proposed change in the structure or identity of the Borrower of which the Trustee has actual knowledge, (f) any

change or notification of proposed change of the Mandatory Tender Date or Remarketing Date, (g) any partial prepayment of the Loan or the giving of notice of the call for redemption of any Bonds, (h) any change in the investment of funds subject to the lien of this Indenture, (i) any defeasance or acceleration of the Bonds hereunder, (j) any change in the Remarketing Agent or the Mortgage Lender of which the Trustee has actual knowledge, or (k) any sale of Eligible Investments below par, as shown in a Cash Flow Projection delivered to the Rating Agency prior to the sale date.

Section 10.25 *Financing Statements.* Pursuant to Sections 5.05 and 5.10 of the Loan Agreement, the Borrower shall perfect, or shall cause to be perfected any security interest created hereunder by the filing of financing statements which fully comply with the applicable State law. Notwithstanding anything to the contrary contained herein, the Trustee shall not be responsible for any initial filings of any financing statements or the information contained therein (including the exhibits thereto), the perfection of any such security interests, or the accuracy or sufficiency of any description of collateral in such initial filings or for filing any modifications or amendments to the initial filings required by any amendments to Article 9 of the Uniform Commercial Code. The Trustee shall cause to be filed a continuation statement with respect to each Uniform Commercial Code financing statement relating to the Bonds which was filed at the time of the issuance thereof, in such manner and in such places as the initial filings were made, provided that a copy of the filed original financing statement is timely delivered to the Trustee. Unless the Trustee shall have been notified in writing by the Issuer that the initial filing or description of collateral was or has become defective, the Trustee shall be fully protected in (i) relying on such initial filing and descriptions in filing any financing or continuation statements or modifications thereto pursuant to this Section 10.26 and (ii) filing any continuation statements in the same filing offices as the initial filings were made. The Borrower shall be responsible for the reasonable costs incurred by the Trustee in the preparation and filing of all continuation statements hereunder.

Section 10.26 *Trustee Delivery of Information to Borrower and Investor Limited Partner.* The Trustee shall furnish to the Borrower and the Investor Limited Partner all information reasonably requested by the Borrower or the Investor Limited Partner with respect to the Bonds and the investment of Funds and Accounts maintained by the Trustee hereunder.

ARTICLE XI

MODIFICATION OF INDENTURE AND OTHER DOCUMENTS

Section 11.01 *Limitation on Amendments to this Indenture.* This Indenture shall not be modified or amended in any respect except as provided in accordance with and subject to the provisions of this Article.

Section 11.02 *Amendments to Indenture Not Requiring Consent of Bondholders.*

(a) The Issuer and the Trustee may, from time to time and at any time, without the consent of Bondholders, enter into agreements supplemental to this Indenture (each, a “Supplemental Indenture”) as follows:

(i) to specify and determine any matters and things relative to Bonds which shall not materially adversely affect the interest of the Bondholders;

(ii) to cure any formal defect, omission or ambiguity in this Indenture if such action does not materially adversely affect the rights of the Bondholders;

(iii) to grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers, authority or security which may lawfully be granted or conferred and which are not contrary to or inconsistent with this Indenture as heretofore in effect;

(iv) to add to the covenants and agreements of the Issuer in this Indenture other covenants and agreements to be observed by the Issuer which are not contrary to or inconsistent with this Indenture as theretofore in effect;

(v) to add to the limitations and restrictions in this Indenture other limitations and restrictions to be observed by the Issuer which are not contrary to or inconsistent with this Indenture as theretofore in effect;

(vi) to confirm, as further assurance, any pledge under and the subjection to any claim, lien or pledge created, or to be created by, this Indenture, of the Revenues or of any other moneys, securities or funds;

(vii) to evidence any succession to the Issuer and the assumption by its successor of the covenants, agreements and obligations of the Issuer under this Indenture, the Loan Agreement and the Bonds;

(viii) to facilitate (i) the transfer of Bonds issued by the Issuer under this Indenture and held in Book Entry Form from one Securities Depository to another and the succession of Securities Depositories, or (ii) the withdrawal of Bonds issued by the Issuer under this Indenture and delivered to a Securities Depository for use in a Book Entry System and the issuance of replacement Bonds in fully registered form and in the form of physical certificates to others than a Securities Depository;

(ix) to permit the Trustee to comply with any obligations imposed upon it by law;

(x) to specify further the duties and responsibilities of the Trustee;

(xi) to achieve compliance of this Indenture with any applicable federal securities or tax law;

(xii) to make amendments to the provisions hereof relating to arbitrage matters under Section 148 of the Code, if, in the opinion of Bond Counsel, those amendments would not adversely affect the Federal Tax Status of the Bonds which amendments may, among other things, change the responsibility for making the relevant calculations, provided that in no event shall such amendment delegate to the Trustee, without its consent, in its sole discretion the obligation to make or perform the calculations required under Section 148 of the Code; or

(xiii) to modify, amend or supplement this Indenture in any respect which, in the judgment of the Trustee, is not materially adverse to the interests of the Owners of the Bonds.

(b) Before the Issuer shall enter into any Supplemental Indenture pursuant to this Section, there shall have been filed with the Trustee an opinion of Bond Counsel stating that (1) such Supplemental Indenture is authorized or permitted by this Indenture and complies with its terms, and (2) the effectiveness of the Supplemental Indenture will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes.

(c) The Trustee shall send written notice to the Borrower, the Mortgage Lender, the Investor Limited Partner and the Rating Agency of any amendment to this Indenture and, if requested, copies of any such amendments.

(d) Notwithstanding the foregoing, the Issuer and the Trustee may not, without the prior written consent of Mortgage Lender, amend this Indenture in any manner that adversely affects the rights and interests of the Mortgage Lender to receive notices hereunder or the rights of the Mortgage Lender with respect to any of the trust funds established under Section 4.01, including with respect to Sections 4.08, 4.11 and 5.02.

Section 11.03 *Amendments to Indenture Requiring Consent of Bondholders.*

(a) Subject to the terms and provisions contained in this Section and not otherwise, the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding shall have the right, from time to time, to consent to and approve the execution and delivery by the Issuer and the Trustee of any Supplemental Indenture as shall be deemed necessary or desirable by the Issuer and the Trustee for the purposes of modifying, altering, amending, adding to or rescinding any of the terms or provisions contained in this Indenture; ***provided, however,*** that, unless approved in writing by the Holders of all of the Bonds then Outstanding, nothing herein contained shall permit, or be construed as permitting, (i) a change in the terms of maturity of the principal of or the interest on any Outstanding Bond, or a reduction in the principal amount of any Outstanding Bond or the rate of interest thereon, or (ii) the creation of a claim or lien upon, or a pledge or assignment of, the Trust Estate ranking prior to or on a parity with the claim, lien, assignment or pledge created by this Indenture, or the release of the Trust Estate or any part thereof (except to the extent permitted pursuant to the Documents), or (iii) a preference or priority of any Bond or Bonds over any other Bond or Bonds, or (iv) a reduction in the aggregate principal amount of the Bonds required for any action or consent by Bondholders set forth in this Indenture, including (without limitation) that required for consent to such Supplemental Indentures. This Section shall not limit or otherwise affect the ability of the Issuer to enter into Supplemental Indentures without the consent of the Bondholders pursuant to Section 11.02 hereof.

(b) If at any time the Issuer and the Trustee shall determine to enter into any Supplemental Indenture for any of the purposes of this Section, the Trustee shall cause written notice of the proposed Supplemental Indenture to be given to all Holders of the Bonds; ***provided, however,*** that failure to give such notice or any defect therein, shall not affect the validity of any proceedings pursuant hereto. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that a copy thereof is on file at the Trust Office for inspection by all Bondholders.

(c) Within one hundred twenty (120) days after the date of giving such notice, the Issuer and the Trustee may enter into such Supplemental Indenture in substantially the form described in such notice only if there shall have first been filed with the Issuer (i) the written consents of Holders of not less than a majority in aggregate principal amount of the Bonds then outstanding (or 100% if required hereunder) and (ii) an Opinion of Counsel stating that (1) such Supplemental Indenture is authorized or permitted by this Indenture and complies with its terms, and (2) the effectiveness of the Supplemental Indenture will not adversely affect the exclusion of interest on the Bonds from gross income for federal income taxes.

(d) If the Holders of not less than the percentage of Bonds required by this Section shall have consented to and approved the Supplemental Indenture as herein provided, no Holder of any Bond shall have any right to object to such Supplemental Indenture, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety thereof, or to enjoin or restrain the Issuer or the Trustee from entering into the same or from taking any action pursuant to the provisions thereof.

(e) Upon the effectiveness of any Supplemental Indenture entered into pursuant to the provisions of this Section, this Indenture shall be, and be deemed to be, modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Issuer, the Trustee and all Holders of Bonds then outstanding shall thereafter be determined, exercised and enforced under this Indenture subject in all respects to such modifications and amendments.

(f) The Trustee shall send written notice to the Rating Agency of any Supplemental Indenture pursuant to this Section.

Section 11.04 *Supplemental Indentures Part of Indenture.* Any Supplemental Indenture entered into in accordance with the provisions of this Article shall thereafter form a part of this Indenture and all the terms and conditions contained in any such Supplemental Indenture as to any provision authorized to be contained therein shall be and shall be deemed to be a part of the terms and conditions of this Indenture for any and all such purposes.

Section 11.05 *Required Consent.* Notwithstanding anything herein to the contrary, as long as no default has occurred and is continuing under any of the Documents, any Supplemental Indenture under this Article shall not become effective unless and until the Borrower shall have consented in writing to such Supplemental Indenture.

Section 11.06 *Amendments to Loan Agreement and Note Not Requiring Consent of Bondholders.* Without the consent of or notice to the Holders, the Issuer, the Borrower and the Trustee may consent to any amendment, change or modification of the Loan Agreement or the Note, as may be required (a) by the provisions of the Note or the Loan Agreement, (b) for the purpose of curing any ambiguity, inconsistency or formal defect or omission in the Loan Agreement or the Note, (c) in connection with an amendment or to effect any purpose for which there could be an amendment of this Indenture pursuant to Section 11.02 hereof, or (d) in connection with any other change therein which is not to the prejudice of the Trustee or the Holders of the Bonds, in the judgment of the Trustee.

Section 11.07 *Amendments to Loan Agreement and Note Requiring Consent of Holders.*

Except for the amendments, changes or modifications contemplated in Section 11.06 hereof, neither the Issuer nor the Trustee shall consent to:

(a) any amendment, change or modification of the Loan Agreement or the Note which would change the amount or time as of which Loan Payments and Collateral Deposits are required to be paid or funded, without the giving of notice as provided in this Section of the proposed amendment, change or modification and receipt of the written consent thereto of the Holders of all of the then Outstanding Bonds affected by such amendment, change or modification, or

(b) any other amendment, change or modification of the Loan Agreement or the Note, without the giving of notice as provided in this Section of the proposed amendment, change or modification and receipt of the written consent thereto of the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding affected by such amendment, change or modification.

The consent of the Holders shall be obtained as provided in Section 11.03 hereof with respect to Supplemental Indentures.

If the Issuer or the Borrower shall request at any time the consent of the Trustee to any proposed amendment, change or modification of the Loan Agreement or the Note contemplated in subparagraphs (a)

or (b) of this Section, upon being indemnified satisfactorily with respect to expenses, the Trustee shall cause notice of the proposed amendment, change or modification to be provided in the manner which is required by Section 11.03 hereof with respect to notice of Supplemental Indentures. The notice shall set forth briefly the nature of the proposed amendment, change or modification and shall state that copies of the instrument or document embodying it are on file at the Designated Office of the Trustee for inspection by all Holders.

Section 11.08 *Responsibilities of the Trustee.*

Notwithstanding anything else contained herein, the Trustee shall not be required to enter into any amendment, change, or modification of any of the documents described in Sections 11.06 and 11.07 which affects the Trustee's own rights, duties or immunities under this Indenture or any other Document.

Section 11.09 *Opinion of Bond Counsel.*

Before the Trustee shall consent to any amendment, change or modification of any of the documents described in Sections 11.06 and 11.07, there shall be delivered to the Trustee an opinion of Bond Counsel that (a) any proposed amendment, change, or modification of any of the documents described in Sections 11.06 and 11.07 complies with the provisions of this Indenture, (b) it is proper for the Trustee to join in the execution of that amendment, change, or modification under the provisions of this Article and (c) such amendment, change or modification will not adversely affect the Federal Tax Status of the Bonds.

Section 11.10 *Conversion Date.* On the Conversion Date and upon the execution and delivery of the Funding Loan Agreement, Governmental Note and Project Loan Agreement, this Indenture, the Bonds and the Loan Agreement shall be deemed amended, restated and superseded in full by the respective terms thereof.

ARTICLE XII

MISCELLANEOUS

Section 12.01 *Issuer's Successors.* In the event of any dissolution of the Issuer, all the covenants, stipulations, promises and agreements in this Indenture contained by or on behalf of, or for the benefit of, the Issuer, shall, consistent with applicable law, bind or inure to the benefit of the successors of the Issuer from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of the Issuer shall be transferred.

Section 12.02 *Limitation of Rights.* With the exception of rights conferred expressly in this Indenture, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any Person other than the parties hereto, the Remarketing Agent, the Borrower, the Investor Limited Partner and the Holders of the Bonds any legal or equitable right, remedy, power or claim under or with respect to this Indenture or any covenants, agreements, conditions and provisions contained herein. This Indenture and all of those covenants, agreements, conditions and provisions are intended to be, and are, for the sole and exclusive benefit of the parties hereto, the Remarketing Agent, the Borrower, the Investor Limited Partner and the Holders of the Bonds, as provided herein.

Section 12.03 *Severability.* In case any one or more of the provisions of this Indenture or of the Bonds for any reason, is held to be illegal or invalid such illegality or invalidity shall not affect any other provisions of this Indenture or the Bonds, and this Indenture and the Bonds shall be construed and enforced to the end that the transactions contemplated hereby be effected and the obligations contemplated hereby be enforced as if such illegal or invalid provisions had not been contained therein.

Section 12.04 *No Recourse.* No personal recourse may be taken, directly or indirectly, against any past, present or future officer, director, employee, counsel or agent of the Issuer with respect to the obligations of the Issuer under this Indenture or any certificate or other writing delivered in connection therewith. The Issuer's immunities and protections from liability and its right to indemnification in connection with the performance of its duties and functions under this Indenture shall extend to the Issuer's past, present and future officers, directors, employees, counsel and agents. All covenants, stipulations, obligations and agreements of the Issuer contained in this Indenture are and shall be deemed to be covenants, stipulations, obligations and agreements of the Issuer to the full extent authorized by the Act and permitted by the Constitution of the State. No covenant, stipulation, obligation or agreement of the Issuer contained in this Indenture shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, officer, agent or employee of the Issuer in other than that person's official capacity. Neither the members of the Issuer nor any official executing the Bonds, this Indenture, the Agreement or any amendment or supplement hereto or thereto shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance or execution hereof or thereof.

Section 12.05 *Governing Law.* The laws of the State shall govern the construction and interpretation of this Indenture and of all Bonds issued hereunder without giving effect to conflict of law principles.

Section 12.06 *Notices; Publication of Notice.*

(a) All notices, advice, certifications or other communications hereunder between the Issuer and the Trustee shall be sufficiently given and shall be deemed given when delivered by hand or overnight courier, or mailed by certified or registered mail, postage prepaid, return receipt requested, or transmitted by Electronic Means addressed to the appropriate Notice Address. The Issuer or the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, advice, certifications or other communications shall be sent. Notices to persons other than the Issuer or the Trustee (such as, for example, notices to Owners of Bonds) shall be governed by the other applicable provisions of this Indenture.

(b) Whenever the Issuer or the Trustee is required or permitted to give or publish notice of any event or occurrence under this Indenture, such notice shall be given or published in such manner and by such means as the Issuer or the Trustee, as the case may be, shall determine to be appropriate. Such publication may be by (but is not limited to) any of the following means: (1) publication in one or more newspapers or trade journals selected by the Issuer or the Trustee, as the case may be; (2) publication by or through one or more financial information reporting services; (3) delivery to one or more "nationally recognized municipal securities information repositories" (as such term is defined in Securities and Exchange Commission Rule 15c2-12) or any successor repository or entity fulfilling a substantially similar or like role; or (4) by mailing a copy of such notice by first class mail, postage prepaid, to the person entitled to receive the notice at such person's address as shown on the records of the Issuer or the Trustee.

Section 12.07 *Trustee as Paying Agent and Bond Registrar.* The Trustee is hereby designated and agrees to act as paying agent and Bond registrar for and in respect to the Bonds.

Section 12.08 *Execution of Instruments by Bondholders and Proof of Ownership of Bonds.* Subject to Section 2.11 hereof, any request, direction, consent or other instrument in writing required or permitted by this Indenture to be signed or executed by Bondholders may be in any number of concurrent instruments of similar tenor and may be signed or executed by such Bondholders in person or by agent appointed by an instrument in writing. Proof of the execution of any such instrument and of the ownership of the Bonds shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee with regard to any action taken by it under such instrument if made in the following manner:

(a) The fact and date of the execution by any person of any such instrument may be proved by the certificate of any officer in any jurisdiction who, by the laws thereof, has power to take acknowledgments within such jurisdiction, to the effect that the person signing such instrument acknowledged before him the execution thereof, or by an affidavit of a witness to such execution.

(b) The ownership of Bonds shall be conclusively proved by the registration books kept under the provisions of Section 2.08 of this Indenture.

Nothing contained in this Section shall be construed as limiting the Trustee to such proof, it being intended that the Trustee may accept any other evidence of the matters herein stated which to it may seem sufficient. Any request or consent of the Holder of any Bond shall bind every future Holder of the same Bond in respect of anything done by the Trustee pursuant to such request or consent.

Section 12.09 *Mortgage Loan Documents Independent.*

(a) Enforcement of the covenants in this Indenture will not result in, and neither the Issuer nor the Trustee has or shall be entitled to assert, any claim against the Borrower, the Project, the Mortgage Loan proceeds, any reserves or deposits required by the Mortgage Lender in connection with the Mortgage Loan transaction, or the rents or deposits or other income of the Project.

(b) Failure of the Issuer or the Borrower to comply with any of the covenants set forth in this Indenture or any of the Borrower Documents will not serve as a basis for default on the Mortgage Loan or any of the Mortgage Loan Documents.

(c) Notwithstanding anything in this Indenture, the Loan Agreement, the Note or the Bond Purchase Agreement to the contrary, (i) the Mortgaged Property (as defined in the Mortgage Loan Security Instrument) shall not include any portion of the Trust Estate and the Mortgage Lender shall not have any claim to or lien upon the Trust Estate under this Indenture and funds held by the Trustee under this Indenture and pledged to secure the repayment of the Bonds, except for Eligible Funds that may be returned to the party that deposited said funds with the Trustee as may be required under Sections 4.08 and 5.02 hereof; and (ii) the Trust Estate shall not include any portion of the Mortgaged Property (as defined in the Mortgage Loan Security Instrument).

Section 12.10 *Counterparts.* This Indenture may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute but one and the same instrument, and the words “executed,” “signed,” “signature,” and words of like import as used above and elsewhere in the Indenture, Loan Agreement or in any other certificate, agreement, bond, note or document related to this transaction shall include, in addition to manually executed signatures, images of manually executed signatures transmitted by facsimile or other electronic format (including, without limitation, “pdf”, “tif” or “jpg”) and other electronic signatures (including, without limitation, any electronic sound, symbol or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record). The use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by Electronic Means) with respect to this Indenture shall be of the same legal effect, validity, enforceability and admissibility as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code. The parties hereto also agree that this Indenture may be signed with a signature stamp. The parties hereto agree that any signatures made with a signature stamp appearing on this Indenture are the same as handwritten signatures for the purposes of validity, enforceability and admissibility. If this

Indenture is originally executed via electronic signature, the Issuer may nevertheless subsequently request the parties' exchange of original manual signatures at any future date.

Section 12.11 U.S.A. Patriot Act Requirements of the Trustee. To help the government of the United States of America fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. For a non-individual Person such as a business entity, a charity, a trust or other legal entity, the Trustee may request documentation to verify such Person's formation and existence as a legal entity and the identity of the owners or controlling persons thereof. The Trustee may also request financial statements, licenses, identification and authorization documents from individuals claiming authority to represent such Person or other relevant documentation.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Issuer and the Trustee have caused this Trust Indenture to be executed and delivered by duly authorized officers thereof as of the day and year first written above.

**RHODE ISLAND HOUSING MORTGAGE
AND FINANCE CORPORATION**

(SEAL)

By _____
Name: Kara L Lachapelle
Title: Chief Financial Officer

ATTEST:

Name: Thomas McNulty
Title: Manager of Treasury and Capital Planning

**THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A., as Trustee**

By _____
Authorized Signatory

CONSENT AND AGREEMENT OF BORROWER

For and in consideration of the issuance of the Bonds by the Issuer, the Borrower consents to and approves the Indenture in all respects. The Borrower acknowledges that it has reviewed the Indenture. In addition, the Borrower agrees that whenever the Indenture by its terms imposes any duty or obligation on the Borrower, such duty or obligation shall be binding upon the Borrower to the same extent as if the Borrower were an express party to the Indenture, and the Borrower agrees to perform fully and faithfully all the duties and obligations which the Issuer has covenanted and agreed to in the Indenture to cause the Borrower to perform and any duties and obligations which the Borrower or the Issuer is required by the Indenture to perform. The foregoing shall not apply to any duty or undertaking of the Issuer which, by its nature, cannot be delegated or assigned.

BRISA BERNON MILLS, LP,
a Rhode Island limited partnership

BY: [NEED SIGNATURE BLOCK]

BY: _____
[NAME]
[TITLE]

APPENDIX A

FORM OF SERIES 2023 BONDS

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation (“DTC”), to Rhode Island Housing and Mortgage Finance Corporation or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

No. R-1

\$(PAR AMOUNT)

\$(PAR AMOUNT)

**Rhode Island Housing and Mortgage Finance Corporation
Multifamily Housing Revenue Bonds
(Bernon Mills Apartments Project), Series 2023**

DATED DATE	INITIAL INTEREST RATE	INITIAL MANDATORY TENDER DATE	MATURITY DATE	CUSIP NUMBER
[CLOSING DATE]	___%	[_____] 1, 202[]	[_____] 1, 20 []	[_____]

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: [_____] MILLION [_____] DOLLARS \$(PAR AMOUNT)

FOR VALUE RECEIVED, Rhode Island Housing and Mortgage Finance Corporation, a public corporation and instrumentality and agency of the State of Rhode Island (the “*Issuer*”), hereby promises to pay (but only out of the Trust Estate pledged therefor) to the registered owner identified above, or its successor or registered assignee or legal representative, unless previously called for redemption, the principal amount set forth above, on the Maturity Date identified above, in lawful money of the United States of America which on the date of payment is legal tender for the payment of public and private debts, upon the presentation and surrender of this Bond at the corporate trust office of The Bank of New York Mellon Trust Company, N.A., as trustee, or its successor in trust (the “*Trustee*”), and to pay interest thereon (but only out of the Revenues) to the registered owner hereof from the Dated Date identified above to but not including [INITIAL TENDER DATE] (the “*Initial Mandatory Tender Date*”), at the Initial Interest Rate per annum identified above and thereafter at the Remarketing Rate (as defined in the Trust Indenture) (subject to adjustment or change as provided in the Trust Indenture), payable at the times and in the manner hereinafter set forth. Principal hereof shall be payable, upon the request of any registered Holder of Bonds on the applicable Record Date having an aggregate principal amount of \$1,000,000 or more, by wire transfer of immediately available funds from the Trustee to the bank and account number specified by such holder to the Trustee in writing. All interest hereon shall be paid by check or draft mailed by the Trustee to the registered Owner hereof at his or her address as it appears on the registration books of the Issuer, or, upon the request of any registered Holder of Bonds having an aggregate principal amount of \$1,000,000 or more, by wire transfer of immediately available funds from the Trustee to the bank and account number provided

by such registered Owner to the Trustee in writing, such interest being payable semi-annually on each [_____] 1 and [_____] 1, commencing [_____] 1, 202[], until the principal amount of the Bonds is paid or duly provided for in lawful money of the United States of America which on the respective dates of payment thereof is legal tender for the payment of public and private debts. Capitalized terms used herein have the same meanings as set forth in the Trust Indenture, dated as of [CLOSING MONTH] 1, 2023, by and between the Issuer and the Trustee (the “*Trust Indenture*”).

THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER, PAYABLE SOLELY FROM THE TRUST ESTATE AND ANY OTHER REVENUES, FUNDS AND ASSETS PLEDGED AND ASSIGNED UNDER THE INDENTURE AND NOT FROM ANY OTHER REVENUES, FUNDS OR ASSETS OF THE ISSUER. NONE OF THE ISSUER, THE STATE, OR ANY POLITICAL SUBDIVISION OR PUBLIC AGENCY THEREOF (EXCEPT THE ISSUER TO THE LIMITED EXTENT SET FORTH HEREIN) SHALL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE BONDS OR OTHER COSTS INCIDENT THERETO, OR FOR THE PERFORMANCE OF ANY PLEDGE, OBLIGATION OR AGREEMENT OF ANY KIND WHATSOEVER WITH RESPECT THERETO, EXCEPT AS SET FORTH HEREIN OR IN THE INDENTURE, AND NEITHER THE BONDS NOR ANY OF THE ISSUER’S AGREEMENTS OR OBLIGATIONS WITH RESPECT TO THE BONDS UNDER THE INDENTURE SHALL BE CONSTRUED TO CONSTITUTE AN INDEBTEDNESS OF OR A PLEDGE OF THE FAITH AND CREDIT OF OR A LOAN OF THE CREDIT OF OR A MORAL OBLIGATION OF ANY OF THE FOREGOING WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION WHATSOEVER. THE ISSUER HAS NO TAXING POWER.

NO MEMBER, OFFICER, AGENT, DIRECTOR, EMPLOYEE, OR ATTORNEY OF THE ISSUER, INCLUDING ANY PERSON EXECUTING THE INDENTURE OR THE BONDS ON BEHALF OF THE ISSUER, SHALL BE LIABLE PERSONALLY UNDER THE INDENTURE OR THE BONDS OR FOR ANY REASON RELATING TO THE ISSUANCE OF THE BONDS. NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR THE INTEREST ON THE BONDS, OR FOR ANY CLAIM BASED ON THE BONDS, OR OTHERWISE IN RESPECT OF THE BONDS, OR BASED IN OR IN RESPECT OF THE TRUST INDENTURE OR ANY SUPPLEMENTAL INDENTURE, AGAINST ANY MEMBER, OFFICER, AGENT, DIRECTOR, EMPLOYEE OR ATTORNEY, AS SUCH, OF THE ISSUER OR ANY SUCCESSOR WHETHER BY VIRTUE OF ANY CONSTITUTION, STATUTE OR RULE OF LAW, OR BY ENFORCEMENT OF ANY ASSESSMENT OR PENALTY OR OTHERWISE; ALL SUCH LIABILITY IS, BY ACCEPTANCE OF THIS BOND AND AS PART OF THE CONSIDERATION FOR THE ISSUANCE OF BONDS, EXPRESSLY WAIVED AND RELEASED.

This Bond is one of an issue of the \$[PAR AMOUNT] Rhode Island Housing and Mortgage Finance Corporation Multifamily Housing Revenue Bonds (Bernon Mills Apartments Project), Series 2023 (the “*Bonds*”), of like date and tenor, except as to number and denomination, issued pursuant to, under authority of and in compliance with Chapter 55 of Title 42 of the General Laws of Rhode Island, 1956 (1998 Reenactment), as amended and supplemented (the “*Act*”), and a resolution duly adopted by the Issuer, for the purpose of paying a portion of the costs of constructing and equipping by Brisa Bernon Mills, LP, a Rhode Island limited partnership (the “*Borrower*”), of a multifamily rental housing project located in Woonsocket, Rhode Island, which, upon completion, will contain approximately sixty (60) rental housing units and which may include such ancillary uses as parking, community space, and other functionally related and subordinate uses (the “*Project*”). The proceeds of the Bonds are being loaned to the Borrower by the Issuer under a Loan Agreement dated as of [CLOSING MONTH] 1, 2023, by and between the Borrower and the Issuer (the “*Loan Agreement*”), which loan is evidenced by a Promissory Note dated [CLOSING DATE], from the Borrower in favor of the Issuer (the “*Note*”).

The Bonds are issued under the Trust Indenture, and to the extent provided therein, are, together with all other Bonds that may be issued thereunder, equally and ratably secured and entitled to the protection given by the Trust Indenture. Pursuant to the Trust Indenture, the Issuer has assigned to the Trustee (among other things) the Revenues. Pursuant to the Note and the Loan Agreement, payments sufficient for the prompt payment when due of the principal of and interest on the Bonds are to be paid by the Borrower to the Trustee for the account of the Issuer. The obligations of the Borrower under the Note and the Loan Agreement are secured by the proceeds of the Bonds deposited into the Project Fund and Eligible Funds deposited into the Collateral Fund created pursuant to Section 4.01 of the Trust Indenture.

Reference is made to the Trust Indenture, the Note, and the Loan Agreement and to all amendments and supplements thereto for a description of the property pledged and assigned and the provisions, among others, with respect to the nature and extent of the security, the rights, duties and other obligations of the Issuer and the Trustee, the terms on which the Bonds are issued and secured, the rights of the Holders of the Bonds and provisions for defeasance of such rights. The terms and conditions set forth herein concerning payment and other rights and remedies of the Owners of the Bonds are descriptive only and are subject in all cases to the terms and conditions as set forth in the Trust Indenture.

The Bonds are issuable in the form of registered Bonds without coupons in denominations of \$5,000 each or any integral multiple of \$5,000 in excess thereof (the “*Authorized Denominations*”).

This Bond is negotiable and is transferable, as provided in the Trust Indenture, only upon the books of the Issuer kept at the office of the Trustee, by the registered owner hereof in person or by his duly authorized attorney, and may be exchanged for new Bonds of the same aggregate principal amount of Authorized Denominations, maturity and interest rate, in registered form, but only upon presentation and surrender of this Bond, all in the manner and subject to the limitations and conditions provided in the Trust Indenture. The Issuer and the Trustee may deem and treat the person in whose name this Bond is registered as the absolute Owner hereof for all purposes; and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

The Bonds are subject to mandatory tender in whole on each Mandatory Tender Date. Holders will not have the right to elect to retain their Bonds. Upon presentation and surrender of the Bonds by the Holder on the date fixed for tender, the Holder shall be paid the principal amount of the Bonds to be tendered, plus accrued interest on such Bonds to the Mandatory Tender Date.

The Bonds are subject to mandatory redemption as provided in the Trust Indenture.

The Holder of this Bond shall have no right to enforce the provisions of the Trust Indenture, or to institute action to enforce the covenants therein, or to take any action with respect to any default under the Trust Indenture, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Trust Indenture. The Trustee shall treat the registered Owner of this Bond as the person exclusively entitled to payment of principal and interest, and the exercise of all rights and powers of the owner of this Bond.

It is certified and recited that there have been performed and have happened in regular and due form, as required by law, all acts and conditions necessary to be done or performed by the Issuer or to have happened (i) precedent to and in the issuing of the Bonds in order to make them legal, valid and binding special obligations of the Issuer, and (ii) precedent to and in the execution and delivery of the Trust Indenture and the Loan Agreement; that payment in full for the Bonds has been received; and that the Bonds do not exceed or violate any constitutional or statutory limitation.

In the case of any conflict between the terms of this Bonds and the terms of the Trust Indenture, the terms of the latter shall control.

This Bond shall not be entitled to any benefit under the Trust Indenture, or be valid or become obligatory for any purpose, until the Trustee shall have executed the Certificate of Authentication appearing hereon.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Rhode Island Housing and Mortgage Finance Corporation has caused this Bond to be executed in its name by the manual or facsimile signature of its Chief Financial Officer and its corporate seal or a facsimile thereof to be impressed, reproduced or printed hereon and attested by the manual or facsimile signature of its Manager of Treasury and Capital Planning, all as of the Dated Date identified above.

**RHODE ISLAND HOUSING MORTGAGE AND
FINANCE CORPORATION**

(SEAL)

BBy _____
Name: Kara L Lachapelle
Title: Chief Financial Officer

ATTEST:

Name: Thomas McNulty
Title: Manager of Treasury and Capital Planning

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described in the Trust Indenture referred to in this Bond.

**THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A.,**

By: _____
Name:
Title:

Date of Authentication: _____, 20__

FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto

(Please Print or Type Name and Address of Assignee)

Social Security or Taxpayer Identification Number: _____

the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints

Attorney to transfer the said bond on the books of the within-named Issuer maintained by the Trustee for the registration thereof, with full power of substitution in the premises.

Notice: The signature to this assignment must correspond with the name as it appears on the face of the within bond in every particular, without alteration or enlargement or any change whatever. The signature must be guaranteed.

Signature guaranteed by:

Authorized Signature

(Signature(s) must be guaranteed by a broker or other financial institution which is a participant in the Securities Transfer Agent's Medallion Program (STAMP, SEMP, MSP)).

DTC FAST RIDER

Each Bond shall remain in the Trustee's custody subject to the provisions of the FAST Balance Certificate Agreement currently in effect between the Trustee and DTC.

APPENDIX B

FORM OF REQUISITION (PROJECT FUND)

\$(PAR AMOUNT)

**Rhode Island Housing and Mortgage Finance Corporation
Multifamily Housing Revenue Bonds
(Bernon Mills Apartments Project), Series 2023**

REQUISITION NO. ___ REQUESTING DISBURSEMENT OF FUNDS FROM
PROJECT FUND PURSUANT TO SECTION 3.03 OF THE LOAN AGREEMENT

Pursuant to Section 3.03 of the Loan Agreement dated as of [CLOSING MONTH] 1, 2023 (the “*Loan Agreement*”) between Rhode Island Housing and Mortgage Finance Corporation (the “*Issuer*”) and Brisa Bernon Mills, LP, a Rhode Island limited partnership (the “*Borrower*”), the undersigned Authorized Borrower Representative hereby requests and authorizes The Bank of New York Mellon Trust Company, N.A., as trustee (the “*Trustee*”), as depository of the Project Fund created by the Trust Indenture dated as of [CLOSING MONTH] 1, 2023 (the “*Indenture*”), between the Issuer and the Trustee, to pay to the Borrower out of the money deposited in the Project Fund the aggregate sum of \$_____ to pay the costs of the items listed in the Disbursement Schedule. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Indenture and in the Tax Certificate.

In connection with the foregoing request and authorization, the undersigned hereby certifies that:

(a) Each item for which disbursement is requested hereunder is properly payable out of the Project Fund in accordance with the terms and conditions of the Loan Agreement and none of those items has formed the basis for any disbursement heretofore made from said Project Fund.

(b) Each such item is or was incurred in connection with the construction, installation, equipment or improvement of the Project.

(c) The Borrower has received, or will concurrently with payment receive and deliver to [the Title Company] [the Trustee], appropriate waivers of any mechanics’ or other liens with respect to each item for which disbursement is requested hereunder.

(d) After taking into account the proposed disbursement,

(i) no more than 5% of the Net Proceeds of the Bonds will have been used for costs that are not Qualified Project Costs;

(ii) less than 25% of the Net Proceeds of the Bonds will have been used for the cost of acquiring land; and

(iii) not more than 2% of the Net Proceeds of the Bonds will have been used for Costs of Issuance.

(e) There is no current or existing Default or Event of Default pursuant to the terms of the Loan Agreement or the Regulatory Agreement and no event exists which by notice or passage of time or both would constitute an event of default under any of the foregoing documents.

(f) All of the funds being requisitioned are being used in compliance with all tax covenants set forth in the Loan Agreement, the Regulatory Agreement and the Tax Certificate, including that none of the proceeds of the Bonds (including investment earnings thereon) will be used to provide an airplane, a skybox or any other private luxury box, any facility primarily used for gambling, health club facility or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(g) There are no liens on the Project except Permitted Encumbrances and those permitted or provided for by the Loan Agreement

(h) This statement and all exhibits hereto, including the attached Disbursement Schedule, shall be conclusive evidence of the facts and statements set forth herein and shall constitute full warranty, protection and authority to the Trustee for its actions taken pursuant hereto.

The Borrower will provide a copy of each payee's Form W-9 or Form W-8, as applicable (unless previously provided). The Borrower further acknowledges the Trustee cannot process such disbursement request until the Trustee is in receipt of a valid Form W-9 From W-8, as applicable, in accordance with Internal Revenue Service regulations and the Foreign Account Tax Compliance Act

[WIRE INSTRUCTIONS TO BE INSERTED]

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

This statement constitutes the approval of the Borrower of each disbursement hereby requested and authorized.

This ____ day of _____, 20__.

BRISA BERNON MILLS, LP,
a Rhode Island limited partnership

BY: [NEED SIGNATURE BLOCK]

BY: _____

Name:

Title:

Approved:

BANK OF AMERICA, N.A., as Mortgage Lender

By: _____
Name:
Title:

**RHODE ISLAND HOUSING AND
MORTGAGE FINANCE CORPORATION**, as
Issuer

By: _____
Name:
Title:

DISBURSEMENT SCHEDULE

TO STATEMENT NO. _____ REQUESTING AND AUTHORIZING DISBURSEMENT OF FUNDS FROM PROJECT
FUND PURSUANT TO SECTION 3.03 OF THE LOAN AGREEMENT

APPENDIX C

FORM OF REQUISITION (COSTS OF ISSUANCE FUND)

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Trustee

Re: \$[PAR AMOUNT] Rhode Island Housing and Mortgage Finance Corporation Multifamily
Housing Revenue Bonds (Bernon Mills Apartments Project), Series 2023

Trustee:

You are requested to disburse funds from the Costs of Issuance Fund pursuant to Section 4.05 of the Indenture in the amount(s), to the person(s) and for the purpose(s) set forth in this requisition (the "Requisition"). The terms used in this requisition shall have the meaning given to those terms in the Trust Indenture dated as of [CLOSING MONTH] 1, 2023 (the "Indenture"), by and between Rhode Island Housing and Mortgage Finance Corporation, as issuer, and The Bank of New York Mellon Trust Company, N.A., as trustee, securing the above referenced Bonds.

REQUISITION NO.: _____

PAYMENT DUE TO: Brisa Bernon Mills, LP

AMOUNT TO BE DISBURSED: \$_____

The undersigned, on behalf of Brisa Bernon Mills, LP, a Rhode Island limited partnership, certifies that:

(a) the expenditures for which money is requisitioned by this Requisition represent proper charges against the Costs of Issuance Fund, have not been included in any previous requisition and are set forth in the Schedule attached to this Requisition, with invoices attached for any sums for which reimbursement is requested; and

(b) the money requisitioned is not greater than those necessary to meet obligations due and payable or to reimburse the applicable party for funds actually advanced for Costs of Issuance.

The Borrower will provide a copy of each payee's Form W-9 or Form W-8, as applicable (unless previously provided). The Borrower further acknowledges the Trustee cannot process such disbursement request until the Trustee is in receipt of a valid Form W-9 From W-8, as applicable, in accordance with Internal Revenue Service regulations and the Foreign Account Tax Compliance Act

[WIRE INSTRUCTIONS TO BE INSERTED]

Date of Requisition: _____

[Signature Page Follows]

BRISA BERNON MILLS, LP,
a Rhode Island limited partnership

BY: [NEED SIGNATURE BLOCK]

BY: _____
Name:
Title:

[SIGNATURE PAGE TO REQUISITION (COSTS OF ISSUANCE FUND) – BERNON MILLS APARTMENTS]

APPENDIX D

FORM OF PERMANENT PHASE FUNDING LOAN AGREEMENT

FUNDING LOAN AGREEMENT

among

**IMPACT C.I.L., LLC,
as Initial Funding Lender**

**RHODE ISLAND HOUSING AND MORTGAGE FINANCE CORPORATION,
as Governmental Lender**

and

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,
as Fiscal Agent**

Relating to

**Bernon Mills Apartments
115-119 Front Street
Woonsocket, Rhode Island**

Original Funding Loan Principal Amount: \$[_____]¹

Dated as of [_____] ²

¹ Amount to be filled in: Actual Project Loan Amount (as defined in the Indenture).

² Date to be filled in: first day of the month of the Conversion Date (as defined in the Indenture).

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FUNDING LOAN AGREEMENT

THIS FUNDING LOAN AGREEMENT (this “*Funding Loan Agreement*”), is made and entered into as of [_____] ³, by and among **IMPACT C.I.L., LLC**, in its capacity as Initial Funding Lender (the “*Initial Funding Lender*”), the **RHODE ISLAND HOUSING AND MORTGAGE FINANCE CORPORATION** (the “*Governmental Lender*”), a public corporation and instrumentality of the State of Rhode Island (the “*State*”), and **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, a national banking association, duly organized and existing under the laws of the United States, having a corporate trust office in Jacksonville, Florida, as Fiscal Agent (the “*Fiscal Agent*”). Capitalized terms are defined in Section 1.01 of this Funding Loan Agreement.

RECITALS

A. Pursuant to Chapter 55 of Title 42 of the General Laws of Rhode Island, 1956 (1998 Reenactment), as amended and supplemented (the “*Act*”), and a Trust Indenture dated as of [CLOSING MONTH] 1, 2023 (the “*Indenture*”) between the Governmental Lender and the Fiscal Agent, the Governmental Lender issued and sold its \$[PAR AMOUNT] Rhode Island Housing and Mortgage Finance Corporation Multifamily Housing Revenue Bonds (Bernon Mills Apartments Project), Series 2023 (the “*Bonds*”), and used the proceeds thereof to make a loan to Brisa Bernon Mills, LP, a Rhode Island limited partnership (the “*Borrower*”), upon the terms and conditions of a promissory note dated [CLOSING DATE], 2023 from the Borrower to the Governmental Lender in the original principal amount of \$[PAR AMOUNT] (the “*Note*”) and the Loan Agreement dated as of the same date as the Indenture (the “*Loan Agreement*”), between the Governmental Lender and the Borrower, for purposes of funding a portion of the costs of constructing and equipping a multifamily rental housing project to be located in Woonsocket, Rhode Island to be known as Bernon Mills Apartments, which upon completion will contain sixty (60) affordable rental housing units (the “*Project*”).

B. The Initial Funding Lender entered into a Conversion Agreement with the Borrower and the Fiscal Agent, dated as of [CLOSING DATE], 2023 (the “*Conversion Agreement*”), whereby the Initial Funding Lender committed, subject to the satisfaction on or before the Outside Conversion Date (as defined in the Conversion Agreement) of the Conditions to Conversion set forth in the Conversion Agreement, to facilitate the financing of the Project in the Permanent Phase.

C. The Conditions to Conversion were satisfied on or before the Outside Conversion Date and on the Conversion Date, (i) the Bonds are subject to mandatory tender in accordance with the Indenture, (ii) the purchase price of \$[_____] ⁴ principal amount of the Bonds is being paid with amounts on deposit under the Indenture, (iii) said principal amount of the Bonds is being cancelled such that the principal amount of Bonds remaining outstanding equals the Actual Project Loan Amount (as defined in the Conversion Agreement), (iv) such remaining Bonds are being removed from the Book-Entry System, (v) such remaining Bonds are being converted to a Governmental Note (in the form attached to this Funding Loan Agreement), executed and delivered by the Governmental Lender, which is being purchased by the Initial Funding Lender, (vi) this Funding Loan Agreement and the Project Loan Agreement dated as of the date hereof (the “*Project Loan Agreement*”) by and among the Governmental Lender, the Fiscal Agent and the Borrower are being delivered by the respective parties and becoming effective and superseding the Indenture and the Loan Agreement, and (vii) the taxable mortgage loan provided by Bank of America, N.A. is being been paid in full in accordance with the Indenture.

³ Date to be filled in: first day of the month of the Conversion Date (as defined in the Indenture).

⁴ Amount to be filled in: \$[PAR AMOUNT] minus Actual Project Loan Amount (as defined in the Indenture).

D. On the Conversion Date, the Borrower will execute and deliver a Project Note payable to the Governmental Lender (together with all riders and modifications thereto, the “*Project Note*”) and the Borrower will enter into a Permanent Loan Agreement with the Initial Funding Lender (the “*Permanent Loan Agreement*”).

E. To secure the Borrower’s obligations under the Project Note, the Borrower will execute and deliver to the Governmental Lender an [Open-End Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing] dated as of the date hereof (the “*Security Instrument*”) with respect to the Project, which Security Instrument will be assigned by the Governmental Lender to the Fiscal Agent as security for the Funding Loan.

F. On and after the Conversion Date, IMPACT C.I.L., LLC will act as Funding Lender Representative with respect to the Loans (in such capacity and any successor in such capacity, the “*Funding Lender Representative*”). IMPACT C.I.L., LLC (the “*Servicer*”) will act as initial servicer for the Loans on behalf of the Funding Lender Representative.

H. The Governmental Lender has determined that all things necessary to incur the Funding Loan and to make the Governmental Note, when executed by the Governmental Lender and authenticated by the Fiscal Agent and issued in accordance with this Funding Loan Agreement, the valid, binding and legal obligation of the Governmental Lender and to constitute this Funding Loan Agreement a valid lien on the properties, interests, revenues and payments herein pledged to the payment of the principal of, premium, if any, and interest on, the Governmental Note, have been duly taken, and the creation, execution and delivery of this Funding Loan Agreement and the execution and delivery of the Governmental Note, subject to the terms of this Funding Loan Agreement, have been duly authorized by the Governmental Lender.

I. The Fiscal Agent has the power and authority to enter into this Funding Loan Agreement, including corporate trust powers to accept the trusts hereunder and to accept and assume its other responsibilities hereunder as Fiscal Agent as evidenced by its execution of this Funding Loan Agreement.

NOW, THEREFORE, in consideration of the premises and of the origination and funding of the Funding Loan by the Funding Lender, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Definitions. The terms used in this Funding Loan Agreement (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Funding Loan Agreement and of any amendment or supplement hereto shall have the respective meanings specified below. Terms used herein not otherwise defined shall have the respective meanings set forth in the Project Loan Agreement.

“*Act*” means Chapter 55 of Title 42 of the General Laws of Rhode Island, 1956 (1998 Reenactment), as amended and supplemented.

“*Administration Fund*” means the Administration Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“Assignment” means the Assignment of Security Instrument dated as of the date hereof by the Governmental Lender assigning its interest in the Security Instrument to the Fiscal Agent.

“Authorized Officer” means (a) when used with respect to the Governmental Lender, any one or more of the Chair, Executive Director, Deputy Executive Director, Chief Financial Officer, Director of Finance, General Counsel and Manager of Treasury and Capital Planning of the Governmental Lender, and such additional Person or Persons, if any, duly designated by the Governmental Lender in writing to act on its behalf, (b) when used with respect to the Borrower, any general partner of the Borrower and such additional Person or Persons, if any, duly designated by the Borrower in writing to act on its behalf, (c) when used with respect to the Fiscal Agent, any authorized signatory of the Fiscal Agent, or any Person who is authorized in writing to take the action in question on behalf of the Fiscal Agent, (d) when used with respect to the Servicer, any Person or Persons duly designated by the Servicer in writing to act on its behalf, and (e) when used with respect to the Funding Lender Representative, any Person who is authorized in writing to take the action in question on behalf of the Funding Lender Representative.

“Bankruptcy Code” means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor federal statute.

“Bond Counsel” means (a) on the Delivery Date, the law firm or law firms delivering the opinion(s) described in Section 2.10 hereof with respect to the Governmental Note, or (b) any other firm of attorneys selected by the Governmental Lender that is experienced in matters relating to the issuance of obligations by states and their political subdivisions that is listed as municipal bond attorneys in The Bond Buyer’s Municipal Marketplace and is acceptable to the Funding Lender Representative.

“Borrower” means Brisa Bernon Mills, LP, a limited partnership duly organized and existing under the laws of the State of Rhode Island, or any of its permitted successors or assigns, as owner of the Project.

“Business Day” means any day other than (a) a Saturday or a Sunday, or (b) a day on which (i) banking institutions in the City of New York or in the city in which the Principal Office of the Fiscal Agent is located are authorized or obligated by law or executive order to be closed or (ii) the New York Stock Exchange is closed.

“Certificate of the Governmental Lender” and **“Request of the Governmental Lender”** mean, respectively, a written certificate or request signed in the name of the Governmental Lender by an Authorized Officer of the Governmental Lender or such other Person as may be designated and authorized to sign for the Governmental Lender. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

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

“Conversion Agreement” means the Conversion Agreement dated as of [CLOSING DATE], by and among the Initial Funding Lender, the Borrower, and the Fiscal Agent, as the same may be amended, modified or supplemented from time to time.

“Conversion Date” means the date the Initial Funding Lender purchases the Funding Loan upon the satisfaction of the Conditions to Conversion (as defined in the Conversion Agreement), as such Conversion Date is specified by the Initial Funding Lender in the Notice of Conversion (as defined in the

Indenture), which date shall be at least ten (10) days following the date on which the Notice of Conversion is delivered.

“Default Rate” means the lower of (i) the Interest Rate otherwise in effect notwithstanding the default plus four percent (4%) per annum or (ii) the maximum rate allowed by law.

“Delivery Date” means [_____] ⁵, the date of the Initial Funding Lender’s funding of the Funding Loan and the delivery of the Governmental Note by the Governmental Lender to the Initial Funding Lender.

“Determination of Taxability” means (a) a determination by the Commissioner or any District Director of the Internal Revenue Service, (b) a private ruling or Technical Advice Memorandum issued by the National Office of the Internal Revenue Service in which Governmental Lender and Borrower were afforded the opportunity to participate, (c) a determination by any court of competent jurisdiction, (d) the enactment of legislation or (e) receipt by Fiscal Agent or Funding Lender Representative, at the request of Governmental Lender, Borrower, Fiscal Agent or Funding Lender Representative, of an opinion of Bond Counsel, in each case to the effect that the interest on the Governmental Note is includable in gross income for federal income tax purposes of the Funding Lender or any former Funding Lender other than a Funding Lender that is a “substantial user” of the Project or a “related person” (as such terms are defined in Section 147(a) of the Code); **provided, however**, that no such Determination of Taxability under clause (a) or (c) shall be deemed to have occurred if the Governmental Lender (at the sole expense of the Borrower) or the Borrower is contesting such determination, has elected to contest such determination in good faith and is proceeding with all applicable dispatch to prosecute such contest until the earliest of (i) a final determination from which no appeal may be taken with respect to such determination, (ii) abandonment of such appeal by the Governmental Lender or the Borrower, as the case may be, or (iii) one year from the date of initial determination.

“Electronic Instruction and Notice” means delivery of written instructions, directions and/or notice signed by an Authorized Officer in a Word format or a Portable Document Format (PDF) by electronic mail to the electronic mail addresses listed in Section 11.04 hereof; provided, that if a sender receives notice that the electronic mail is undeliverable, notice must be sent as otherwise required by Section 11.04 hereof.

“Event of Default” or **“event of default”** means any of those events specified in and defined by the applicable provisions of Article VI hereof to constitute an event of default.

“Extraordinary Fiscal Agent’s Fees and Expenses” means all those fees, expenses and reimbursements earned or incurred by the Fiscal Agent as described under Section 7.06 hereof during any Rebate Year for Extraordinary Services, as set forth in a detailed invoice to the Borrower, the Servicer and the Funding Lender Representative.

“Extraordinary Services” means and includes, but not by way of limitation, services, actions and things carried out and all expenses incurred by the Fiscal Agent, in respect of or to prevent default under this Funding Loan Agreement or the Project Loan Documents, including any reasonable attorneys’ or agents’ fees and expenses and other litigation costs that are entitled to reimbursement under the terms of the Project Loan Agreement, and other actions taken and carried out by the Fiscal Agent which are not expressly set forth in this Funding Loan Agreement or the Project Loan Documents.

⁵ Date to be filled in: the Conversion Date (as defined in the Indenture).

“Fair Market Value” means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm’s length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Code) and, otherwise, the term “Fair Market Value” means the acquisition price in a bona fide arm’s length transaction (as referenced above) if (a) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (b) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (c) the investment is a United States Treasury Security--State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (d) any commingled investment fund in which the Governmental Lender and related parties do not own more than a ten percent (10%) beneficial interest therein if the return paid by the fund is without regard to the source of investment.

“Financing Documents” means, collectively, this Funding Loan Agreement, the Governmental Note, the Tax Certificate, the Project Loan Documents and all other documents or instruments evidencing, securing or relating to the Loans.

“Fiscal Agent” means The Bank of New York Mellon Trust Company, N.A. and its successors hereunder.

“Funding Lender” means any Person who is the holder of the Governmental Note, and initially means the Initial Funding Lender.

“Funding Lender Representative” means the Funding Lender or any Person designated by the Funding Lender to act on behalf of the Funding Lender as provided in Section 11.05, or an assignee of such Person as provided in Section 11.05. The initial Funding Lender Representative shall be the Initial Funding Lender.

“Funding Loan” means the loan in the original principal amount of \$[_____] ⁶ made to the Governmental Lender pursuant to this Funding Loan Agreement by the Initial Funding Lender.

“Funding Loan Amortization Schedule” means the Funding Loan Amortization Schedule attached as Schedule 1 to the Governmental Note.

“Government Obligations” means investments meeting the requirements of clause (a) or (b) of the definition of “Qualified Investments” herein.

“Governmental Lender” means Rhode Island Housing and Mortgage Finance Corporation, a public corporation and instrumentality of the State of Rhode Island.

“Governmental Lender Fee” means the ongoing annual administrative fee of the Governmental Lender in connection with the making of the Project Loan, payable on a monthly basis in an amount equal to 25 basis points of the then outstanding principal amount of the Governmental Note, calculated on the basis of a 365/366 day year for the actual number of days elapsed in such month..

“Governmental Note” means the Multifamily Note dated the Delivery Date, executed by the Governmental Lender and authenticated by the Fiscal Agent in favor of the Initial Funding Lender, in the

⁶ Amount to be filled in: Actual Project Loan Amount (as defined in the Indenture).

form attached hereto as ***Exhibit A***, as the same may be amended, restated, supplemented or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented or otherwise modified from time to time.

“Initial Funding Lender” means IMPACT C.I.L., LLC, as initial holder of the Governmental Note.

“Interest Payment Date” means (i) the first day of each calendar month, commencing [_____]7, (ii) the date of any prepayment of the Funding Loan, but only with respect to the portion of the Funding Loan subject to prepayment, and (iii) the Maturity Date.

“Interest Rate” means the interest rate of [_____] % per annum; provided that during the continuance of any Event of Default hereunder, the Interest Rate shall be the Default Rate.

“Investment Income” means the earnings and profits derived from the investment of money pursuant to Section 4.08 hereof.

“Investor Limited Partner” means [_____].

“Loan Payment Fund” means the Loan Payment Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“Loan Prepayment Fund” means the Loan Prepayment Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“Loans” means, together, the Project Loan and the Funding Loan.

“Maturity Date” means the maturity date of the Funding Loan set forth in Section 2.01(b) hereof.

“Moody’s” means Moody’s Investors Service, Inc., its successors and assigns, if such successors and assigns continue to perform the services of a securities rating agency.

“Net Proceeds” when used with respect to any insurance or condemnation award, means the proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all reasonable expenses incurred in the collection of such insurance proceeds or condemnation award, including reasonable attorneys’ fees.

“Notes” means, together, the Project Note and the Governmental Note.

“Ordinary Fiscal Agent’s Fees and Expenses” means the annual administration fee for the Fiscal Agent’s ordinary fees and expenses in rendering its services under this Funding Loan Agreement during each twelve month period, which fee is equal to (and shall not exceed) \$[_____] and shall be payable annually in advance on the Delivery Date and each anniversary date of the Delivery Date thereafter.

“Original Closing Date” means [CLOSING DATE], the date of the issuance and delivery of the Bonds.

⁷ Date to be filled in: first day of the month immediately following the month of the Conversion Date (as defined in the Indenture).

“Permanent Loan Agreement” means the Permanent Loan Agreement dated as of the date hereof by and between the Borrower and the Initial Funding Lender, as the same may be amended, modified or supplemented from time to time.

“Permanent Phase” means the permanent phase of the Project Loan, which time period shall commence on the Conversion Date and remain in effect through the remaining term of the Project Loan.

“Person” means an individual, a corporation, a partnership, an association, a joint stock company, a joint venture, a trust, an unincorporated association, a limited liability company or a government or any agency or political subdivision thereof, or any other organization or entity (whether governmental or private).

“Pledged Security” shall have the meaning given to that term in Section 2.02 hereof.

“Prepayment Premium” shall mean any premium payable hereunder in connection with a prepayment of the Funding Loan, which premium shall be in an amount equal to the amount payable by the Borrower under Section 2.03 of the Permanent Loan Agreement in connection with a prepayment of the Project Loan.

“Principal Office of the Fiscal Agent” means the office of the Fiscal Agent referenced in Section 11.04(a) hereof, or such other office or offices as the Fiscal Agent may designate in writing from time to time, or the office of any successor Fiscal Agent where it principally conducts its business of serving as Fiscal Agent under indentures pursuant to which municipal or governmental obligations are issued.

“Project” means, collectively, the land and residential rental apartment units to be constructed, and related fixtures, equipment, furnishings and site improvements to be known as Bernon Mills Apartments located at 115-119 Front Street, in Woonsocket, Rhode Island, including the real estate described in the Security Instrument.

“Project Loan” means the loan made by the Governmental Lender to the Borrower pursuant to the Project Loan Agreement in the original principal amount of \$[_____]⁸, as evidenced by the Project Note.

“Project Loan Agreement” means the Project Loan Agreement dated as of the date hereof among the Borrower, the Governmental Lender and the Fiscal Agent, as amended, supplemented or restated from time to time.

“Project Loan Documents” means the Security Instrument, the Project Note, the Project Loan Agreement, the Regulatory Agreement, the Tax Certificate, the Assignment, the Permanent Loan Agreement, any Subordination Agreement(s) and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Project Loan or any portion thereof.

“Project Note” means the Multifamily Note dated the Delivery Date from the Borrower, including all riders and addenda thereto, evidencing the Borrower’s obligation to repay the Project Loan, which Project Note will be delivered to the Governmental Lender and endorsed by the Governmental Lender to the Fiscal Agent as security for the Funding Loan, as the same may be amended, restated, supplemented or otherwise modified from time to time, or any note executed in substitution therefor, as such substitute note may be amended, restated, supplemented or otherwise modified from time to time.

⁸ Amount to be filled in: Actual Project Loan Amount (as defined in the Indenture).

“Qualified Investments” means any of the following if and to the extent permitted by law: (a) direct and general obligations of the United States of America; (b) obligations of any agency or instrumentality of the United States of America the payment of the principal of and interest on which are unconditionally guaranteed by the full faith and credit of the United States of America; (c) senior debt obligations of Freddie Mac; (d) senior debt obligations of Fannie Mae; (e) demand deposits or time deposits with, or certificates of deposit issued by, the Fiscal Agent or its affiliates or any bank organized under the laws of the United States of America or any state or the District of Columbia which has combined capital, surplus and undivided profits of not less than \$50,000,000; provided that the Fiscal Agent or such other institution has been rated at least “VMIG-1”/“A-1+” by Moody’s or S&P which deposits or certificates are fully insured by the Federal Deposit Insurance Corporation or collateralized pursuant to the requirements of the Office of the Comptroller of the Currency; (f) investment agreements with a bank or any insurance company or other financial institution which has a rating assigned by Moody’s or S&P to its outstanding long-term unsecured debt which is the highest rating (as defined below) for long-term unsecured debt obligations assigned by Moody’s or S&P, and which are approved by the Funding Lender Representative; (g) shares or units in any money market mutual fund rated “Aaa”/“AAA” by Moody’s or S&P (or if a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security) (including mutual funds of the Fiscal Agent or its affiliates or for which the Fiscal Agent or an affiliate thereof serves as investment advisor or provides other services to such mutual fund receives reasonable compensation therefor) registered under the Investment Company Act of 1940, as amended, whose investment portfolio consists solely of (A) direct obligations of the government of the United States of America, or (B) tax exempt obligations; (h)(i) tax-exempt obligations rated in the highest short term rating category by Moody’s or S&P, or (ii) shares of a tax-exempt municipal money market mutual fund or other collective investment fund registered under the federal Investment Company Act of 1940, whose shares are registered under the federal Securities Act of 1933, having assets of at least \$100,000,000, and having a rating of “Aaa”/“AAA” by Moody’s or S&P (or if a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security), for which at least 95% of the income paid to the holders on interest in such money market fund will be excludable from gross income under Section 103 of the Code, including money market funds for which the Fiscal Agent or its affiliates receive a fee for investment advisory or other services to the fund; or (i) any other investments approved in writing by the Funding Lender Representative. For purposes of this definition, the “highest rating” shall mean a rating of at least “VMIG-1”/“A-1+” for obligations with less than one year maturity; at least “Aaa”/“VMIG-1”/“AAA”/“A-1+” for obligations with a maturity of one year or greater but less than three years; and at least “Aaa”/“AAA” for obligations with a maturity of three years or greater. Qualified Investments must be limited to instruments that have a predetermined fixed-dollar amount of principal due at maturity that cannot vary or change and interest, if tied to an index, shall be tied to a single interest rate index plus a single fixed spread, if any, and move proportionately with such index. Ratings of Qualified Investments shall be determined only at the time of purchase of such Qualified Investments and without regard to ratings subcategories.

“Rating Agency” means Moody’s or S&P, as applicable, or any successor rating service thereof.

“Rebate Analyst” means Hawkins Delafield & Wood LLP or such other certified public accountant, financial analyst or bond counsel, or any firm of the foregoing, or financial institution (which may include the Fiscal Agent) experienced in making the arbitrage and rebate calculations required pursuant to Section 148 of the Code, selected and retained by the Borrower at the expense of the Borrower, with the prior written consent of the Governmental Lender, to make the rebate computations required under this Funding Loan Agreement and the Project Loan Agreement.

“Rebate Fund” means the Rebate Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“Rebate Year” means each one-year period that ends at the close of business on the day in the calendar year that is selected by Borrower as indicated in the Tax Certificate. The first and last Rebate Years may be short periods. If no day is selected by Borrower before the earlier of the Maturity Date or the date that is five years after the Delivery Date, each Rebate Year ends on each anniversary of the Delivery Date and on the Maturity Date or date of earlier payment in full of the Governmental Note.

“Regulatory Agreement” means, collectively, (i) that certain Regulatory Agreement, dated as of [CLOSING DATE], by and between the Governmental Lender and the Borrower, as hereafter amended or modified, and (ii) the Declaration of Land Use Restrictive Covenants for Low Income Housing Tax Credits, dated [CLOSING DATE], by and between the Governmental Lender and the Borrower.

“Resolution” means the resolution adopted by the Governmental Lender authorizing the Funding Loan, the Project Loan and the execution and delivery of the Financing Documents to which it is a party.

“Responsible Officer” means any officer of the Fiscal Agent employed within or otherwise having regular responsibility in connection with the corporate trust department of the Fiscal Agent and the trusts created hereunder.

“Revenue Fund” means the Revenue Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“Revenues” means (a) all payments made with respect to the Project Loan pursuant to the Project Loan Agreement, the Project Note or the Security Instrument, including but not limited to all casualty or other insurance benefits and condemnation awards paid in connection therewith and all payments obtained through the exercise of remedies under the Financing Documents, and (b) all money and securities held by the Fiscal Agent in the funds and accounts established pursuant to this Funding Loan Agreement (excluding money or securities designated for deposit into and held in the Administration Fund and the Rebate Fund), together with all investment earnings thereon.

“Security Instrument” means the [Open-End Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing] dated as of the date hereof, by the Borrower, granting a first priority mortgage and security interest in the Project to the Governmental Lender to secure the repayment of the Project Loan and related obligations, which Security Instrument has been assigned by the Governmental Lender to the Fiscal Agent pursuant to the Assignment as security for the Funding Loan, as the same may be amended, supplemented or restated.

“S&P” means S&P Global Ratings, a division of S&P Global Inc., and its successors and assigns, if such successors and assigns continue to perform the services of a securities rating agency.

“Servicer” means any entity appointed by the Funding Lender Representative to service the Loans and any successor in such capacity as appointed by the Funding Lender Representative pursuant to Section 3.02 of the Project Loan Agreement. Initially, the Servicer shall be IMPACT C.I.L., LLC

“State” means the State of Rhode Island.

“Subordination Agreement” means any subordination or intercreditor agreement(s) entered into with respect to any subordinate financing related to the Project, as the same may be amended, supplemented or restated.

“**Tax Certificate**” means the Tax Certificate executed by the Governmental Lender and the Borrower, dated the Original Closing Date, and any exhibits, schedules, amendments and supplements to the foregoing.

“**Title Company**” means [_____], the title company for purposes of the Loans.

“**Transferee Representations Letter**” has the meaning set forth in Section 2.08 hereof.

“**Unassigned Rights**” means all of the rights of the Governmental Lender and its directors, officers, commissioners, elected officials, attorneys, accountants, employees, agents and consultants to be held harmless and indemnified, to be reimbursed and paid its fees and expenses, to payment to the Fiscal Agent by the Borrower of any arbitrage rebate, to give or withhold consent to amendments, changes, modifications and alterations, to receive notices, reports and other statements, its rights of access to the Project pursuant to Section 5.11 of the Project Loan Agreement, its rights under the Regulatory Agreement as provided in Section 7.06 of the Project Loan Agreement, and the right to enforce all such rights.

“**Window Period**” means the three (3) consecutive month period prior to the Maturity Date.

Section 1.02 Interpretation. The words “hereof,” “herein,” “hereunder,” and other words of similar import refer to this Funding Loan Agreement as a whole and not to any particular Article, Section or other subdivision. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as in effect from time to time. References to Articles, Sections, and other subdivisions of this Funding Loan Agreement are to the designated Articles, Sections and other subdivisions of this Funding Loan Agreement as originally executed. The headings of this Funding Loan Agreement are for convenience only and shall not define or limit the provisions hereof.

ARTICLE II

THE FUNDING LOAN

Section 2.01 Terms.

(a) The Funding Loan shall be originated and funded on the Delivery Date in the original principal amount of \$[_____] ⁹ with funds provided to the Fiscal Agent, on behalf of the Governmental Lender, by the Initial Funding Lender. The proceeds of the Funding Loan shall be deposited and disbursed in accordance with this Funding Loan Agreement. The Funding Loan shall be evidenced by the Governmental Note and shall bear interest and be paid in accordance with the payment terms set forth in the Governmental Note and this Funding Loan Agreement.

(b) The Funding Loan shall bear interest payable on each Interest Payment Date at the Interest Rate and shall mature on [MATURITY DATE] subject to scheduled monthly principal payments as provided in Section 2.01(c) below and optional and mandatory prepayment prior to maturity as provided in Article III hereof. Interest on the Funding Loan shall be computed on the basis of a 360-day year and the actual number of days elapsed.

⁹ Amount to be filled in: Actual Project Loan Amount (as defined in the Indenture).

(c) The unpaid principal balance of the Funding Loan shall be paid on the dates and in the amounts set forth on the Funding Loan Amortization Schedule attached as Schedule 1 to the Governmental Note. All unpaid principal and all accrued and unpaid interest outstanding under the Funding Loan shall be due and payable on the Maturity Date.

(d) Payment of principal of, premium, if any, and interest on the Funding Loan shall be paid by wire transfer in immediately available funds to an account within the United States of America designated by such Funding Lender (unless otherwise directed in writing by the Funding Lender).

(e) On or before the date fixed for payment, money shall be deposited with the Fiscal Agent to pay, and the Fiscal Agent is hereby authorized and directed to apply such money to the payment of, the Funding Loan, together with accrued interest thereon to the date of payment.

(f) In no contingency or event whatsoever shall the aggregate of all amounts deemed interest hereunder and charged or collected pursuant to the terms of this Funding Loan Agreement exceed the highest rate permissible under any law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto. In the event that such court determines the Funding Lender has charged or received interest hereunder in excess of the highest applicable rate, the Funding Lender shall apply, in its sole discretion, and set off such excess interest received by the Funding Lender against other obligations due or to become due under the Financing Documents and such rate shall automatically be reduced to the maximum rate permitted by such law.

Section 2.02 Pledged Security. To secure the payment of the principal of, premium, if any, and interest on the Funding Loan according to its tenor and effect, and the performance and observance by the Governmental Lender of all the covenants expressed or implied herein and in the Governmental Note, and the payment and performance of all amounts and obligations under the Permanent Loan Agreement, the Governmental Lender does hereby grant, bargain, sell, convey, pledge and assign a security interest, unto the Fiscal Agent, and its successors in such capacity and its and their assigns in and to the following (said property being herein referred to as the “*Pledged Security*”) for the benefit of the Funding Lender:

(a) All right, title and interest of the Governmental Lender in and to all Revenues;

(b) All right, title and interest of the Governmental Lender in and to the Project Loan Agreement, the Project Note, the Security Instrument and the other Project Loan Documents (other than the Unassigned Rights), including all extensions and renewals of the terms thereof, if any, including, but without limiting the generality of the foregoing, the present and continuing right to receive, receipt for, collect or make claim for any of the money, income, revenues, issues, profits and other amounts payable or receivable thereunder (including all casualty insurance benefits or condemnation awards), whether payable under the above referenced documents or otherwise, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Governmental Lender or any other Person is or may become entitled to do under said documents; and

(c) Except for funds, money or securities in the Administration Fund and the Rebate Fund, all funds, money and securities and any and all other rights and interests in property whether tangible or intangible from time to time hereafter by delivery or by writing of any kind, conveyed, mortgaged, pledged, assigned or transferred as and for additional security hereunder for the Funding Loan by the Governmental Lender or by anyone on its behalf or with its written consent to the Fiscal Agent, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

The foregoing notwithstanding, if the Governmental Lender or its successors or assigns shall pay or cause to be paid to the Funding Lender in full the principal, interest and premium, if any, to become due with respect to the Funding Loan at the times and in the manner provided in Article IX hereof, and if the Governmental Lender shall keep, perform and observe, or cause to be kept, performed and observed, all of its covenants, warranties and agreements contained herein, then these presents and the estate and rights hereby granted shall, at the option of the Governmental Lender, cease, terminate and be void, and thereupon the Fiscal Agent shall cancel and discharge the lien of this Funding Loan Agreement and execute and deliver to the Governmental Lender such instruments in writing as shall be requisite to satisfy the lien hereof, and, subject to the provisions of Sections 4.11 and 4.12 hereof and Article IX hereof, reconvey to the Governmental Lender the estate hereby conveyed, and assign and deliver to the Governmental Lender any property at the time subject to the lien of this Funding Loan Agreement which may then be in its possession, except for the Rebate Fund and cash held by the Fiscal Agent for the payment of interest on and principal of the Governmental Note; otherwise this Funding Loan Agreement to be and shall remain in full force and effect.

Section 2.03 *Limited Obligations.* The Funding Loan and the Governmental Note are special, limited obligations of the Governmental Lender payable solely from the Revenues and other funds and moneys and Pledged Security pledged and assigned hereunder and not from any other revenues, funds or assets of the Governmental Lender. None of the Governmental Lender, the State, or any political subdivision thereof (except the Governmental Lender to the limited extent set forth herein) nor any public agency shall in any event be liable for the payment of the principal of, premium, if any, or interest on the Funding Loan or the Governmental Note or other costs incident thereto, or for the performance of any pledge, obligation or agreement of any kind whatsoever with respect thereto, except as set forth herein, and none of the Funding Loan or the Governmental Note or any of the Governmental Lender's agreements or obligations with respect to the Funding Loan, the Governmental Note or hereunder, shall be construed to constitute an indebtedness of or a pledge of the faith and credit of or a loan of the credit of or a moral obligation of any of the foregoing within the meaning of any constitutional or statutory provision whatsoever. The Governmental Lender shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with the Project Loan Agreement, the Funding Loan or this Funding Loan Agreement, except only to the extent amounts are received for the payment thereof from the Borrower under the Project Loan Agreement. The Governmental Lender has no taxing power.

Section 2.04 *Funding Loan Agreement Constitutes Contract.* In consideration of the origination and funding of the Funding Loan by the Initial Funding Lender, the provisions of this Funding Loan Agreement shall be part of the contract of the Governmental Lender with the Initial Funding Lender and any successors or assigns thereof in such capacity from time to time.

Section 2.05 *Form and Execution.* The Governmental Note shall be in substantially the form attached as Exhibit A. The Governmental Note shall be executed on behalf of the Governmental Lender by the manual or facsimile signature of an Authorized Officer of the Governmental Lender, and attested by the manual or facsimile signature of another Authorized Officer of the Governmental Lender, sealed with an impression or a facsimile of the seal of the Governmental Lender. Any facsimile signatures shall have the same force and effect as if said officers had manually signed the Governmental Note. Any reproduction of the official seal of the Governmental Lender on the Governmental Note shall have the same force and effect as if the official seal of the Governmental Lender had been impressed on the Governmental Note.

Section 2.06 *Authentication.* The Governmental Note shall not be valid or obligatory for any purpose or entitled to any security or benefit under this Funding Loan Agreement unless a certificate of authentication on the Governmental Note, substantially in the form set forth in Exhibit A, shall have been

duly executed by an Authorized Officer of the Fiscal Agent; and such executed certificate of authentication upon the Governmental Note shall be conclusive evidence that the Governmental Note has been duly executed, registered, authenticated and delivered under this Funding Loan Agreement.

Section 2.07 *Mutilated, Lost, Stolen or Destroyed Governmental Note.* In the event the Governmental Note is mutilated, lost, stolen or destroyed, the Governmental Lender shall execute and the Fiscal Agent shall authenticate a new Governmental Note substantially in the form set forth in ***Exhibit A*** in exchange and substitution for and upon cancellation of the mutilated Governmental Note or in lieu of and in substitution for such lost, stolen or destroyed Governmental Note, upon payment by the Funding Lender of any applicable tax or governmental charge and the reasonable expenses and charges of the Governmental Lender and the Fiscal Agent in connection therewith, and in the case where the Governmental Note is lost, stolen or destroyed, the filing with the Fiscal Agent of evidence satisfactory to it that the Governmental Note was lost, stolen or destroyed, and of the ownership thereof, and furnishing the Governmental Lender and the Fiscal Agent with indemnity satisfactory to each of them. In the event where the Governmental Note shall have matured, instead of delivering a new Governmental Note the Governmental Lender may pay the same without surrender thereof.

Section 2.08 *Registration; Transfer of Funding Loan and Transferee Representations Letter.*

(a) The Funding Loan shall be fully registered as to principal and interest in the manner and with any additional designation as the Fiscal Agent deems necessary for the purpose of identifying the registered owner thereof. The Funding Loan shall be transferable only on the registration books of the Fiscal Agent. The Fiscal Agent shall maintain books or other records showing the name and date of registration, address and employer identification number of the registered owner of the Funding Loan and any transfers of the Funding Loan as provided herein. The Funding Loan shall initially be registered to the Initial Funding Lender. The Governmental Note shall not be transferred through the services of The Depository Trust Company or any other third-party securities intermediary without the prior written consent of the Governmental Lender.

(b) The Funding Lender shall have the right to sell, assign or otherwise transfer in whole its interest in the Funding Loan; provided that the Funding Loan may be transferred only to a “qualified institutional buyer” as that term is defined under Rule 144A of the Securities Act (such “qualified institutional buyer” a “***Qualified Transferee***”) that delivers a letter to the Governmental Lender and the Fiscal Agent substantially in the form attached hereto as ***Exhibit C*** setting forth certain representations with respect to such Qualified Transferee (the “***Transferee Representations Letter***”).

Section 2.09 *[Reserved]*

Section 2.10 *Additional Conditions to Conversion; Delivery of Governmental Note.* In addition to the Conditions to Conversion set forth in the Conversion Agreement, Conversion shall be conditioned upon, and the Governmental Lender shall only execute and deliver to the Fiscal Agent, and the Fiscal Agent shall only authenticate the Governmental Note and deliver the Governmental Note to the Initial Funding Lender upon, receipt by the Fiscal Agent of the following:

(a) executed counterparts of this Funding Loan Agreement, the Project Loan Agreement, the Regulatory Agreement and the Tax Certificate;

(b) an opinion of Bond Counsel or counsel to the Governmental Lender to the effect that the Governmental Lender is duly organized and existing under the laws of the State and has duly authorized, executed and delivered this Funding Loan Agreement, the Governmental Note

and the other Financing Documents to which it is a party, and such documents are valid and binding special, limited obligations of the Governmental Lender enforceable in accordance with their terms subject to customary exceptions;

(c) the proceeds of the Funding Loan from the original funding thereof by the Initial Funding Lender;

(d) the executed Project Note and an endorsement of the Project Note by the Governmental Lender in favor of the Fiscal Agent;

(e) a copy of the executed Security Instrument, the Assignment and the Permanent Loan Agreement;

(f) an opinion of counsel to the Borrower to the effect that the Borrower is duly organized and validly existing and in good standing under the laws of the state in which it has been organized and in good standing under the laws of each other state in which the Borrower transacts business and has full power and authority to enter into the Financing Documents to which it is a party, that its execution and delivery of and performance of its covenants in such documents do not contravene law or any provision of any other documents to which it is a party or by which it or such property is bound or affected, and that all such agreements have been duly authorized, executed and delivered by the Borrower, and are legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and general principles of equity;

(g) an opinion of Bond Counsel to the effect that either (as determined by Bond Counsel) (i) the amendment and restatement of the Bonds and the Indenture as the Governmental Note and the Funding Loan Agreement, under laws in effect on the date of such opinion, does not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds or the Governmental Note or the exemption of such interest from State income taxes, or (ii) interest on the Governmental Note, under laws in effect on the date of such opinion, is excluded from gross income for federal income tax purposes and exempt from State income taxes;

(h) a certified copy of the Resolution;

(i) the written request and authorization to the Fiscal Agent by the Governmental Lender to authenticate and deliver the Governmental Note to the Initial Funding Lender upon funding to the Fiscal Agent of the full amount of the Funding Loan; and

(j) receipt by the Fiscal Agent of the amounts specified in Section 3.03 of the Project Loan Agreement.

(k) receipt by the Fiscal Agent of a Transferee Representations Letter from the Initial Funding Lender substantially in the form attached hereto as *Exhibit C*.

Section 2.11 *Loan Payments to Servicer; Servicer Disbursements.*

(a) Notwithstanding any provision in this Funding Loan Agreement to the contrary, during any period that a Servicer is engaged with respect to the Loans, the Governmental Lender and the Fiscal Agent agree that all payments of principal of, Prepayment Premium, if any, and interest on the Funding

Loan and all fees due hereunder and under the Project Loan Agreement shall be paid by the Borrower to the Servicer. The Servicer shall be entitled to retain its Servicing Fee collected from the Borrower and shall remit (i) to the Fiscal Agent, (A) all payments collected from the Borrower of principal of, Prepayment Premium, if any, and interest on the Funding Loan, (B) the Ordinary Fiscal Agent's Fees and Expenses, together with any other amounts due to the Fiscal Agent collected by the Servicer from the Borrower, and (C) the Governmental Lender Fee, together with any other amounts due to the Governmental Lender collected by the Servicer from the Borrower, in each case in accordance with their respective instructions (provided the Borrower may pay the Governmental Lender Fee directly to the Fiscal Agent), and (ii) to the Funding Lender, any fees or other amounts that may be due to the Funding Lender pursuant to the instructions of the Funding Lender Representative. Any payment made in accordance with the provisions of this Section shall be accompanied by sufficient information to identify the source and proper application of such payment. The Servicer shall promptly notify the Fiscal Agent, the Funding Lender Representative and the Governmental Lender in writing of any failure of the Borrower to make any payment of principal of, Prepayment Premium, if any, and interest on the Funding Loan when due or to pay any fees due hereunder or under the Project Loan Agreement, and the Fiscal Agent and the Governmental Lender shall not be deemed to have any notice of such failure unless it has received such notice in writing.

(b) If the Governmental Note is sold or transferred as provided in Section 2.08, the Funding Lender Representative shall notify the Fiscal Agent and the Borrower in writing of the name and address of the transferee.

ARTICLE III

PREPAYMENT OF THE FUNDING LOAN

Section 3.01 *Prepayment of the Funding Loan Prior to Maturity.*

(a) **Optional Prepayment.** The Funding Loan, together with accrued interest thereon, is subject to optional prepayment in whole upon optional prepayment of the Project Loan in accordance with the notice and other prepayment provisions set forth in the Project Note.

(b) **Mandatory Prepayment.** The Funding Loan, together with accrued interest thereon, and together with Prepayment Premium (to the extent payable under the Project Note), is subject to mandatory prepayment on any Business Day, in whole or in part as indicated below, at the earliest practicable date upon the occurrence of a mandatory prepayment of the Project Loan pursuant to Section [___] of the Project Note and receipt by the Fiscal Agent of a written direction by the Funding Lender Representative that the Funding Loan shall be subject to mandatory payment as a result thereof.

Section 3.02 *Notice of Prepayment.* Notice of the intended prepayment of the Funding Loan shall be given by the Fiscal Agent by first class mail, postage prepaid, or by overnight delivery service, to the Funding Lender. All such prepayment notices shall be given not less than ten (10) days (not less than thirty (30) days in the case of optional prepayment) nor more than sixty (60) days prior to the date fixed for prepayment. Notices of prepayment shall state (i) the prepayment date, (ii) the prepayment amount, and (iii) the place or places where amounts due upon such prepayment will be payable.

Notice of such prepayment shall also be sent by first class mail, postage prepaid, or by overnight delivery service, to the Governmental Lender and the Servicer, not later than the time of mailing of notices required by the first paragraph above, and in any event no later than simultaneously with the mailing of notices required by the first paragraph above; provided, that neither failure to receive such

notice nor any defect in any notice so mailed shall affect the sufficiency of the proceedings for the prepayment of the Funding Loan.

ARTICLE IV

REVENUES AND FUNDS

Section 4.01 *Pledge of Revenues and Assets; Establishment of Funds.* The pledge and assignment of and the security interest granted in the Pledged Security pursuant to Section 2.02 hereof shall attach, be perfected and be valid and binding from and after the time of the closing of the Funding Loan and delivery of the Governmental Note by the Fiscal Agent or by any Person authorized by the Fiscal Agent to deliver the Governmental Note. The Pledged Security so pledged and then or thereafter received by the Fiscal Agent shall immediately be subject to the lien of such pledge and security interest without any physical delivery thereof or further act, and the lien of such pledge and security interest shall be valid and binding and prior to the claims of any and all parties having claims of any kind in tort, contract or otherwise against the Governmental Lender irrespective of whether such parties have notice thereof.

The Fiscal Agent shall establish, maintain and hold in trust the following funds and accounts, each of which is hereby established and each of which shall be disbursed and applied only as herein authorized:

- (a) Revenue Fund;
- (b) Loan Payment Fund;
- (c) Loan Prepayment Fund;
- (d) Administration Fund; and
- (e) Rebate Fund.

The funds and accounts established pursuant to this Section 4.01 shall be maintained in the corporate trust department of the Fiscal Agent as segregated trust accounts, separate and identifiable from all other funds held by the Fiscal Agent. The Fiscal Agent shall, at the written direction of an Authorized Officer of the Governmental Lender, and may, in its discretion, establish such additional accounts within any Fund, and subaccounts within any of the accounts, as the Governmental Lender or the Fiscal Agent may deem necessary or useful for the purpose of identifying more precisely the sources of payments into and disbursements from that Fund and its accounts, or for the purpose of complying with the requirements of the Code relating to arbitrage, but the establishment of any such account or subaccount shall not alter or modify any of the requirements of this Funding Loan Agreement with respect to a deposit or use of money in the funds established hereunder, or result in commingling of funds not permitted hereunder.

Section 4.02 *[Reserved]*

Section 4.03 *Application of Revenues.*

(a) All Revenues received by the Fiscal Agent shall be deposited by the Fiscal Agent, promptly upon receipt thereof, to the Revenue Fund, except (i) as otherwise specifically provided in subsection (c) of this Section 4.03 with respect to certain deposits into the Loan Prepayment Fund; (ii) with respect to Investment Income to the extent required under the terms hereof to be retained in the funds and accounts to which they are attributable; and (iii) with respect to amounts required to be transferred between funds and accounts as provided in this Article IV.

(b) On each Interest Payment Date or any other date on which payment of principal of or interest on the Funding Loan becomes due and payable, the Fiscal Agent, out of money in the Revenue Fund, shall credit the following amounts to the following funds, but in the order and within the limitations hereinafter indicated with respect thereto, as follows:

FIRST: to the Loan Payment Fund, an amount equal to the principal of and interest due on the Funding Loan on such date (including scheduled principal pursuant to the Funding Loan Amortization Schedule); and

SECOND: to the Loan Prepayment Fund, an amount equal to the principal and interest due on the Funding Loan on such date with respect to a mandatory prepayment of all or a portion of the Funding Loan pursuant to Section 3.01(b) hereof (other any extraordinary mandatory prepayment as described in Section 4.03(c)(i) or (iii) below).

(c) Promptly upon receipt, the Fiscal Agent shall deposit directly to the Loan Prepayment Fund (i) Net Proceeds representing casualty insurance proceeds or condemnation awards paid as a prepayment of the Project Loan, such amount to be applied to provide for the extraordinary mandatory prepayment of all or a portion of the Funding Loan pursuant to Section 3.01(b)(i) hereof; and (ii) funds paid to the Fiscal Agent to be applied to the optional prepayment of all of the Funding Loan pursuant to Section 3.01(a).

(d) Should the amount in the Loan Payment Fund be insufficient to pay the amount due on the Funding Loan on any given Interest Payment Date, the Fiscal Agent shall credit to the Loan Payment Fund the amount of such deficiency by charging the following funds and accounts in the following order of priority: (1) the Revenue Fund; and (2) the Loan Prepayment Fund, except no such charge to the Loan Prepayment Fund shall be made from money to be used to effect a prepayment for which notice of prepayment has been provided for hereunder.

Section 4.04 Application of Loan Payment Fund. The Fiscal Agent shall charge the Loan Payment Fund, on each Interest Payment Date, an amount equal to the unpaid interest and principal due on the Funding Loan on such Interest Payment Date as provided in Section 4.03(a) and (b), and shall cause the same to be applied to the payment of such interest and principal when due. Any money remaining in the Loan Payment Fund on any Interest Payment Date after application as provided in the preceding sentence may, to the extent there shall exist any deficiency in the Loan Prepayment Fund to prepay the Funding Loan if called for prepayment on such Interest Payment Date, be transferred to the Loan Prepayment Fund to be applied for such purpose.

Any Investment Income on amounts on deposit in the Loan Payment Fund shall be deposited by the Fiscal Agent upon receipt thereof in the Revenue Fund.

No amount shall be charged against the Loan Payment Fund except as expressly provided in this Article IV and in Section 6.05 hereof.

Section 4.05 Application of Loan Prepayment Fund. Any money credited to the Loan Prepayment Fund shall be applied as set forth in Sections 4.03(b) and 4.03(c) hereof; *provided, however*, that to the extent any money credited to the Loan Prepayment Fund is in excess of the amount necessary to effect the prepayments described in Sections 4.03(b) and 4.03(c) hereof it shall be applied to make up any deficiency in the Loan Payment Fund on any Interest Payment Date, to the extent money then available in accordance with Section 4.03(d) hereof in the Revenue Fund is insufficient to make up such deficiency; provided that no money to be used to effect a prepayment for which a notice of prepayment has been provided shall be so transferred to the Loan Payment Fund.

On or before each Interest Payment Date, any Investment Income on amounts on deposit in the Loan Prepayment Fund shall be credited by the Fiscal Agent to the Revenue Fund.

No amount shall be charged against the Loan Prepayment Fund except as expressly provided in this Article IV and in Section 6.05 hereof.

Section 4.06 Administration Fund. The Fiscal Agent shall deposit into the Administration Fund, promptly upon receipt thereof, all amounts received from the Servicer (or the Borrower if no Servicer exists for the Loans) designated for deposit into such fund. Amounts in the Administration Fund shall be withdrawn or maintained, as appropriate, by the Fiscal Agent and used **FIRST**, to pay to the Fiscal Agent when due the Ordinary Fiscal Agent's Fees and Expenses; **SECOND**, to pay to the Governmental Lender when due the Governmental Lender Fee; **THIRD**, to pay when due the reasonable fees and expenses of a Rebate Analyst in connection with the computations relating to arbitrage rebate required under this Funding Loan Agreement and the Project Loan Agreement, upon receipt of an invoice from the Rebate Analyst; **FOURTH**, to pay to the Fiscal Agent any Extraordinary Fiscal Agent's Fees and Expenses due and payable from time to time, as set forth in an invoice submitted to the Borrower and the Servicer; **FIFTH**, to pay to the Governmental Lender any extraordinary expenses it may incur in connection with the Loans or this Funding Loan Agreement from time to time, as set forth in an invoice submitted to the Fiscal Agent and the Servicer; **SIXTH**, to pay to the Funding Lender Representative any unpaid amounts due under the Permanent Loan Agreement, as certified in writing by the Funding Lender Representative to the Fiscal Agent; **SEVENTH**, to make up any deficiency in the Loan Prepayment Fund on any prepayment date of the Funding Loan, to the extent money then available in accordance with Section 4.03(d) hereof in the Loan Prepayment Fund is insufficient to prepay the Funding Loan scheduled for prepayment on such prepayment date; and **EIGHTH**, to transfer any remaining balance after application as aforesaid to the Revenue Fund.

In the event that the amounts on deposit in the Administration Fund are not equal to the amounts payable from the Administration Fund as provided in the preceding paragraph on any date on which such amounts are due and payable, the Fiscal Agent shall give notice to the Borrower and the Servicer of such deficiency and of the amount of such deficiency and request payment within two (2) Business Days to the Fiscal Agent of the amount of such deficiency. Upon payment by the Borrower or the Servicer of such deficiency, the amounts for which such deficiency was requested shall be paid by the Fiscal Agent.

On or before each Interest Payment Date, any Investment Income on amounts on deposit in the Administration Fund not needed to pay the foregoing amounts shall be credited by the Fiscal Agent to the Revenue Fund.

No amount shall be charged against the Administration Fund except as expressly provided in this Article IV and Section 6.05 hereof.

Section 4.07 [Reserved].

Section 4.08 Investment of Funds. The money held by the Fiscal Agent shall constitute trust funds for the purposes hereof. Any money attributable to each of the funds and accounts hereunder shall be, except as otherwise expressly provided herein, invested by the Fiscal Agent, at the written direction of the Borrower (or, in the case of the Rebate Fund, as provided in Section 5.07(b)), in Qualified Investments which mature or shall be subject to prepayment or withdrawal at par without penalty on or prior to the earlier of (i) six months from the date of investment and (ii) the date such money is needed; provided, that if the Fiscal Agent shall have entered into any investment agreement requiring investment of money in any fund or account hereunder in accordance with such investment agreement and if such investment agreement constitutes a Qualified Investment, such money shall be invested in accordance

with such requirements. In the absence of written direction from the Borrower, the Fiscal Agent shall invest amounts on deposit in the funds and accounts established under this Funding Loan Agreement in Government Obligations or in investments of the type described in subparagraph (g) of the definition of Qualified Investments which shall have the same maturity and other restrictions as set forth above. Such investments may be made through the investment or securities department of the Fiscal Agent. The Fiscal Agent may purchase from or sell to itself or an affiliate, as principal or agent, securities herein authorized. The Fiscal Agent shall be entitled to assume, absent receipt by the Fiscal Agent of written notice to the contrary, that any investment which at the time of purchase is a Qualified Investment remains a Qualified Investment thereafter.

Qualified Investments representing an investment of money attributable to any fund or account shall be deemed at all times to be a part of said fund or account, and, except as otherwise may be provided expressly in other Sections hereof, the interest thereon and any profit arising on the sale thereof shall be credited to the Revenue Fund, and any loss resulting on the sale thereof shall be charged against the Revenue Fund. Such investments shall be sold at the best price obtainable (at least par) whenever it shall be necessary so to do in order to provide money to make any transfer, withdrawal, payment or disbursement from said fund or account. In the case of any required transfer of money to another such fund or account, such investments may be transferred to that fund or account in lieu of the required money if permitted hereby as an investment of money in that fund or account. The Fiscal Agent shall not be liable or responsible for any loss resulting from any investment made in accordance herewith.

The Governmental Lender acknowledges that to the extent that regulations of the Comptroller of the Currency or other applicable regulatory agency grant the Governmental Lender the right to receive brokerage confirmations of the security transactions as they occur, to the extent permitted by law, the Governmental Lender specifically waives compliance with 12 C.F.R. 12 and hereby notifies the Fiscal Agent hereunder, that no brokerage confirmations need be sent relating to the security transactions as they occur. The Fiscal Agent shall furnish the Borrower, the Funding Lender and the Governmental Lender (to the extent requested by any such parties) periodic cash transaction statements which shall include detail for all investment transactions, if any, made by the Fiscal Agent hereunder.

In computing for any purpose hereunder the amount in any fund or account on any date, obligations so purchased shall be valued at Fair Market Value.

Section 4.09 *[Reserved]*.

Section 4.10 *Accounting Records.* The Fiscal Agent shall maintain accurate books and records for all funds and accounts established hereunder.

Section 4.11 *Amounts Remaining in Funds.* After full payment of the Funding Loan (or provision for payment thereof having been made in accordance with Section 9.01 hereof) and full payment of the fees, charges and expenses of the Governmental Lender, the Fiscal Agent, the Rebate Analyst, the Funding Lender and the Servicer, including reasonable fees, charges and expenses of their respective counsel, and other amounts required to be paid hereunder or under any Project Loan Document, including, but not limited to, the Permanent Loan Agreement (as certified in writing to the Fiscal Agent by the Governmental Lender with respect to amounts due to the Governmental Lender and by the Funding Lender Representative or the Servicer on its behalf with respect to amounts owed under the Permanent Loan Agreement and by the Rebate Analyst with respect to amounts due to the Rebate Analyst), any amounts remaining in any fund or account hereunder other than the Rebate Fund shall be paid to the Borrower.

Section 4.12 *Rebate Fund; Compliance with Tax Certificate.* The Rebate Fund shall be established by the Fiscal Agent and held and applied as provided in this Section 4.12. On any date on which any amounts are required by applicable federal tax law to be rebated to the federal government, amounts shall be deposited into the Rebate Fund by the Borrower for such purpose. All money at any time deposited in the Rebate Fund shall be held by the Fiscal Agent in trust, to the extent required to satisfy the rebate requirement (as set forth in the Tax Certificate) and as calculated by the Rebate Analyst, for payment to the government of the United States of America, and none of the Governmental Lender, the Borrower or the Funding Lender shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section 4.12 and by the Tax Certificate. The Fiscal Agent shall conclusively be deemed to have complied with such provisions if it follows the written instructions of the Governmental Lender, Bond Counsel or the Rebate Analyst, including supplying all necessary information in the manner set forth in the Tax Certificate, and shall not be required to take any actions under the Tax Certificate in the absence of written instructions from the Governmental Lender, Bond Counsel or the Rebate Analyst.

Within 55 days of the end of each fifth Rebate Year, the Borrower shall cause the Rebate Analyst to calculate the amount of rebatable arbitrage, in accordance with Section 148(f)(2) of the Code and Section 1.148-3 of the Treasury Regulations (taking into account any exceptions with respect to the computation of the rebatable arbitrage, described, if applicable, in the Tax Certificate (e.g., the temporary investments exceptions of Section 148(f)(4)(B) and (C) of the Code)), for this purpose treating the last day of the applicable Rebate Year as a (computation) date, within the meaning of Section 1.148-1(b) of the Treasury Regulations (the “*Rebatable Arbitrage*”). Pursuant to Section 2.04 of the Project Loan Agreement, the Borrower shall cause the Rebate Analyst to provide such calculations to the Fiscal Agent and the Governmental Lender. In the event that the Borrower fails to provide such information to the Fiscal Agent and the Governmental Lender within 55 days of the end of each fifth Rebate Year, the Fiscal Agent, at the expense of the Borrower, shall select the Rebate Analyst, with the prior written approval of the Governmental Lender, and shall cause the Rebate Analyst to calculate the amount of rebatable arbitrage as required herein.

Within 55 days of the end of each fifth Rebate Year, upon the written direction of the Governmental Lender, Bond Counsel or the Rebate Analyst, an amount shall be deposited to the Rebate Fund by the Fiscal Agent from amounts provided by the Borrower, if and to the extent required so that the balance in the Rebate Fund shall equal the amount of Rebatable Arbitrage so calculated in accordance with the preceding paragraph.

The Fiscal Agent shall pay, as directed by the Governmental Lender, Bond Counsel or the Rebate Analyst, to the United States Department of the Treasury, out of amounts in the Rebate Fund:

- (i) Not later than 60 days after the end of (A) the fifth Rebate Year, and (B) each applicable fifth Rebate Year thereafter, an amount equal to at least 90% of the Rebatable Arbitrage calculated as of the end of such Rebate Year; and
- (ii) Not later than 60 days after the payment in whole of the Funding Loan, an amount equal to 100% of the Rebatable Arbitrage calculated as of the end of such applicable Rebate Year, and any income attributable to the Rebatable Arbitrage, computed in accordance with Section 148(f) of the Code.

Each payment required to be made under this Section shall be made to the Internal Revenue Service Center, Ogden, Utah 84201 (or such other address provided in such direction), on or before the date on which such payment is due, and shall be accompanied by Internal Revenue Service Form 8038-T, which shall be prepared by the Rebate Analyst and provided to the Fiscal Agent.

Notwithstanding any provision of this Funding Loan Agreement to the contrary, the obligation to remit payment of the Rebateable Arbitrage to the United States of America and to comply with all other requirements of Sections 2.04 and 4.03 of the Project Loan Agreement and this Section 4.12, and the requirements of the Tax Certificate shall survive the defeasance or payment in full of the Funding Loan.

Any funds remaining in the Rebate Fund after payment in full of the Funding Loan and payment and satisfaction of any Rebate Requirement, or provision made therefor satisfactory to the Fiscal Agent, shall be withdrawn and remitted to the Borrower.

The Fiscal Agent shall obtain and keep such records of the computations made pursuant to this Section 4.12 as are required under Section 148(f) of the Code to the extent furnished to the Fiscal Agent. The Borrower shall or shall cause the Rebate Analyst to provide to the Governmental Lender and the Fiscal Agent copies of all rebate computations made pursuant to this Section 4.12. The Fiscal Agent shall keep and make available to the Borrower such records concerning the investments of the gross proceeds of the Funding Loan and the investments of earnings from those investments made by the Fiscal Agent as may be requested by the Borrower in order to enable the Borrower to cause the Rebate Analyst to make the aforesaid computations as are required under Section 148(f) of the Code.

Notwithstanding the foregoing, the computations and payments of Rebateable Arbitrage need not be made to the extent that neither the Governmental Lender nor the Borrower will thereby fail to comply with any requirements of Section 148(f) of the Code based on an opinion of Bond Counsel, to the effect that such failure will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Governmental Note, a copy of which shall be provided to the Fiscal Agent and the Funding Lender Representative, at the expense of the Borrower.

Section 4.13 *[Reserved].*

Section 4.14 *Reports from the Fiscal Agent.* The Fiscal Agent shall, on or before the fifteenth (15th) day of each month, file with the Funding Lender Representative, the Servicer, the Governmental Lender (at its written request) and the Borrower a statement setting forth in respect of the preceding calendar month:

- (i) the amount withdrawn or transferred by it, and the amount deposited within or on account of each fund and account held by it under the provisions of this Funding Loan Agreement, including the amount of investment income on each fund and account;
- (ii) the amount on deposit with it at the end of such month to the credit of each fund and account;
- (iii) a brief description of all obligations held by it as an investment of money in each such fund and account; and
- (iv) any other information which the Funding Lender Representative or the Governmental Lender may reasonably request and to which the Fiscal Agent has access in the ordinary course of its operations.

Upon the written request of the Funding Lender, the Fiscal Agent, at the cost of the Borrower, shall provide a copy of such statement to Funding Lender. All records and files pertaining to the Pledged Security shall be open at all reasonable times to the inspection of the Governmental Lender and the Funding Lender Representative or the Servicer and their agents and representatives upon reasonable prior notice during normal business hours.

ARTICLE V

GENERAL COVENANTS AND REPRESENTATIONS

Section 5.01 *Payment of Principal and Interest.* The Governmental Lender covenants that it will promptly pay or cause to be paid, but only from the sources identified herein, sufficient amounts to provide for the payment of the principal of, premium, if any, and interest on the Funding Loan at the place, on the dates and in the manner provided herein and in the Governmental Note, according to the true intent and meaning thereof.

Section 5.02 *Performance of Covenants.* The Governmental Lender covenants that it will faithfully perform at all times any and all of its covenants, undertakings, stipulations and provisions contained in this Funding Loan Agreement, in the Governmental Note and in all proceedings pertaining thereto.

Section 5.03 *Instruments of Further Assurance.* The Governmental Lender covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such supplements hereto, and such further acts, instruments and transfers as may be reasonably required for the better assuring, transferring, conveying, pledging, assigning and confirming unto the Fiscal Agent all and singular its interest in the property herein described and the revenues, receipts and other amounts pledged hereby to the payment of the principal of, premium, if any, and interest on the Funding Loan. Any and all interest in property hereafter acquired which is of any kind or nature herein provided to be and become subject to the lien hereof shall and without any further conveyance, assignment or act on the part of the Governmental Lender or the Fiscal Agent, become and be subject to the lien of this Funding Loan Agreement as fully and completely as though specifically described herein, but nothing in this sentence contained shall be deemed to modify or change the obligations of the Governmental Lender under this Section 5.03. The Governmental Lender covenants and agrees that, except as herein otherwise expressly provided, it has not and will not sell, convey, mortgage, encumber or otherwise dispose of any part of its interest in the Pledged Security or the revenues or receipts therefrom.

The Governmental Lender will promptly notify the Fiscal Agent, the Funding Lender Representative and the Servicer in writing of the occurrence of any of the following:

- (i) the submission of any claim or the initiation of any legal process, litigation or administrative or judicial investigation against the Governmental Lender with respect to the Loans;
- (ii) any change in the location of the Governmental Lender's principal office or any change in the location of the Governmental Lender's books and records relating to the transactions contemplated hereby;
- (iii) the occurrence of any default or Event of Default of which the Governmental Lender has actual knowledge;
- (iv) the commencement of any proceedings or any proceedings instituted by or against the Governmental Lender in any federal, state or local court or before any governmental body or agency, or before any arbitration board, relating to the Notes; or
- (v) the commencement of any proceedings by or against the Governmental Lender under any applicable bankruptcy, reorganization, liquidation, rehabilitation, insolvency or other similar law now or hereafter in effect or of any proceeding in which a receiver, liquidator, conservator, trustee or similar official shall have been, or may be, appointed or requested for the Governmental Lender or any of its assets relating to the Loans.

Section 5.04 *Inspection of Project Books.* The Governmental Lender covenants and agrees that all books and documents in its possession relating to the Project shall, upon reasonable prior notice, during normal business hours, be open to inspection and copying by such accountants or other agents as the Fiscal Agent or the Funding Lender Representative may from time to time reasonably designate. The Fiscal Agent shall keep and maintain adequate records pertaining to any funds and accounts established hereunder, including all deposits to and disbursements from said funds and accounts and shall keep and maintain the registration books for the Governmental Note and interests therein. The Fiscal Agent shall retain in its possession all certifications and other documents presented to it, all such records and all records of principal, interest and premium paid on the Funding Loan, subject to the inspection of the Funding Lender and the Governmental Lender and their representatives at all reasonable times and upon reasonable prior notice.

Section 5.05 *No Modification of Security; Additional Indebtedness.* The Governmental Lender covenants to and for the benefit of the Funding Lender that it will not, without the prior written consent of the Funding Lender Representative, take any of the following actions:

- (i) alter, modify or cancel, or agree to consent to alter, modify or cancel any agreement to which the Governmental Lender is a party, or which has been assigned to the Governmental Lender, and which relates to or affects the security for the Loans or the payment of any amount owed under the Financing Documents; or
- (ii) create or suffer to be created any lien upon the Pledged Security or any part thereof other than the lien created hereby and by the Security Instrument.

Section 5.06 *Damage, Destruction or Condemnation.* Net Proceeds resulting from casualty to or condemnation of the Project shall be applied as provided in the Permanent Loan Agreement and, to the extent consistent therewith, Section 3.01(b)(i) hereof.

Section 5.07 *Tax Covenants.*

(a) *Governmental Lender's Covenants.* The Governmental Lender covenants to and for the benefit of the Funding Lender that it will:

- (i) neither make or use nor cause to be made or used any investment or other use of the proceeds of the Funding Loan or the money and investments held in the funds and accounts in any manner which would cause the Governmental Note to be an “arbitrage bond” under Section 148 of the Code and the Regulations issued under Section 148 of the Code (the “*Regulations*”) or which would otherwise cause the interest payable on the Governmental Note to be includable in gross income for federal income tax purposes;
- (ii) enforce or cause to be enforced all obligations of the Borrower under the Regulatory Agreement in accordance with its terms and seek to cause the Borrower to correct any violation of the Regulatory Agreement within a reasonable period after it first discovers or becomes aware of any such violation;
- (iii) not take or cause to be taken any other action or actions, or fail to take any action or actions, if the same would cause the interest payable on the Governmental Note to be includable in gross income for federal income tax purposes;
- (iv) at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest paid by the Governmental Lender on the Funding Loan will be excluded from the gross income for federal income tax purposes, of the Funding Lender pursuant to the Code, except in the event where the Funding Lender is a “substantial user” of the facilities financed with the Loans or a “related person” within the meaning of the Code; and
- (v) not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Governmental Note to be “federally guaranteed” within the meaning of Section 149(b) of the Code and the Regulations.

In furtherance of the covenants in this Section 5.07, the Governmental Lender and the Borrower shall execute, deliver and comply with the provisions of the Tax Certificate, which is by this reference incorporated into this Funding Loan Agreement and made a part of this Funding Loan Agreement as if set forth in this Funding Loan Agreement in full, and by its acceptance of

this Funding Loan Agreement the Fiscal Agent acknowledges receipt of the Tax Certificate and acknowledges its incorporation into this Funding Loan Agreement by this reference and agrees to comply with the terms specifically applicable to it.

(b) *Fiscal Agent's Covenants.* The Fiscal Agent agrees that it will invest funds held under this Funding Loan Agreement in accordance with the covenants and terms of this Funding Loan Agreement and the Tax Certificate (this covenant shall extend through the term of the Funding Loan, to all funds and accounts created under this Funding Loan Agreement and all money on deposit to the credit of any such fund or account). The Fiscal Agent covenants to and for the benefit of the Funding Lender that, notwithstanding any other provisions of this Funding Loan Agreement or of any other Financing Document, it will not knowingly make or cause to be made any investment or other use of the money in the funds or accounts created hereunder which would cause the Governmental Note to be classified as an "arbitrage bond" within the meaning of Sections 103(b) and 148 of the Code and the regulations thereunder or would cause the interest on the Governmental Note to be includable in gross income for federal income tax purposes; provided that the Fiscal Agent shall be deemed to have complied with such requirements and shall have no liability to the extent it reasonably follows the written directions of the Borrower, the Governmental Lender, the Funding Lender Representative, Bond Counsel or the Rebate Analyst. This covenant shall extend, throughout the term of the Funding Loan, to all funds created under this Funding Loan Agreement and all money on deposit to the credit of any such fund. Pursuant to this covenant, with respect to the investments of the funds and accounts under this Funding Loan Agreement, the Fiscal Agent obligates itself to comply throughout the term of the Funding Loan with the requirements of Sections 103(b) and 148 of the Code; provided that the Fiscal Agent shall be deemed to have complied with such requirements and shall have no liability to the extent it reasonably follows the written directions of the Borrower, the Governmental Lender, Bond Counsel or the Rebate Analyst. The Fiscal Agent further covenants that should the Governmental Lender or the Borrower file with the Fiscal Agent (it being understood that neither the Governmental Lender nor the Borrower has an obligation to so file), or should the Fiscal Agent receive, an opinion of Bond Counsel to the effect that any proposed investment or other use of proceeds of the Funding Loan would cause the Governmental Note to become an "arbitrage bond," then the Fiscal Agent will comply with any written instructions of the Governmental Lender, the Borrower, the Funding Lender Representative or Bond Counsel regarding such investment (which shall, in any event, be a Qualified Investment) or use so as to prevent the Governmental Note from becoming an "arbitrage bond," and the Fiscal Agent will bear no liability to the Governmental Lender, the Borrower, the Funding Lender or the Funding Lender Representative for investments made in accordance with such instructions.

Section 5.08 *Representations and Warranties of the Governmental Lender.* The Governmental Lender hereby represents and warrants as follows:

(a) The Governmental Lender is a public corporation and instrumentality of the State, duly organized and validly existing under the laws of the State.

(b) The Governmental Lender has all necessary power and authority to issue the Governmental Note and to execute and deliver this Funding Loan Agreement, the Project Loan Agreement and the other Financing Documents to which it is a party, and to perform its duties and discharge its obligations hereunder and thereunder.

(c) The revenues and assets pledged for the repayment of the Funding Loan are and will be free and clear of any pledge, lien or encumbrance prior to, or equal with, the pledge created by this Funding Loan Agreement, and all action on the part of the Governmental Lender to that end has been duly and validly taken.

(d) The Financing Documents to which the Governmental Lender is a party have been validly authorized, executed and delivered by the Governmental Lender, and assuming due authorization, execution and delivery by the other parties thereto, constitute valid and binding obligations of the Governmental Lender, enforceable against the Governmental Lender in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally and the application of equitable principles.

(e) The Governmental Lender is not in default under or in violation of, and the execution and delivery of the Regulatory Agreement and the Financing Documents to which it is a party and its compliance with the terms and conditions thereof will not in any material respect conflict or constitute a default under or a violation of, (i) the Act, (ii) to its knowledge, any other existing laws, rules, regulations, judgments, decrees and orders applicable to it, or (iii) to its knowledge, the provisions of any material agreements or instruments to which the Governmental Lender is a party, a default under or violation of which would prevent it from entering into this Funding Loan Agreement, executing and delivering the Governmental Note, financing the Project, executing and delivering the Regulatory Agreement and the other Financing Documents to which it is a party or consummating the transactions contemplated thereby.

ARTICLE VI

DEFAULT PROVISIONS AND REMEDIES OF FISCAL AGENT AND FUNDING LENDER

Section 6.01 *Events of Default.* Each of the following shall be an event of default with respect to the Funding Loan (an "Event of Default") under this Funding Loan Agreement:

(a) failure to pay the principal of, premium, if any, or interest on the Funding Loan when due, whether on an Interest Payment Date, at the stated maturity thereof, by proceedings for prepayment thereof, by acceleration or otherwise; or

(b) failure to observe the covenants set forth in Section 5.05 hereof; or

(c) failure to observe or perform any of the covenants, agreements or conditions on the part of the Governmental Lender (other than those set forth in Sections 5.01 and 5.05 hereof) set forth in this Funding Loan Agreement or in the Governmental Note and the continuance thereof for a period of thirty (30) days (or such longer period, if any, as is specified herein for particular defaults) after written notice thereof to the Governmental Lender from the Fiscal Agent or the Funding Lender Representative specifying such default and requiring the same to be remedied; provided that if such default cannot be cured within such thirty (30) day period through the exercise of diligence and the Governmental Lender commences the required cure within such thirty (30) day period and continues the cure with diligence and the Governmental Lender reasonably anticipates that the default could be cured within sixty (60) days, the Governmental Lender shall have sixty (60) days following receipt of such notice to effect the cure; or

(d) receipt by the Fiscal Agent of written notice from the Funding Lender Representative of the acceleration of the Project Loan upon the occurrence of an "Event of Default" under the Project Loan Agreement or the Permanent Loan Agreement.

The Fiscal Agent will promptly notify the Governmental Lender, the Servicer and the Funding Lender Representative after a Responsible Officer obtains actual knowledge of the occurrence of an Event

of Default or obtains actual knowledge of the occurrence of an event which would become an Event of Default with the passage of time or the giving of notice or both.

Section 6.02 Acceleration; Other Remedies Upon Event of Default. Upon the occurrence of an Event of Default, the Fiscal Agent shall, upon the written request of the Funding Lender Representative, by notice in writing delivered to the Governmental Lender, declare the principal of the Funding Loan and the interest accrued thereon immediately due and payable, and interest shall continue to accrue thereon until such amounts are paid.

At any time after the Funding Loan shall have been so declared due and payable, and before any judgment or decree for the payment of the money due shall have been obtained or entered, the Fiscal Agent may, but only if directed in writing by the Funding Lender Representative, by written notice to the Governmental Lender and the Fiscal Agent, rescind and annul such declaration and its consequences if the Governmental Lender or the Borrower shall pay to or deposit with the Fiscal Agent a sum sufficient to pay all principal on the Funding Loan then due (other than solely by reason of such declaration) and all unpaid installments of interest (if any) on the Funding Loan then due, with interest at the rate borne by the Funding Loan on such overdue principal and (to the extent legally enforceable) on such overdue installments of interest, and the reasonable fees and expenses of the Fiscal Agent (including its counsel) shall have been made good or cured or adequate provision shall have been made therefor, and all outstanding amounts then due and unpaid under the Financing Documents (collectively, the “**Cure Amount**”) shall have been paid in full, and all other defaults hereunder shall have been made good or cured or waived in writing by the Funding Lender Representative; but no such rescission and annulment shall extend to or shall affect any subsequent default, nor shall it impair or exhaust any right or power consequent thereon.

Upon the occurrence and during the continuance of an Event of Default, the Fiscal Agent in its own name and as trustee of an express trust, on behalf and for the benefit and protection of the Funding Lender, may also proceed to protect and enforce any rights of the Fiscal Agent and, to the full extent that the Funding Lender itself might do, the rights of the Funding Lender under the laws of the State or under this Funding Loan Agreement by such of the following remedies as the Fiscal Agent shall deem most effectual to protect and enforce such rights; provided that, the Fiscal Agent may undertake any such remedy only upon the receipt of the prior written consent of the Funding Lender Representative (which consent may be given in the sole discretion of the Funding Lender Representative):

(i) by mandamus or other suit, action or proceeding at law or in equity, to enforce the payment of the principal of, premium, if any, or interest on the Funding Loan and to require the Governmental Lender to carry out any covenants or agreements with or for the benefit of the Funding Lender and to perform its duties under the Act, this Funding Loan Agreement, the Project Loan Agreement or the Regulatory Agreement (as applicable) to the extent permitted under the applicable provisions thereof;

(ii) by pursuing any available remedies under the Project Loan Agreement, the Regulatory Agreement or any other Financing Document;

(iii) by realizing or causing to be realized through sale or otherwise upon the security pledged hereunder; and

(iv) by action or suit in equity enjoin any acts or things that may be unlawful or in violation of the rights of the Funding Lender and execute any other papers and documents and do and perform any and all such acts and things as may be necessary or advisable in the opinion of

the Fiscal Agent in order to have the claim of the Funding Lender against the Governmental Lender allowed in any bankruptcy or other proceeding.

No remedy by the terms of this Funding Loan Agreement conferred upon or reserved to the Fiscal Agent or to the Funding Lender is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Fiscal Agent or the Funding Lender hereunder or under the Project Loan Agreement, the Regulatory Agreement, the Permanent Loan Agreement or any other Financing Document, as applicable, 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 any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default hereunder, whether by the Fiscal Agent or the Funding Lender, shall extend to or shall affect any subsequent default or event of default or shall impair any rights or remedies consequent thereto.

Section 6.03 *Funding Lender Representative Control of Proceedings.* If an Event of Default has occurred and is continuing, notwithstanding anything to the contrary herein, the Funding Lender Representative shall have the sole and exclusive right at any time to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Funding Loan Agreement, or for the appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Funding Loan Agreement. In addition, subject to Section 7.06 of the Project Loan Agreement, the Funding Lender Representative shall have the sole and exclusive right at any time to directly enforce all rights and remedies hereunder and under the other Financing Documents with or without the involvement of the Fiscal Agent or the Governmental Lender (and in connection therewith the Fiscal Agent shall transfer or assign to the Funding Lender Representative all of its interest in the Pledged Security at the request of the Funding Lender Representative). In no event shall the exercise of any of the foregoing rights result in an acceleration of the Funding Loan without the express direction of the Funding Lender Representative.

Section 6.04 *Waiver by Governmental Lender.* Upon the occurrence of an Event of Default, to the extent that such right may then lawfully be waived, neither the Governmental Lender nor anyone claiming through or under it shall set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or prepayment laws now or hereinafter in force, in order to prevent or hinder the enforcement of this Funding Loan Agreement; and the Governmental Lender, for itself and all who may claim through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws and all right of appraisal and prepayment to which it may be entitled under the laws of the State and the United States of America.

Section 6.05 *Application of Money After Default.* All money collected by the Fiscal Agent at any time pursuant to this Article shall, except to the extent, if any, otherwise directed by a court of competent jurisdiction, be credited by the Fiscal Agent to the Revenue Fund. Such money so credited to the Revenue Fund and all other money from time to time credited to the Revenue Fund shall at all times be held, transferred, withdrawn and applied as prescribed by the provisions of Article IV hereof and this Section 6.05.

In the event that at any time the money credited to the Revenue Fund, the Loan Payment Fund and the Loan Prepayment Fund available for the payment of interest or principal then due with respect to the Governmental Note shall be insufficient for such payment, such money shall be applied as follows and in the following order of priority:

(a) For payment of all amounts due to the Fiscal Agent incurred in performance of its duties under this Funding Loan Agreement, including, without limitation, the payment of all reasonable fees and expenses of the Fiscal Agent incurred in exercising any remedies under this Funding Loan Agreement.

(b) To the extent directed in writing by the Funding Lender Representative, to the reimbursement of any unreimbursed advances made by or on behalf of the Funding Lender pursuant to the Permanent Loan Agreement or the Security Instrument.

(c) Unless the full principal amount of the Funding Loan shall have become or have been declared due and payable:

FIRST: to the Funding Lender, all installments of interest then due on the Funding Loan in the order of the maturity of such installments; and

SECOND: to the Funding Lender, unpaid principal of and premium, if any, on the Funding Loan which shall have become due, whether at maturity or by call for prepayment, in the order in which they became due and payable.

(d) If the full principal amount of the Governmental Note shall have become or have been declared due and payable, to the Funding Lender for the payment of the principal of, premium, if any, and interest then due and unpaid on the Funding Loan without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest.

Section 6.06 Remedies Not Exclusive. No right or remedy conferred upon or reserved to the Fiscal Agent, the Funding Lender or the Funding Lender Representative by the terms of this Funding Loan Agreement is intended to be exclusive of any other right or remedy, but each and every such remedy shall be cumulative and shall be in addition to every other right or remedy given to the Fiscal Agent, the Funding Lender or the Funding Lender Representative under this Funding Loan Agreement or existing at law or in equity or by statute (including the Act).

Section 6.07 Fiscal Agent May Enforce Rights Without Governmental Note. All rights of action and claims, including the right to file proof of claims, under this Funding Loan Agreement may be prosecuted and enforced by the Fiscal Agent at the written direction of the Funding Lender Representative without the possession of the Governmental Note or the production thereof in any trial or other proceedings relating thereto. Subject to the rights of the Funding Lender Representative to direct proceedings hereunder, any such suit or proceeding instituted by the Fiscal Agent shall be brought in its name as Fiscal Agent without the necessity of joining as plaintiffs or defendants any Funding Lender, and any recovery or judgment shall be for the benefit as provided herein of the Funding Lender.

Section 6.08 [Reserved].

Section 6.09 Termination of Proceedings. In case the Fiscal Agent (at the direction of the Funding Lender Representative) or the Funding Lender Representative shall have proceeded to enforce any right under this Funding Loan Agreement by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower and the Funding Lender shall be restored to their former positions and rights hereunder with respect to the Pledged Security herein conveyed, and all rights,

remedies and powers of the Fiscal Agent and the Funding Lender Representative shall continue as if no such proceedings had been taken.

Section 6.10 *Waivers of Events of Default.* The Fiscal Agent shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest on the Funding Loan upon the written direction of the Funding Lender Representative. In case of any such waiver or rescission, or in case any proceeding taken by the Fiscal Agent on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case the Governmental Lender, the Fiscal Agent, the Borrower, the Servicer, the Funding Lender Representative and the Funding Lender shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereto.

Section 6.11 *Interest on Unpaid Amounts and Default Rate for Nonpayment.* In the event that principal of or interest payable on the Funding Loan is not paid when due, there shall be payable on the amount not timely paid, on each Interest Payment Date, interest at the Default Rate, to the extent permitted by law. Interest on the Funding Loan shall accrue at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full.

Section 6.12 *Assignment of Project Loan; Remedies Under the Project Loan.*

(a) The Funding Lender Representative shall have the right, with respect to the Project Loan, in its sole and absolute discretion, without directing the Fiscal Agent to effect an acceleration of the Funding Loan, to instruct the Fiscal Agent in writing to assign the Project Note, the Security Instrument and the other Project Loan Documents (other than the Regulatory Agreement and Unassigned Rights) to the Funding Lender Representative, in which event the Fiscal Agent shall (a) endorse and deliver the Project Note to the Funding Lender Representative and assign (in recordable form) the Security Instrument, (b) execute and deliver to the Funding Lender Representative all documents prepared by the Funding Lender Representative necessary to assign (in recordable form) all other Project Loan Documents (other than the Regulatory Agreement and Unassigned Rights) to the Funding Lender Representative and (c) execute all such documents prepared by the Funding Lender Representative as are necessary to legally and validly effectuate the assignments provided for in the preceding clauses (a) and (b). The Fiscal Agent's assignments to the Funding Lender Representative pursuant to this Section 6.12 shall be without recourse or warranty except that the Fiscal Agent shall represent and warrant in connection therewith (A) that the Fiscal Agent has not previously endorsed or assigned any such documents or instruments and (B) that the Fiscal Agent has the corporate authority to endorse and assign such documents and instruments and such endorsements and assignments have been duly authorized.

(b) The Funding Lender Representative shall have the right, in its own name or on behalf of the Governmental Lender or the Fiscal Agent, to declare any default and exercise any remedies under the Project Loan Agreement, the Project Note or the Security Instrument, whether or not the Governmental Note has been accelerated or declared due and payable by reason of an Event of Default or the occurrence of a mandatory prepayment.

Section 6.13 *Substitution.* Upon receipt of written notice from the Funding Lender Representative and the approval of the Governmental Lender as and to the extent permitted under the Tax Certificate and the Regulatory Agreement, the Fiscal Agent shall exchange the Project Note and the Security Instrument for a new Project Note and Security Instrument, evidencing and securing a new loan (the "*New Project Loan*"), which may be executed by a person other than the Borrower (the "*New Borrower*"), provided that if the Fiscal Agent, the Funding Lender or a nominee of the Fiscal Agent or the Funding Lender has acquired the Project through foreclosure, by accepting a deed in lieu of foreclosure or

by comparable conversion of the Project, no approval from the Governmental Lender of such exchange shall be required. Prior to accepting a New Project Loan, the Fiscal Agent shall have received (i) written evidence that the New Borrower shall have executed and recorded, as applicable, a document substantially in the form of the Tax Certificate and the Regulatory Agreement (or executed and recorded an assumption of all of the Borrower's obligations under the Regulatory Agreement) and that the Project Loan Documents have been modified as necessary to be applicable to the New Project Loan, and (ii) an opinion of Bond Counsel, to the effect that such exchange and modification, in and of itself, shall not affect the exclusion, from gross income, for federal income tax purposes of the interest payable on the Governmental Note.

ARTICLE VII

CONCERNING THE FISCAL AGENT

Section 7.01 *Standard of Care.* The Fiscal Agent, prior to an Event of Default as defined in Section 6.01 hereof and after the curing or waiver of all such events which may have occurred, shall perform such duties and only such duties as are specifically set forth in this Funding Loan Agreement and no implied covenants or obligations should be read into this Funding Loan Agreement against the Fiscal Agent. The Fiscal Agent, during the existence of any such Event of Default (which shall not have been cured or waived), shall exercise such rights and powers vested in it by this Funding Loan Agreement and use the same degree of care and skill in its exercise as a prudent Person would exercise or use under similar circumstances in the conduct of such Person's own affairs. For the avoidance of doubt, the permissive right of the Fiscal Agent to do things enumerated in this Funding Loan Agreement or the Project Loan Agreement shall not be construed as a duty.

No provision of this Funding Loan Agreement shall be construed to relieve the Fiscal Agent from liability for its breach of trust, own negligence or willful misconduct, except that:

(a) prior to an Event of Default hereunder, and after the curing or waiver of all such Events of Default which may have occurred:

(i) the duties and obligations of the Fiscal Agent shall be determined solely by the express provisions of this Funding Loan Agreement, and the Fiscal Agent shall not be liable except with regard to the performance of such duties and obligations as are specifically set forth in this Funding Loan Agreement; and

(ii) in the absence of bad faith on the part of the Fiscal Agent, the Fiscal Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificate or opinion furnished to the Fiscal Agent by the Person or Persons authorized to furnish the same;

(b) at all times, regardless of whether or not any such Event of Default shall exist:

(i) the Fiscal Agent shall not be liable for any error of judgment made in good faith by an officer or employee of the Fiscal Agent except for willful misconduct or negligence by the officer or employee of the Fiscal Agent as the case may be; and

(ii) the Fiscal Agent shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Funding Lender Representative relating to the time, method and place of conducting any

proceeding for any remedy available to the Fiscal Agent, or exercising any trust or power conferred upon the Fiscal Agent under this Funding Loan Agreement.

Section 7.02 *Reliance upon Documents.* Except as otherwise provided in Section 7.01 hereof:

(a) the Fiscal Agent may rely upon the authenticity or truth of the statements and the correctness of the opinions expressed in, and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, notarial seal, stamp, acknowledgment, verification, request, consent, order, bond, or other paper or document of the proper party or parties, including any Electronic Instruction and Notice as permitted hereunder or under the Project Loan Agreement;

(b) any notice, request, direction, election, order or demand of the Governmental Lender mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Governmental Lender by an Authorized Officer of the Governmental Lender (unless other evidence in respect thereof be herein specifically prescribed), and any resolution of the Governmental Lender may be evidenced to the Fiscal Agent by a copy of such resolution duly certified by an Authorized Officer of the Governmental Lender;

(c) any notice, request, certificate, statement, requisition, direction, election, order or demand of the Borrower mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Borrower by any Authorized Officer of the Borrower (unless other evidence in respect thereof be herein specifically prescribed), and any resolution or certification of the Borrower may be evidenced to the Fiscal Agent by a copy of such resolution duly certified by a secretary or other authorized representative of the Borrower;

(d) any notice, request, certificate, statement, requisition, direction, election, order or demand of the Servicer mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Servicer by an Authorized Officer of the Servicer (unless other evidence in respect thereof be herein specifically prescribed);

(e) any notice, request, direction, election, order or demand of the Funding Lender Representative mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Funding Lender Representative by any Authorized Officer of the Funding Lender Representative (unless other evidence in respect thereof be herein specifically prescribed);

(f) [Intentionally Omitted];

(g) [Intentionally Omitted];

(h) in the administration of the trusts of this Funding Loan Agreement, the Fiscal Agent may execute any of the trusts or powers hereby granted directly or through its agents, receivers or attorneys appointed with due care, and the Fiscal Agent may consult with counsel (who may be counsel for the Governmental Lender, the Servicer or the Funding Lender Representative) concerning all matters of trusts hereof and duties hereunder, and the opinion or advice of such counsel shall be full and complete authorization and protection in respect of any action taken or permitted by it hereunder in good faith and in accordance with the opinion of such counsel;

(i) whenever in the administration of the trusts of this Funding Loan Agreement, the Fiscal Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or permitting any action hereunder, such matters (unless other evidence in respect thereof

be herein specifically prescribed), may in the absence of negligence or willful misconduct on the part of the Fiscal Agent, be deemed to be conclusively proved and established by a certificate of an officer or authorized agent of the Governmental Lender or the Borrower and such certificate shall in the absence of bad faith on the part of the Fiscal Agent be full warrant to the Fiscal Agent for any action taken or permitted by it under the provisions of this Funding Loan Agreement, but in its discretion the Fiscal Agent may in lieu thereof accept other evidence of such matter or may require such further or additional evidence as it may deem reasonable;

(j) the recitals herein and in the Governmental Note (except the Fiscal Agent's certificate of authentication thereon) shall not be considered as made by or imposing any obligation or liability upon the Fiscal Agent. The Fiscal Agent makes no representations as to the value or condition of the Pledged Security or any part thereof, or as to the title of the Governmental Lender or the Borrower to the Pledged Security, or as to the security of this Funding Loan Agreement, or of the Governmental Note issued hereunder, and the Fiscal Agent shall incur no liability or responsibility in respect of any of such matters;

(k) the Fiscal Agent shall not be personally liable for debts contracted or liability for damages incurred in the management or operation of the Pledged Security except for its own willful misconduct or negligence; and every provision of this Funding Loan Agreement relating to the conduct or affecting the liability of or affording protection to the Fiscal Agent shall be subject to the provisions of this Section 7.02(k);

(l) the Fiscal Agent shall not be required to ascertain or inquire as to the performance or observance of any of the covenants or agreements (except to the extent they obligate the Fiscal Agent) herein or in any contracts or securities assigned or conveyed to or pledged with the Fiscal Agent hereunder, except Events of Default that are evident under Section 6.01(a) hereof. The Fiscal Agent shall not be required to take notice or be deemed to have notice or actual knowledge of any default or Event of Default specified in Section 6.01 hereof (except defaults under Section 6.01(a) hereof to the extent they are collecting loan payments hereunder) unless the Fiscal Agent shall receive from the Governmental Lender or the Funding Lender Representative written notice stating that a default or Event of Default has occurred and specifying the same, and in the absence of such notice the Fiscal Agent may conclusively assume that there is no such default. Every provision contained in this Funding Loan Agreement or related instruments or in any such contract or security wherein the duty of the Fiscal Agent depends on the occurrence and continuance of such default shall be subject to the provisions of this Section 7.02(l);

(m) the Fiscal Agent shall be under no duty to confirm or verify any financial or other statements or reports or certificates furnished pursuant to any provisions hereof, except to the extent such statement or reports are furnished by or under the direction of the Fiscal Agent, and shall be under no other duty in respect of the same except to retain the same in its files and permit the inspection of the same at reasonable times by the Funding Lender; and

(n) the Fiscal Agent shall be under no obligation to exercise those rights or powers vested in it by this Funding Loan Agreement, other than such rights and powers which it shall be obliged to exercise in the ordinary course of acting as Fiscal Agent under the terms and provisions of this Funding Loan Agreement and as required by law, at the request or direction of the Funding Lender Representative pursuant to Section 6.03 hereof, unless the Funding Lender Representative shall have offered to the Fiscal Agent reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in the compliance with such request or direction.

None of the provisions contained in this Funding Loan Agreement shall require the Fiscal Agent to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

The Fiscal Agent is authorized and directed to execute in its capacity as Fiscal Agent and the Project Loan Agreement and shall have no responsibility or liability with respect to any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the delivery of the Governmental Note.

The Fiscal Agent is authorized and directed to execute in its capacity as Fiscal Agent the Project Loan Agreement and shall have no responsibility or liability with respect to any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the delivery of the Governmental Note. In acting or omitting to act pursuant to the Project Loan Agreement or any other documents executed in connection herewith, the Fiscal Agent shall be entitled to all of the rights, immunities and indemnities accorded to it under this Funding Loan Agreement, including, but not limited to, this Article VII.

The Fiscal Agent or any of its affiliates may act as advisor or sponsor with respect to any Qualified Investments.

The Fiscal Agent agrees to accept and act upon Electronic Instruction and Notice of written instructions and/or directions pursuant to this Funding Loan Agreement or other Financing Document.

Any resolution, certification, notice, request, direction, election, order or demand delivered to the Fiscal Agent pursuant to this Section 7.02 shall remain in effect until the Fiscal Agent receives written notice to the contrary from the party that delivered such instrument accompanied by revised information for such party.

The Fiscal Agent shall have no responsibility for the value of any collateral or with respect to the perfection or priority of any security interest in any collateral except as otherwise provided in Section 7.17 hereof.

Notwithstanding anything contained herein or in the Security Instrument to the contrary, upon the occurrence and continuance of an Event of Default, before taking any foreclosure action or any action which may subject the Fiscal Agent to liability under any environmental law, statute, regulation or similar requirement relating to the environment, the Fiscal Agent may require that a satisfactory indemnity bond, indemnity or environmental impairment insurance be furnished for the payment or reimbursement of all expenses to which it may be put and to protect it against all liability resulting from any claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability) and expenses which may result from such foreclosure or other action. The Fiscal Agent shall not be required to take any action to foreclose or otherwise enforce the Security Instrument unless indemnified to its satisfaction and will not be required to foreclose if doing so will subject it to environmental liability or will require the approval of a governmental regulator that cannot be obtained.

Section 7.03 Use of Proceeds. The Fiscal Agent shall not be accountable for the use or application of the Governmental Note authenticated or delivered hereunder or of the proceeds of the Funding Loan except as provided herein.

Section 7.04 [Reserved].

Section 7.05 *Trust Imposed.* All money received by the Fiscal Agent shall, until used or applied as herein provided, be held in trust for the purposes for which it was received.

Section 7.06 Compensation of Fiscal Agent. The Fiscal Agent shall be entitled to its Ordinary Fiscal Agent's Fees and Expenses in connection with the services rendered by it in the execution of the trusts hereby created and in the exercise and performance of any of the powers and duties of the Fiscal Agent hereunder or under any Financing Document to the extent money is available therefor, in accordance with Section 4.06 hereof, exclusive of Extraordinary Services. The Fiscal Agent shall be entitled to Extraordinary Fiscal Agent's Fees and Expenses in connection with any Extraordinary Services performed consistent with the duties hereunder or under any of the Financing Documents; provided the Fiscal Agent shall not perform any Extraordinary Services or incur any Extraordinary Fiscal Agent's Fees and Expenses without the consent of the Funding Lender Representative. If any property, other than cash, shall at any time be held by the Fiscal Agent subject to this Funding Loan Agreement, or any supplement hereto, as security for the Funding Loan, the Fiscal Agent, if and to the extent authorized by a receivership, bankruptcy, or other court of competent jurisdiction or by the instrument subjecting such property to the provisions of this Funding Loan Agreement as such security for the Funding Loan, shall be entitled to make advances for the purpose of preserving such property or of discharging tax liens or other liens or encumbrances thereon. Payment to the Fiscal Agent for its services and reimbursement to the Fiscal Agent for its expenses, disbursements, liabilities and advances, shall be limited to the sources described in the Project Loan Agreement and in Sections 4.06, 4.11 and 6.05 hereof. The Governmental Lender shall have no liability for Fiscal Agent's fees, costs or expenses. Subject to the provisions of Section 7.09 hereof, the Fiscal Agent agrees that it shall continue to perform its duties hereunder and under the Financing Documents even in the event that money designated for payment of its fees shall be insufficient for such purposes or in the event that the Borrower fails to pay the Ordinary Fiscal Agent's Fees and Expenses or, if applicable, the Extraordinary Fiscal Agent's Fees and Expenses as required by the Project Loan Agreement.

The Borrower shall indemnify and hold harmless the Fiscal Agent and its officers, directors, officials, employees, agents, receivers, attorneys, accountants, advisors, consultants and servants, past, present or future, from and against (a) any and all claims by or on behalf of any person arising from any cause whatsoever in connection with this Funding Loan Agreement or transactions contemplated hereby, the Project, or the delivery of the Governmental Note or the Loans; (b) any and all claims arising from any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Project, or the delivery of the Governmental Note or the Loans; and (c) all costs, counsel fees, expenses or liabilities incurred in connection with any such claim or proceeding brought thereon; except that the Borrower shall not be required to indemnify any person for damages caused by the gross negligence, willful misconduct or unlawful acts of such person or which arise from events occurring after the Borrower ceases to own the Project. In the event that any action or proceeding is brought or claim made against the Fiscal Agent, or any of its officers, directors, officials, employees, agents, receivers, attorneys, accountants, advisors, consultants or servants, with respect to which indemnity may be sought hereunder, the Borrower, upon written notice thereof from the indemnified party, shall assume the investigation and defense thereof, including the employment of counsel and the payment of all expenses (except for matters attributable to the negligence or willful misconduct of such person). The indemnified party shall have the right to approve a settlement to which it is a party and to employ separate counsel in any such action or proceedings and to participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses of such separate counsel. The provisions of this Section 7.06 shall survive the termination of this Funding Loan Agreement.

Section 7.07 Qualifications of Fiscal Agent. There shall at all times be a Fiscal Agent hereunder which shall be an association or a corporation organized and doing business under the laws of the United States of America or any state thereof, authorized under such laws of the State to exercise corporate trust powers. Any successor Fiscal Agent shall have a combined capital and surplus of at least \$50,000,000 (or shall be a wholly-owned subsidiary of an association or corporation that has such

combined capital and surplus), and be subject to supervision or examination by federal or state authority, or shall have been appointed by a court of competent jurisdiction pursuant to Section 7.11 hereof. If such association or corporation publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority referred to above, then for the purposes of this Section 7.07, the combined capital and surplus of such association or corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Fiscal Agent shall cease to be eligible in accordance with the provisions of this Section 7.07 and another association or corporation is eligible, the Fiscal Agent shall resign immediately in the manner and with the effect specified in Section 7.09 hereof.

Section 7.08 *Merger of Fiscal Agent.* Any association or corporation into which the Fiscal Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any association or corporation resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party shall, ipso facto, be and become successor Fiscal Agent hereunder and vested with all the title to the whole property or Pledged Security and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instruments or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding, and shall also be and become successor Fiscal Agent in respect of the legal interest of the Fiscal Agent in the Loans.

Section 7.09 *Resignation by the Fiscal Agent.* The Fiscal Agent may at any time resign from the trusts hereby created by giving not less than sixty (60) days written notice to the Governmental Lender, the Borrower, the Servicer and the Funding Lender Representative. Such notice to the Governmental Lender, the Borrower, the Servicer and the Funding Lender Representative may be served personally or sent by certified mail or overnight delivery service. The resignation of the Fiscal Agent shall not be effective until a successor Fiscal Agent has been appointed as provided herein and such successor Fiscal Agent shall have agreed in writing to be bound by the duties and obligations of the Fiscal Agent hereunder.

Section 7.10 *Removal of the Fiscal Agent.* The Fiscal Agent may be removed at any time, either with or without cause, with the consent of the Funding Lender Representative (which consent of the Funding Lender Representative shall not be unreasonably withheld) and the consent of the Funding Lender, by a written instrument signed by the Governmental Lender and delivered to the Fiscal Agent, the Servicer and the Borrower. The Fiscal Agent may also be removed by a written instrument signed by the Funding Lender Representative and delivered to the Fiscal Agent, the Servicer, the Governmental Lender and the Borrower. In each case written notice of such removal shall be given to the Servicer, the Borrower and to the Funding Lender. Any such removal shall take effect on the day specified in such written instrument(s), but the Fiscal Agent shall not be discharged from the trusts hereby created until a successor Fiscal Agent has been appointed and has accepted such appointment and has agreed in writing to be bound by the duties and obligations of the Fiscal Agent hereunder.

Section 7.11 *Appointment of Successor Fiscal Agent.*

(a) In case at any time the Fiscal Agent shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or shall be adjudged a bankrupt or insolvent, or if a receiver of the Fiscal Agent or of its property shall be appointed, or if a public supervisory office shall take charge or control of the Fiscal Agent or of its property or affairs, a vacancy shall forthwith and ipso facto be created in the office of such Fiscal Agent hereunder, and the Governmental Lender, with the written consent of the Funding Lender Representative, shall promptly appoint a successor Fiscal Agent. Any such appointment shall be made by a written instrument

executed by an Authorized Officer of the Governmental Lender. If the Governmental Lender fails to appoint a successor Fiscal Agent within thirty (30) days following receipt of notice of the resignation or removal of the Fiscal Agent pursuant to Section 7.09 or Section 7.10 hereunder, as applicable, the Funding Lender Representative may appoint a successor Fiscal Agent.

(b) If, in a proper case, no appointment of a successor Fiscal Agent shall be made pursuant to subsection (a) of this Section 7.11 within sixty (60) days following delivery of all required notices of resignation given pursuant to Section 7.09 hereof or of removal of the Fiscal Agent pursuant to Section 7.10 hereof, the retiring Fiscal Agent may apply to any court of competent jurisdiction to appoint a successor Fiscal Agent. The court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Fiscal Agent.

Section 7.12 *Concerning Any Successor Fiscal Agent.* Every successor Fiscal Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Governmental Lender a written instrument accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the Pledged Security and the rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Governmental Lender, the Borrower or the Funding Lender Representative, or of its successor, and upon payment of all amounts due such predecessor, including but not limited to fees and expenses of counsel, execute and deliver such instruments as may be appropriate to transfer to such successor Fiscal Agent all the Pledged Security and the rights, powers and trusts of such predecessor hereunder; and every predecessor Fiscal Agent shall deliver all securities and money held by it as Fiscal Agent hereunder to its successor. Should any instrument in writing from the Governmental Lender be required by a successor Fiscal Agent for more fully and certainly vesting in such successor the Pledged Security and all rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Governmental Lender. The resignation of any Fiscal Agent and the instrument or instruments removing any Fiscal Agent and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be filed and/or recorded by the successor Fiscal Agent in each recording office where this Funding Loan Agreement shall have been filed and/or recorded. Each successor Fiscal Agent shall mail notice by first class mail, postage prepaid, at least once within thirty (30) days of such appointment, to the Funding Lender.

Section 7.13 *Successor Fiscal Agent.* In the event of a change in the office of Fiscal Agent, the predecessor Fiscal Agent which shall have resigned or shall have been removed shall cease to be Fiscal Agent with respect to the Governmental Note, and the successor Fiscal Agent shall become such Fiscal Agent.

Section 7.14 *Appointment of Co-Fiscal Agent or Separate Fiscal Agent.* It is the intent of the Governmental Lender and the Fiscal Agent that there shall be no violation of any law of any jurisdiction (including particularly the laws of the State) denying or restricting the right of banking corporations or associations to transact business as Fiscal Agent in such jurisdiction. It is recognized that in case of litigation under or connected with this Funding Loan Agreement, the Project Loan Agreement or any of the other Financing Documents, and, in particular, in case of the enforcement of any remedies on default, or in case the Fiscal Agent deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein or therein granted to the Fiscal Agent or hold title to the properties in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Fiscal Agent, with the consent of the Governmental Lender and the Funding Lender Representative, appoint an additional individual or institution as a co-fiscal agent or separate fiscal agent.

In the event that the Fiscal Agent appoints an additional individual or institution as a co-fiscal agent or separate fiscal agent, in the event of the incapacity or lack of authority of the Fiscal Agent, by reason of any present or future law of any jurisdiction, to exercise any of the rights, powers, trusts and remedies granted to the Fiscal Agent herein or to hold title to the Pledged Security or to take any other action that may be necessary or desirable in connection therewith, each and every remedy, power, right, obligation, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Funding Loan Agreement to be imposed upon, exercised by or vested in or conveyed to the Fiscal Agent with respect thereto shall be imposed upon, exercisable by and vest in such separate fiscal agent or co-fiscal agent, but only to the extent necessary to enable such co-fiscal agent or separate fiscal agent to exercise such powers, rights, trusts and remedies, and every covenant and obligation necessary to the exercise thereof by such co-fiscal agent or separate fiscal agent shall run to and be enforceable by either of them, subject to the remaining provisions of this Section 7.14. Such co-fiscal agent or separate fiscal agent shall deliver an instrument in writing acknowledging and accepting its appointment hereunder to the Governmental Lender and the Fiscal Agent.

Should any instrument in writing from the Governmental Lender be required by the co-fiscal agent or separate fiscal agent so appointed by the Fiscal Agent for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Governmental Lender, the Fiscal Agent and the Borrower. If the Governmental Lender shall fail to deliver the same within thirty (30) days of such request, the Fiscal Agent is hereby appointed attorney-in-fact for the Governmental Lender to execute, acknowledge and deliver such instruments in the Governmental Lender's name and stead. In case any co-fiscal agent or separate fiscal agent, or a successor to either, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such co-fiscal agent or separate fiscal agent, so far as permitted by law, shall vest in and be exercised by the Fiscal Agent until the appointment of a new Fiscal Agent or successor to such co-fiscal agent or separate fiscal agent.

Every co- fiscal agent or separate fiscal agent shall, to the extent permitted by law, but to such extent only, be appointed subject to the following terms, namely:

(a) the Governmental Note shall be authenticated and delivered, and all rights, powers, trusts, duties and obligations by this Funding Loan Agreement conferred upon the Fiscal Agent in respect of the custody, control or management of money, papers, securities and other personal property shall be exercised solely by the Fiscal Agent;

(b) all rights, powers, trusts, duties and obligations conferred or imposed upon the Fiscal Agent shall be conferred or imposed upon or exercised or performed by the Fiscal Agent, or by the Fiscal Agent and such co- fiscal agent, or separate fiscal agent jointly, as shall be provided in the instrument appointing such co- fiscal agent or separate fiscal agent, except to the extent that under the law of any jurisdiction in which any particular act or acts are to be performed the Fiscal Agent shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co- fiscal agent or separate fiscal agent;

(c) any request in writing by the Fiscal Agent to any co- fiscal agent or separate fiscal agent to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking or the refraining from taking of such action by such co- fiscal agent or separate fiscal agent;

(d) any co- fiscal agent or separate fiscal agent to the extent permitted by law shall delegate to the Fiscal Agent the exercise of any right, power, trust, duty or obligation, discretionary or otherwise;

(e) the Fiscal Agent at any time by an instrument in writing with the concurrence of the Governmental Lender evidenced by a certified resolution may accept the resignation of or remove any co- fiscal agent or separate fiscal agent appointed under this Section 7.14 and in case an Event of Default shall have occurred and be continuing, the Fiscal Agent shall have power to accept the resignation of or remove any such co- fiscal agent or separate fiscal agent without the concurrence of the Governmental Lender, and upon the request of the Fiscal Agent, the Governmental Lender shall join with the Fiscal Agent in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co- fiscal agent or separate fiscal agent so resigned or removed may be appointed in the manner provided in this Section 7.14;

(f) no Fiscal Agent or co- fiscal agent hereunder shall be personally liable by reason of any act or omission of any other Fiscal Agent hereunder;

(g) any demand, request, direction, appointment, removal, notice, consent, waiver or other action in writing executed by the Funding Lender Representative and delivered to the Fiscal Agent shall be deemed to have been delivered to each such co- fiscal agent or separate fiscal agent; and

(h) any money, papers, securities or other items of personal property received by any such co- fiscal agent or separate fiscal agent hereunder shall forthwith, so far as may be permitted by law, be turned over to the Fiscal Agent.

The total compensation of the Fiscal Agent and any co fiscal agent or separate fiscal agent shall be as, and may not exceed the amount, provided in Section 7.06 hereof.

Section 7.15 *Notice of Certain Events.* The Fiscal Agent shall give written notice to the Governmental Lender, the Servicer and the Funding Lender Representative of any failure by the Borrower to comply with the terms of the Regulatory Agreement or any Determination of Taxability of which a Responsible Officer has actual knowledge.

Section 7.16 *[Reserved].*

Section 7.17 *Filing of Financing Statements.* The Fiscal Agent shall, at the expense of the Borrower, file or record or cause to be filed or recorded all UCC continuation statements for the purpose of continuing without lapse the effectiveness of those financing statements which have been filed on or approximately on the Original Closing Date or the Conversion Date in connection with the security for the Funding Loan pursuant to the authority of the UCC. Upon the filing of any such continuation statement the Fiscal Agent shall immediately notify the Governmental Lender, the Borrower, the Funding Lender Representative and the Servicer that the same has been done. If direction is given by the Servicer or the Funding Lender Representative, the Fiscal Agent shall file all continuation statements in accordance with such directions. The Borrower shall be responsible for the reasonable costs incurred and customary fees charged by the Fiscal Agent in the preparation and filing of all continuation statements hereunder.

Notwithstanding anything to the contrary contained herein, the Fiscal Agent shall not be responsible for any initial filings of any financing statements or the information contained therein

(including the exhibits thereto), the perfection of any such security interests, or the accuracy or sufficiency of any description of collateral in such initial filings or for filing any modifications or amendments to the initial filings required by any amendments to Article 9 of the Uniform Commercial Code and unless the Fiscal Agent shall have been notified by the Funding Lender that any such initial filing or description of collateral was or has become defective, the Fiscal Agent shall be fully protected in relying on such initial filing and descriptions in filing any continuation statements or modifications thereto pursuant to this Section 7.17 and in filing any continuation statements in the same filing offices as the initial filings were made.

Section 7.18 *USA Patriot Act Requirements of the Fiscal Agent.* To help the government of the United States of America fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For a non-individual Person such as a business entity, a charity, a trust, or other legal entity, the Fiscal Agent may request documentation to verify such Person's formation and existence as a legal entity. The Fiscal Agent may also request financial statements, licenses, identification and authorization documents from individuals claiming authority to represent such Person or other relevant documentation.

ARTICLE VIII

AMENDMENTS OF CERTAIN DOCUMENTS

Section 8.01 *Amendments to this Funding Loan Agreement.* Any of the terms of this Funding Loan Agreement and the Governmental Note may be amended or waived only by an instrument signed by the Fiscal Agent and the Governmental Lender, and with the prior written consent of the Funding Lender Representative.

Section 8.02 *Amendments to Financing Documents Require Consent of Funding Lender Representative.* Neither the Governmental Lender nor the Fiscal Agent shall consent to any amendment, change or modification of any Financing Document without the prior written consent of the Funding Lender Representative. The Fiscal Agent shall enter into such amendments to the Financing Documents as shall be directed by the Funding Lender Representative; ***provided, however,*** the Fiscal Agent shall not be obligated to enter into any such amendment to the Financing Documents that adversely affects the Fiscal Agent's rights, duties or immunities under such Financing Document or otherwise.

Section 8.03 *Opinion of Bond Counsel Required.* No amendment to this Funding Loan Agreement, the Governmental Note, the Project Loan Agreement, the Project Note, the Security Instrument or the Regulatory Agreement shall become effective unless and until (i) the Funding Lender Representative shall have consented to the same in writing in its sole discretion and (ii) the Funding Lender Representative, the Governmental Lender and the Fiscal Agent shall have received, at the expense of the Borrower, (A) an opinion of Bond Counsel to the effect that such amendment, change or modification will not, in and of itself, cause interest on the Governmental Note to be includable in gross income of the holders thereof for federal income tax purposes, and (B) an opinion of counsel acceptable to the Funding Lender Representative to the effect that any such proposed such amendment, change or modification is authorized and complies with the provisions of this Funding Loan Agreement and is a legal, valid and binding obligation of the parties thereto, subject to normal exceptions relating to bankruptcy, insolvency and equitable principles limitations.

ARTICLE IX

SATISFACTION AND DISCHARGE OF FUNDING LOAN AGREEMENT

Section 9.01 *Discharge of Lien.* If the Governmental Lender shall pay or cause to be paid to the Funding Lender the principal, interest and premium, if any, to become due with respect to the Funding Loan at the times and in the manner stipulated herein and in the Governmental Note, in any one or more of the following ways:

- (a) by the payment of all unpaid principal of (including Prepayment Premium, if any) and interest on the Funding Loan; or
- (b) prior to the Window Period, by the deposit to the account of the Fiscal Agent, in trust, of money or securities in the necessary amount to pay the principal, Prepayment Premium and interest to the Maturity Date; or
- (c) by the delivery of the Governmental Note by the Funding Lender to the Fiscal Agent for cancellation;

and shall have paid or cause to be paid all amounts due and owing under the other Financing Documents, and shall have paid or cause to be paid all fees and expenses of and any other amounts due to the Fiscal Agent, the Servicer and the Rebate Analyst, and if the Governmental Lender shall keep, perform and observe all and singular the covenants and promises in the Governmental Note and in this Funding Loan Agreement expressed as to be kept, performed and observed by it or on its part, then these presents and the estates and rights hereby granted shall cease, determine and be void, and thereupon the Fiscal Agent shall cancel and discharge the lien of this Funding Loan Agreement and execute and deliver to the Governmental Lender such instruments in writing as shall be requisite to satisfy the lien hereof, and reconvey to the Governmental Lender the estate hereby conveyed, and assign and deliver to the Governmental Lender any interest in property at the time subject to the lien of this Funding Loan Agreement which may then be in its possession, except amounts held by the Fiscal Agent for the payment of principal of, interest and premium, if any, on the Governmental Note, the payment of any amounts owed to the United States of America pursuant to Section 4.12 hereof.

Prior to the Window Period and subject to the satisfaction of the conditions set forth in Section 4.04(c) of the Project Loan Agreement, the Funding Loan shall, prior to the Maturity Date, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this Section 9.01 based on a deposit of moneys or securities with the Fiscal Agent pursuant to Section 9.01(b) if, under circumstances which do not cause interest on the Governmental Note to become includable in the holders' gross income for purposes of federal income taxation, the following conditions shall have been fulfilled: (a) there shall be on deposit with the Fiscal Agent either money or noncallable and nonprepayable direct obligations of the United States of America (or other defeasance securities constituting Qualified Investments approved in writing by the Funding Lender Representative) in an amount, together with anticipated earnings thereon (but not including any reinvestment of such earnings), which will be sufficient to pay, when due, the principal and interest due and to become due on the Funding Loan up to and on the Maturity Date; (b) the Fiscal Agent shall have received a verification report of a firm of certified public accountants or financial analyst reasonably acceptable to the Fiscal Agent and the Funding Lender Representative as to the adequacy of the amounts or securities so deposited to fully pay the Funding Loan; (c) the Fiscal Agent, the Governmental Lender and the Funding Lender Representative shall have received a written opinion of nationally recognized counsel experienced in bankruptcy matters to the effect that if the Borrower, any partner, general partner, member or guarantor of the Borrower, or the Governmental Lender were to become a debtor in a proceeding under the Bankruptcy Code (x)

payment of such money to the Funding Lender would not constitute a voidable preference under Section 547 of the Bankruptcy Code and (y) the automatic stay provisions of Section 362(a) of the Bankruptcy Code would not prevent application of such money to the payment of the Funding Loan; (d) the Fiscal Agent and the Funding Lender Representative shall have received an opinion of Bond Counsel to the effect that the defeasance of the Funding Loan is in accordance with the provisions of the Funding Loan Agreement and that such defeasance will not adversely affect the exclusion of interest on the Governmental Note from gross income for federal income tax purposes; and (e) the Fiscal Agent shall have received written confirmation that all fees, expenses or reimbursement of any advances due to the Funding Lender and the Servicer under the Financing Documents have been fully paid.

Section 9.02 *Discharge of Liability on Funding Loan.* Upon the deposit with the Fiscal Agent, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 9.01 above) to pay or prepay the Funding Loan (whether upon or prior to their maturity or the prepayment date of the Funding Loan) provided that, if the Funding Loan is to be prepaid prior to the maturity thereof, notice of such prepayment shall have been given as in Article III provided or provision satisfactory to the Fiscal Agent shall have been made for the giving of such notice, all liability of the Governmental Lender in respect of the Funding Loan shall cease, terminate and be completely discharged, except only that thereafter the Funding Lender shall be entitled to payment by the Governmental Lender, and the Governmental Lender shall remain liable for such payment, but only out of the money or securities deposited with the Fiscal Agent as aforesaid for their payment, subject, however, to the provisions of Section 9.03 hereof.

Section 9.03 *Payment of Funding Loan after Discharge of Funding Loan Agreement.* Notwithstanding any provisions of this Funding Loan Agreement, and subject to applicable unclaimed property laws of the State, any money deposited with the Fiscal Agent or any paying agent in trust for the payment of the principal of, interest or premium on the Governmental Note remaining unclaimed for three (3) years after the maturity or earlier payment date to the extent permitted by applicable law, shall be paid to the Borrower, whereupon all liability of the Governmental Lender and the Fiscal Agent with respect to such money shall cease, and the Funding Lender shall thereafter look solely to the Borrower for payment of any amounts then due. All money held by the Fiscal Agent and subject to this Section 9.03 shall be held uninvested and without liability for interest thereon.

ARTICLE X

INTENTIONALLY OMITTED

ARTICLE XI

MISCELLANEOUS

Section 11.01 *Servicing of the Loans.* The Funding Lender Representative may appoint a Servicer (which may be the Funding Lender Representative if the Funding Lender Representative elects to service the Loans) to service the Loans as provided in Section 3.02 of the Project Loan Agreement.

Section 11.02 *Limitation of Rights.* With the exception of rights herein expressly conferred, nothing expressed or to be implied from this Funding Loan Agreement or the Governmental Note is intended or shall be construed to give to any Person other than the Parties hereto, the Funding Lender, the Funding Lender Representative, the Servicer and the Borrower, any legal or equitable right, remedy or claim under or in respect to this Funding Loan Agreement or any covenants, conditions and provisions hereof.

Section 11.03 *Construction of Conflicts; Severability.* Notwithstanding anything provided herein, or in any of the documents referred to herein, in the event that any contracts or other documents executed by the Borrower or any other arrangements agreed to by the Borrower in order to finance or refinance the Project with the proceeds of the Funding Loan, the interest on which is excluded from gross income for federal income tax purposes under Section 103(a) of the Code are inconsistent with the Project Loan Documents, then the Project Loan Documents shall be controlling in all respects. If any provision of this Funding Loan Agreement shall be held or deemed to be, or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute,

rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or sections in this Funding Loan Agreement contained, shall not affect the remaining portions of this Funding Loan Agreement, or any part thereof.

Section 11.04 Notices.

(a) Whenever in this Funding Loan Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the Person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower, the Investor Limited Partner or the Servicer shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth below or as may be required or permitted by this Funding Loan Agreement by Electronic Instruction and Notice. The Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower or the Servicer may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

The Governmental Lender:	Rhode Island Housing and Mortgage Finance Corporation 44 Washington Street Providence, Rhode Island 02903 Attention: Executive Director Telephone: (401) 457-1234 Email: cventura@rihousing.com
The Fiscal Agent:	The Bank of New York Mellon Trust Company, N.A. 4655 Salisbury Road, Suite 300 Jacksonville, Florida 32256 Attention: Corporate Trust Telephone: (904) 645-7979 Email: caroline.cowart@bnymellon.com
The Borrower:	Brisa Bernon Mills, LP c/o [_____] 2009 Flatbush Avenue Brooklyn, New York 11234 Attention: Hammad Graham Telephone: (718) 774-6103 Email: HammadGraham@brisabuilders.com

with a copy to:

[_____
[_____
[_____
Attention: [_____
Telephone: [_____
Email: [_____]com

Initial Funding Lender and
Servicer:

IMPACT C.I.L., LLC
450 Sansome Street, Suite 100
San Francisco, California 94111
Attention: Jeffrey Brenner
Email: jbrenner@impactcapital.net
Telephone: (415) 638-9509

with a copy to:

[_____
[_____
[_____
Attention: [_____
Telephone: [_____
Email: [_____]com

A duplicate copy of each notice or other communication given hereunder by any party to the Servicer shall also be given to the Funding Lender Representative and by any party to the Funding Lender Representative to the Servicer.

The Fiscal Agent agrees to accept and act upon Electronic Instruction and Notice of written instructions and/or directions pursuant to this Funding Loan Agreement.

(b) The Fiscal Agent shall provide to the Funding Lender Representative and the Servicer (i) prompt notice of the occurrence of any Event of Default pursuant to Section 6.01 hereof and (ii) any written information or other written communication received by the Fiscal Agent hereunder within ten (10) Business Days of receiving a written request from the Funding Lender Representative and the Servicer for any such information or other communication.

Section 11.05 Funding Lender Representative.

(a) The Initial Funding Lender is the initial Funding Lender Representative with respect to the Governmental Note. The Funding Lender Representative shall be entitled to all the rights and privileges of the Funding Lender hereunder and under the other Financing Documents.

(b) The Funding Lender Representative may provide written notice to the Fiscal Agent designating particular individuals or Persons authorized to execute any consent, waiver, approval, direction or other instrument on behalf of the Funding Lender Representative, and such notice may be amended or rescinded by the Funding Lender Representative at any time by subsequent written notice. The Funding Lender Representative may be removed and a successor appointed by a written notice in the form of **Exhibit B** hereto given by the Funding Lender to the Fiscal Agent, the Governmental Lender, the Servicer and the Borrower. The removal and reappointment shall be effective immediately upon receipt of such notice by the Fiscal Agent. The Funding Lender may appoint any Person to act as Funding Lender Representative, including, without limitation, the Servicer. If, for any reason, a Funding Lender Representative resigns by written notice provided to the Fiscal Agent, the Funding Lender, the Governmental Lender, the Servicer and the Borrower, all references to Funding Lender Representative

herein and in the other Financing Documents shall be deemed to refer to the Funding Lender until a successor Funding Lender Representative is appointed by the Funding Lender.

(c) Whenever pursuant to this Funding Loan Agreement or any other Financing Document, the Funding Lender Representative exercises any right given to it to approve or disapprove, any arrangement or term hereof, the decision of the Funding Lender Representative to approve or disapprove or to decide whether arrangements or terms are acceptable or not acceptable shall be in the sole discretion of the Funding Lender Representative, except as otherwise specifically indicated.

(d) Each Funding Lender, by their purchase or other acquisition of the Funding Loan, shall be deemed to have acknowledged and agreed to the provisions of this Funding Loan Agreement and the other Financing Documents with respect to the Funding Lender Representative and the rights and privileges thereof, including but not limited to the right to control all remedies in respect of the Governmental Note and the Loans.

Section 11.06 *Payments Due on Non-Business Days.* In any case where a date of payment with respect to the Funding Loan shall be a day other than a Business Day, then such payment need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on such date, and no interest shall accrue for the period after such date provided that payment is made on such next succeeding Business Day.

Section 11.07 *Counterparts.* This Funding Loan 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. The exchange of copies of this Funding Loan Agreement and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this instrument as to the parties hereto and may be used in lieu of the original instrument for all purposes. Signature pages of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 11.08 *Laws Governing Funding Loan Agreement.* The effect and meanings of this Funding Loan Agreement and the rights of all parties hereunder shall be governed by, and construed according to, the internal laws of the State without regard to conflicts of laws principles.

Section 11.09 *No Recourse.* No recourse under or upon any obligation, covenant or agreement contained in this Funding Loan Agreement or in the Governmental Note shall be had against any member, officer, commissioner, director or employee (past, present or future) of the Governmental Lender, either directly or through the Governmental Lender or its governing body or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, or otherwise, of any sum that may be due and unpaid by the Governmental Lender or its governing body upon the Governmental Note. Any and all personal liability of every nature whether at common law or in equity or by statute or by constitution or otherwise of any such member, officer, commissioner, director or employee, as such, to respond by reason of any act of omission on his/her part or otherwise, for the payment for or to the Funding Lender or otherwise of any sum that may remain due and unpaid with respect to the Funding Loan hereby secured is, by the acceptance hereof, expressly waived and released as a condition of and in consideration for the execution of this Funding Loan Agreement and the delivery of the Governmental Note.

Section 11.10 *Successors and Assigns.* All the covenants and representations contained in this Funding Loan Agreement by or on behalf of the parties hereto shall bind and inure to the benefit of their successors and assigns, whether so expressed or not.

Section 11.01 *Prior Bond Documents.* On the Conversion Date, this Funding Loan Agreement, the Governmental Note and the Project Loan Agreement shall amend, restate and supersede the Indenture, the Bonds and the Loan Agreement, respectively.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Governmental Lender, the Initial Funding Lender and the Fiscal Agent have caused this Funding Loan Agreement to be executed and delivered by duly authorized officers thereof as of the day and year first written above.

**RHODE ISLAND HOUSING MORTGAGE AND
FINANCE CORPORATION**, as Governmental
Lender

By

Name: Kara L Lachapelle
Title: Chief Financial Officer

[GOVERNMENTAL LENDER'S SIGNATURE PAGE TO
BERNON MILLS APARTMENTS FUNDING LOAN AGREEMENT]

Signature 1

IMPACT C.I.L., LLC

By: _____
Name: _____
Title: _____

[INITIAL FUNDING LENDER'S SIGNATURE PAGE TO
BERNON MILLS APARTMENTS FUNDING LOAN AGREEMENT]

**THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A., as Fiscal Agent**

By: _____
Name:
Title:

FORM OF GOVERNMENTAL NOTE

THIS GOVERNMENTAL NOTE IS SUBJECT TO CERTAIN RESTRICTIONS ON TRANSFER AS SET FORTH IN THE FUNDING LOAN AGREEMENT.

MULTIFAMILY NOTE
(BERNON MILLS APARTMENTS PROJECT), SERIES 2023

US \$[_____] ¹⁰ [_____] , 20[___] ¹¹

FOR VALUE RECEIVED, the undersigned, RHODE ISLAND HOUSING AND MORTGAGE FINANCE CORPORATION (the “*Obligor*”), promises to pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement referenced below) to the order of IMPACT C.I.L., LLC (the “*Funding Lender*”), and its assigns, the principal sum [_____] ¹² DOLLARS (US \$[_____] ¹³), plus premium, if any, and interest thereon and to pay the other amounts owing from time to time hereunder, all as set forth below.

This Multifamily Note (this “*Note*”) is being delivered pursuant to that certain Funding Loan Agreement dated as of [_____] ¹⁴ (together with any and all amendments, modifications, supplements and restatements, the “*Funding Loan Agreement*”), among the Funding Lender, the Obligor and The Bank of New York Mellon Trust Company, N.A. (the “*Fiscal Agent*”), pursuant to which the Obligor has incurred a loan in the original principal amount of \$[_____] ¹⁵ (the “*Funding Loan*”), and this Note is entitled to the benefits of the Funding Loan Agreement and is subject to the terms, conditions and provisions thereof. The Obligor is using the proceeds of the Funding Loan to make a loan to Brisa Bernon Mills, LP (the “*Borrower*”) pursuant to the Project Loan Agreement dated as of [_____] ¹⁶ (the “*Project Loan Agreement*”), among the Obligor, the Borrower and the Fiscal Agent.

1. **Defined Terms.** As used in this Note, (i) the term “*Funding Lender*” means the holder of this Note, and (ii) the term “*Indebtedness*” means the principal of, premium, if any, and interest on or any other amounts due at any time under this Note or the Funding Loan Agreement. “*Event of Default*” and other capitalized terms used but not defined in this Note shall have the meanings given to such term in the Funding Loan Agreement.

2. **Payments of Principal and Interest.** The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) on the first calendar day of each month commencing [_____] ¹⁷, interest on this Note at the rate of [___]% per annum (or such higher rate of interest borne by the Funding Loan upon any default) (the “*Interest Rate*”) on the outstanding principal balance of this Note, and shall also pay interest on this Note at the Interest Rate on the date of any

¹⁰ Amount to be filled in: Actual Project Loan Amount (as defined in the Indenture).

¹¹ Date to be filled in: the Conversion Date (as defined in the Indenture).

¹² Amount to be filled in: Actual Project Loan Amount (as defined in the Indenture).

¹³ Amount to be filled in: Actual Project Loan Amount (as defined in the Indenture).

¹⁴ Date to be filled in: first day of the month of the Conversion Date (as defined in the Indenture).

¹⁵ Amount to be filled in: Actual Project Loan Amount (as defined in the Indenture).

¹⁶ Date to be filled in: first day of the month of the Conversion Date (as defined in the Indenture).

¹⁷ Date to be filled in: first day of the month immediately following the month of the Conversion Date (as defined in the Indenture).

optional or mandatory prepayment or acceleration of all or part of the Funding Loan pursuant to the Funding Loan Agreement, in an amount equal to the accrued and unpaid interest to the date of prepayment on the portion of this Note subject to prepayment (each such date for payment an “*Interest Payment Date*”). Interest on this Note shall be computed on the basis of a 360-day year and the actual number of days elapsed.

The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) the outstanding principal of this Note in full on [MATURITY DATE] (the “*Maturity Date*”) and in monthly installments on each date set forth on the Funding Loan Amortization Schedule attached as Schedule 1 hereto in an amount equal to the corresponding amounts set forth thereon, or at such earlier times and in such amounts as may be required, in the event of an optional or mandatory prepayment or acceleration of the Funding Loan pursuant to the Funding Loan Agreement. The outstanding principal hereof is subject to acceleration at the time or times and under the terms and conditions, and with notice, if any, as provided under the Funding Loan Agreement.

3. **Manner of Payment.** All payments under this Note shall be made in lawful currency of the United States and in immediately available funds as provided for herein and in the Funding Loan Agreement.

4. **Application of Payments.** If at any time the Funding Lender receives any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, the Funding Lender may apply that payment to amounts then due and payable in any manner and in any order determined by the Funding Lender, in the Funding Lender’s discretion. Neither the Funding Lender’s acceptance of a payment in an amount that is less than all amounts then due and payable nor the Funding Lender’s application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

5. **Security.** The Indebtedness is secured by, among other things, the Pledged Security pledged pursuant to the Funding Loan Agreement.

6. **Acceleration.** If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, and all other amounts payable under this Note shall at once become due and payable, at the option of the Funding Lender, as governed by the Funding Loan Agreement, without any prior notice to the Obligor (unless required by applicable law). The Funding Lender may exercise this option to accelerate regardless of any prior forbearance.

7. **Prepayment; Prepayment Premium.** This Note is subject to prepayment as specified in the Funding Loan Agreement. Prepayment Premium shall be payable as specified in the Funding Loan Agreement.

8. **Forbearance.** Any forbearance by the Funding Lender in exercising any right or remedy under this Note or any other document evidencing or securing the Funding Loan or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by the Funding Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of the Funding Lender’s right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by the Funding Lender of any security for the obligations under this Note shall not constitute an election by the Funding Lender of remedies so as to preclude the exercise of any other right or remedy available to the Funding Lender.

9. **Waivers.** Presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace and diligence in collecting the Indebtedness are waived by the Obligor and all endorsers and guarantors of this Note and all other third-party obligors.

10. **Loan Charges.** Neither this Note nor any of the other Financing Documents will be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate greater than the rate of interest which results in the maximum amount of interest allowed by applicable law (the "*Maximum Interest Rate*"). If any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor in connection with the Funding Loan is interpreted so that any interest or other charge provided for in any Financing Document, whether considered separately or together with other charges provided for in any other Financing Document, violates that law, and Obligor is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Funding Lender in excess of the permitted amounts will be applied by Funding Lender to reduce the unpaid principal balance of this Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor has been violated, all indebtedness that constitutes interest, as well as all other charges made in connection with the indebtedness that constitute interest, will be deemed to be allocated and spread ratably over the stated term of this Note. Unless otherwise required by applicable law, such allocation and spreading will be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of this Note.

11. **Governing Law.** This Note shall be governed by the internal law of the State of Rhode Island (the "*Property Jurisdiction*").

12. **Captions.** The captions of the paragraphs of this Note are for convenience only and shall be disregarded in construing this Note.

13. **Address for Payment.** All payments due under this Note shall be payable at the principal office of the Funding Lender as designated by the Funding Lender in writing to the Fiscal Agent and the Servicer.

14. **Default Rate.** So long as (a) any monthly installment under this Note remains past due, or (b) any other Event of Default has occurred and is continuing, interest under this Note shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid monthly installment or the occurrence of such other Event of Default, as applicable, at a rate (the "*Default Rate*") equal to the lesser of (i) the Interest Rate otherwise in effect notwithstanding the default plus four percent (4%) per annum or (ii) the Maximum Interest Rate. If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date at the Default Rate.

15. **Limited Obligation.** THE FUNDING LOAN AND THIS GOVERNMENTAL NOTE ARE SPECIAL LIMITED OBLIGATIONS OF THE GOVERNMENT LENDER, PAYABLE SOLELY FROM THE REVENUES AND OTHER FUNDS AND MONEYS AND PLEDGED SECURITY PLEDGED AND ASSIGNED UNDER THE FUNDING LOAN AGREEMENT AND NOT FROM ANY OTHER REVENUES, FUNDS OR ASSETS OF THE GOVERNMENTAL LENDER. NONE OF THE GOVERNMENTAL LENDER, THE STATE, OR ANY POLITICAL SUBDIVISION THEREOF (EXCEPT THE GOVERNMENTAL LENDER, TO THE LIMITED EXTENT SET FORTH HEREIN) NOR ANY PUBLIC AGENCY SHALL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM (IF ANY) OR INTEREST ON THE FUNDING LOAN OR THIS GOVERNMENTAL NOTE OR FOR THE PERFORMANCE OF ANY PLEDGE, OBLIGATION OR

AGREEMENT OF ANY KIND WHATSOEVER WITH RESPECT THERETO EXCEPT AS SET FORTH HEREIN AND IN THE FUNDING LOAN AGREEMENT, AND NONE OF THE FUNDING LOAN OR THIS GOVERNMENTAL NOTE OR ANY OF THE GOVERNMENTAL LENDER'S AGREEMENTS OR OBLIGATIONS WITH RESPECT TO THE FUNDING LOAN, THIS GOVERNMENTAL NOTE OR UNDER THE FUNDING LOAN AGREEMENT SHALL BE CONSTRUED TO CONSTITUTE AN INDEBTEDNESS OF OR A PLEDGE OF THE FAITH AND CREDIT OF OR A LOAN OF THE CREDIT OF OR A MORAL OBLIGATION OF ANY OF THE FOREGOING WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION WHATSOEVER. THE GOVERNMENTAL LENDER HAS NO TAXING POWER.

NO MEMBER, DIRECTOR, OFFICER, AGENT, EMPLOYEE OR ATTORNEY OF THE GOVERNMENTAL LENDER, INCLUDING ANY PERSON EXECUTING THE FUNDING LOAN AGREEMENT OR THE GOVERNMENTAL NOTE, SHALL BE LIABLE PERSONALLY ON THE GOVERNMENTAL NOTE OR FOR ANY REASON RELATING TO THE ISSUANCE OF THE GOVERNMENTAL NOTE. NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR THE INTEREST ON THE GOVERNMENTAL NOTE, OR FOR ANY CLAIM BASED ON THE GOVERNMENTAL NOTE, OR OTHERWISE IN RESPECT OF THE GOVERNMENTAL NOTE, OR BASED ON OR IN RESPECT OF THE FUNDING LOAN AGREEMENT, AGAINST ANY MEMBER, DIRECTOR, OFFICER, EMPLOYEE OR AGENT, AS SUCH, OF THE GOVERNMENTAL LENDER OR ANY SUCCESSOR, WHETHER BY VIRTUE OF ANY CONSTITUTION, STATUTE OR RULE OF LAW, OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY OR OTHERWISE, ALL SUCH LIABILITY BEING, BY THE ACCEPTANCE OF THIS GOVERNMENTAL NOTE AND AS PART OF THE CONSIDERATION FOR THE ISSUE OF THIS GOVERNMENTAL NOTE, EXPRESSLY WAIVED AND RELEASED.

[Signature page follows]

IN WITNESS WHEREOF, the Obligor has caused this Multifamily Note to be duly executed by the manual or facsimile signature of its [_____] and attested by the manual or facsimile signature of its [_____].

RHODE ISLAND HOUSING AND MORTGAGE
FINANCE CORPORATION

[SEAL]

By_____

ATTEST:

By_____

CERTIFICATE OF AUTHENTICATION

This Multifamily Note is issued under the provisions of and described in the within-mentioned Funding Loan Agreement.

Date of Authentication: _____

THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A.

By: _____
Authorized Signer

SCHEDULE 1
FUNDING LOAN AMORTIZATION SCHEDULE

**FORM OF NOTICE OF APPOINTMENT
OF FUNDING LENDER REPRESENTATIVE**

The Bank of New York Mellon
Trust Company, N.A.,
Corporate Trust Department
4655 Salisbury Road, Suite 300
Jacksonville, Florida 32256

Brisa Bernon Mills, LP
[BORROWER’S ADDRESS]

Rhode Island Housing and Mortgage
Finance Corporation
44 Washington Street
Providence, Rhode Island 02903

Re: Bernon Mills Apartments Project

Ladies and Gentlemen:

The undersigned is the holder (the “Funding Lender”) of the Multifamily Note (Bernon Mills Apartments Project), Series 2023, dated [_____] ¹⁸ (the “*Governmental Note*”) delivered pursuant to the Funding Loan Agreement dated as of [_____] ¹⁹ (the “*Funding Loan Agreement*”), among IMPACT C.I.L. LLC, in its capacity as Initial Funding Lender (the “*Initial Funding Lender*”), the Rhode Island Housing and Mortgage Finance Corporation (the “*Governmental Lender*”) and The Bank of New York Mellon Trust Company, N.A.. (the “*Fiscal Agent*”). Pursuant to Section 11.05 of the Funding Loan Agreement, you are hereby notified that, effective immediately upon receipt of this notice by the Fiscal Agent, the Funding Lender Representative appointed under Section 11.05 of the Funding Loan Agreement shall be [_____]. [The person or entity previously appointed as Funding Lender Representative shall upon the effectiveness of this notice no longer have any further rights or obligations as Funding Lender Representative.]

The following individual or individuals shall have the authority to execute any consent, waiver, approval, direction or other instrument on behalf of the Funding Lender Representative and the signature(s) set forth next to his/her (their) name(s) is (are) his/her (their) true and correct signature(s).

NAME	SIGNATURE
_____	_____
_____	_____
_____	_____
_____	_____

Additional individuals may be given such authority by written notice to you from the Funding Lender Representative or from the Funding Lender.

¹⁸ Date to be filled in: the Conversion Date (as defined in the Indenture).

¹⁹ Date to be filled in: first day of the month of the Conversion Date (as defined in the Indenture).

This notice is dated as of the _____ day of _____, _____.

[FUNDING LENDER SIGNATURE BLOCK]

By: _____

FORM OF TRANSFEREE REPRESENTATIONS LETTER

[To be prepared on letterhead of transferee]

[Date]

Rhode Island Housing and Mortgage
Finance Corporation
44 Washington Street
Providence, Rhode Island 02903

The Bank of New York Mellon
Trust Company, N.A.,
Corporate Trust Department
4655 Salisbury Road, Suite 300
Jacksonville, Florida 32256

Re: Multifamily Note (Bernon Mills Apartments Project), Series 2023, dated [_____] ²⁰
(the “*Governmental Note*”) delivered pursuant to the Funding Loan Agreement dated as
of [_____] ²¹ (the “*Funding Loan Agreement*”), among Impact C.I.L. LLC, in its
capacity as Initial Funding Lender, Rhode Island Housing and Mortgage Finance
Corporation (the “*Governmental Lender*”) and The Bank of New York Mellon Trust
Company, N.A, as fiscal agent (the “*Fiscal Agent*”).

Ladies and Gentlemen:

The undersigned (the “*Funding Lender*”), in connection with the purchase of the loan made to the Governmental Lender pursuant to the Funding Loan Agreement and the Governmental Note evidencing such loan (such loan and Governmental Note are collectively referred to herein as the “*Funding Loan*”), hereby represents and warrants to you as follows:

1. The Funding Lender is authorized to purchase the Funding Loan, evidenced by the Governmental Note, and the Funding Lender is authorized to execute this Letter and any other instruments and documents required to be executed by the Funding Lender in connection with the purchase of the Funding Loan. The Funding Lender has satisfied itself that the Funding Loan, evidenced by the Governmental Note, is a lawful investment for it under all applicable laws.

2. The Funding Lender understands that the Governmental Note has not been registered under the Securities Act of 1933, as amended (the “*1933 Act*”), and that such registration is not legally required as of the date hereof; and further understands that the Governmental Note (a) is not being registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any state, (b) will not be listed in any stock or other securities exchange, (c) will not carry a rating from any rating service, and (d) will be delivered in a form which may not be readily marketable.

3. The Funding Lender has sufficient knowledge and experience in business and financial matters in general, and investments such as the Funding Loan, evidenced by the Governmental Note, in

²⁰ Date to be filled in: the Conversion Date (as defined in the Indenture).

²¹ Date to be filled in: first day of the month of the Conversion Date (as defined in the Indenture).

particular, and is capable of evaluating the merits and risks involved in an investment in the Funding Loan. The Funding Lender is able to bear the economic risk of, and an entire loss of, an investment in the Funding Loan.

4. The Funding Lender is purchasing the Funding Loan solely for its own account for investment purposes and has no present intention to resell or distribute all or any portion of, or interest in, the Funding Loan; provided that the Funding Lender reserves the right to transfer or dispose of the Funding Loan at any time, and from time to time, in its complete and sole discretion, subject, however, to the restrictions on transfer described paragraphs 5, 6 and 7 below and in the Funding Loan Agreement.

5. The Funding Lender agrees that it will only offer, sell, pledge, transfer or exchange the Funding Loan (or any legal or beneficial interest in the Funding Loan) in whole, and then only (i) in accordance with an available exemption from the registration requirements of Section 5 of the 1933 Act, (ii) in accordance with any applicable state securities laws, and (iii) in accordance with the provisions of the Funding Loan.

6. The Funding Lender is a “qualified institutional buyer” as defined in Rule 144A promulgated under the 1933 Act (“Rule 144A”); it is aware that the sale of the Funding Loan to it is made in reliance on Rule 144A, and understands that the Funding Loan may be offered, resold, pledged or transferred only (i) to a person who is a “qualified institutional buyer,” as defined in Rule 144A, in compliance with Rule 144A (a “*Qualified Transferee*”), and (ii) in compliance with the Funding Loan and applicable state securities laws.

7. If the Funding Lender sells the Funding Loan (or any legal or beneficial interest in the Funding Loan), the Funding Lender or its agent will obtain for your benefit, and deliver to you, from any subsequent purchaser a Transferee Representations Letter in the form of this letter or such other materials (including, but not limited to, an opinion of counsel) as are required by you to evidence compliance of such sale and purchase with the requirements of the 1933 Act for an exemption from registration under the Act.

8. The Funding Lender acknowledges that the Funding Loan is not being offered and sold under or pursuant to an official statement or other disclosure document. The Funding Lender further acknowledges that in lieu thereof, the Funding Lender has either been supplied with or been given access to information and documents (including, without limitation, financial statements and other financial information), including information relating to the sources of repayment of the Funding Loan and the security therefor, which it considers necessary to make informed investment decisions, and the Funding Lender has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Governmental Lender, Brisa Bernon Mills, LP, a Rhode Island limited partnership (the “*Borrower*”), the Project, the Funding Loan, and the security therefor so that, as a reasonable investor, the Funding Lender has been able to make its decision to purchase the Funding Loan. The Funding Lender acknowledges and agrees that it not relied upon the Governmental Lender for any information in connection with its purchase of the Funding Loan and that Governmental Lender has made no representations or statements (expressed or implied) with respect to the accuracy or completeness of any of the materials reviewed by the Funding Lender in connection with such purchase.

9. The Funding Lender acknowledges that (i) the Funding Loan is a special, limited obligation of the Governmental Lender, payable solely from the Revenues and other funds and moneys and Pledged Security pledged and assigned under the Funding Loan Agreement, and not from any other revenues, funds or assets of the Governmental Lender, (ii) none of the Governmental Lender, the State of Rhode Island (the “*State*”) or any political subdivision or public agency thereof shall be liable for the payment of the principal of, premium, if any, or interest on the Funding Loan or other costs incident

thereto except from the revenues and assets pledged with respect thereto, (iii) neither the Funding Loan nor any of the Governmental Lender's obligations with respect thereto shall be construed to constitute an indebtedness or a pledge of the faith and credit of or a moral obligation of any of the Governmental Lender, the State or any political subdivision or public agency thereof.

10. In making an investment decision, the Funding Lender is relying upon its own inquiry and analysis with respect to the Funding Loan and the security therefor and other material factors affecting the security and payment of the Funding Loan. The Funding Lender is aware that the business of the Borrower involves certain economic variables and risks that could adversely affect the security for the Funding Loan.

11. The Funding Lender agrees to indemnify the Governmental Lender, the Fiscal Agent and their respective members, officers, directors, counsel, advisors and employees, and agents against any claim based upon the Funding Lender's sale, transfer or other disposition of the Funding Loan in violation of the provisions hereof or the inaccuracy of any statement made by the Funding Lender herein.

All agreements, representations and warranties of the Funding Lender contained herein shall survive the sale and delivery of the Funding Loan to the Funding Lender as representations of fact existing as of the date of execution and delivery of this letter and, notwithstanding any investigation heretofore or hereafter, shall continue in full force and effect.

[SIGNATURE BLOCK]

By: _____
Name: _____
Title: _____

APPENDIX E

FORM OF PERMANENT PHASE PROJECT LOAN AGREEMENT

PROJECT LOAN AGREEMENT

among

**RHODE ISLAND HOUSING AND MORTGAGE FINANCE CORPORATION,
as Governmental Lender**

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,
as Fiscal Agent**

and

**BRISA BERNON MILLS, LP,
as Borrower**

Relating to

**Bernon Mills Apartments
115-119 Front Street
Woonsocket, Rhode Island**

Original Project Loan Principal Amount: \$[_____]¹

Dated as of [_____]²

All of the right, title and interest of the Rhode Island Housing and Mortgage Finance Corporation (except for its Unassigned Rights) in and to this Project Loan Agreement are being assigned to The Bank of New York Mellon Trust Company, N.A., as Fiscal Agent, as security for the Funding Loan made pursuant to that certain Funding Loan Agreement dated as of [_____]³ by and among the Governmental Lender, the Initial Funding Lender named therein and the Fiscal Agent.

¹ Amount to be filled in: Actual Project Loan Amount (as defined in the Indenture).

² Date to be filled in: first day of the month of the Conversion Date (as defined in the Indenture).

³ Date to be filled in: first day of the month of the Conversion Date (as defined in the Indenture).

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PROJECT LOAN AGREEMENT

THIS PROJECT LOAN AGREEMENT (this “*Project Loan Agreement*”) is made and entered into as of [_____] ⁴, by and among the **RHODE ISLAND HOUSING AND MORTGAGE FINANCE CORPORATION** (the “*Governmental Lender*”), a public corporation and instrumentality of the State of Rhode Island (the “*State*”), **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, a national banking association, duly organized and existing under the laws of the United States (together with any successor Fiscal Agents appointed under the Funding Loan Agreement, the “*Fiscal Agent*”), and **BRISA BERNON MILLS, LP**, a limited partnership duly organized and existing under the laws of the State of Rhode Island (together with its successors and assigns permitted hereunder, the “*Borrower*”).

RECITALS

A. Pursuant to Chapter 55 of Title 42 of the General Laws of Rhode Island, 1956 (1998 Reenactment), as amended and supplemented (the “*Act*”), and a Trust Indenture dated as of [CLOSING MONTH] 1, 2023 (the “*Indenture*”) between the Governmental Lender and the Fiscal Agent, the Governmental Lender issued and sold its \$[PAR AMOUNT] Rhode Island Housing and Mortgage Finance Corporation Multifamily Housing Revenue Bonds (Bernon Mills Apartment Project), Series 2023 (the “*Bonds*”), and used the proceeds thereof to make a loan to the Borrower, a Rhode Island limited partnership, upon the terms and conditions of a promissory note dated [CLOSING DATE], from the Borrower to the Governmental Lender in the original principal amount of \$[PAR AMOUNT] (the “*Note*”) and the Loan Agreement dated as of the same date as the Indenture (the “*Loan Agreement*”), between the Governmental Lender and the Borrower, for purposes of funding a portion of the costs of constructing and equipping a multifamily rental housing project to be located in Woonsocket, Rhode Island to be known as Bernon Mills Apartments, which upon completion will contain sixty (60) affordable rental housing units (the “*Project*”).

B. IMPACT C.I.L., LLC (the “*Initial Funding Lender*”) entered into a Conversion Agreement with the Borrower, Bank of America, N.A. and the Fiscal Agent, dated as of [CLOSING DATE] (the “*Conversion Agreement*”), whereby the Initial Funding Lender committed, subject to the satisfaction on or before the Outside Conversion Date (as defined in the Conversion Agreement of the Conditions to Conversion set forth in the Conversion Agreement, to facilitate the financing of the Project in the Permanent Phase.

C. The Conditions to Conversion were satisfied on or before the Outside Conversion Date and on the Conversion Date, (i) the Bonds are subject to mandatory tender in accordance with the Indenture, (ii) the purchase price of \$[_____] ⁵ principal amount of the Bonds is being paid with amounts on deposit under the Indenture, (iii) said principal amount of the Bonds is being cancelled such that the principal amount of Bonds remaining outstanding equals the Actual Project Loan Amount (as defined in the Conversion Agreement), (iv) such remaining Bonds are being removed from the Book-Entry System, (v) such remaining Bonds are being converted to a Governmental Note (in the form attached to the Funding Loan Agreement), executed and delivered by the Governmental Lender, which is being purchased by the Initial Funding Lender, (vi) this Project Loan Agreement and the Funding Loan Agreement dated as of the date hereof (the “*Funding Loan Agreement*”), by and among the Funding Lender, Governmental Lender, and the Fiscal Agent, are being delivered by the respective parties and

⁴ Date to be filled in: first day of the month of the Conversion Date (as defined in the Indenture).

⁵ Amount to be filled in: \$[PAR AMOUNT] minus Actual Project Loan Amount (as defined in the Indenture).

becoming effective and superseding the Indenture and the Loan Agreement, and (vii) the taxable mortgage loan provided by Bank of America, N.A. is being paid in full in accordance with the Indenture.

D. On the Conversion Date, the Borrower will execute and deliver a Project Note payable to the Governmental Lender (together with all riders and modifications thereto, the “*Project Note*”) and the Borrower is entering into a Permanent Loan Agreement with the Initial Funding Lender (the “*Permanent Loan Agreement*”).

E. To secure the Borrower’s obligations under the Project Note, the Borrower will execute and deliver to the Governmental Lender an [Open-End Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing] dated as of the date hereof (the “*Security Instrument*”) with respect to the Project, which Security Instrument will be assigned by the Governmental Lender to the Fiscal Agent as security for the Funding Loan.

G. On and after the Conversion Date, IMPACT C.I.L., LLC will act as Funding Lender Representative with respect to the Loans (in such capacity and any successor in such capacity, the “*Funding Lender Representative*”). IMPACT C.I.L., LLC (the “*Servicer*”) will act as initial servicer for the Loans on behalf of the Funding Lender Representative.

NOW, THEREFORE, for and in consideration of the mutual covenants and representations hereinafter contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Definitions. All words and phrases (except for Event of Default) defined in the Funding Loan Agreement and the Permanent Loan Agreement shall have the same meanings for the purposes of this Project Loan Agreement. In addition to the words and phrases defined in the Funding Loan Agreement and elsewhere herein, the following words and phrases shall have the following meanings:

“*Additional Loans*” is defined in Section 8.13 of this Project Loan Agreement.

“*Event of Default*” means any of those events specified in and defined by the applicable provisions of Article VII hereof to constitute an event of default.

“*Fee Component*” means the regular, ongoing fees due from time to time to the Governmental Lender, the Fiscal Agent and the Rebate Analyst, if any, expressed as a flat, fixed amount or in terms of a percentage of the unpaid principal amount of the Funding Loan on an annual basis, and including the Governmental Lender Fee and the Ordinary Fiscal Agent’s Fees and Expenses.

“*Project Loan Agreement*” means this Project Loan Agreement, together with any amendments hereto.

“*Project Loan Amortization Schedule*” means the Project Loan Amortization Schedule attached as Schedule 1 to the Project Note.

“Project Loan Payment” means each payment of the Project Loan on each Project Loan Payment Date pursuant to the Project Note and this Project Loan Agreement.

“Project Loan Payment Date” means (A) the first day of each calendar month, commencing [_____] ⁶, or (B) any other date on which the Project Loan is prepaid or paid, whether at scheduled maturity or upon prepayment or acceleration of the maturity thereof; **provided, however**, that if a Project Loan Payment Date is not a Business Day, payment shall be made on the first Business Day following such Project Loan Payment Date.

“TPA Regulations” shall mean those certain regulations of the Governmental Lender entitled “Regulations Governing Proposed Prepayments and Transfers” as in effect on the date hereof and as the same may be amended from time to time.

“Taxes” means all taxes, water rents, sewer rents, assessments and other governmental or municipal or public or private dues, fees, charges and levies and any liens (including federal tax liens) which are or may be levied, imposed or assessed upon the Project or any part thereof, or upon any leases pertaining thereto, or upon the rents, issues, income or profits thereof, whether any or all of the aforementioned be levied directly or indirectly or as excise taxes or as income taxes.

“Transfer” means (i) a sale, assignment, transfer, or other disposition (whether voluntary, involuntary or by operation of law); (ii) the grant, creation, or attachment of a lien, encumbrance, or security interest (whether voluntary, involuntary or by operation of law); (iii) the issuance or other creation of a direct or indirect ownership interest; or (iv) the withdrawal, retirement, removal or involuntary resignation of any owner or manager of a legal entity.

Section 1.02 Interpretation. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. Words importing persons include firms, partnerships, limited liability companies, joint ventures, associations and corporations. References to Articles, Sections and other subdivisions of this Project Loan Agreement are the Articles, sections and other subdivisions of this Project Loan Agreement as originally executed.

The terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof” and any similar terms refer to this Project Loan Agreement; the term “heretofore” means before the date of execution of this Project Loan Agreement; and the term “hereafter” means after the date of execution of this Project Loan Agreement.

ARTICLE II

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 2.01 Representations, Warranties and Covenants of the Governmental Lender. The Governmental Lender makes the following representations, warranties and covenants for the benefit of the Borrower, the Fiscal Agent, the Funding Lender and the Servicer:

(a) **Organization.** The Governmental Lender is a public corporation and instrumentality of the State duly organized and validly existing under the laws of the State.

⁶ Date to be filled in: first day of the month immediately following the month of the Conversion Date (as defined in the Indenture).

(b) Power and Authority. The Governmental Lender has all necessary power and authority to incur the indebtedness of the Funding Loan evidenced by the Governmental Note and to make the Project Loan from the proceeds thereof, and to execute, and deliver this Project Loan Agreement, the Funding Loan Agreement, and the other Financing Documents to which it is a party, and to perform its duties and discharge its obligations hereunder and thereunder.

(c) All Action Taken. The Governmental Lender has taken all action on its part to incur the Funding Loan evidenced by the Governmental Note and make the Project Loan from the proceeds thereof and for the sale, execution and delivery thereof.

(d) Authorization; Enforceability. Each of the Financing Documents to which the Governmental Lender is a party has been duly and validly authorized, executed and delivered by the Governmental Lender and, assuming due authorization, execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of the Governmental Lender, enforceable against the Governmental Lender in accordance with its respective terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally and the application of equitable principles.

(e) Compliance and No Conflicts or Breach. The Governmental Lender has complied with the provisions of the laws of the State, including, but not limited to, the Act, which are prerequisites to the consummation of the transactions on the part of the Governmental Lender described or contemplated in the Financing Documents. The execution and delivery of the Governmental Note and the Financing Documents to which the Governmental Lender is a party, the consummation of the transactions on the part of the Governmental Lender contemplated thereby and the fulfillment of or compliance with the terms and conditions thereof do not conflict with or result in the breach of any of the terms, conditions or provisions of any agreement or instrument or judgment, order or decree to which the Governmental Lender is now a party or by which it is bound, nor do they constitute a default under any of the foregoing or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature upon any property or assets of the Governmental Lender under the terms of any instrument or agreement.

(f) Consents; Approvals. No authorization, consent, approval, order, registration, declaration or withholding of objection on the part of, or filing of or with any governmental authority, other than those already obtained, is required for the due execution and delivery by the Governmental Lender of, and performance by the Governmental Lender of its obligations under, the Financing Documents.

(g) Litigation. There is no action, suit, proceeding, inquiry or investigation pending or, to the knowledge of the Governmental Lender, threatened against the Governmental Lender by or before any court, governmental agency or public board or body, nor, to the Governmental Lender's knowledge, is there any basis therefor, which (i) affects or questions the existence or the territorial jurisdiction of the Governmental Lender or the title to office of any member of the governing body of the Governmental Lender; (ii) affects or seeks to prohibit, restrain or enjoin the execution and delivery of any Financing Documents or the issuance, sale, execution or delivery of the Governmental Note; (iii) affects or questions the validity or enforceability of the Governmental Note or any Financing Document; (iv) adversely affects the exclusion from gross income of interest on the Governmental Note for federal income tax purposes; or (v) questions the power or authority of the Governmental Lender to perform its obligations under the Governmental Note or any Financing Document, or to carry out the transactions contemplated by the Governmental Note and the Financing Documents.

(h) No Interest in Project or Borrower. No officer or other official of the Governmental Lender has any personal financial interest in the Project or the Borrower or in the transactions contemplated by this Project Loan Agreement.

(i) Notice of Noncompliance; Actions. Upon the discovery by the Governmental Lender of any noncompliance by the Borrower with this Project Loan Agreement, the Tax Certificate or the Regulatory Agreement, the Governmental Lender will promptly notify the Fiscal Agent, the Servicer and the Funding Lender Representative of such noncompliance and at the Borrower's expense will, subject to the Funding Lender Representative's rights upon the occurrence and continuance of an Event of Default pursuant to the provisions of Article VII hereof, promptly institute action, or cause the Fiscal Agent to institute action, to correct such noncompliance, will diligently pursue such action and will attempt to correct such noncompliance within sixty (60) days after such discovery, subject to the provisions of the Funding Loan Agreement, this Project Loan Agreement, the Tax Certificate and the Regulatory Agreement.

It is expressly acknowledged that the Governmental Lender makes no representation as to the financial position or business condition of the Borrower and does not represent or warrant as to any of the statements, materials (financial or otherwise), representations or certifications furnished or to be made and furnished by the Borrower in connection with the issuance, sale, execution and delivery of the Governmental Note, or as to the correctness, completeness or accuracy of such statements.

Section 2.02 *Representations, Warranties and Covenants of the Borrower.* The Borrower makes the following representations, warranties and covenants, all of which, together with the other representations and agreements of the Borrower contained in this Project Loan Agreement, are relied upon by the Governmental Lender, the Funding Lender, the Servicer and the Fiscal Agent and serve as a basis for the undertakings of the Governmental Lender, the Servicer and the Fiscal Agent contained in this Project Loan Agreement:

(a) Organization. The Borrower is a Rhode Island limited partnership duly organized, validly existing and in good standing under the laws of the State and is duly qualified to conduct its business under the laws of the State and in every other state in which the nature of its business requires such qualification, has full legal right, power and authority to enter into this Project Loan Agreement and the other Financing Documents to which it is a party, and to carry out and consummate all transactions contemplated hereby and by such other Financing Documents, and by proper action has duly authorized the execution, delivery and performance of this Project Loan Agreement and the other Financing Documents. All corporate general partners, if any, of the Borrower are duly organized and in good standing under the laws of their respective states of organization and are duly qualified to transact business in the State as either domestic or foreign corporations, as applicable. All partnership general partners, if any, are duly formed and in good standing under the laws of their respective states of formation and, to the extent required by the laws of the State, are duly qualified to transact business in the State as either domestic or foreign partnerships or limited liability companies, as applicable.

(b) Power and Authority. The Borrower has the legal right, power and authority to (i) own its properties and assets, including, but not limited to, the Project, (ii) to carry on its business as now being conducted and the Borrower contemplates it to be conducted with respect to the Project and (iii) execute and deliver, carry out its obligations under, and close the transactions provided for in, the Financing Documents to which it is a party.

(c) Authorization, Enforceability. Each of the Financing Documents to which the Borrower is a party has been duly authorized, executed and delivered by the Borrower and, assuming due authorization, execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and general principles of equity.

(d) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the Borrower, and no authorization, consent, approval, order, registration, declaration or withholding of objection on the part of, or filing of or with any governmental authority, other than those already obtained and as are in full force and effect or those necessary to be obtained during the course of construction of the Project, is required for the due execution and delivery or approval, as the case may be, by the Borrower of, and the performance by the Borrower of its obligations under, the Financing Documents.

(e) No Violations, Conflicts, Defaults or Liens. None of the execution and delivery of the Financing Documents to which the Borrower is a party, the consummation of the transactions provided for in the Financing Documents, or the Borrower's fulfillment of or compliance with the terms and conditions of the Financing Documents (i) violates or will violate any law, rule or regulation of any governmental agency or body having jurisdiction over the Borrower, or any of its activities or properties, or any judgment, order, writ, injunction or decree to which the Borrower is subject, or any of the organizational or other governing documents of the Borrower, (ii) conflicts or will conflict with any agreement, instrument or license to which the Borrower is now a party or by which it or any of its properties or assets is bound or results or will result in a breach of, or constitutes or will constitute a default (with due notice or the passage of time or both) under, any such agreement, instrument or license, (iii) contravenes or will contravene any such law, rule or regulation or any such judgment, order, writ, injunction or decree, or (iv) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, except for any lien, charge or encumbrance permitted under the terms of the Financing Documents.

(f) No Acquisition or Transfer Within Six Months. Within the six (6) month period preceding the Delivery Date, the Borrower has not acquired the Project or any interest therein, nor has the Borrower transferred or acquired any capital interest in the owner of the Project. The Borrower shall not cause or permit the Project, or any interest therein, to be sold, assigned or transferred, except as provided in the Financing Documents, and shall not sell the Project or any interest therein or in its ownership structure for a period of six (6) months following the Delivery Date.

(g) Litigation. There is no action, suit, proceeding, inquiry or investigation pending or, to the Borrower's knowledge, threatened against or affecting the Borrower or any of its properties (including, without limitation, the Project), which, if adversely determined, would (i) impair the right of the Borrower to carry on its business substantially as now conducted and as contemplated by the Financing Documents, (ii) adversely affect the financial condition of the Borrower, (iii) prohibit, restrain or enjoin the making of the Funding Loan or the Project Loan or the execution and delivery of any of the Financing Documents, (iv) adversely affect the validity or enforceability of any of the Financing Documents, or (v) adversely affect the exclusion from gross income for federal income tax purposes of interest on the Governmental Note.

(h) Compliance. The Project and the operation of the Project (in the manner contemplated by the Financing Documents) conform and will continue to conform in all material respects with the requirements of the Act as well as all applicable zoning, planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project.

(i) Filing and Payment of Taxes. The Borrower has filed or caused to be filed all federal, state and local tax returns which are required to be filed or has obtained appropriate extensions therefor, 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.

(j) No Default. To the Borrower's knowledge, the Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any Financing Document to which it is a party or by which it or the Project is bound. The Borrower is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any other agreement or instrument to which it is a party which default would materially adversely affect the transactions contemplated by the Financing Documents or the operations of the Borrower or the enforceability of the Financing Documents to which the Borrower is a party or the ability of the Borrower to perform all obligations thereunder.

(k) Payment of Maintenance, Repairs and Taxes With Respect to the Project. The Borrower agrees to pay or cause to be paid all costs of maintenance and repair, all Taxes and assessments, insurance premiums (including public liability insurance and insurance against damage to or destruction of the Project) concerning or in any way related to the Project, or any part thereof, and any expenses or renewals thereof, and any other governmental charges and impositions whatsoever, foreseen or unforeseen, and all utility and other charges and assessments concerning or in any way related to the Project.

(l) Ownership Interests in Borrower. If the Borrower is a partnership, all of the partnership interests in the Borrower are validly issued and are fully registered, if required, with the applicable governmental authorities and/or agencies, and there are no outstanding options or rights to purchase or acquire those interests except as provided in Borrower's Partnership Agreement. If the Borrower is a limited liability company, all of the ownership interests in the Borrower are validly issued and are fully registered, if required, with the applicable governmental authorities and/or agencies, and there are no outstanding options or rights to purchase or acquire those interests. Nothing in this Project Loan Agreement shall prevent the Borrower from issuing additional partnership interests or ownership interests if such units are issued in accordance with all applicable securities laws.

(m) Representations and Warranties. The representations and warranties of the Borrower contained in the Tax Certificate, Regulatory Agreement and the other Financing Documents are true and accurate in all material respects.

(n) Full and Accurate Disclosure; Financial Information. The information, statements or reports furnished in writing to the Governmental Lender, the Servicer and the Funding Lender Representative by the Borrower in connection with this Project Loan Agreement and the other Financing Documents or the consummation of the transactions contemplated hereby and thereby do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances under which

they were made, not misleading, and there is no material fact or circumstance presently known to the Borrower that has not been disclosed to the Funding Lender Representative or the Governmental Lender which materially and adversely affects the Project or the business, operations or financial condition or business prospects of the Borrower or the Borrower's ability to meet its obligations under this Project Loan Agreement and the other Financing Documents to which it is a party in a timely manner. The representations and warranties of the Borrower and the statements, information and descriptions contained in the Borrower's closing certificates, as of the Delivery Date, are true and correct in all material respects, do not contain any untrue statement of a material fact, and do not omit to state a material fact necessary to make the representations, warranties, statements, information and descriptions contained therein, in the light of the circumstances under which they were made, not misleading; and any estimates or assumptions contained in any certificate of the Borrower delivered as of the Delivery Date are reasonable.

All financial data, including any statements of cash flow and income and operating expense, that have been delivered to the Governmental Lender or the Funding Lender in respect of the Project by or on behalf of the Borrower, to the best knowledge of the Borrower, (i) are accurate and complete in all material respects as of the respective dates of such reports, and (ii) accurately represent the financial condition of the Project as of the date of such reports. Other than pursuant to or permitted by the Financing Documents or the Borrower organizational documents, the Borrower has no contingent liabilities, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operations or business of the Borrower from that set forth in said financial statements.

(o) No Interest of Governmental Lender. To the knowledge of the Borrower, no commissioner, member, officer or employee of the Governmental Lender has been or is in any manner interested, directly or indirectly, in that person's own name or in the name of any other person, in the Financing Documents, the Borrower or the Project, in any contract for property or materials to be furnished or used in connection with the Project, or in any aspect of the transactions contemplated by the Financing Documents.

(p) Intention to Hold the Project. The Borrower intends to hold the Project for its own account and has no current plans to sell, and has not entered into any agreement, to sell all or any portion of the Project, and the Borrower intends to occupy the Project or cause the Project to be occupied and to operate it or cause it to be operated at all times during the term of this Project Loan Agreement in compliance with the terms of this Project Loan Agreement and the Regulatory Agreement and does not know of any reason why the Project will not be so used by it in the absence of circumstances not now anticipated by it or totally beyond its control.

(q) Location of Project. The Project is located wholly within the boundaries of the City of Woonsocket, Rhode Island.

(r) Changes to and Operation of Project. The Borrower shall make no changes to the Project or to the operation thereof which would affect the qualification of the Project under the Act or impair the exclusion from gross income for federal income tax purposes of the interest on the Governmental Note. The Borrower shall use and operate the Project as required by the Tax Certificate and the Regulatory Agreement.

(s) Approval of Funding Loan Agreement. The Funding Loan Agreement has been submitted to the Borrower for examination, and the Borrower, by execution of this Project Loan Agreement, acknowledges and agrees that it has participated in the drafting of the Funding Loan Agreement and that it is bound by, shall adhere to the provisions of, covenants and agrees to perform all obligations required of the Borrower pursuant to, and shall have the rights set forth by the applicable terms and conditions of, the Funding Loan Agreement.

(t) Title. The Borrower will have a fee simple interest in the land and improvements on the Project, subject only to liens and other encumbrances and exceptions permitted under the Security Instrument ("*Permitted Encumbrances*"). The Security Instrument, when properly recorded in the appropriate records, together with any UCC financing statements required to be filed in connection therewith, will create (i) a valid, perfected first priority lien on the fee simple interest in the Project and (ii) perfected security interests in and to, and perfected collateral assignments of, all personalty included in the Project (including the Leases (as defined in the Security Instrument)), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances. To the Borrower's knowledge, there are no delinquent Taxes with respect to the Project, nor are there any claims for payment for work, labor or materials affecting the Project which are or may become a lien prior to, or of equal priority with, the liens created by the Financing Documents.

(u) Acknowledgement of Transactions and Risks. The Borrower acknowledges that (i) it understands the nature and structure of the transactions relating to the financing of the Project, (ii) it is familiar with the provisions of all of the documents and instruments relating to the financing, (iii) it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project, and (iv) it has not relied on the Governmental Lender, the Fiscal Agent, the Funding Lender, the Funding Lender Representative or the Servicer for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Financing Documents or otherwise relied on the Governmental Lender, the Fiscal Agent, the Funding Lender, the Funding Lender Representative or the Servicer in any manner.

(v) Transfers of Interests in Borrower or Project. The Borrower will not make, suffer or permit the occurrence of any Transfer of any interest in the Borrower or the Project other than as permitted in the Financing Documents or a transfer expressly approved in writing by the Governmental Lender and the Funding Lender, nor transfer any material license required for the operation of the Project. The Borrower understands that any Transfer of any interest in the Borrower or the Project and any approvals of the same by the Governmental Lender shall be subject to the TPA Regulations.

(w) No Bankruptcy Filing. The Borrower is not contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency law or the liquidation of all or a major portion of its property (a "*Bankruptcy Proceeding*"), and has no knowledge of any Person contemplating the filing of any such petition against it. As of the Delivery Date, the Borrower has the ability to pay its debts as they become due.

(x) State Law Requirements. The Borrower will comply with the provisions of all applicable State laws relating to the Project Loan and the operation of the Project.

(y) Insurance. The Borrower has obtained the insurance required by the Permanent Loan Agreement and has delivered to the Funding Lender Representative copies of insurance

policies or certificates of insurance reflecting the insurance coverages, amounts and other requirements set forth therein and in the Security Instrument. The Borrower will maintain the insurance required by the Permanent Loan Agreement.

(z) Compliance with Regulatory Agreements. The Project is, as of the date of issuance of the Governmental Note, in compliance with all requirements of the all regulatory agreements (including the Regulatory Agreement) to the extent such requirements are applicable, and the Borrower intends to cause the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of such regulatory agreements, including all applicable requirements of the Act and the Code, and pursuant to leases which comply with all applicable laws. The Borrower shall at all times comply with the requirements of the regulatory agreements, including the Regulatory Agreement

(aa) Environmental Matters.

(i) Except as disclosed to the Governmental Lender and the Funding Lender, the Project and the use and operation thereof is in compliance with each zoning, subdivision, land use, environmental and other law, ordinance, order, permits, license, rule, regulation and approval applicable thereto.

(ii) The Borrower has received no written notice that either the Borrower or the land comprising the Project are in violation of or subject to any existing, pending or, to Borrower's knowledge, threatened investigation or inquiry by any governmental authority pertaining to any applicable environmental law.

Section 2.03 *Representations and Warranties of the Fiscal Agent.* The Fiscal Agent makes the following representations and warranties for the benefit of the Governmental Lender, the Borrower, the Funding Lender and the Servicer:

(a) Organization; Authority. The Fiscal Agent is a national banking association, duly organized and existing under the laws of the United States of America. The Fiscal Agent is duly authorized to act as a fiduciary and to execute the trust created by the Funding Loan Agreement, and meets the qualifications to act as Fiscal Agent under the Funding Loan Agreement.

(b) Compliance. The Fiscal Agent has complied with the provisions of law which are prerequisite to the consummation of, and has all necessary power (including trust powers) and authority (i) to execute and deliver this Project Loan Agreement and the other Financing Documents to which it is a party, (ii) to perform its obligations under this Project Loan Agreement and the other Financing Documents to which it is a party, and (iii) to consummate the transactions contemplated by this Project Loan Agreement and the other Financing Documents to which it is a party.

(c) Due Authorization. The Fiscal Agent has duly authorized (i) the execution and delivery of this Project Loan Agreement and the other Financing Documents to which it is a party, (ii) the performance by the Fiscal Agent of its obligations under this Project Loan Agreement and the other Financing Documents to which it is a party, and (iii) the actions of the Fiscal Agent contemplated by this Project Loan Agreement and the other Financing Documents to which it is a party.

(d) Execution and Delivery; Enforceability. Each of the Financing Documents to which the Fiscal Agent is a party has been duly executed and delivered by the Fiscal Agent and, assuming due authorization, execution and delivery by the other parties thereto, constitutes a valid and binding obligation of the Fiscal Agent, enforceable against the Fiscal Agent in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(e) Qualified to Act. The Fiscal Agent meets the qualifications to act as Fiscal Agent under the Funding Loan Agreement.

(f) Compliance. The Fiscal Agent has complied with the provisions of law which are prerequisites to the consummation of the transactions on the part of the Fiscal Agent described or contemplated in the Financing Documents.

(g) Consents and Approvals. No approval, permit, consent, authorization or order of any court, governmental agency or public board or body not already obtained is required to be obtained by the Fiscal Agent as a prerequisite to (i) the execution and delivery of this Project Loan Agreement and the other Financing Documents to which the Fiscal Agent is a party, (ii) the authentication or delivery of the Governmental Note, (iii) the performance by the Fiscal Agent of its obligations under this Project Loan Agreement and the other Financing Documents to which it is a party, or (iv) the consummation of the transactions contemplated by this Project Loan Agreement and the other Financing Documents to which the Fiscal Agent is a party. The Fiscal Agent makes no representation or warranty relating to compliance with any federal or state securities laws.

Section 2.04 *Arbitrage and Rebate Fund Calculations.* The Borrower shall (a) take or cause to be taken all actions necessary or appropriate in order to fully and timely comply with Section 4.12 of the Funding Loan Agreement, and (b) if required to do so under Section 4.12 of the Funding Loan Agreement, select at the Borrower's expense, a Rebate Analyst reasonably acceptable to the Governmental Lender for the purpose of making any and all calculations required under Section 4.12 of the Funding Loan Agreement. Such calculations, if required, shall be made in the manner and at such times as specified in Section 4.12 of the Funding Loan Agreement. The Borrower shall cause the Rebate Analyst to provide such calculations to the Fiscal Agent and the Governmental Lender at such times and with such directions as are necessary to comply fully with the arbitrage and rebate requirements set forth in the Funding Loan Agreement and to comply fully with Section 148 of the Code, including the timely payment of any arbitrage rebate owed.

Section 2.05 *Tax Covenants of the Borrower.* The Borrower covenants and agrees that:

(a) It will at all times comply with the terms of the Tax Certificate and the Regulatory Agreement;

(b) It will not take, or permit to be taken on its behalf, any action which would cause the interest payable on the Governmental Note to be included in gross income of the Funding Lender, for federal income tax purposes, and will take such action as may be necessary in the opinion of Bond Counsel to continue such exclusion from gross income, including, without limitation, the preparation and filing of all statements required to be filed by it in order to

maintain the exclusion (including, but not limited to, the filing of all reports and certifications required by the Regulatory Agreement);

(c) No changes will be made to the Project, no actions will be taken by the Borrower and the Borrower will not omit to take any actions, which will in any way adversely affect the tax-exempt status of the Governmental Note;

(d) It will comply with the requirements of Section 148 of the Code and the Regulations issued thereunder throughout the term of the Funding Loan and the Project Loan and will not make any use of the proceeds of the Funding Loan or the Project Loan, or of any other funds which may be deemed to be proceeds of the Governmental Note under the Code and the related regulations of the United States Treasury, which would cause the Governmental Note to be “arbitrage bonds” within the meaning of Section 148 of the Code; and

(e) If the Borrower becomes aware of any situation, event or condition which would, to the best of its knowledge, result in the interest on the Governmental Note becoming includable in gross income of the Funding Lender for purposes of federal income tax purposes, it will promptly give written notice of such circumstance, event or condition to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative and the Servicer.

(f) The full amount of each disbursement of proceeds of the Project Loan will be applied to pay or to reimburse the Borrower for the payment of Costs of the Project and, after taking into account any proposed disbursement, (i) at least 95% of the net proceeds of the Governmental Note (as defined in Section 150 of the Code and the related regulations of the United States Treasury (the “**Regulations**”)) will be used to provide a qualified residential rental project (as defined in Section 142(d) of the Code) and (ii) less than 25% of the net proceeds of the Governmental Note will have been disbursed to pay or to reimburse the Borrower for the cost of acquiring land; none of the proceeds of the Governmental Note (as defined for purposes of Section 147(g) of the Code) will be disbursed to provide working capital;

(g) The Borrower will cause all of the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Act, the Code and the Regulatory Agreement;

(h) All leases will comply with all applicable laws and the Regulatory Agreement;

(i) In connection with any lease or grant by the Borrower of the use of the Project, the Borrower will require that the lessee or user of any portion of the Project not use that portion of the Project in any manner which would violate the covenants set forth in this Project Loan Agreement or the Regulatory Agreement;

(j) No proceeds of the Loans shall be used for the acquisition of any tangible property or an interest therein, other than land or an interest in land, unless the first use of such property is pursuant to such acquisition; **provided, however**, that this limitation shall not apply with respect to any building (and the equipment therefor) if rehabilitation expenditures (as defined in Section 147(d) of the Code) with respect to such building equal or exceed 15 percent of the portion of the cost of acquiring such building (and equipment) financed with the proceeds; and provided, further, that this limitation shall not apply with respect to any structure other than a building if rehabilitation expenditures with respect to such structure equal or exceed 100 percent of the portion of the cost of acquiring such structure financed with the proceeds;

(k) No proceeds of the Funding Loan and investment earnings thereon, in an amount in excess of two percent (2%), will be used for Costs of Issuance of the Governmental Note, all within the meaning of Section 147(g)(1) of the Code;

(l) No proceeds of the Funding Loan shall be used directly or indirectly to provide any airplane, skybox or other private luxury box, health club facility, facility used for gambling or store the principal business of which is the sale of alcoholic beverages for consumption off premises; and

(m) The Borrower pursuant to the requirements of Section 1.148-1(b) of the Regulations (or any related person contemplated by such Regulations), will not purchase interests in the Funding Loan in an amount related to the amount of the Project Loan.

In the event of a conflict between the terms and requirements of this Section 2.05 and the Tax Certificate, the terms and requirements of the Tax Certificate shall control.

ARTICLE III

THE PROJECT LOAN

Section 3.01 *Conditions to Funding the Project Loan.* On the Conversion Date, the Governmental Lender shall cause the proceeds of the Funding Loan to be deposited with the Fiscal Agent to be used in accordance with the Indenture. The execution and delivery of this Project Loan Agreement shall be subject to the conditions set forth in Section 2.12 of the Indenture.

Section 3.02 *Terms of the Project Loan; Servicing.*

(a) The Project Loan shall (i) be evidenced by the Project Note; (ii) be secured by the Security Instrument; (iii) be in the original principal amount of \$[_____]⁷; (iv) bear interest as provided in the Project Note; (v) provide for principal and interest payments in accordance with the Project Note; and (vi) be subject to optional and mandatory prepayment at the times, in the manner and on the terms, and have such other terms and provisions, as provided herein and in the Project Note.

(b) The Funding Lender Representative may appoint a Servicer to service the Loans for all or a portion of the term of the Loans. The initial Servicer of the Loans is IMPACT C.I.L., LLC who shall service the Loans pursuant to the terms of the Permanent Loan Agreement. The Funding Lender Representative may remove a Servicer or appoint a replacement Servicer, in its discretion, by written notice provided to the Governmental Lender, the Fiscal Agent and the Borrower. Any successor Servicer shall signify its acceptance of the duties and obligations imposed upon it by the Funding Loan Agreement and this Project Loan Agreement by executing such instrument(s) as shall be acceptable to the Funding Lender Representative, a copy of which shall be provided to the parties hereto.

(c) During any period that the Servicer services the Loans, the Borrower shall make all payments in connection with the Project Loan to the Servicer, and the Servicer will (i) retain the allocable portion of the monthly Servicing Fee (if any) for its own account, (ii) remit to the Fiscal Agent (A) all payments of principal of, Prepayment Premium, if any, and interest due with respect to the Funding Loan, (B) the Ordinary Fiscal Agent's Fees and Expenses, together with any other amounts due to the Fiscal Agent, and (C) the Governmental Lender Fee, together with any other amounts due to the Governmental

⁷ Amount to be filled in: Actual Project Loan Amount (as defined in the Indenture).

Lender, and (iv) remit to the Funding Lender, any fees or other amounts that may be due to the Funding Lender. During a period in which there is no Servicer, all notices to be sent to the Servicer shall be sent to the Funding Lender Representative (to the extent not already provided) and all amounts to be paid to the Servicer by the Borrower shall be paid directly to the Fiscal Agent (unless otherwise directed by the Funding Lender Representative).

(d) The Governmental Lender, the Fiscal Agent and the Borrower hereby acknowledge and agree that (i) the Funding Lender Representative has appointed the Servicer to service and administer the Project Loan, (ii) the selection or removal of any Servicer is in the sole and absolute discretion of the Funding Lender Representative; and (iii) none of the Governmental Lender, the Fiscal Agent or the Borrower shall terminate or attempt to terminate any Servicer as the servicer for the Project Loan or appoint or attempt to appoint a substitute servicer for the Project Loan.

Section 3.03 *Initial Deposits.* On the Conversion Date, proceeds of the purchase of the Funding Loan by the Initial Funding Lender shall be deposited and applied by the Fiscal Agent in accordance with the Indenture.

Section 3.04 *Pledge and Assignment to Fiscal Agent.* The parties hereto acknowledge, and the Borrower consents to, the pledge and assignment by the Governmental Lender to the Fiscal Agent pursuant to the Funding Loan Agreement of all of the Governmental Lender's right, title and interest in this Project Loan Agreement (excluding the Unassigned Rights), the Project Loan, the Project Note, the Security Instrument, the other Project Loan Documents and the Revenues as security for the payment of the principal of, premium, if any, and interest on the Governmental Note and the payment of any other amounts due under the Financing Documents.

Section 3.05 *Investment of Funds.* Except as otherwise provided in the Funding Loan Agreement, any money held as a part of any fund or account established under the Funding Loan Agreement shall be invested or reinvested by the Fiscal Agent in Qualified Investments in accordance with Section 4.08 of the Funding Loan Agreement.

Section 3.06 *Damage; Destruction and Eminent Domain.* If, prior to payment in full of the Project Loan, the Project or any portion thereof is destroyed or damaged in whole or in part by fire or other casualty, or title to, or the temporary use of, the Project or any portion thereof shall have been taken by the exercise of the power of eminent domain, and the Governmental Lender, the Borrower, the Fiscal Agent or the Servicer receives Net Proceeds from insurance or any condemnation award in connection therewith, such Net Proceeds shall be utilized as provided in the Project Loan Documents and the Funding Loan Agreement.

Section 3.07 *Enforcement of Financing Documents.* The Fiscal Agent or the Funding Lender Representative may enforce and take all reasonable steps, actions and the proceedings necessary for the enforcement of all terms, covenants and conditions of the Funding Loan Agreement and the other Financing Documents as and to the extent set forth herein and therein.

ARTICLE IV

LOAN PAYMENTS

Section 4.01 *Payments under the Project Note; Independent Obligation of Borrower.*

(a) **Payment Obligations.** The Borrower agrees to repay the Project Loan on each Project Loan Payment Date as provided in the Project Note, and in all instances at the times and in the amounts necessary to enable the Fiscal Agent, on behalf of the Governmental Lender, or the Servicer, to pay all amounts payable with respect to the Funding Loan, when due, whether at maturity or upon prepayment (with premium, if applicable), acceleration or otherwise. To ensure such timely payment, the Servicer shall collect from the Borrower, and the Borrower shall provide to the Servicer the foregoing payments not less than two (2) Business Days prior to each respective Project Loan Payment Date.

The obligation of the Borrower to make the payments set forth in this Article IV shall be an independent obligation of the Borrower, separate from its obligation to make payments under the Project Note, provided that in all events payments made by the Borrower under and pursuant to the Project Note shall be credited against the Borrower's obligations hereunder on a dollar for dollar basis. If for any reason the Project Note or any provision of the Project Note shall be held invalid or unenforceable against the Borrower by any court of competent jurisdiction, the Project Note or such provision of the Project Note shall be deemed to be the obligation of the Borrower pursuant to this Project Loan Agreement to the full extent permitted by law and such holding shall not invalidate or render unenforceable any of the provisions of this Article IV and shall not serve to discharge any of the Borrower's payment obligations hereunder or eliminate the credit against such obligations to the extent of payments made under the Project Note.

(b) **Obligations Unconditional; No Set-Off.** The obligation of the Borrower to repay the Project Loan, to perform all of its obligations under the Project Loan Documents, to provide indemnification pursuant to Section 6.01 hereof, to pay costs, expenses and charges pursuant to Section 4.02 hereof and to make any and all other payments required by this Project Loan Agreement, the Funding Loan Agreement or any other documents contemplated by this Project Loan Agreement or by the Project Loan Documents shall, subject to the limitations set forth in Section 4.06 hereof, be absolute and unconditional, and shall be paid or performed without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Borrower's title to the Project or to any part thereof is defective or nonexistent, and notwithstanding any damage due to loss, theft or destruction of the Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the Borrower's use thereof, the eviction or constructive eviction of the Borrower, any change in the tax or other laws of the United States of America, the State or any political subdivision thereof, any change in the Governmental Lender's legal organization or status, or any default of the Governmental Lender or the Fiscal Agent hereunder or under any other Financing Document, and regardless of the invalidity of any action of the Governmental Lender or the invalidity of any portion of this Project Loan Agreement.

(c) **Payments from Borrower to Fiscal Agent or Servicer.** Each payment by the Borrower hereunder or under the Project Note shall be made in immediately available funds to the Servicer on each Project Loan Payment Date or such other date when such payment is due; *provided, however*, such Project Loan Payment shall be made directly to the Fiscal Agent if there is no Servicer or if the Borrower is so directed in writing by the Funding Lender Representative. Each such payment shall be made to the

Fiscal Agent or the Servicer, as applicable, by deposit to such account as the Fiscal Agent or the Servicer may designate by written notice to the Borrower. Whenever any Project Loan Payment or any other payment under this Project Loan Agreement or under the Project Note shall be stated to be due on a day that is not a Business Day, such payment shall be made on the first Business Day immediately thereafter.

Section 4.02 *Additional Payments Under the Project Note and this Project Loan Agreement.*

(a) In addition to the payments set forth in Section 4.01 hereof, payments to be made by the Borrower under the Project Note include certain money to be paid in respect of, among others, the Fee Component, and amounts required to be deposited pursuant to the Permanent Loan Agreement and the other Project Loan Documents, as set forth in subsection (b) of this Section 4.02. To the extent that any portion of the Fee Component, and amounts required to be deposited pursuant to the Permanent Loan Agreement and the other Project Loan Documents remain due and owing at any time, such amounts remaining due and owing shall be payable from money on deposit in the Administration Fund as provided in Section 4.06 of the Funding Loan Agreement or from other money of the Borrower, to the extent that money in the Administration Fund is insufficient for such purposes. All other fees and expenses shall be payable from money of the Borrower as provided in subsection (b) of this Section 4.02.

(b) In addition to the funding of the initial deposits required of the Borrower described in Section 3.03, the Borrower shall pay (or cause to be paid by the Servicer or the Fiscal Agent (to the extent paid from money on deposit in the Administration Fund), in consideration of the funding of the Project Loan, the following fees, expenses and other money payable in connection with the Loans:

(i) On the Conversion Date, from money deposited by the Borrower with the Fiscal Agent, to the Initial Funding Lender, all fees and expenses, including third party and out-of-pocket expenses of the Initial Funding Lender (including but not limited to the fees and expenses of counsel to the Initial Funding Lender) in connection with the Loans.

(ii) On the Conversion Date, from money deposited by the Borrower with the Fiscal Agent, to the Governmental Lender, all fees and expenses, including all third party and out-of-pocket expenses of the Governmental Lender (including but not limited to the fees and expenses of Bond Counsel and counsel to the Governmental Lender) in connection with the Loans and the issuance of the Governmental Note.

(iii) On the Conversion Date, from money deposited by the Borrower with the Fiscal Agent, to the Servicer, all fees and expenses, including all third party and out of pocket expenses of the Servicer (including but not limited to the fees and expenses of counsel to the Servicer, if any) in connection with the Loans.

(iv) On the Conversion Date, from money deposited by the Borrower with the Fiscal Agent, to the Fiscal Agent, all fees and expenses, including all third party and out-of-pocket expenses of the Fiscal Agent (including but not limited to the fees and expenses of counsel to the Fiscal Agent) in connection with the Loans and the issuance of the Governmental Note.

(v) To the Fiscal Agent, the Ordinary Fiscal Agent's Fees and Expenses and the Extraordinary Fiscal Agent's Fees and Expenses when due from time to time.

(vi) To the Governmental Lender, the Governmental Lender Fee when due and any extraordinary expenses not covered by the Governmental Lender Fee the Governmental Lender may incur in connection with the Financing Documents or the Project from time to time.

(vii) To the Rebate Analyst, the reasonable fees and expenses of such Rebate Analyst in connection with the computations relating to arbitrage rebate required under the Funding Loan Agreement and this Project Loan Agreement when due from time to time.

(viii) To the Funding Lender Representative, any amount due and owing the Funding Lender Representative from time to time but unpaid under the Permanent Loan Agreement.

(ix) To the Servicer, the amount of any fees, costs and expenses of the Servicer as provided in the Permanent Loan Agreement.

(x) To the Servicer, the amounts required to be deposited in respect of reserves and impounds required under the Permanent Loan Agreement and the other Project Loan Documents.

(xi) If the Fiscal Agent is collecting and remitting loan payments under the Funding Loan Agreement, to the Fiscal Agent, within two (2) Business Days of receipt from the Fiscal Agent of a notice of deficiency in the Administration Fund as provided in Section 4.06 of the Funding Loan Agreement, the amount of any such deficiency in the Administration Fund.

Section 4.03 *Payments to Rebate Fund.* The Borrower shall pay when due to the Fiscal Agent at the Principal Office of the Fiscal Agent any amount required to be deposited in the Rebate Fund in accordance with Section 4.12 of the Funding Loan Agreement.

Section 4.04 *Prepayment.*

(a) ***Optional Prepayment of the Project Loan.*** The Borrower shall have the option to prepay the Project Loan in whole, together with all accrued and unpaid interest thereon, as provided in the Project Note.

(b) ***Mandatory Prepayment of the Project Loan.*** The Borrower shall be required to pay all or a portion of the outstanding principal balance of the Project Loan, together with accrued interest thereon, and together with any Prepayment Premium due under the Project Note, as provided in the Project Note.

(c) ***Defeasance of the Funding Loan.*** In addition, prior to the Window Period, the Borrower may cause a defeasance of the Funding Loan resulting in a release of the Pledged Security by satisfying the conditions set forth hereunder and in Article IX of the Funding Loan Agreement. In connection therewith, the Borrower will give written notice (a “*Defeasance Notice*”) to the Funding Lender Representative, the Servicer, the Governmental Lender and the Fiscal Agent of the date the Borrower desires to defease the Funding Loan (the “*Defeasance Date*”). The Defeasance Date may not be more than 60 calendar days, nor less than 30 calendar days, after the delivery of the Defeasance Notice. In connection with the delivery of the Defeasance Notice, the Borrower shall cause to be paid to the Funding Lender Representative the Defeasance Fee set forth in the Permanent Loan Agreement. In addition to, and not in limitation of any other provisions of this Project Loan Agreement, the Borrower shall pay all fees, costs and expenses in connection with any defeasance whether or not such defeasance occurs. Following such defeasance in accordance with the terms and conditions hereof and the Funding Loan Agreement, the Project Loan shall be deemed paid in full, and the Borrower shall be entitled to the release of the Security Instrument, the Pledged Security and other security provided by it for the Project Loan, subject to the terms and conditions hereof and the other Financing Documents.

Section 4.05 *Borrower's Obligations upon Prepayment.* In the event of any prepayment, the Borrower will timely pay, or cause to be paid through the Servicer, an amount equal to the principal amount of the Funding Loan or portion thereof called for prepayment, together with interest accrued to the prepayment date and premium, if any. In addition, the Borrower will timely pay all fees, costs and expenses associated with any prepayment of the Funding Loan.

Section 4.06 *Limits on Personal Liability.*

(a) Except as otherwise set forth in [Section 5 of] the Project Note and subsection 4.06(b) below, the obligations of the Borrower under this Project Loan Agreement and the other Financing Documents are non-recourse liabilities of the Borrower which shall be enforced only against the Project and other property of the Borrower encumbered by the Financing Documents and not personally against the Borrower or any partner of the Borrower or any successor or assign of the Borrower. However, nothing in this Section 4.06 shall limit the right of the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative to proceed against the Borrower to recover any fees owing to any of them or any actual out-of-pocket expenses (including but not limited to actual out-of-pocket attorneys' fees incurred by any of them) incurred by any of them in connection with the enforcement of any rights under this Project Loan Agreement or the other Financing Documents. Nothing in this Section 4.06 shall limit any right that the Servicer or the Funding Lender Representative may have to enforce the Project Note, the Security Instrument, or any other Financing Document in accordance with their terms.

(b) Notwithstanding anything contained in any other provision of this Project Loan Agreement to the contrary (but subject to the provisions of Section 7.06 hereof), the following obligations of the Borrower shall be and remain the joint and several full recourse obligations of the Borrower and the Borrower's general partners: (i) the Borrower's obligations to the Governmental Lender and the Fiscal Agent under subsections (b)(ii), (b)(iv), (b)(v), and (b)(vi) of Section 4.02 hereof; (ii) the Borrower's obligations under Sections 2.05 and 6.01 of this Project Loan Agreement; (iii) the Borrower's obligation to pay any and all rebate amounts that may be or become owing with respect to the Funding Loan and fees and expenses of the Rebate Analyst as provided in Sections 2.04 and 4.03 of this Project Loan Agreement and the Tax Certificate; and (iv) the Borrower's obligation to pay legal fees and expenses under Section 7.04 hereof.

ARTICLE V

SPECIAL COVENANTS OF BORROWER

Section 5.01 *Performance of Obligations.* The Borrower shall keep and faithfully perform all of its covenants and undertakings contained herein and in the Financing Documents, including, without limitation, its obligations to make all payments set forth herein and therein in the amounts, at the times and in the manner set forth herein and therein.

Section 5.02 *Compliance with Applicable Laws.* All work performed in connection with the Project shall be performed in strict compliance with all applicable federal, state, county and municipal laws, ordinances, rules and regulations now in force or that may be enacted hereafter.

Section 5.03 *Funding Loan Agreement Provisions.* The execution of this Project Loan Agreement shall constitute conclusive evidence of approval of the Funding Loan Agreement by the Borrower. The Borrower agrees that whenever the Funding Loan Agreement by its terms imposes a duty or obligation upon the Borrower, such duty or obligation shall be binding upon the Borrower to the same extent as if the Borrower were an express party to the Funding Loan Agreement, and the Borrower shall

carry out and perform all of its obligations under the Funding Loan Agreement as fully as if the Borrower were a party to the Funding Loan Agreement. The Borrower also shall fully and faithfully perform all the duties and obligations which the Governmental Lender has covenanted and agreed in the Funding Loan Agreement to cause the Borrower to perform with the exception of any duty or undertaking of the Governmental Lender that by its nature cannot be delegated or assigned.

Section 5.04 *[Reserved].*

Section 5.05 *Borrower to Maintain Its Existence; Certification of No Default.*

(a) The Borrower agrees to maintain its existence and maintain its current legal status with authority to own and operate the Project.

(b) In addition to performing all other similar requirements under the Financing Documents to which the Borrower is a party, the Borrower shall, within 30 days after the end of each calendar year, render to the Fiscal Agent a certificate executed by an Authorized Officer of the Borrower to the effect that the Borrower is not, as of the date of such certificate, in default of any of its covenants, agreements, representations or warranties under any of the Financing Documents to which the Borrower is a party and that, to the best of the Borrower's knowledge, after reasonable investigation, there has occurred no default or Event of Default (as such terms are defined in each respective Financing Document) under any of the Financing Documents.

Section 5.06 *Borrower to Remain Qualified in State and Appoint Agent.* The Borrower will remain duly qualified to transact business in the State and will maintain an agent in the State on whom service of process may be made in connection with any actions against the Borrower.

Section 5.07 *Use of Project; Sale or Other Transfer of Project* The Project will be used exclusively as a mixed income multifamily residential rental project and other appurtenant and related uses, which use is consistent with the zoning classification for the Project and, to the extent applicable, in accordance with Section 42 and Section 142 of the Code. The Borrower may convey and transfer the Project only upon strict compliance with the provisions of the Financing Documents, and upon receipt of the prior written consent of the Governmental Lender and the Funding Lender Representative, subject to satisfaction of the requirements of the TPA Regulations.

Section 5.08 *Right to Perform Borrower's Obligations.* In the event the Borrower fails to perform any of its obligations under this Project Loan Agreement, the Governmental Lender, the Fiscal Agent, the Servicer and/or the Funding Lender Representative, after giving requisite notice, if any, and subject to Section 5.05 of the Funding Loan Agreement, may, but shall be under no obligation to, perform such obligation and pay all costs related thereto, and all such costs so advanced shall become an additional obligation of the Borrower hereunder, payable on demand and if not paid on demand with interest thereon at the default rate of interest payable under the Project Loan Documents.

Section 5.09 *Notice of Event of Default and Certain Other Events.* The Borrower shall promptly advise the Governmental Lender, the Fiscal Agent, the Funding Lender Representative and the Servicer, if any, in writing of the occurrence of (i) any Event of Default hereunder or any event which, with the passage of time or service of notice or both, would constitute an Event of Default, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto, and (ii) any other fact or circumstance affecting the Borrower or the Project that materially and adversely affects the Borrower's ability to meet its obligations hereunder or under any of the other Financing Documents to which it is a party.

The Borrower shall also promptly advise the Governmental Lender and the Funding Lender Representative in writing of (i) any lien affecting the Project, or any part thereof, other than liens expressly permitted by the Project Loan Documents, (ii), upon giving or receipt thereof, copies of any notices, certificates or other communications delivered at the Project or to Borrower or managing members naming the Governmental Lender and/or the Funding Lender as addressee or which could reasonably be deemed to affect the structural integrity of the Project or the ability of Borrower to perform its obligations under the Financing Documents, and (iii) any notice of default, alleged default or potential default on the part of Borrower received from any tenant or occupant of the Project under or relating to its lease or occupancy agreement (together with a copy of any such notice), if, in the aggregate, notices from at least fifteen percent (15%) of the tenants at the Project have been received by Borrower with respect to, or alleging, the same default, alleged default or potential default.

Section 5.10 *Survival of Covenants.* The provisions of Sections 2.04, 2.05, 4.02, 4.03, 6.01 and 7.04 hereof shall survive the expiration or earlier termination of this Project Loan Agreement and, with regard to the Fiscal Agent, the resignation or removal of the Fiscal Agent.

Section 5.11 *Access to Project; Records.* Subject to reasonable notice and the rights of tenants at the Project, the Governmental Lender, the Fiscal Agent, the Servicer and the Funding Lender Representative, and the respective duly authorized agents of each, shall have the right (but not any duty or obligation) at all reasonable times and during normal business hours: (a) to enter the Project and any other location containing the records relating to the Borrower, the Project, the Loans and the Borrower's compliance with the terms and conditions of the Financing Documents; (b) to inspect and audit any and all of the Borrower's records or accounts pertaining to the Borrower, the Project, the Loans and the Borrower's compliance with the terms and conditions of the Financing Documents; and (c) to require the Borrower, at the Borrower's sole expense, (i) to furnish such documents to the Governmental Lender, the Fiscal Agent, the Servicer and the Funding Lender Representative, as the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative, as the case may be, from time to time, deems reasonably necessary in order to determine that the provisions of the Financing Documents have been complied with and (ii) to make copies of any records that the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative or the respective duly authorized agents of each, may reasonably require. The Borrower shall make available to the Governmental Lender, the Fiscal Agent, the Servicer and the Funding Lender Representative, such information concerning the Project, the Security Instrument and the Financing Documents as any of them may reasonably request.

Section 5.12 *Regulatory Agreement.* The covenants of the Borrower in the Regulatory Agreement shall be deemed to constitute covenants of the Borrower running with the land and an equitable servitude for the benefit of the Governmental Lender and the Funding Lender and shall be binding upon any owners of the Project until such time as such restrictions expire as provided in the Regulatory Agreement. The Borrower covenants to file of record the Regulatory Agreement and such other documents, and to take such other steps as are necessary in order to assure that the restrictions contained in the Regulatory Agreement will, subject to the terms of the Regulatory Agreement, be binding upon all owners of the Project. The Borrower covenants to include such restrictions or a reference to such restrictions in any documents transferring any interest in the Project to another to the end that such transferee has notice of, and is bound by, the Regulatory Agreement. Subject to the provisions of Section 7.06 of this Project Loan Agreement, the Governmental Lender and the Fiscal Agent shall have the right to seek specific performance of or injunctive relief to enforce the requirements of any covenants of the Borrower contained in the Regulatory Agreement.

Section 5.13 *Damage, Destruction and Condemnation.* If prior to full payment of the Funding Loan (or provision for payment of the Funding Loan in accordance with the provisions of the Funding Loan Agreement) the Project or any portion of it is destroyed (in whole or in part) or is damaged by fire or other casualty, or title to, or the temporary use of, the Project or any portion of it shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, or shall be transferred pursuant to an agreement or settlement in lieu of eminent domain proceedings, the Borrower shall nevertheless be obligated to continue to pay the amounts specified in this Project Loan Agreement and in the Project Note to the extent the Project Loan is not prepaid in full in accordance with the terms of the Project Loan Documents.

Section 5.14 *[Reserved]*.

Section 5.15 *Filing of Financing Statements.* The Borrower shall file or record or cause to be filed or recorded on or prior to the Delivery Date all UCC financing statements which are required to be filed or recorded in order fully to protect and preserve the security interests relating to the priority of the Project Loan, the Funding Loan, the Pledged Security and the Security Instrument, and the rights and powers of the Governmental Lender, the Fiscal Agent and the Funding Lender in connection with such security interests. In accordance with Section 7.15 of the Funding Loan Agreement, the Borrower shall cooperate with the Fiscal Agent in connection with the filing of any continuation statements for the purpose of continuing without lapse the effectiveness of such financing statements. The Borrower shall be responsible for the customary fees charged by the Fiscal Agent for the preparation and filing of continuation statements and for the reasonable costs incurred by the Fiscal Agent in the preparation and filing of all continuation statements hereunder.

Section 5.16 *Taxes and Other Charges.* The Borrower shall pay all Taxes and other similar charges, interest or penalties ("*Other Charges*") as the same become due and payable in accordance with the Security Instrument, except to the extent that the amount, validity or application thereof is being contested in good faith as permitted by the Security Instrument.

The Borrower covenants to pay all taxes and other charges of any type or character charged to the Governmental Lender or to the Fiscal Agent affecting the amount available to the Governmental Lender or the Fiscal Agent from payments to be received hereunder or in any way arising due to the transactions contemplated hereby (including taxes and other charges assessed having power to levy taxes or assessments) but excluding franchise taxes based upon the capital and/or income of the Fiscal Agent or the Governmental Lender and taxes based upon or measured by the net income of the Fiscal Agent or the Governmental Lender; *provided, however*, that the Borrower shall have the right to protest any such taxes or other charges and to require the Governmental Lender or the Fiscal Agent, at the Borrower's expense, to protest and contest any such taxes or other charges levied upon them and that the Borrower shall have the right to withhold payment of any such taxes or other charges pending disposition of any such protest or contest unless such withholding, protest or contest would adversely affect the rights or interests of the Governmental Lender or the Fiscal Agent. This obligation shall remain valid and in effect notwithstanding repayment of the loan hereunder or termination of this Project Loan Agreement or the Funding Loan Agreement.

Section 5.17 *Repairs, Maintenance and Physical Condition.* The Borrower shall cause the Project to be maintained in a good, habitable and safe (so as to not threaten the health or safety of the Project's tenants or their invited guests) condition and repair (reasonable wear and tear excepted) as set forth in the Security Instrument and shall not remove, demolish or materially alter the improvements or equipment (except for removal of aging or obsolete equipment or furnishings in the normal course of business), except as provided in the Security Instrument.

Section 5.18 *Environmental Matters.* So long as the Borrower owns or is in possession of the Project, the Borrower shall (a) keep the Project in compliance with all environmental laws, (b) promptly notify the Funding Lender, the Governmental Lender and the Servicer, if any, if the Borrower shall become aware that any hazardous materials are on or near the Project in violation of applicable laws, and (c) commence and thereafter diligently prosecute to completion all remedial work necessary with respect to the Project required under any such laws, in each case as set forth in the Security Instrument or the Permanent Loan Agreement.

Section 5.19 *Litigation.* The Borrower shall give prompt written notice to the Governmental Lender, the Servicer, if any, the Fiscal Agent and the Funding Lender Representative of any litigation, governmental proceedings or claims or investigations regarding an alleged actual violation of a legal requirement pending or, to the Borrower's knowledge, threatened against the Borrower or the Project which might materially adversely affect the Borrower's condition (financial or otherwise) or business or the Project.

Section 5.20 *Performance of Other Agreements.* The Borrower shall observe and perform in all material respects each and every term to be observed or performed by it pursuant to the terms of any agreement or instrument affecting or pertaining to the Project.

Section 5.21 *Cooperate in Legal Proceedings.* The Borrower shall cooperate fully with the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer with respect to, and permit the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer at their option, to participate in, any proceedings before any Governmental Authority that may in any way affect the rights of the Governmental Lender, the Funding Lender, the Fiscal Agent and/or the Servicer under any Financing Document.

Section 5.22 *Insurance.* The Borrower will maintain the insurance required by the Permanent Loan Agreement.

ARTICLE VI

INDEMNIFICATION

Section 6.01 *Indemnification.*

(a) ***Indemnified Losses.*** To the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Governmental Lender, the Fiscal Agent, the Servicer, the Funding Lender and each of their respective officers, governing commissioners, members, directors, officials, employees, attorneys and agents (collectively, the "***Indemnified Parties***"), against any and all losses, damages (including, but not limited to, consequential and punitive damages), claims, actions, liabilities, costs and expenses of any conceivable nature, kind or character (including, without limitation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject under federal or state securities laws or any other statutory law or at common law or otherwise (collectively, "***Losses***"), to the extent arising, directly or indirectly, out of or based upon or in any way relating to:

(i) any breach by the Borrower of its obligations under the Financing Documents or the execution, amendment, restructuring or enforcement thereof, or in connection with

transactions contemplated thereby, including the issuance, sale, transfer or resale of the Governmental Note;

(ii) any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Project Loan or the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation, construction or equipping of, the Project or any part thereof;

(iii) any accident, injury to, or death of persons or loss of or damage to property occurring in, on or about the Project or any part thereof;

(iv) any lien (other than liens permitted under the Permanent Loan Agreement) or charge upon payments by the Borrower to the Governmental Lender, the Fiscal Agent or the Servicer hereunder, or any Taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Governmental Lender or the Fiscal Agent in respect of any portion of the Project (other than income and similar taxes on fees received or earned in connection therewith);

(v) any violation of any environmental law, rule or regulation with respect to, or the release of any hazardous materials from, the Project or any part thereof;

(vi) [Reserved];

(vii) the enforcement of, or any action taken by the Governmental Lender, the Fiscal Agent or the Funding Lender Representative related to remedies under this Project Loan Agreement, the Funding Loan Agreement or any other Financing Document;

(viii) any untrue statement of a material fact or alleged untrue statement of a material fact by the Borrower contained in any offering statement or document for the Governmental Note or any of the Financing Documents to which the Borrower is a party, or any omission or alleged omission by the Borrower of a material fact from any offering statement or document for the Governmental Note necessary to be stated therein in order to make the statements made therein by the Borrower, in the light of the circumstances under which they were made, not misleading;

(ix) any declaration of taxability of interest on the Governmental Note or allegations (or regulatory inquiry) that interest on the Governmental Note is includable in gross income for federal income tax purposes;

(x) any audit or inquiry by the Internal Revenue Service with respect to the Project and/or the tax-exempt status of the Governmental Note; or

(xi) the Fiscal Agent's acceptance or administration of the trust of the Funding Loan Agreement, or the exercise or performance of any of its powers or duties thereunder or under any of the documents relating to the Governmental Note to which it is a party;

except (A) in the case of the foregoing indemnification of the Fiscal Agent, or any of its respective officers, commissioners, members, directors, officials, employees, attorneys and agents, to the extent such Losses are caused by the negligence, unlawful acts or willful misconduct of such Indemnified Party; or (B) in the case of the foregoing indemnification of the Servicer, the Funding Lender or the Governmental Lender or any of their respective officers, commissioners, members, directors, officials, employees,

attorneys and agents, to the extent such Losses are caused by the gross negligence or willful misconduct of such Indemnified Party. The indemnification set forth above is intended to and shall include the indemnification of all affected officials, commissioners, directors, officers, employees and agents of the Governmental Lender, the Servicer, the Funding Lender and the Fiscal Agent, and any predecessor Fiscal Agent, respectively. The indemnification is intended to and shall be enforceable by the Governmental Lender, the Servicer, the Funding Lender and the Fiscal Agent, respectively, to the full extent permitted by law.

(b) ***Procedures.*** In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from such Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel selected or approved by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that such Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof. The Borrower shall pay the reasonable fees and expenses of such separate counsel; ***provided, however,*** that such Indemnified Party may employ separate counsel at the expense of the Borrower only if, in such Indemnified Party's good faith judgment, a conflict of interest exists by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel.

(c) ***Borrower to Remain Obligated.*** Notwithstanding any transfer of the Project to another owner in accordance with the provisions of this Project Loan Agreement, the Security Instrument and the Regulatory Agreement, the Borrower shall remain obligated to indemnify each Indemnified Party pursuant to this Section 6.01 for Losses with respect to any claims based on actions or events occurring prior to the date of such transfer unless (i) such subsequent owner assumed in writing at the time of such transfer all obligations of the Borrower under this Section 6.01 (including obligations under this Section 6.01 for Losses with respect to any claims based on actions or events occurring prior to the date of such transfer) and (ii) any such transfer is in compliance with the requirements of the Financing Documents.

(d) ***Survival.*** The provisions of this Section 6.01 shall survive the termination of this Project Loan Agreement.

Section 6.02 Limitation With Respect to the Funding Lender. Notwithstanding anything in this Project Loan Agreement to the contrary, in the event that the Funding Lender (or its nominee) shall become the owner of the Project as a result of a foreclosure or a deed in lieu of foreclosure, or comparable conversion of the Project Loan, the Funding Lender (or its nominee) shall not be liable for any breach or default of any prior owner of the Project under this Project Loan Agreement and shall only be responsible for defaults and obligations incurred or occurring during the period that the Funding Lender (or its nominee) is the owner of the Project. Accordingly, during any period that the Funding Lender (or its nominee) owns the Project and that this Article VI is applicable to the Funding Lender (or its nominee), the Funding Lender's (or its nominee's) obligations under this Article VI shall be limited to acts and omissions of the Funding Lender (or its nominee) occurring during the period of the Funding Lender's (or its nominee's) ownership of the Project.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

Section 7.01 Events of Default. The following shall be “**Events of Default**” under this Project Loan Agreement, and the term “Event of Default” shall mean, whenever it is used in this Project Loan Agreement, one or all of the following events:

(a) Any representation or warranty made by the Borrower in the Financing Documents or any certificate, statement, data or information furnished by the Borrower in connection therewith or included by the Borrower in its application to the Governmental Lender for assistance proves at any time to have been incorrect when made in any material respect;

(b) Failure by the Borrower to pay any amounts due under this Project Loan Agreement, the Project Note or the Security Instrument at the times and in the amounts required by this Project Loan Agreement, the Project Note and the Security Instrument, as applicable;

(c) The Borrower shall fail to observe or perform any other term, covenant, condition or agreement (after taking into account any applicable cure period) set forth in this Project Loan Agreement, which failure continues for a period of 30 days after notice of such failure by the Governmental Lender, the Fiscal Agent or the Funding Lender Representative to the Borrower (unless such default cannot with due diligence be cured within 30 days but can be cured within a reasonable period and will not, in the Funding Lender Representative’s sole discretion, adversely affect the Funding Lender or result in impairment of this Project Loan Agreement or any other Financing Document, in which case no Event of Default shall be deemed to exist so long as Borrower shall have commenced to cure the default or Event of Default within 30 days after receipt of notice, and thereafter diligently and continuously prosecutes such cure to completion); *provided, however*, no such notice or grace periods shall apply in the case of any such failure which could, in the Funding Lender Representative’s judgment, absent immediate exercise by the Funding Lender Representative of a right or remedy under this Agreement, result in harm to the Funding Lender, impairment of this Project Loan Agreement or any other Financing Document;

(d) The occurrence of a default under the Permanent Loan Agreement or the Security Instrument (after taking into account any applicable cure period thereunder) shall at the discretion of the Funding Lender Representative constitute an Event of Default under this Project Loan Agreement but only if the Fiscal Agent is provided written notice by the Funding Lender Representative that an Event of Default has occurred under such Financing Document and the Fiscal Agent is instructed by the Funding Lender Representative that such default constitutes an Event of Default hereunder. The occurrence of an Event of Default hereunder shall in the discretion of the Funding Lender Representative constitute a default under the other Financing Documents.

Nothing contained in this Section 7.01 is intended to amend or modify any of the provisions of the Financing Documents or to bind the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative to any notice and cure periods other than as expressly set forth in the Financing Documents.

Borrower’s Investor Limited Partner shall have the right but not the obligation to cure any default or Event of Default hereunder or under any other Financing Documents (in each case, to the extent a cure

right exists). Any cure of a default or an Event of Default tendered by the Investor Limited Partner shall be treated as a cure tendered by the Borrower and shall be accepted or rejected on the same terms and within the same cure period afforded to the Borrower as if the cure had been directly tendered by the Borrower. The Borrower represents and warrants that the Borrower's Investor Limited Partner is authorized to act on behalf of the Borrower.

Section 7.02 Remedies on Default. Subject to Section 7.06 hereof, whenever any Event of Default hereunder shall have occurred and be continuing, the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender), may take any one or more of the following remedial steps:

(a) The Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) may take such action, without notice or demand, as the Funding Lender deems advisable to protect and enforce its rights against the Borrower and in and to the Project, including declaring the Project Loan to be immediately due and payable (including, without limitation, declaring the principal of, Prepayment Premium, if any, and interest on and all other amounts due on the Project Note to be immediately due and payable).

(b) The Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) may, without being required to give any notice (other than to the Governmental Lender or the Fiscal Agent, as applicable), except as provided herein, pursue all remedies of a creditor under the laws of the State, as supplemented and amended, or any other applicable laws.

(c) The Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) may take whatever action at law or in equity may appear necessary or desirable to collect the payments under this Project Loan Agreement then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Project Loan Agreement.

In addition, subject to Section 7.06 hereof, the Governmental Lender and the Fiscal Agent may pursue remedies with respect to the Unassigned Rights.

Any amounts collected pursuant to Article IV hereof and any other amounts which would be applicable to payment of principal of and interest and any premium on the Funding Loan collected pursuant to action taken under this Section 7.02 shall be applied in accordance with the provisions of the Funding Loan Agreement.

Section 7.03 No Remedy Exclusive. Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available against the Borrower hereunder or under the Financing Documents or otherwise at law or in equity may be exercised by the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender), at any time and from time to time, whether or not the Funding Lender has accelerated the Project Loan, and whether or not the Funding Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Financing Documents. No remedy conferred upon or reserved to the Funding Lender or the Fiscal Agent by this Project Loan Agreement 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 Project Loan 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 any Event of 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. In order to entitle the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) to

exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be expressly required by this Project Loan Agreement.

Section 7.04 *Agreement to Pay Attorneys' Fees and Expenses.* In the event the Borrower shall default under any of the provisions of this Project Loan Agreement and the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative shall employ attorneys or incur other expenses for the collection of loan payments or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained in this Project Loan Agreement or in the Project Note, the Borrower shall on demand therefor reimburse the reasonable fees of such attorneys and such other expenses so incurred.

Section 7.05 *No Additional Waiver Implied by One Waiver.* In the event any agreement contained in this Project Loan Agreement shall be breached by any party and thereafter waived by the other parties, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 7.06 *Control of Proceedings.*

(a) If an Event of Default has occurred and is continuing, notwithstanding anything to the contrary herein, the Funding Lender Representative shall have the sole and exclusive right at any time to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Project Loan Agreement, or for the appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Project Loan Agreement. In addition, the Funding Lender Representative shall have the sole and exclusive right at any time to directly enforce all rights and remedies hereunder and under the other Financing Documents with or without the involvement of the Fiscal Agent or the Governmental Lender. In no event shall the exercise of any of the foregoing rights result in an acceleration of the Project Loan without the express direction of the Funding Lender Representative.

(b) The Governmental Lender and the Fiscal Agent covenant that they will not, without the prior written consent of the Funding Lender Representative, take any of the following actions:

(i) prosecute any action with respect to a lien on the Project; or

(ii) initiate or take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due under, the Project Loan; or

(iii) interfere with or attempt to influence the exercise by the Funding Lender Representative of any of its rights under the Financing Documents upon the occurrence of any event of default by the Borrower under the Financing Documents; or

(iv) take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Project Loan or the Funding Loan.

(c) Notwithstanding Sections 7.06(a) and 7.06(b) hereof, the Governmental Lender or the Fiscal Agent may:

(i) specifically enforce the tax covenants of the Borrower specified in Sections 2.04 and 2.05 hereof or seek injunctive relief against acts which may be in violation thereof;

(ii) specifically enforce the Regulatory Agreement or seek injunctive relief against acts which may be in violation of the Regulatory Agreement or are otherwise inconsistent with the operation of the Project in accordance with applicable requirements of the Internal Revenue Code and state law (but in neither the case of subsection (c)(i) above or this subsection (c)(ii) may the Governmental Lender or the Fiscal Agent seek any form of monetary damages from the Borrower in connection with such enforcement).

In addition, notwithstanding Sections 7.06(a) and 7.06(b) hereof, the Governmental Lender and the Fiscal Agent may seek specific performance of the other Unassigned Rights (provided no monetary damages are sought), and nothing herein shall be construed to limit the rights of the Governmental Lender, the Fiscal Agent or any Indemnified Party related to the Governmental Lender or the Fiscal Agent under Section 6.01 (each a “*Related Indemnified Party*”) to enforce their respective rights against the Borrower under Sections 4.02, 4.03, 6.01 and 7.04 hereof, provided that no obligation of the Borrower to the Governmental Lender, the Fiscal Agent, or any Related Indemnified Party, under such sections shall be secured by or in any manner constitute a lien on, or security interest in, the Project, whether in favor of the Governmental Lender, the Fiscal Agent or any Related Indemnified Party, and all such obligations are and shall be subordinate in priority, in right to payment and in all other respects to all other obligations, liens, rights (including without limitation the right to payment) and interests arising or created under the Financing Documents (except for the Fiscal Agent’s right to receive payment of reasonable fees and expenses pursuant to Section 6.05(a) of the Funding Loan Agreement after an event of default with respect to the Funding Loan, which reasonable fees and expenses of the Fiscal Agent shall be payable as provided thereunder). Accordingly, none of the Governmental Lender, the Fiscal Agent or any Related Indemnified Party shall have the right to enforce any monetary obligation arising under such sections other than directly against the Borrower, without recourse to the Project. In addition, any such enforcement must not cause the Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future.

Section 7.07 Assumption of Obligations. In the event that the Fiscal Agent or the Funding Lender or their respective assignee or designee shall become the legal or beneficial owner of the Project by foreclosure or deed in lieu of foreclosure, such party shall succeed to the rights and the obligations of the Borrower under this Project Loan Agreement, the Project Note, the Regulatory Agreement, and any other Financing Documents to which the Borrower is a party or with respect to which it is a third-party beneficiary. Such assumption shall be effective from and after the effective date of such acquisition and shall be made with the benefit of the limitations of liability set forth therein and without any liability for the prior acts of the Borrower.

ARTICLE VIII

MISCELLANEOUS

Section 8.01 Notices.

(a) Whenever in this Project Loan Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower, the Investor Limited Partner or the Servicer shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth in Section 11.04 of the Funding Loan Agreement or as required or permitted by this Project Loan Agreement by Electronic Instruction and Notice. The Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower, the Investor Limited Partner or the Servicer may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

A duplicate copy of each notice or other communication given hereunder by any party to the Servicer shall also be given to the Funding Lender Representative and a duplicate copy of each notice or other communication given hereunder by any party to the Funding Lender Representative shall be given to the Servicer. In addition, a duplicate copy of each notice or other communication hereunder to the Borrower shall be given to the Investor Limited Partner.

The Fiscal Agent agrees to accept and act upon Electronic Instruction and Notice of written instructions and/or directions pursuant to this Project Loan Agreement.

(b) The Fiscal Agent shall provide to the Funding Lender Representative and the Servicer (i) prompt notice of the occurrence of any Event of Default hereunder and (ii) any written information or other communication received by the Fiscal Agent hereunder within ten (10) Business Days of receiving a written request from the Funding Lender Representative for any such information or other communication.

Section 8.02 *Concerning Successors and Assigns* All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the financing herein contemplated and shall continue in full force and effect so long as the obligations hereunder are outstanding. Whenever in this Project Loan Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrower which are contained in this Project Loan Agreement shall bind its successors and assigns and inure to the benefit of the successors and assigns of the Governmental Lender, the Fiscal Agent, the Servicer, the Funding Lender and the Funding Lender Representative, as applicable.

Section 8.03 *Governing Law*. This Project Loan Agreement and the Exhibits attached hereto shall be construed in accordance with and governed by the internal laws of the State and, where applicable, the laws of the United States of America.

Section 8.04 *Modifications in Writing*. Modification or the waiver of any provisions of this Project Loan Agreement or consent to any departure by the parties therefrom, shall in no event be effective unless the same shall be in writing approved by the parties hereto and shall require the prior written consent of the Funding Lender Representative and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Borrower in any case shall entitle it to any other or further notice or demand in the same circumstances.

Section 8.05 *Further Assurances and Corrective Instruments*. The Governmental Lender, the Fiscal Agent 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 hereto and such further instruments as may reasonably be required (including such supplements or further instruments requested by the Funding Lender Representative) for correcting any inadequate or incorrect description of the performance of this Project Loan Agreement.

Section 8.06 *Captions.* The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Project Loan Agreement.

Section 8.07 *Severability.* The invalidity or unenforceability of any provision of this Project Loan Agreement shall not affect the validity of any other provision, and all other provisions shall remain in full force and effect.

Section 8.08 *Counterparts.* This Project Loan Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

Section 8.09 *Amounts Remaining in Loan Payment Fund or Other Funds.* It is agreed by the parties hereto that any amounts remaining in the Loan Payment Fund or other funds and accounts established under the Funding Loan Agreement upon expiration or sooner termination of the term hereof (and the repayment in full of the Project Loan and all other amounts owing under the Project Loan Documents), shall be paid in accordance with the Funding Loan Agreement.

Section 8.10 *Effective Date and Term.* This Project Loan Agreement shall become effective upon its execution and delivery by the parties hereto, shall be effective and remain in full force from the date hereof, and, subject to the provisions hereof, shall expire on such date as the Funding Loan Agreement shall terminate.

Section 8.11 *Cross References.* Any reference in this Project Loan Agreement to an “Exhibit,” an “Article,” a “Section,” a “Subsection” or a “Paragraph” shall, unless otherwise explicitly provided, be construed as referring, respectively, to an exhibit attached to this Project Loan Agreement, an article of this Project Loan Agreement, a section of this Project Loan Agreement, a subsection of the section of this Project Loan Agreement in which the reference appears and a paragraph of the subsection within this Project Loan Agreement in which the reference appears. All exhibits attached to or referred to in this Project Loan Agreement are incorporated by reference into this Project Loan Agreement.

Section 8.12 *Funding Lender Representative and Servicer as Third-Party Beneficiaries.* The parties hereto agree and acknowledge that the Funding Lender Representative and the Servicer are third party beneficiaries of this Project Loan Agreement.

Section 8.13 *Supplemental Financings.* The Governmental Lender and the Fiscal Agent each acknowledges that the Funding Lender may make additional loans to the Borrower secured by additional mortgages on the Project (“*Additional Loans*”), provided however that no such Additional Loans may be made without the prior written consent of the Governmental Lender. Additional Loans must be subordinate to the repayment of the Project Loan by the Borrower.

Section 8.13 *Non-Liability of Governmental Lender.* The Governmental Lender shall not be obligated to pay the principal (or Prepayment Premium) of or interest on the Funding Loan, except from Revenues and other money and assets received by the Fiscal Agent on behalf of the Governmental Lender pursuant to this Project Loan Agreement. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof, nor the faith and credit of the Governmental Lender or any member is pledged to the payment of the principal (or prepayment premium) or interest on the Funding Loan. The

Governmental Lender shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Project Loan Agreement, the Funding Loan or the Funding Loan Agreement, except only to the extent amounts are received for the payment thereof from the Borrower under this Project Loan Agreement.

The Borrower hereby acknowledges that the Governmental Lender's sole source of money to repay the Funding Loan will be provided by the payments made by the Borrower pursuant to this Project Loan Agreement, together with investment income on certain funds and accounts held by the Fiscal Agent under the Funding Loan Agreement, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal (or prepayment premium) and interest on the Funding Loan as the same shall become due (whether by maturity, prepayment, acceleration or otherwise), then upon notice from the Fiscal Agent, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal (or prepayment premium) or interest, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Fiscal Agent, the Borrower, the Governmental Lender or any third party, subject to any right of reimbursement from the Fiscal Agent, the Governmental Lender or any such third party, as the case may be, therefor.

Section 8.14 *No Liability of Officers.* No recourse under or upon any obligation, covenant, or agreement or in the Governmental Note, or under any judgment obtained against the Governmental Lender, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, shall be had against any incorporator, member, director, commissioner, employee, agent or officer, as such, past, present, or future, of the Governmental Lender, either directly or through the Governmental Lender, or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, of any sum that may be due and unpaid by the Governmental Lender upon the Funding Loan. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director, commissioner, employee, agent or officer, as such, to respond by reason of any act or omission on his or her part or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, of any sum that may remain due and unpaid upon the Funding Loan, is hereby expressly waived and released as a condition of and consideration for the execution of this Project Loan Agreement and the issuance of the Governmental Note.

Section 8.15 *Capacity of the Fiscal Agent.* The Fiscal Agent is entering into this Project Loan Agreement solely in its capacity as Fiscal Agent and shall be entitled to the rights, protections, limitations from liability and immunities afforded it as Fiscal Agent under the Funding Loan Agreement. The Fiscal Agent shall be responsible only for the duties of the Fiscal Agent expressly set forth herein and in the Funding Loan Agreement.

Section 8.16 *Reliance.* The representations, covenants, agreements and warranties set forth in this Project Loan Agreement may be relied upon by the Governmental Lender, the Fiscal Agent, Bond Counsel, the Servicer, the Funding Lender and the Funding Lender Representative. In performing their duties and obligations under this Project Loan Agreement and under the Funding Loan Agreement, the Governmental Lender and the Fiscal Agent may rely upon statements and certificates of the Borrower, upon certificates of tenants believed to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the Borrower pertaining to occupancy of the Project. In addition, the Governmental Lender and the Fiscal Agent may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Governmental Lender or the Fiscal Agent under this Project Loan Agreement and under

the Funding Loan Agreement in good faith and in conformity with the opinion of such counsel. It is expressly understood and agreed by the parties to this Project Loan Agreement (other than the Governmental Lender) that:

(a) the Governmental Lender may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Governmental Lender by the Fiscal Agent, the Funding Lender or the Borrower as to the existence of a fact or state of affairs required under this Project Loan Agreement to be noticed by the Governmental Lender;

(b) the Governmental Lender shall not be under any obligation to perform any record keeping or to provide any legal service, it being understood that such services shall be performed or caused to be performed by the Fiscal Agent, the Funding Lender Representative, the Servicer or the Borrower, as applicable; and

(c) none of the provisions of this Project Loan Agreement shall require the Governmental Lender or the Fiscal Agent to expend or risk its own funds (apart from the proceeds of Funding Loan issued under the Funding Loan Agreement) or otherwise endure financial liability in the performance of any of its duties or in the exercise of any of its rights under this Project Loan Agreement, unless it shall first have been adequately indemnified to its satisfaction against the costs, expenses and liabilities which may be incurred by taking any such action.

Section 8.17 *Delivery of Reports.* The delivery of reports, information and documents to the Governmental Lender as provided herein is for informational purposes only and the Governmental Lender's receipt of such shall not constitute constructive knowledge of any information contained therein or determinable from information contained therein. The Governmental Lender shall have no duties or responsibilities except those that are specifically set forth herein, and no other duties or obligations shall be implied in this Project Loan Agreement against the Governmental Lender.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Project Loan Agreement, all as of the date first set forth above.

**RHODE ISLAND HOUSING MORTGAGE AND
FINANCE CORPORATION**, as Governmental
Lender

By

Name: Kara L Lachapelle
Title: Chief Financial Officer

*[GOVERNMENTAL LENDER'S SIGNATURE PAGE TO
BERNON MILLS APARTMENTS PROJECT LOAN AGREEMENT]*

**THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A., as Fiscal Agent**

By _____
Name:
Title:

*[FISCAL AGENT'S SIGNATURE PAGE TO
BERNON MILLS APARTMENTS PROJECT LOAN AGREEMENT]*

BRISA BERNON MILLS, LP,
a Rhode Island limited partnership

BY: NEED SIGNATURE BLOCK]

BY: _____

[BORROWER'S SIGNATURE PAGE TO
BERNON MILLS APARTMENTS PROJECT LOAN AGREEMENT]